



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
 सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरांगपुरा, अहमदाबाद 380009
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

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आदेश की तारीख/Date of Order : 04.06.2025
 जारी करने की तारीख/Date of Issue : 04.06.2025

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-12-2025-26 dtd. 04.06.2025 in
 the case of M/s. Forever Precious Jewellery and Diamonds Ltd., "Forever House", Opp.
 Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad.

- 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.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
 2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
- उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. 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 विरुद्ध 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 शीर्ष जुरमाना के बारेमे विवाद है उसका भुक्तान 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/INT-22/2009 dated 28.10.2009 issued by the Additional Director General, DRI, Ahmedabad Zonal Unit to M/s. Forever Precious Jewellery & Diamonds Ltd., "Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad and others.

BRIEF FACTS OF THE CASE:

1.1. An intelligence was received by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad that a consignment of about 100 Kgs. of crude bangles of 0.995 (24 Karat) purity, was being exported from Air Cargo Complex, Ahmedabad (ACC), in the guise of Plain Gold jewellery, under Advance Authorisation Scheme by M/s. Forever Precious Jewellery and Diamonds Ltd., "Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad (hereinafter also referred to as M/s. Forever).

1.2. To work out the same, they visited the ACC, Ahmedabad and found a consignment of the said M/s. Forever to be exported under Shipping Bill No.1122303 dated 06.05.2009 & Invoice No. ASD/HO/05/001 dated 05.05.2009. Shri Kartik Pancholi, the CHA produced the file containing the check list for the said Shipping Bill No.1122303 dated 06.05.2009 and Invoice No. ASD/HO/05/001 dated 05.05.2009.

1.3. It was found that 1015 Pcs. of 0.995 fineness gold bangles totally weighing 100047.76 Gms. valued at USD 29,46,411 (FOB) were being exported by M/s. Forever to M/s. Italian Gold FZC, Sharjah Airport International Free Zone, Sharjah, U.A.E. The goods being exported were packed in two Boxes and each box contained 10 Packets of Bangles, totally containing 1015 pieces and having a declared total Gross / Net Weight of 100047.76 Gms. The FOB value of the said Consignment was declared as Rs.14,62,89,306.15 as per the Check List for the Shipping Bill found in the said file. It was seen that the said exports were being effected against Advance Authorisation No. 0310439347/3/03/00 dated 13.08.2007 issued to M/s. Forever by DGFT, Mumbai for import of 800 Kgs. of 995 / 999 purity gold and export of 772.946 Kgs of 99/1-Plain gold Jewellery.

1.4. The said consignment of so called gold bangles was examined under Panchnama dated 07.05.2009, by the officers of DRI, in the presence of two independent panchas as well as the representatives of M/s. Forever and the Assistant Manager of GSEC Ltd., as the person in charge of the export godown at ACC, Ahmedabad and the representative of the CHA.

1.5.1. The said export consignment being exported by M/s. Forever under the aforementioned shipping bill and invoice of M/s. Forever was stated to be packed in two Packets wrapped in Cloth on which the following markings were found.

"TO,

ITALIAN GOLD FZC

P.O. BOX 8221

SHARJAH AIRPORT INTL FREE ZONE

SHARJAH, U.A.E.

PH. NO. 0097165570816, FAX 0097165570817.

FROM:

FOREVER PRE. JEW. & DIA. LTD.

'FOREVER HOUSE', OPP. HOTEL NEST,

OFF C. G. ROAD. NAVRANGPURA, AHMEDABAD-380009.

PH. NO. 079-26443006, FAX: 26443007."

1.5.2. The representatives of the CHA firm and the exporting company also agreed that they are the same boxes in which their goods were being exported. Thereafter, both the boxes were opened and the contents therein were examined and the same revealed that:

- 1015 Pcs of so called Bangles totally weighing over 100.047 Kgs. and valued at Rs.14.63 Crores were to be exported by the said company.
- detailed examination revealed that the so called bangles appeared to be of 995 purity and each so called bangle weighed between 90 to 105 Gms.
- all the so called bangles were of almost the same size and with the same design embossed on them.
- there was no individual paper or plastic or box packing for each so called bangle, which was worth Rs.1,26,000 to Rs.1,47,000 per piece.
- it was also observed that the bangles were loosely packed in 18 plastic bags each containing 50 bangles and 2 bags contained 55 & 60 bangles.
- it was also observed that almost all the bangles were not in proper shape and were de-shaped on account of malleable nature of 24 K gold.
- further it was observed that the said bangles would easily go out of shape when a little pressure was applied by hand.
- on being asked by the officers of DRI, the representatives of the company stated that since the said bangles were made of pure gold of 24 Carat (.995), they would easily go out of shape.
- it was also observed that in many cases, even the joints were not aligned before soldering.

1.5.3. The photographs of the export consignment were also taken during the panchnama, which also revealed the crude method in which the so called bangles were made and packed for export. Some of these photographs which were also shown to the Directors of M/s. Forever are relied upon as evidence in this case.

1.5.4. Thereafter, the officer randomly drew 3 bangles each from one plastic bag as representative samples from Box No.1 and also from Box No.2. Thus in all 6 bangles were drawn as representative samples and each bangle was packed in a separate plastic bag which in turn were packed in 6 separate cloth covers and sealed in the presence of the panchas as well as the representatives of M/s. Forever and CHA.

1.5.5. The said export consignment was detained for further verification.

1.6. The said detained goods were got examined by two experts who were into the manufacture and trading of gold jewellery for several years. The said examination was carried out under panchnama dated 09.05.2009. On examination of the so called bangles, the said experts opined that:

- as per their experience and knowledge the bangles were of 24 Karats i.e. of 995 to 999 fineness.
- all the bangles were of almost the same size with the same design embossed on them.
- these bangles were loosely packed in the plastic bags each containing about 50 bangles and there was no individual paper or plastic or box packing for each bangle.
- normally such large consignments of gold jewellery were not packed in this manner.
- almost all the bangles were not in proper shape and were de-shaped.
- there was no marking of Karatage or purity on the bangles, which is normally there on the gold jewellery meant for local or foreign sale.
- in many of the bangles the joints were also not aligned properly before soldering.
- the finishing of the bangles examined by them clearly showed that the said bangles can never be accepted as jewellery even in the local market than how it can be accepted for sale as jewellery in the foreign market.
- since these bangles were of 24 Karat purity they would easily go out of shape when a little pressure was applied on them.
- normally 24 Karat, i.e. 995 to 999 purity jewellery is not used for adornment as it easily goes out of shape.

- normally in India and in foreign countries jewellery of 14 to 22 Karat is used.
- on being asked by the DRI officers the experts stated that normally bangles of 10 to 25 Gms are used as ornaments /jewellery and are normally made of 22 Karat gold. Such heavy bangles of over 90 grams cannot be worn or used as jewellery.
- the experts finally opined that these bangles appear to be only strips of gold embossed with some design and given a roughly round shape and soldered at the ends to give them a shape of bangles. Such bangles cannot be accepted as jewellery in the trade.

1.7. In view of the above findings, it appeared that the said so called bangles which were being exported by M/s. Forever cannot be termed as jewellery by any stretch of imagination and were, therefore, liable for confiscation under the provisions of Customs Act, 1962 and therefore the officers of DRI seized the two boxes containing 1009 pcs. of so called Bangles weighing about 99.840 Kgs valued at approximately Rs.13.78 Crores (after excluding the weight and value of the six bangles drawn as samples), under the reasonable belief that they appeared liable for confiscation under the provisions of Customs Act, 1962. The two sealed boxes were handed over to the Office Assistant of GSEC, Shri Jitendra for safe custody with the instruction that the same should not be dealt with or handed over to anyone without the written permission of the Assistant / Deputy Director of DRI, Ahmedabad.

1.8. On being requested by M/s. Forever, the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, vide his letter dated 30.06.2009 allowed provisional release of the so called bangles seized by the officers of DRI under Panchnama dated 09.05.2009, on execution of bond for Rs.14,62,89,306.15 supported by Bank Guarantee for Rs.3,66,00,000/- As the said so called bangles could not be allowed for exports, the same were released provisionally only for taking back to town and with a condition that the same would not be exported from any port.

1.9. Accordingly, M/s. Forever executed Bond for Rs.14,62,89,306.15 supported by Bank Guarantee of HDFC Bank Ltd., Trade Finance Department, Law Garden, Ellis bridge, Ahmedabad for Rs.3,66,00,000/- and the goods were provisionally released to them.

2.1. During the course of inquiry, statements of the two experts who had examined the said consignment of so called bangles under panchnama dated 09.05.2009 were recorded.

2.2. Shri Chandreshbhai Rasiklal Soni Proprietor of M/s. Jayendra Jewellers, Ahmedabad, in his statement recorded on 09.10.2009 deposed, inter alia, that:

- he along with Shri Harshadbhai Shantilal Soni, Proprietor of M/s. Dharmik Jewellers, Ahmedabad, was present during the proceedings of the panchnama dated 09.05.2009, under which the export consignment of gold jewellery being exported by M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad was examined by them at the export godown of Air Cargo Complex, Ahmedabad;
- he is the proprietor of M/s. Jayendra Jewellers, Ahmedabad and he is into the business of manufacture of gold jewellery on job work basis since last 20 years and have entered into the business of sale of gold jewellery since over 10 years in the name of M/s. Jayendra Jewellers of which he is the proprietor;
- since he is into the business of manufacture and sale of gold jewellery for over 20 years he is fully aware about the business of gold and gold jewellery;
- as mentioned by them during the above panchnama, the gold jewellery being exported by M/s. Forever Precious Jewellery & Diamonds Ltd., was in the form of bangles of 24 Karats i.e. of 995 to 999 fineness;
- It was also noticed by them that all the bangles were of almost the same size and the same design was embossed on them;
- normally in such a big consignment of over 1000 pieces of bangles the bangles are of different design and size;

- as seen by them these bangles were loosely packed in plastic bags and there was no individual paper or plastic or box packing for each bangle. Normally such large consignments of gold jewellery are not packed in this manner. Even the artificial jewellery being exported or sold in the local market are packed in a better manner;
- they had also noticed that almost all the bangles were not in proper round shape and were de-shaped;
- as seen by them there was no marking of Karatage or purity on the bangles, which is normally done on the gold jewellery meant for local sale or exports;
- the finishing of the bangles examined by them was also not proper and it appeared that the said bangles were not even polished properly.;
- they also found that in many of the bangles the joints were also not aligned properly before soldering;
- according to his experience in the business of gold jewellery he could say that such bangles cannot be accepted as jewellery;
- normally 24 Karat, i.e. 995 to 999 purity jewellery is not used for wearing as ornament because pure gold is very soft and the ornaments made out of it easily goes out of shape even when little pressure is applied on them; also there is lot of wear and tear on 24 K jewellery and it wears off easily;
- from his experience in the business of gold jewellery he could say that normally in India jewellery of 22 Karat is used and in foreign countries jewellery of 14 to 22 Karat is used;
- there is hardly any demand of 24 K jewellery in India or foreign countries;
- normally bangles of 10 to 20 Gms are used as ornaments /jewellery. Only in some cases bangles of above 30 to 50 grams are worn. Very heavy bangles of above 90 grams cannot normally be worn or used as jewellery;
- the bangles of M/s. Forever examined by them at Air Cargo Complex, Ahmedabad, appeared as if strips of gold were manufactured out of 24 Karat gold bars and were given a roughly round shape and soldered to make them look like a bangle;
- but being of 24K purity most of them were out of shape when they examined them;
- on the base of his experience he stated that such bangles cannot be accepted as jewellery in the trade even in the local market and cannot be used as jewellery or ornaments.

2.3. Statement of Shri Harshadbhai Shantilal Soni, Proprietor of M/s. Dharmik Jewellers, Ahmedabad was recorded on 08.10.2009, wherein he deposed, inter alia, that:

- he along with Shri Chandreshbhai Rasiklal Soni, Proprietor of M/s. Jayendra Jewellers, Ahmedabad, was present at Air Cargo Complex, Ahmedabad during the proceedings of the panchnama dated 09.05.2009, under which the export consignment of gold jewellery being exported by M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad was examined by them at the export godown of Air Cargo Complex, Ahmedabad;
- he was the proprietor of M/s. Dharmik Jewellers, Ahmedabad and they were into the business of manufacture and sale of gold jewellery since over 40 years in the name of M/s. Dharmik Jewellers, in which formerly his father was the proprietor; that he joined the said business around 1988-1999 and he is the proprietor of the said firm after his father's death;
- he was into the business of manufacture and sale of gold jewellery since over 20 years and fully aware about the business of gold and gold jewellery;
- as mentioned by them during the said panchnama, the gold jewellery being exported by Forever was in the form of bangles of 24 Karats i.e. of 995 to 999 fineness;
- they also noticed that all the bangles were of almost the same size and the same design embossed on them, which would not be possible in case of such a big

consignment of over 1000 pieces of bangles; that normally in such big consignment the bangles should be of different size with different designs;

- as seen by them these bangles were loosely packed in plastic bags and there was no individual paper or plastic or box packing for each bangle; that normally such large consignments of gold jewellery are not packed in this manner;
- they had also noticed that almost all the bangles were not in proper round shape and were out of shape;
- as seen by them there was no marking of Karatage or purity on the bangles, which is normally done on the gold jewellery meant for local sale or exports; they also found that in many of the bangles the joints were also not aligned properly before soldering;
- the finishing of the bangles examined by them was also not proper and it appeared that the said bangles were not even polished properly;
- according to his experience in the business of gold jewellery he could say that such bangles will not be accepted as jewellery in the trade of gold jewellery;
- normally 24 Karat, i.e. 995 to 999 purity jewellery is not used for wearing as ornament because pure gold is very soft and the ornaments made out of it easily gets out of shape even due to little pressure and also 24 K jewellery wears off easily;
- from his experience in the business of gold jewellery he could say that normally in India jewellery of 22 Karat is used and in foreign countries jewellery of 14 to 22 Karat is used; that in India studded jewellery is also manufactured out of 14 to 18 Karat gold;
- there is hardly any demand of 24 K jewellery in India or foreign country;
- normally bangles of 10 to 25 Gms are used as ornaments /jewellery; that only in some cases bangles of 40 to 50 grams are worn. Very heavy bangles of above 90 grams cannot normally be worn or used as jewellery;
- the bangles of M/s. Forever examined by them at Air Cargo Complex, Ahmedabad, appeared as if strips of gold were manufactured out of 24 Karat gold bars and were given a roughly round shape and soldered to give them a look of a bangle; but being of 24K purity most of them were out of shape when they examined them;
- on the basis of his experience he stated that such bangles cannot be accepted as jewellery in the trade and cannot be worn as ornament.

3.1. The six samples of the so called bangles drawn under panchnama dated 07.05.2009 were also got examined by two experts under panchnama dated 14.10.2009. On examination of the said samples the experts observed as under:

- that as per their experience and knowledge these so called bangles were of 24 Karats i.e. of 995 to 999 fineness;
- All the so called six bangles were of almost the same size with the same design embossed on them;
- The experts also stated that that so called bangles were not in proper shape and were de-shaped;
- they also observed that there was no marking of Karatage or purity on the bangles, which is normally there on the gold jewellery meant for local or foreign sale;
- on being asked by the officer of DRI the experts also opined that the finishing of so called bangles examined by them was such the said so called bangles can not be accepted as jewellery in the local market or for export;
- on being asked the experts also stated that since these so called bangles were of 24 Karat purity they could have gone out of shape even by little pressure applied on them during packing or transportation;
- they also stated that normally 24 Karat, i.e. 995 to 999 purity jewellery is not used for adornment as it easily goes out of shape;

- on being asked they also stated that normally in India and in Foreign countries jewellery of 14 to 22 Karat is used;
- on being further asked by the DRI officers the experts state that normally bangles of 10 to 25 Gms are used as ornaments /jewellery and are made of 14 to 22 Karat gold. Such heavy bangles of over 90 grams cannot be worn or used as jewellery;
- the experts also opined that these bangles appear to be only strips of 24 K gold embossed with some design and given a roughly round shape and soldered at the ends to give them a shape of bangles. Such bangles cannot be accepted as jewellery in the trade.

3.2. The statements of the two experts who had examined the samples of the so called bangles under panchnama dated 14.10.2009 were recorded.

3.2.1. Statement of Shri Kishore Zaveri, Director of M/s Zaveri & Co. Pvt. Ltd., Ahmedabad was recorded on 16.10.2009, wherein he stated, inter alia, that:

- he along with Shri Shantibhai Patel, Proprietor of M/s Jaykrishna Jewellers, Ahmedabad, was present during the proceedings of the panchnama dated 14.10.2009, under which the samples drawn under panchanama dated 07.05.2009 from a consignment of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, was examined by them at the locker premises of Bank of Baroda, Navrangpura Branch, Ahmedabad on 14.10.2009;
- he is the Director of M/s Zaveri & Co. Pvt. Ltd., Ahmedabad; they are into the business of manufacture and sale of gold jewellery since last 30 to 35 years in the name of M/s Zaveri & Co. Pvt. Ltd., in which his uncle Shri Zaveribhai Mandaliya was the Director; he joined the said business as Director around 2004-05, however, he is into the business of manufacture and sale of gold jewellery since over 25 years and was fully aware about the business of gold and gold jewellery;
- they also export plain as well as studded gold jewellery to UAE, Singapore, USA and Middle East Countries, since 2003-04; normally they export plain and studded bangles, rings, earrings, pendants etc.; the jewellery exported by them is of 22 Karat; they have also exported gold medallion of 24 Karat;
- 24 Karat gold is very soft and jewellery made out of 24 karat gold would go out of shape easily, therefore there is hardly any demand of 24 Karat jewellery;
- they normally pay Rs.50 to 150 Per gram making charges in whole sale for the plain gold jewellery to their labour engaged in manufacturing of plain gold jewellery; the wholesale making charges for studded gold jewellery is from Rs.225 to 450 per gram;
- being in the trade of manufacture and sale of gold jewellery, he had visited UAE, Singapore, USA and Middle East Countries and had also attended many gold jewellery trade fares in India as well as abroad. However, he had hardly seen any demand for 24K jewellery; in UAE also mostly 21 Karat or 22 Karat gold jewellery is in demand;
- some of the big jewellery manufacturers of Indonesia, Italy, Thailand, etc, had started manufacturing gold jewellery of 24 Karat, but these were made with sophisticated machines. Even these are also not of pure 24 Karat gold i.e. 999 or 995 purity, but of 990 purity, i.e. even they use some alloy equal to 0.09%; moreover this jewellery is very light weight and of about less than 5 grams and up to 25 grams and is very expensive;
- they had never heard the names of UAE based companies namely M/s. Al Abia Jewellery, U.A.E., M/s. Al Mufied Jewellery FZE, UAE and M/s. Italian Gold FZC, UAE, during their business of export of gold jewellery;
- as mentioned by them during the said panchnama, the gold jewellery being exported by Forever was in the form of bangles of 24 Karats i.e. of 995 to 999 fineness; they also noticed that all the bangles were of almost the same size with the same design embossed on them; almost all the bangles were not in proper round shape and were out of shape; there was no marking of Karatage or purity

on the bangles, which is normally done on the gold jewellery meant for local sale or exports; the finishing of the bangles examined by them was also not proper and it appeared that the said bangles were not even polished properly;

- according to his experience in the business of gold jewellery he can say that such bangles will never be accepted as jewellery in the trade of gold jewellery;
- normally 24 Karat, i.e. 995 to 999 purity jewellery is not used for wearing as ornament because pure gold is very soft and the ornaments made out of it easily gets out of shape even due to little pressure;
- from their experience in the business of gold jewellery he can say that normally in India jewellery of 22 Karat is used and in Foreign countries jewellery of 14 to 22 Karat is used;
- normally bangles of 10 to 25 Gms are used as ornaments /jewellery; only in some cases bangles of 40 to 50 grams are worn and very heavy bangles of above 90 grams cannot normally be worn or used as jewellery;
- the samples of bangles of M/s. Forever examined by them at the locker premises of Bank of Baroda, Navrangpura Branch, Ahmedabad, appeared as if strips of gold were manufactured out of 24 Karat gold bars and they were soldered after giving it a round shape like a bangle, but being of 24K purity most of them were out of shape when they examined them; that such bangles cannot be accepted as jewellery in the trade.

3.2.2. Statement of Shri Shantibhai Patel, Proprietor of M/s Jaykrishna Jewellers, Ahmedabad was recorded on 16.10.2009, wherein he stated, inter alia, that:

- he along with Shri Kishorbhai Zaveri, Director of M/s Zaveri & Company Pvt. Ltd., Ahmedabad, was present during the proceedings of the above panchnama dated 14.10.2009, under which the samples drawn under panchnama dated 07.05.2009 from an export consignment of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, was examined by them at the locker premises of Bank of Baroda, Navrangpura Branch, Ahmedabad on 14.10.2009;
- he is the proprietor of M/s Jaykrishna Jewellers, G-4, "Deepkala", Near Municipal Market, C.G. Road, Ahmedabad; they are into the business of sale of gold jewellery since last 30 years; he started the said business as proprietor in the year 1980 of the said firm i.e. M/s. Jaykrishna Jewellers; he is into the business of manufacture and sale of gold jewellery since over 30 years and was fully aware about the business of gold and gold jewellery;
- at present he is President of Gem & Jewellery Trade Council of India and Jewellery Association, Ahmedabad; he is also member of Gem & Jewellery Export Promotion Council, Bombay;
- as mentioned by them during the said panchnama, the gold jewellery being exported by Forever which was shown to be bangles were of 24 Karats i.e. of 995 to 999 fineness;
- all the bangles were of almost the same size with the same design embossed on them; almost all the bangles were not in proper round shape and were out of shape; there was no marking of Karatage or purity on the bangles, which is normally done on the gold jewellery meant for local sale or exports; the finishing of the bangles examined by them was also not proper and it appeared that the said bangles were not even polished properly; according to his experience in the business of gold jewellery he can say that such bangles will never be accepted as jewellery in the trade of gold jewellery;
- normally 24 Karat, i.e. 995 to 999 purity jewellery is not used for wearing as ornament because pure gold is very soft and the ornaments made out of it easily gets out of shape even due to little pressure;
- from their experience in the business of gold jewellery he can say that normally in India jewellery of 22 Karat is used and in Foreign countries jewellery of 14 to 22 Karat is used;

- normally bangles of 10 to 25 Gms are used as ornaments /jewellery; only in some cases bangles of 40 to 50 grams are worn that very heavy bangles of above 90 grams cannot normally be worn or used as jewellery;
- the samples of bangles of M/s. Forever examined by them at the locker premises of Bank of Baroda, Navrangpura Branch, Ahmedabad, appeared as if strips of gold were manufactured out of 24 Karat gold bars and they were soldered after giving it a round shape like a bangle, but being of 24K purity most of them were out of shape when they examined them; such bangles cannot be accepted as jewellery in the trade;
- 24 Karat gold is very soft and jewellery made out of 24 karat gold would go out of shape easily, therefore there is hardly any demand of 24 Karat jewellery;
- they normally pay Rs.80 to 200 Per gram making charges in whole sale for the plain gold jewellery to the labour engaged in manufacturing of plain gold jewellery; that the wholesale making charges for studded gold jewellery is from Rs.80 to 180 per gram; being in the trade of manufacture and sale of gold jewellery, he has visited UAE, USA etc. and also attended many gold jewellery trade fares in India as well as abroad, however he has hardly seen any demand for 24K jewellery; in UAE also mostly 21 Karat or 22 Karat gold jewellery is in demand;

4.1. Simultaneous search was also carried out at the office premises of said M/s. Forever situated at "Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad and certain documents were recovered and withdrawn under Panchnama dated 07.05.2009.

4.2. Inquiries were also caused at the registered office of the said M/s. Forever said to be situated at Kesharba Market-2, Gotala Wadi, Katargam, Surat. On inquiry it was learnt that the said premises belonged to M/s. Suraj Diamond and no activities relating to M/s. Forever was being carried out from the said premises.

4.3.1. In this regard a statement dated 07.05.2009 of Shri Mustafa Ibrahim Batliwala, Administrator and Accounts Officer of M/s Su-Raj Diamonds and Jewellery Limited, Surat was recorded, wherein he deposed, inter alia, that:

- he was working in M/s Su-Raj Diamonds and Jewellery Limited since last 8 years and he was looking after the Administration and Accounts of M/s Su-RAJ Diamonds and Jewellery Limited;
- entire premises of Ashoka Tower, Kesarba Market No.2, Gotalawadi, Katargam, Surat was owned by M/s Su-Raj Diamonds and Jewellery Limited; this firm was engaged in the manufacturing and trading of cut and polished diamonds;
- On being asked regarding the firms operating at Ashoka Tower, Kesarba Market No.2, Gotalawadi, Katargam, Surat, he stated that apart from M/s Su-Raj Diamonds and Jewellery Limited, the firms namely 1) M/s B. V. Chinai and Co., 2) M/s Sheel Diamond Export Pvt. Ltd., 3). M/s. Jagdish C. Mody Export, 4) M/s Chirag Gems and 5) M/s Span Design Organization were operating;
- On being asked regarding a firm operating or existing in the name of and style of M/s Forever Precious Jewellery and Diamonds Pvt. Ltd. at Kesarba Market -2, Gotalawadi, Katargam, he stated that in Ashoka Tower, Kesarba Market No.2, no firm in the name and style of M/s Forever Precious Jewellery and Diamonds Pvt. Ltd., was in existence;
- On being asked whether he knew any person by name of Shri Jal Kumar Begani, he stated that he did not know him nor he had met him at any point of time.

4.3.2. Shri Mustafa Ibrahim Batliwala, of his own accord, again presented himself on 07.05.2009 before the officer of DRI, Surat, to tender his further statement. His further statement dated 07.05.2009 was recorded wherein he stated, inter alia, that:

- he had once again read his earlier statement dated 07.05.2009 and he agreed that facts stated therein are true and correct;

- after the officers (DRI officers) left their office located at Ashoka Tower, Kesarba Market No.2, Gotalawadi, Katargam, Surat, he received some documents by fax from their office of M/s Su-Raj Diamonds & Jewellery Limited now located at C-5/D-4, Open House, Harmesh House, Mama Parmanand Marg, Mumbai, the Xerox copies of which he produced as under;
 - (a) Letter dated 01.01.2001 of Shri Shiv Prakash K. Singh Company Secretary addressed to M/s Forever Precious Jewellery and Diamonds Pvt. Ltd., Sakar, Ahmedabad.
 - (b) Form 13 Issued by the authorities of Companies Act, (R.O.C);
 - (c) Receipt issued by Registrar of Companies;
 - (d) Form 18 dated 21.12.1995;
 - (e) Receipt issued by Registrar of Companies;
- he knew that Shri Jatin R. Mehta, the Chairman of M/s Su-Raj Diamonds & Jewellery Limited, is sitting in Mumbai at the office address given above, his telephone no. is 022-40960300; he is in regular contact with him (Shri Jatin R. Mehta) being employee of their firm;
- he (Shri Jatin R. Mehta) had informed him that whatever letters in the name of M/s Forever Precious Jewellery and Diamonds Pvt. Ltd., were received in Surat office were to be sent to their (Forever Precious Jewellery and Diamonds Pvt. Ltd.,) Ahmedabad office situated at Forever House, Opp. Nest Hotel, Navrangpura, Ahmedabad;
- accordingly, what ever documents / letters he received in the name of this firm, he used to send the same to Ahmedabad office; he was not paid any extra money for sending letters of M/s Forever Precious Jewellery and Diamonds Pvt. Ltd;
- there was no sign board of M/s Forever Precious Jewellery and Diamonds Pvt. Ltd. and there is no room no.19 allotted to this firm in the whole building;
- he did not know any thing more about M/s Forever Precious Jewellery and Diamonds Pvt. Ltd.

5.1. During the course of further inquiry, it was gathered that the said consignment of so called bangles being exported by M/s. Forever was got manufactured by them from M/s. Tapubhai Dayalji Soni & Sons, 211, Ruby Chamber, 2nd Floor, Fatasa's Pole, Gandhi Road, Ahmedabad. Therefore, Inquiries were caused with the said firm and the statements of Shri Dineshbhai Tapubhai Soni, Partner of M/s. Tapubhai Dayalji Soni & Sons, Ahmedabad were recorded under section 108 of the Customs Act, 1962.

5.2. Statement of Shri Dineshbhai Tapubhai Soni, Partner of M/s Tapubhai Dayalji Soni & Sons, 211, Ruby Chamber, 2nd Floor, Fatasa's Pole, Gandhi Road, Ahmedabad was recorded on 07.05.2009, wherein he deposed, inter alia, that:

- he is a partner in M/s Tapubhai Dayalji Soni & Sons wherein he and his three brothers are partners; their firm was engaged in the making and selling of gold ornaments. Apart from making ornaments, they also manufactured gold medallions, 100 Gms bars, and bangles of gold on job work basis. For doing these work, they had the machineries.
- they received 1 kg Gold bars from the persons for whom they undertook the job work. These bars were either rolled for making medallions or bars or cut into strips for making bangles;
- On being asked about how he came into contact with M/s Forever Precious Jewellery & Diamonds Ltd, he stated that he had contacted Shri Jaybhai of M/s Forever Precious Jewellery & Diamond Ltd. before two years, when he had made some rings for them, thereafter he approached them for work and on a request from him (Jaybhai), he sent them a quotation for making bangles of 90-100 Gms. and 100 Gms. coins which was accepted by him (Jaybhai). The charges for making bangles were finalized at Rs.40,000/- per 100 Kgs. and that for making 100 Gms. coins was finalized at Rs.25,000/-;
- they had started the job work for M/s Forever Precious Jewellery & Diamond Ltd. since April, 2009;

- when he had approached M/s Forever precious jewellery & Diamond Ltd for dealing, he had shown them around 10 designs for the bangles and Shri Jaybhai had told him that he can make any design as per the current trend. No specific design was given by Shri Jaybhai for making bangles;
- till date they had received around Rs.97,000/- after deducting the TDS;
- he had not received any other remuneration (in any other form), towards job work charges of M/s. Forever Precious Jewellery & Diamond Ltd.;
- He also produced following documents maintained at his office premise in respect of the job work being done by their firm for M/s Forever Precious jewellery & Diamond Ltd.:
 - Voucher file containing documents related to Job work of M/s Forever Precious jewellery & Diamond Ltd paged from 1 to 127.
 - Xerox copy of bill Nos.01 to 10 of M/s. Forever Precious jewellery & Diamond Ltd for the year 2009-10.

5.3. Further statement of Shri Dineshbhai Tapubhai Soni S/o Tapubhai Dayalji Soni, was recorded on 11.05.2009 wherein he deposed, inter alia, that:

- he was an active partner of his firm and look after day to day affairs of the firm and therefore was aware of all the dealings of the firm and in the said capacity he was giving this statement;
- they were into the business of manufacture and sale of gold jewellery since over 50 years in the name of M/s. Tapubhai Dayalji Soni in which his father was the proprietor. He joined the said business as partner around 1976-1977 and the firm was named as M/s. Tapubhai Dayalji Soni & Sons;
- he was into the business of manufacture and sale of gold jewellery since over 30 years and was fully aware about the business of gold and gold jewellery;
- as mentioned in his statement dated 07.05.2009, he had come into contact with Mr. Jaybhai Begani of M/s. Forever Precious Jewellery & Diamonds Ltd., about two years back, when they made 22 Karats gold ornaments for them; thereafter they had no business with them for quite some time. Around March, 2009 when he met him (Jay Begani) at his office, opposite Hotel Nest, Off C.G. Road, at Ahmedabad, he (Jay Begani) told him (Dineshbhai) that they had to export bangles of 24 Karats fineness of about 90 Gms to 120 Gms a piece and asked him (Dineshbhai) about their job charges for the same; on his (Dineshbhai) asking him about the design and finishing required for the said bangles he said that any design will do and not much finishing is required and it should just look like a bangle; on asking about the size of the bangles to be manufactured he stated that any size would do but the weight should be between 90 Gms. to 120 Gms. a piece; he (Jay Begani) also asked him (Dineshbhai) to give their lowest price and not to bother much about the design and finishing;
- as such crude type of bangles could be easily manufactured by them (Dineshbhai) without much labour, he told him that they would charge him about Rs.40,000/- per 100 Kgs. for manufacture of such bangles; he (Jay Begani) agreed and asked him to send a quotation in the name of M/s. Forever Precious Jewellery & Diamonds Ltd. and the same was accepted by them;
- On being asked he stated that he had brought the "Sona Khata Vahi" of their firm for the years 2008-09 and 2009-10, in which they keep the record of receipt of gold for manufacture and issue of jewellery supplied to different parties; On perusal of the "Sona Khata Vahi" for the year 2008-09 and 2009-10 he stated that they had not undertaken any job work for M/s. Forever Precious Jewellery & Diamonds Ltd. during 2008-09. However, during 2009-10, between 04/04/2009 and 29/04/2009 they had manufactured about 460 Kgs. of bangles of 24 Karat purity for them (M/s. Forever); they had also raised ten bills No.01 to 10 for the same for their labour charges at the rate of Rs.4/- per 10 Gms.
- On being asked regarding the process carried out by them for the manufacture of the so called bangles for M/s. Forever Precious Jewellery & Diamonds Ltd., he

stated that they received One Kg gold Bars from M/s. Forever Precious Jewellery & Diamonds Ltd. which they cut into five strips; the cut strips are rolled to make the thickness uniform. These strips of uniform thickness are then passed into roller machine to obtain long strips of desired thickness; these strips are thereafter passed through another roller machine to emboss the design on them;

- thereafter the strips are cut into desired length and given a round shape as that of bangle and soldered at the ends with cadmium;
- they had manufactured such bangles of up to 99 Kgs within a day and given to M/s. Forever Precious Jewellery & Diamonds Ltd.;
- all the 460 Kgs. of bangles manufactured and supplied by them to M/s. Forever Precious Jewellery & Diamonds Ltd. were manufactured in similar fashion;
- On being asked he stated that in whole sale they charged up to Rs.40 to 60 per gram for the manufacture of 22 Karat Gold jewellery in normal designs; that Jewellery with special design and handicraft are charged at higher rates. They had also charged at the same rate of about Rs.40 to 50 per gram to M/s. Forever Precious Jewellery & Diamonds Ltd. when they made 22 Karat gold jewellery for them (M/s. Forever) for their local sale; On being asked as to how they could afford to manufacture bangles for M/s. Forever Precious Jewellery & Diamonds Ltd. At 40 Paise per gram as against Rs.40 to 60 per gram, he stated that, as already mentioned by him, Shri Jaybhai of M/s. Forever Precious Jewellery & Diamonds Ltd. had asked him to manufacture the said bangles at the lowest possible cost without any concern for design or finish, therefore they had quoted the lowest possible rates and manufactured bangles for them at this rate; as there was no craftsmanship involved in the manufacture of the said bangles they could manufacture and supply up to 100 Kgs. of bangles to M/s. Forever Precious Jewellery & Diamonds Ltd., within a day, at this rate;
- He was shown some of the photographs of the bangles being exported by M/s. Forever Precious Jewellery & Diamonds Ltd., which were taken on 07/05/2009 at Air Cargo Complex, Ahmedabad, and on seeing the design of the same he stated that the same were manufactured by them for M/s. Forever Precious Jewellery & Diamonds Ltd;
- about 50 to 60 bangles were loosely packed by them in a plastic bag and handed over to Shri Gordhanbhai or the other representatives of M/s. Forever Precious Jewellery & Diamonds Ltd. who used to come to deliver the gold and take the delivery of the bangles;
- On being asked regarding the fact that most of the bangles found in the export consignment were de-shaped and mutilated as can also be seen from the photographs he stated that since these bangles were manufactured out of 24 Karat gold, they would easily go out of shape even on account of little pressure on them during storage or transportation; that ornaments are made of 14 to 22 Karats and ornaments of 24 Karat are not used as they would go out of shape easily;
- He was also asked as to in many of the bangles found in the export consignments of M/s. Forever Precious Jewellery & Diamonds Ltd., the ends were not properly aligned before soldering, he stated that due the urgency of making the bangles and supplying the same to M/s. Forever Precious Jewellery & Diamonds Ltd. in some cases this could have happened due to the carelessness of the workers. Moreover, M/s. Forever Precious Jewellery & Diamonds Ltd. had not insisted on quality and finishing;
- Normally bangles of 15 to 40 grams of 22 Karats are worn as ornaments. Such heavy bangles of over 90 grams and that too in 24 Karats cannot be worn or used as jewellery;
- The type and finish of the bangles supplied by him to M/s. Forever Precious Jewellery and Diamonds cannot be accepted as jewellery in the local or foreign trade;
- From the photo copies of invoices and other related documents for the manufacture and supply of bangles to M/s. Forever he stated that till date they

had received Rs.97,000/- (after deducting TDS) and the balance is outstanding; they had neither charged nor received any other remuneration from M/s. Forever Precious Jewellery & Diamonds Ltd. for manufacture of bangles except their job charges of Rs.4/- per 10 grams, charged by them;

- The photo copies of invoices and other related documents for the manufacture and supply of bangles to M/s. Forever Precious Jewellery & Diamonds Ltd. Exports were handed over by him during the recording of his statement dated 07.05.2009. He produced the photo copies of the relevant pages of their Sona Khata Vahi for the years 2008-09 and 2009-10 for receipt of gold and supply of gold jewellery and gold bars/medallions to M/s. Forever Precious Jewellery and Diamonds Ltd., and others.

6.1. During the course of investigation statement of Shri Jaikumar Begani S/o Kirankumar Begani, Managing Director of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad was recorded on 15.05.2009, wherein he deposed, inter alia, that:

- about 15 years back he joined Su-raj Diamonds & Jewellery Ltd., Mumbai, as Manager Marketing for international Market and worked with them for 3 to 4 years;
- the directors of M/s. Su-raj Diamonds were Mr. Jatin Mehta (Chairman), Mr. Atul Pethe, Mr. Ranjit Shah and others;
- M/s. Su-raj Diamonds was in the business of export of jewellery and diamonds and they had a unit for manufacture of jewellery in Santa Cruz Export Processing Zone (SEPZ), from where he operated and thereafter he started his own business of trading in jewellery mostly in whole sale and in some cases to the individual clients also;
- after doing his own business for about one & a half year, he once again met Mr. Jatin Mehta and Mr. Ranjit Shah for job;
- they offered him a job in their newly formed company, M/s. Forever Precious Jewellery and Diamonds Ltd, having their registered office at Surat, to handle the operations of their Ahmedabad branch; thus he joined M/s. Forever in the year 1997/1998 and looked after their Ahmedabad operations;
- in and around the year 2000 he was appointed as Managing Director of M/s. Forever and at present he is drawing a salary of Rs.50,000/- per month;
- On being asked he stated that his stake in M/s. Forever was Zero percent; the other Directors of M/s. Forever were, Mr. Jatin Mehta, Mr. Vinay Mehta and Mr. Madan Kurjrekar; Mr. Jatin Mehta had about 0.1% stake in the company, whereas Mr. Vinay Mehta and Mr. Madan Kurjrekar had no stake in the company; earlier they had Mr. Alastair Adolf Guggenbuhl, a Zurich national as a director of M/s. Forever and he had a stake of about 25% through his company M/s. Lotus Global Investment; Mr. Adolf resigned from the directorship sometime last year, but his company M/s. Lotus Global Investment is still holding of about 25% shares of in their company; the other main share holders of their company are M/s. Su-raj Diamonds & Jewellery, Mumbai (49%), and M/s. Su-raj Diamond Industries, Mumbai (19%);
- initially M/s. Forever purchased diamond studded jewellery as well as plain gold jewellery from M/s. Su-raj Diamonds and sold the same in the local market and thereafter in around the year 2000/2001, they had started export of diamond studded jewelry and plain gold jewellery from M/s. Forever;
- initially they exported diamond studded jewellery of 18 Karat gold and thereafter they also exported studded gold jewellery studded with Cubic Zarconia and other coloured stones made of 22 K gold; they had also exported plain gold jewellery of 22 K gold; they have exported different type of jewellery including earrings, rings, pendants, bangles, bracelets, etc.; the average weight of the jewellery exported by them was about 8 to 12 Gms per piece for rings & earrings, Pendants would be about 15 to 30 Gms, bangles of 50 to 100 Gms, Bracelets of about 40-

50 Gms, per piece; he would give the details of all their exports from the beginning to till date by 20.05.2009.

- On being asked as to when they started export of 24 K gold jewellery and gold coins, he stated that he did not exactly remember when they started these exports, but he would inform about it when he submit the details of their exports;
- they had mostly exported their diamond studded jewellery of 18 K gold to Fiji, U.K. and U.A.E. Export of 22 K plain gold jewellery was mainly to Fiji and U.A.E;
- they had also exported 24K gold jewellery and 24K gold coins to U.A.E and Cut & Polished Diamonds to Hong Kong and U.A.E and he would also give the details of exports of Cut & Polished diamonds by 20.05.2009;
- they also had a unit in MEPZ Special Economic Zone, NH-45, Tambaram Chennai, where they mainly manufacture light weight stamped jewellery of 22 K & 23 K gold and mainly exported to U.A.E and Hong Kong;
- they had installed the required machinery for the manufacture of the jewellery, however they got the Karigars for the manufacture of jewellery on contract basis;
- they had in house manufacturing facility only at their Corporate office at "Forever House", Ahmedabad, where they mainly manufactured 18 K diamond / Cubic Zircon studded jewellery, Plain jewellery sets of 18 to 22 K and also earrings, earrings, pendants, etc. of 18 to 22 K gold, which were sold in the domestic market as well as exported;
- they also got different type of gold jewellery manufactured through different job workers at various locations in India and export the same as well as sell it in the local market; and produced a list of their job workers;
- the details of issue of gold and receipt of jewellery as well as the ledger accounts of all the job workers would be produced by him by 20.05.2009;
- they had a quality control department at their corporate office, Ahmedabad, where they normally carried out quality checks for the jewellery got manufactured by them, especially for exports, but where it was not possible to bring the jewellery to Ahmedabad or not possible to send their Quality check personal to the job workers premises, due to distance involved they rely on their job workers from whom they were getting the same manufactured for over a period of time;
- as far as he remembered, they had obtained only one Advance authorization for export of 995 purity plain gold jewellery against import of about 800 Kgs. of 995 gold; against this authorization, they had not effected any import of gold or purchased any gold locally, without payment of duty; the benefit of the duty free import /procurement would be taken by them after fulfillment of export obligation;
- they had exported 5 consignments of 995 purity plain gold jewellery against this licence. Out of the said 5 exports, three consignments were exported to Alabia Jewellery, FZE, Sharjah Airport International Free Zone, Sharjah, U.A.E and two Consignments to Al Mufied Jewellery FZE, Sharjah Airport International Free Zone, Sharjah, U.A.E; all these consignments were exported through Air Cargo Complex, Ahmedabad;
- out of the five consignments exported by them, two consignments exported to Alabia Jewellery, FZE, Sharjah under Shipping Bill Nos. 1115007 dated 16.02.2009 and 1115220 dated 18.02.2009, were manufactured for them by M/s. Emerald Jewel Industries Pvt. Ltd., Coimbatore and mostly contained Pendants and earrings and a few bangles of 995 purity; the other three Consignments exported under Shipping Bill Nos. 1120438 dated 15.04.2009, 1120539 dated 16.04.2009 and 1121212 dated 24.04.2009 were manufactured for them by M/s. Tapubhai Dayalji Soni & Sons, Ahmedabad and they contained bangles of .995 purity;
- On being asked regarding the consignment of over 100 Kgs of 995 purity bangles which was tendered for export by them through Air Cargo Complex, Ahmedabad, vide Shipping Bill No.1122303 dated 06.05.2009 and their invoice No.ASD/HO/05/001 dated 05.05.2009, which had been seized by DRI,

Ahmedabad, he stated that the said consignment was being exported to M/s. Italian Gold FZC, Sharjah Airport International Free Zone, Sharjah, U.A.E and was also manufactured for them by M/s. Tapubhai Dayalji Soni & Sons, Ahmedabad;

- all the three consignments of 24 K gold Bangles exported by them as detailed above and the fourth consignment of 24 K gold bangles being exported by them to M/s. Italian Gold FZC, Sharjah, were manufactured by M/s. Tapubhai Dayalji Soni & Sons, Ahmedabad and in all the consignments the weight of the bangles was between 90 to 100 grams as ordered by them; that they had contracted with M/s. Tapubhai Dayalji Soni & Sons, Ahmedabad for the manufacture of the above bangles of 24 K gold at the rate of 40 Paise per gram; that up to 100 Kgs of bangles were manufactured and supplied to them by M/s. Tapubhai Dayalji Soni & Sons, Ahmedabad on the same day or the next day of their supplying gold to them (M/s. Tapubhai Dayalji Soni & Sons);
- As regards the manufacturing charges for the other gold jewellery got manufactured by them for exports or local sales, he stated that they paid job charges in whole sale at around 3.5% to 4% of the value of gold for the bangles, which would come to around Rs.49/- to Rs.56/- per gram (Taking Value of gold @ Rs.1400/- per gram), whereas for other type of jewellery i.e. Pendants, rings, earrings, etc., he stated that they pay around 4 to 6% depending on the design which would come to around Rs.56/- to Rs.64/- per gram. He also stated that for the machine made bangles got manufactured by them they pay Rs.10/- to Rs.12/-;
- except the five consignments of 24 K gold jewellery exported by them to Alabia Jewellery, FZE, Sharjah, U.A.E and Al Mufied Jewellery FZE, Sharjah and the above consignment being exported by them to M/s. Italian Gold FZC, Sharjah, they had never exported or sold locally, 24 K gold jewellery;
- in his entire career of over 15 years of trading in gold jewellery he had never dealt with in 24 K gold jewellery; jewellery made of 24 K gold was very malleable and got mutilated and deformed easily;
- the order for the above 24 K gold bangles exported / being exported by them was received through one Mr. Prasad, a broker in U.A.E. with whom he came in contact about 2 years back in Dubai;
- for all the above consignments of 24 K gold bangles exported by them they had charged about 4.5% as making charges, whereas they had paid only 40 Paise as making charges, which comes to around 0.003%;
- as per the value addition norms required by Foreign Trade Policy a minimum value addition of 4% was required and therefore they got order from their overseas customer accordingly for a value addition of 4.5%;
- He had been shown some of the photographs of the bangles being exported by them under Shipping Bill No.1122303 dated 06.05.2009, through Air Cargo Complex, Ahmedabad, which were taken in the presences of the representatives of their company, under panchnama dated 07.05.2009. On seeing the said photographs he stated that the said bangles which were being exported are badly mutilated and deformed and in some cases the ends were also not properly aligned before soldering;
- that on being asked he stated that, as stated by him herein above, 24 K gold was very malleable and therefore the bangles made out 24 K gold would get deformed easily due to the pressure applied on them, due to packing & transportation, as about 50 bangles were loosely packed in one plastic bag and 10 such plastic bags were packed in one aluminum box for export;
- that the 24 K gold bangles exported by them earlier were also exported in the same fashion;
- On being asked whether the bangles in such mutilated condition, as was being exported by them can be accepted as jewellery, he stated that they had received orders for such 24 K bangles and they were exporting the same.

6.2. Statement of Shri Jatin Rajnikant Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad and CMD of M/s Su Raj Diamonds & Jewellery Ltd., Mumbai was recorded on 27.05.2009 wherein he deposed, inter alia, that:

- in 1986 they floated a public limited company in the name of M/s. Su Raj Diamond and Jewellery Ltd., in which he and his family members have about 35% to 40% holding; that Mr. Dillip Thakker (Chairman), Mr. Atul Pethe, Mr. Rajawadi, Mr. Ranjit Shah, Mr. Parimal Parikh and himself were the directors of the company from time to time;
- he was appointed as chairman of the company on resignation of Mr. Dilip Thakker and was appointed as CMD of the company in about 2003 and still continued to be the CMD of the company;
- M/s. Su Raj Diamond and Jewellery Ltd. mainly deal in trading of diamonds and other precious and semi precious stones and jewellery; they mainly export diamonds, precious and semi precious stones and studded as well as plain gold jewellery of 8K to 24K; they mainly manufactured and exported studded gold jewellery of 8k to 22K and stamped jewellery, casted as well as hand crafted jewellery of 14K to 24K; all their sale of diamonds and other precious and semi-precious stones and jewellery is in the form of exports and mainly export their products to USA (about 15% of the total exports), Europe (about 15% of the total exports), UAE (45 to 50% of the total exports and the balance to Far East countries, mainly to Hong Kong and Thailand;
- they entered into the business of jewellery in about 1990, till then their main business was exports of diamonds; on being asked he stated that the gold jewelry exported by them mainly consists of earrings, rings, pendants and bangles and the per piece weight of this items is mostly between 2 grams to 50 grams;
- some time in July 2007, they applied for and obtained certain Advance Authorisation Certificates from DGFT, Mumbai for Import of gold and export of plain/studded gold jewellery; as far as he remembers they had also exported one consignment of gold bangles of 995 purity of about 125 Kgs. against one of the Advance Authorisation; the said bangles were also got manufactured by their Mr. Jai Begani at Ahmedabad and exported from Air Cargo Complex, Ahmedabad;
- Around 1997-1998 they floated a company in the name of M/s. Forever Precious Jewellery and Diamonds Ltd, having registered office at Kesharba Market-2, Gotala Wadi, Katargam, Surat, but there is no regular office or any other activity in the name of M/s. Forever Precious Jewellery and Diamonds Ltd, being carried out from the said premises; the said premises is owned by Su Raj Diamond and Jewellery Ltd.; Mr. Vinay Mehta, Mr. Madan Kurjrekar and himself are the directors of the said company and Mr. Jai Begani has been appointed as the Managing director of the said company; except him none of the directors have any shareholding in the company; his stake in the company is about 0.1%; earlier they had Mr. Alastair Adolf Guggenbuhl, a Zurich national as a director of M/s. Forever and he had a stake of about 25% through his company M/s. Lotus Global Investment; Mr. Adolf resigned from the directorship sometime last year, but his company M/s. Lotus Global Investment is still holding of about 25% shares of in their company; the other main share holders of their company are M/s. Su-raj Diamonds & Jewellery Ltd., Mumbai (49%), and M/s. Su-raj Diamond Industries, Mumbai (19%);
- initially M/s. Forever purchased diamond studded jewellery as well as plain gold jewellery from M/s. Su-raj Diamonds and sold the same in the local market. Around the year 2000-2001, they started export of diamond studded jewellery and plain gold jewellery from M/s. Forever; initially they exported diamond studded jewellery of 18 Karat gold and thereafter, they also exported studded gold jewellery studded with Cubic Zirconium and other coloured stones made of 22 K gold; they also exported plain gold jewellery of 22 K gold; they exported different type of jewellery including earrings, rings, pendants, bangles, bracelets, etc.;
- in the name of M/s. Forever they had obtained one Advance Authorisation Certificate from DGFT for import of gold and export of gold jewellery and under

the said Advance Authorisation, they have till now exported 5 consignments of about 260 Kgs of 995 purity mainly consisting of plain gold bangles weighing between 90 to 100 gms per piece, from Air Cargo Complex, Ahmedabad; all these exports were to UAE; against this authorization, they had not affected any import of gold or purchased any gold locally, without payment of duty;

- the benefit of the duty free import / procurement will be taken by them after fulfillment of export obligation;
- M/s. Forever also has a unit in MEPZ Special Economic Zone, NH-45, Tambaram Chennai, where they mainly manufacture light weight stamped jewellery of 22 K & 23 K gold and mainly export to U.A.E and Hong Kong; they have installed the required machinery for the manufacture of the jewellery, however they get the Karigars for the manufacture of jewellery on contract basis; in M/s. Forever they also get different type of gold jewellery manufactured through different job workers at various locations in India and export the same as well as sell it in the local market;
- the consignment of over 100 Kgs of 995 purity bangles which was tendered for export by them through Air Cargo Complex, Ahmedabad, vide Shipping Bill No.1122303 dated 06.05.2009 and their invoice No.ASD/HO/05/001 dated 05.05.2009, which has been seized by DRI, Ahmedabad, was being exported to M/s. Italian Gold FZC, Sharjah Airport International Free Zone, Sharjah, U.A.E;
- other than the five consignments of 995 purity gold jewellery exported in the name of M/s. Forever and one consignment of 995 purity gold bangles from M/s. Su Raj; that they have exported a few consignments of light weight pendants (below 15 Gms. per piece) of 24K from their M/s. Su Raj; he would submit the details of all such exports of 24K pendants exported by M/s. Su Raj Diamonds and Jewellery Ltd and the manufacturing process for the same;
- for all the above consignments of 24 K gold bangles exported by them, they have charged about 4.5% as making charges, whereas they have paid only 40 Paise as making charges, which comes to around 0.003%;
- as per the value addition norms required by Foreign Trade Policy a minimum value addition of 4% is required and therefore they got order from their overseas customer accordingly for a value addition of 4.5%;
- 24 K gold is very malleable and therefore the bangles made out 24 K gold will get deformed easily due to the pressure applied on them, due to packing & transportation.
- On being asked whether the bangles in such mutilated condition, as was being exported by them can be accepted as jewellery in the trade, he stated that they had received orders for such 24K bangles and they were exporting the same.

7. On being called upon M/s. Forever vide their letter dated 14.05.2009 submitted, inter alia, the details of procurement of gold and the so called gold jewellery exported by them during 2008-09 and 2009-10. According to the details so submitted it appeared that M/s. Forever had so far utilized only one Advance Authorisation No.0310439347/3/03/00 dated 13.08.2007 for export of so called gold jewellery, under which the present consignment under Shipping Bill No.1122303 dated 06/05/2009 & Invoice No. ASD/HO/05/001 dated 06/05/2009 was being exported. The details of the previous exports of so called gold jewellery exported by M/s. Forever during 2009-10 under the above mentioned Advance Authorisation No.0310439347/3/03/00 dated 13.08.2007 are given in para 16 of the Show Cause Notice.

It also transpired that so far no import of gold was affected under the above said Advance Authorisation and gold was locally procured from Bank of Nova Scotia and Bank of India on loan basis, details of which are also in para 16 of the Show Cause Notice.

8.1. M/s. Forever had claimed to have entered into contracts with various overseas buyers for supply of studded gold jewellery. One such contract was found in the file produced by Shri Kartik Pancholi, the CHA, on 07.05.2009 at ACC, Ahmedabad, containing the check list for the said Shipping Bill No. 1122303 dated 06/05/2009 &

Invoice No. ASD/HO/05/001 dated 06/05/2009 and other related documents, filed by them on behalf of the exporter, M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad. The said contract No. NIL dated 21.03.2000 of Italian Gold FZC is reproduced in para 22 of the Show Cause Notice.

From this contract, it has been observed by the DRI that:

i) A total of over 100 kgs. of Bangles are contracted for but there is no reference to the rate of gold. Normally the rate of gold is to be fixed on the contract date.

ii) There is also no reference to design, Size, weight per pc.

Normally in such a huge order the size and designs of the bangles would obviously be different. It is also to mention that when the so called bangles were examined in the presence of experts it was also observed that the so called bangles were almost of the same size and all of them had the same design embossed on them.

iii) The quantity of gold bangles ordered is exact to the decimal. Is this possible in gold jewellery?

iv) In a market where the prices of gold fluctuate at least twice in a day, the payment terms are for 180 days, even without fixing the rate of gold. This is not normal trade practice in the business of gold and gold jewellery.

v) Though the payment terms are 180 days, no L/C appears to have been insisted upon by M/s Forever, even though the order is worth Crores of rupees.

vi) The making charges are also stated to be 4.5% of the gold value.

Based on this it has been alleged that this is just to align with the value addition norms as per Para 4A.2.1 of Hand Book of Procedures 2004-09 of FTP 2004-09, according to which the minimum value addition prescribed for plain gold jewellery is 3%; that what transpires from the above order is that only the quantity was important; that the so called contracts / purchased orders were purported to be entered into with the so called UAE based Importers, who were hand in glove with M/s. Forever just to give credence to the transactions.

8.2. In a similar investigations carried out by DRI, Ahmedabad statements of Shri Promod Goenka, Director of M/s. Say India Jewellers P. Ltd., Mumbai and Shri Darshan Gandhi, Executive Director of M/s. Subodhchandra Jewellers Pvt. Ltd., Mumbai, who were in the regular trade of manufacture and export of gold jewellery were recorded on 10.09.2009 and 09.09.2009, respectively. The above persons who were in the trade of manufacture and sale / export of gold jewellery for over 15 to 20 years, also stated that they had never manufactured 24k jewellery as they had never received any enquiry or order for the same. It was also stated by them that even if 24K plain jewellery is made, it will easily loose shape and therefore there is no demand for jewellery of 24K.

9.1. Another aspect, which was investigated by the DRI, is whether M/s. Forever had achieved the value addition in terms of the Foreign Trade Policy. In case of M/s. Forever the subject Advance Authorisation was issued for manufacture & export of plain gold jewellery. Para 4A.2.1 of Hand Book of Procedures 2004-09, lays down the norms for value addition in case of export of jewellery, according to which the minimum value addition prescribed for plain gold jewellery is 3%. The general method of calculation of value addition for duty exemption schemes is outlined in Para 4A.6 of the FTP 2004-09 which reads as under:

4A.6

Value Addition (VA) for gems and jewellery sector shall be as per paragraph 4A.2.1 of HBP v1. It would be calculated as under:

$I/A = (A-B) \times 100 / B$, where

A= FOB value of the export realised / FOR value of supply received.

B= Value of inputs (including domestically procured) such as gold /silver / platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier.

9.2. As per the details provided by M/s. Forever vide their letter dated 14.05.2009 (Proforma A, B & C), and as detailed in Para 16 of the Show Cause Notice, during 2009-10, (till 14.05.2009) they had domestically procured 300 Kgs of gold bars from the Bank of Nova Scotia as Gold Loan for a total value of Rs.50 crores. Similarly, they had procured 120 Kgs of gold bars on loan against SBLC from Bank of India for a total cost of Rs.25 crores. Thus in all they had procured 420 Kgs. of gold bars for a total cost of Rs.75 crores, at an average cost of Rs.17,85,714/- per Kg. All these procurements were between 02.04.2009 & 27.04.2009. Against the said procurement, they had shown exports of 92.600 Kgs. of 24 Karat gold coins for a total FOB value of Rs.14,25,78,395/-, i.e. an average price of Rs.15,39,723/-per Kg. Further, they had shown export of 184.998 kgs of 24 Karat Plain gold jewellery (so called gold Bangles) for a total FOB value of Rs.27,39,44,458/-. The average price works out to Rs.14,80,795/-per kg. Moreover, 100.048 kgs of so called gold bangles was being exported under Shipping Bill No.1122303 dated 06.05.2009 & Invoice No. ASD/HO/05/001 dated 05.05.2009, for a declared FOB value of Rs.14,80,79,022/- at the rate of Rs.14,80,080/- per Kg, which was seized by the officers of DRI on 09.05.2009. Thus it is seen that in all the cases of exports of gold coins as well as the so called gold bangles, the average per Kg rate of gold charged was less by about Rs.3,05,000/-, in case of so called bangles and about Rs.2,46,000/- In case of gold coins, than the average rate of purchase of gold. Based on this it has been alleged in the show cause notice that it was apparent that the Indian exporters and the overseas importers were interrelated and hand in glove.

9.3. All the above exports of so called bangles were made under Advance Authorisation Scheme. It has been alleged by the DRI that in case of the so called bangles exported / being exported under the Advance Authorisation No.0310439347/3/03/00 dated 13.08.2007, the FOB value of the so called bangles exported / being exported even did not cover the value of gold used in their manufacture and therefore the value addition so achieved is negative, when the value of the locally procured gold is taken into account for the purpose of calculation of value addition as per para 4A.6 of FTP 2004-09, as enumerated in para 24 of the Show Cause Notice and that on this count alone, the export of so called gold bangles under the above referred Advance authorization could not be counted towards fulfillment of the exports under the said authorization.

9.4. It has been further alleged in the Show Cause Notice that

(i) the making charges claimed to be charged / received by M/s. Forever were incomprehensible, especially in the light of the fact that only 40 paisa per gram were paid by M/s. Forever to their job worker, whereas they are claiming about Rs.63.00 per gram (taking the value of gold at Rs.1400/- per gram) from their so called overseas buyers; that how the overseas buyers, who buy such huge quantity of gold jewellery, continuously remained unaware of the making charges payable in India for the type and finish of so called gold bangles imported by them and pay M/s. Forever more than One hundred and fifty times the actual charges, for making of the so called gold bangles which as stated above cannot be even termed as jewellery.

(ii) the overseas firms in UAE, to whom the so called gold bangles were shown to be exported, were hand in glove with M/s. Forever and the price declared before the Customs at the time of export could not be treated as the sole consideration for the sale.

(iii) As the requirements of Section 14 of the Customs Act, 1962 are not fulfilled for the reasons enumerated as above, the transaction values of the so called gold bangles declared at the time of export by M/s. Forever were not acceptable as they did not represent the true and correct values of the export goods and therefore,

were liable for rejection in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, and is required to be re-determined as per Rule 3(3) ibid. As no transaction value of goods of like kind and quality exported, as contemplated in Rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, was available, the same had to be re-determined in terms of Rule 5 of the Rules ibid.

(iv) that the export values had been mis-declared is further borne out from the fact that only processes carried out on the imported gold bars before exports was to convert them into strips of gold, embossing some design on them and thereafter solder the same at the ends after giving it a roughly round shape to appear like a bangle and accordingly lowest rate possible was charged by the job worker.

(v) Therefore the cost of production to be calculated in terms of Rule 5(a) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, would only be the value of the gold as declared in the invoices at the time of exports plus the making charges of Rs.400/- per kg paid by the exporters to their job worker. In this case, no charges for design or brand had been paid, as contemplated in Rule 5(b) of Rules ibid. Moreover, in the case of gold jewellery the gold prices as ruling as per LMB (London Bullion Market) on the day of the contract or sale were fixed and therefore the only element of profit in case of gold jewellery would be the making charges, which in this case were negligible. Therefore, the re-determined value of the so called gold bangles exported / attempted to be exported by M/s. Forever would be the actual value of the gold as declared in the export invoices plus making charges.

(vi) In view of the above the value of the 184.998 Kgs of so called bangles exported by M/s. Forever in April 2009 and the 100.048 kgs of so called gold bangles being exported by them under Shipping Bill No.1122303 dated 06.05.2009 & Invoice No. ASD/HO/05/001 dated 05.05.2009, under the Advance Authorisation Scheme was required to be re-determined as under:

Sr. No .	Invoice No. & Date	Shipping Bill No. & Date	Quantity (in Gms.)	Declared FOB Value		FOB Value of gold as per Invoice (Rs.)		Making Charge s @ of Rs. 400 per Kg.	Re-determined FOB Value (Rs.)
				IN USD	IN INR	IN USD	IN INR		
1	ASD/HO/04/ 004 dated 15.04.20 09	1120438 dated 15.04.20 09	134963.1 30	3969585. 00	199471646. 25	3784161. 00	190154090. 25	53985. 25	190208075. 50
2	ASD/HO/04/ 005 dated 16.04.20 09	1120539 dated 16.04.20 09	15000.87 0	445023.0 0	22362405.7 5	425859.0 0	21399414.7 5	6000.3 5	21405415.1 0
3	ASD/HO/04/ 006 dated 23.04.20 09	1121212 dated 24.04.20 09	35034.16 0	1036715. 00	52110405.7 5	992072.0 0	49851618.0 0	14013. 66	49865631.6 6
			Total	184998.1 6	5451323. 00	273944457. 75	5202092. 00	261405123. 00	73999. 26
4	ASD/HO/05/ 001 dated 05.05.2009	1122303 dated 06.05.20 09	100047.7 60	2946411. 00	148079021. 75	2819532. 00	141681483. 00	40019. 10	141721502. 10

10.1. From the foregoing facts and evidences, it appeared that M/s. Forever had deliberately, in tandem with their so called overseas buyers had planned and operated a scheme whereby their exports under the Advance Authorisation Scheme could be boosted far beyond their actual capacity; it was also seen that they had stage managed the entire operation under the Advance Authorisation Scheme so as to show that the 24 Karat gold bangles was sought for by their overseas buyers by raising purchase orders in their name; it was also seen that there was hardly any demand for 24K gold jewellery and that too in such heavy weight; other than these few buyers, there were no other buyers for such heavy jewellery of 24K, which they have shown to export under the

Advance Authorisation scheme; Further, the trade opinion taken from the individuals as well the job worker of M/s. Forever and others who had a long standing experience in the trade of jewellery also indicated that the 995 purity gold articles were not normally worn as ornaments in India or abroad but that the jewellery items worn were normally of 22 Karat purity or less; The job worker of M/s. Forever and the various individuals engaged in the manufacture & trade of jewellery, had also stated that 24K gold being malleable, the jewellery made out of it would go out of shape easily and therefore it could not be used as jewellery; This clearly showed that the articles declared to Customs as 995 fineness gold bangles were not 'jewellery' as commonly understood; Moreover, it is also evident that the so called gold Bangles exported by M/s. Forever can not be used as jewellery for adornment as they were made of 24 Karat which was malleable and therefore tended to deform easily; Further, the fact that the so called Importers required about 100 kgs (over 1000 Pieces) of so called gold bangles with the same design and size clearly indicated that the export was done not as a normal trade; Moreover the contention that the so called gold bangles could be purchased for investment is also not tenable as in UAE and even in other countries gold bars / coins weighing 1 Gram to 1 Kg are freely available and therefore the import of 24K gold from India in the form of studded jewellery by paying so called making charges of 4.5% on the value of gold was illogical; Moreover the investors could have purchased gold from U.A.E. at a cheaper rate when compared to gold purchased from the Indian market, as India was not a net gold producer but a gold consuming nation; It, therefore, appeared that the main intention of M/s. Forever in entering into this type of trade was to boost their export performance (turnover) and thereby gain export incentives under the Advance Authorisation Scheme, in connivance with their overseas buyers; In other words, it appears that the entire exercise was undertaken only to circumvent the Exim Policy provisions and artificially boost export turnover under the Advance Authorisation Scheme.

10.2. From the foregoing facts and evidences it also appeared that Shri Jai Begani, in his capacity as Managing Director of M/s. Forever Precious Jewellery & Diamonds Ltd. and Shri Jatin Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Ltd. were the key players in the fraudulent scheme designed by them to export the so called bangles of 995 purity gold under Advance Authorisation and thereafter importing gold against the same without paying customs duty; that by their various acts and omissions they had rendered the exported goods liable for confiscation under the provisions of Section 113 of the Customs Act, 1962; and that they had also rendered themselves liable for penalty under the provisions of section 114(iii) of the customs Act, 1962.

10.3. Further, from the foregoing, it therefore appeared that the exports of said strips of gold, by M/s. Forever, in the guise of gold bangles against the Advance Authorisation issued to them by the Jt. DGFT, Mumbai, could not be considered towards fulfillment of export obligation against the said Authorisation, in as much as the value addition achieved by them is negative as discussed above. Moreover, as discussed in the foregoing paras the so called value addition of 4.5% shown to be achieved by them by way of making charges was also shown to be artificially achieved, just to circumvent the provisions of Para. 4A. 2.1 of HOP 2004-09, as amended from time to time. In view thereof, the condition of Advance Authorisation issued to M/s. Forever was not fulfilled, in terms of Para. 4A.2.1 of HOP 2004-09, as amended from time to time.

10.4. Moreover, the Advance Authorisation was obtained by M/s. Forever for import of 995/999 purity gold and export of 991 purity plain gold jewellery. However, as it was evident in all the cases that the so called plain jewellery exported /attempted to be exported by them towards the fulfillment of export obligation against the said Advance Authorisation was of 995 purity, which was in contradiction of the terms under which the Advance Authorisation was issued. Therefore, also the said exports could not be considered towards fulfillment of export obligation against the said Authorisation.

10.5. Therefore, by virtue of the fact that M/s. Forever, the Authorisation holder had failed to fulfill their export obligation of exporting the specified product, i.e. Plain gold bangles, no import of gold without payment of duty, could be allowed against the said

Advance Authorisation and the same was required to be cancelled in view of the fraudulent nature of exports made by M/s. Forever.

10.6. Similarly, as discussed earlier, the said export goods appeared to had been mis-declared as "Plain gold bangles", whereas in reality they were round strips of 995 purity gold given a roughly round shape like a bangle and soldered at the ends; that they obviously were intended to be scrapped at the port of destination or sold as raw gold as such. The said mis-declaration appeared to be a violation of Section 50 of the Customs Act, 1962 and therefore the said exported goods viz. 185 kgs of so called plain gold bangles having a declared FOB value of USD 54,51,323.00 (Rs.27,39,44,458/-), exported by M/s. Forever, as detailed in Annexure-B, from Air Cargo Complex, Ahmedabad, appeared liable for confiscation under Section 113(1). Moreover, for the same reasons the 100.05 Kgs of so called plain gold bangles attempted to be exported by M/s. Forever under Shipping Bill No.1122303 dated 06/05/2009 & Invoice No. ASD/HO/05/001 dated 05/05/2009 having a declared FOB value of USD 29,46,411.00 (Rs.14,80,79,021.75) also appear liable for confiscation under Section 113(1) and for that reason the said M/s. Forever Precious Jewellery & Diamonds Ltd., appeared liable for penalty under Section 114 ibid.

11.1. Based on above cited investigation M/s. Forever Precious Jewellery & Diamonds Ltd., "Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad were issued Show Cause Notice No. DRI/AZU/INT-22/2009 dated 28.10.2009 as to why:

- (a) the FOB value of Rs.27,39,44,457.75 declared for the export of 184.998 Kgs of gold (mis-declared as plain gold bangles) as per Annexure-B and the FOB value of Rs.14,80,79,021.75 declared for 100.048 Kgs. of gold (mis-declared as plain gold bangles) attempted to be exported under Shipping Bill No.1122303 dated 06.05.2009 & Invoice No. ASD/HO/05/001 dated 05.05.2009 should not be rejected and the same be re-determined under the provisions of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (b) Consequent to such re-determination the value of the gold as declared at the time of its exports / attempted export, in the relevant export invoices plus the making charges of Rs.400 per Kg, should not be accepted as the true and correct value of the so called plain gold bangles exported.
- (c) The said exported goods viz. 184.998 kgs of gold (mis-declared as plain gold bangles) totally valued at USD 54,51,323.00 (Rs.27,39,44,457.75/-) (as declared by them), (as detailed in Annexure-B) and the value of which is re-determined as Rs.26,14,79,122.26 (as detailed in Para 27.5), exported by M/s. Forever Precious Jewellery and Diamonds Ltd., from ACC, Ahmedabad should not be held liable for confiscation under Section 113(d) & (i) of the Customs Act, 1962.
- (d) The said goods attempted to be exported under Shipping Bill No.1122303 dated 06.05.2009 & Invoice No.ASD/HO/05/001 dated 05.05.2009 viz. 100047.76 Gms. of gold (mis-declared as plain gold bangles) totally valued at USD 29,46,411.00 (Rs.14,80,79,021.75) (FOB value as declared by them) by M/s. Forever Precious Jewellery & Diamonds Ltd., from ACC, Ahmedabad, and the value of which is redetermined as Rs.14,17,21,502.10 (as detailed in Para 27.5), should not be held liable for confiscation under Section 113(i) of the Customs Act, 1962.
- (e) The above goods exported by them and declared as "Plain gold bangles" should not be disallowed for fulfillment of export obligation against the said Advance Authorisation No.0310439347/3/03/00 dated 13.08.2007 issued by the JDGFT, Mumbai.
- (f) Penalty should not be imposed on them under Section 114(iii) of the said Act.
- (g) The bond & bank guarantee executed by them before the office of the Commissioner of Customs, Ahmedabad, at the time of provisional release of the

said goods should not be enforced towards recovery of Fine & penalty as imposed on them.

11.2. Shri Jatin Mehta, Chairman of M/s. Forever Precious Jewellery And Diamonds Ltd., Ahmedabad & Shri Jai Kumar Begani, Managing Director of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad were also called upon to Show Cause as to why Penalty should not be imposed on them under Section 114(iii) of the customs Act, 1962.

FINDINGS OF THE ORIGINAL ADJUDICATING AUTHORITY:

12. The show cause notice F.No: DRI/AZU/INT-22/2009 dated 28.10.2009 was adjudicated by the Commissioner, Customs, Ahmedabad vide Order-in-Original No. 10/Commr/ACC-Ahmedabad/2011 dated 04.04.2011, wherein:-

- (i) rejected the FOB value of Rs.27,39,44,457.75 declared for the export of 184.998 Kgs of gold (mis-declared as plain gold bangles) as per Annexure-B to the show cause notice dated 28.10.2010 and the FOB value of Rs.14,80,79,021.75 declared for 100.048 Kgs. of gold (mis-declared as plain gold bangles) attempted to be exported under Shipping Bill No.1122303 dated 06.05.2009 and re-determine the same as shown in para 22.2. of the OIO under the provisions of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (ii) the goods viz. 184.998 kgs of gold (mis-declared as plain gold bangles) having re-determined valued at Rs. 26,15,53,121.52 were confiscated under Section 113(d) & (i) of the Customs Act, 1962, but no fine was imposed as goods were not available for confiscation.
- (iii) the said goods viz. 100047.76 Gms. of gold (mis-declared as plain gold bangles) attempted to be exported under Shipping Bill No.1122303 dated 06.05.2009 having re-determined value at Rs.14,17,61,521.20, were confiscated under Section 113(d) & (i) of the Customs Act, 1962 and also given option to redeem the same on payment of a fine of Rs. One Crore (Rupees One Crore Only) under section 125 of the Customs Act, 1962.
- (iv) the above goods exported by them were disallowed for fulfillment of export obligation against the said Advance Authorisation No.0310439347/3/03/00 dated 13.08.2007 issued by the JDGFT, Mumbai.
- (v) imposed a Penalty of Rs.50,00,000/- (Rupees Fifty Lakhs Only) on M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, under Section 114(iii) of the Customs Act, 1962.
- (vi) ordered to enforced the bond & bank guarantee executed by them at the time of provisional release of the said goods towards recovery of Fine and Penalty as imposed on them.
- (v) Penalty was also imposed on the following persons:

Sr. No.	Name of the person	Amount of penalty Under Section 114 (iii) of CA, 1962 (In Rs.)
1.	Shri Jatin Mehta, Chairman, of M/s. Forever Precious Jewellery and Diamonds Ltd., Ahmedabad	10,00,000/-
2.	Shri Jai Kumar Begani, Managing Director of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad	10,00,000/-

APPEAL FILED BY THE NOTICEES BEFORE THE HON'BLE TRIBUNAL, AHMEDABAD AGAINST ORDER-IN-ORIGINAL NO. 10/COMM/R/ACC-AHMEDABAD/2011 DATED 04.04.2011.

13. Appeals were filed by M/s Forever Precious Jewellery & Diamonds Ltd., Shri Jatin Mehta and Shri Jai Kumar Begani before the Hon'ble Tribunal, Ahmedabad and the same was decided by the Tribunal vide its Order No. A/12532-12574/2017 dated 14.09.2017 by way of remand back the case to the adjudicating authority, keeping all issues open in view of their earlier decision in case of Rahul Arora. The remand proceedings in the instant case has arisen out of Final Order No. (*operative portion are reproduced for ready reference*):

4. We find that this Tribunal in Rahul Arora's case (*supra*) taking into consideration the principles of law relating to authority of the DRI officer to issue show cause notice for the period prior to 6.7.2011 under the Customs Act, 1962 has observed that there are two views possible on the said issue and consequently, remanded the matter to the adjudicating authority. It is observed at Para 10 as follows:

*"10. The developments show that there are two views holding the field and the matter now stand before the Hon'ble supreme Court. In an earlier case, the Hon'ble Supreme Court in the case of Chandna Impex vs. C.C., Delhi 2012 (26) STR 257 (SC) had remanded the matter to the Tribunal with a direction to examine the issue of jurisdiction afresh in the light of decision in Sayed Ali (*supra*). As already observed the entire issue is once again before the Hon'ble Apex Court. In these circumstances, we deem it fit to set aside the impugned orders and remand the matters to the original adjudicating authority to first decide the issue of jurisdiction, after the availability of Supreme Court decision in the case of Mangali Impex (*supra*) and then the merits of the case."*

DEFENCE SUBMISSION SUBMITTED BEFORE EARLIER ADJUDICATING AUTHORITY:

14. M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, vide letter dated 01.02.2010, submitted, *inter alia*, that:

- they were engaged in supply of an extensive range of fine jewellery, metal ware and accessories to the country's most quality conscious jewellers and jewellery manufacturers and had acquired a nationwide reputation; they had a sizable export turnover through exports of all kinds of material relating to the Gems & Jewellery industry;
- the allegation in the show cause notice that fineness (purity) of the gold content in the gold product exported / attempted to be exported was not based on any valid or rational consideration and was without any basis whatsoever;

- Jewellery was defined in the Thesaurus as "an adornment" (as a bracelet or ring or necklace) made of precious metal and set with gems (or imitation gems'). Thus, to be categorized as "jewellery", the weight or purity of the bangles was not relevant at all; it depends on the taste, culture, customs and various other considerations of the people who buy and use such jewellery;
- tribal jewellery in countries like India and Africa was considerably heavier in weight than jewellery worn in towns and cities and amongst non-trials. Similarly, while in countries in Europe and Americans, the emphasis was more on fineness/art/craft involved in making of a jewellery item and not so much on purity of gold content. In India and many other countries including the UAE, people preferred jewellery with higher purity and/or fineness;
- though rare, because 24 karat gold was very soft and therefore difficult to mould, such jewellery was created regularly and one such website listing manufacture of gold jewellery of 24 karat is set out - www.jckindia.com/jewelry/...Gold_jewelry_in_24_karat;
- with the help of the latest technology, and after considerable research and development, it was now possible to make the hardness of 24 karat gold similar to any 22 karat or 18 karat gold jewellery;
- in a lot of countries around the world, saving of gold jewellery was considered to be a sound investment and a safe way to maintain savings; therefore, people in such countries were more than willing to buy gold jewellery made of gold in its purest form and did not place so much importance on the workmanship of the same;
- jewellery had traditionally been used as a form of investment and to provide a source of savings to families in cases of emergencies; prices of gold did not fluctuate much over a period of time and in fact increase with passage of time and considered safe investment as opposed to say investing in the stock market or in any other securities; jewellery, even if purchased purely as an investment and not intended to be worn, did not go out of the ambit of the definition of 'jewellery', merely on this ground;
- jewellery gifted at the time of auspicious occasions like marriages etc. was considerably heavier in weight and of much higher purity and fineness than jewellery which was ordinarily worn by ladies in day to day life;
- it is irrelevant whether the jewellery was worn or not; if a customer or importer places order for supply of 24 karat gold jewellery and the same was supplied, then the same was to be considered as gold jewellery;
- the allegation "dumped into an aluminium box" and were being exported was indicative of intention of same not meant to be used as jewellery was at most an assumption without any basis and could not be sustained; the statement of the so called experts that the bangles could never be accepted as jewellery in the local market, much less in the foreign market was without any basis;
- statements of the so called experts that 24 karat gold ornaments would go out of shape even if little pressure were to be applied did not further the case of the Department as the said goods would even then be considered 'jewellery';

- the allegation that only 24 karat gold was malleable is incorrect in as much as even 21 / 22 karat gold jewellery is malleable and could go out of shape;
- reliance placed in the SCN on the definition of "Jewellery" in the Britannia Concise Encyclopaedia and Wikipedia was mis-placed; jewellery need not be worn or be wearable for the same to be jewellery;
- in terms of Para 4A.5 of the foreign Trade Policy, gold jewellery, including partly processed jewellery and articles including medallions and coins, whether plain or studded, containing gold of 8 carats and above, if exported were eligible for the benefits under the Scheme;
- the allegation that ends of the bangles in some cases were not even properly aligned was due to manufacturing defects on the part of the job worker;
- the Hon'ble Tribunal in the case of CC Vs. Adani Exports Ltd -2009 (243) ELT 115 had upheld the order of the Commissioner, who rejected the allegation that the jewellery in that case did not constitute export of jewellery as the weight of the gold bangles was about 100 gms and the shape and size did not commensurate with gold bangles as ordinarily understood in India;
- the fact the so called experts had deposed that they had never come across or heard the name of M/s. Al Abia Jewellery, UAE, etc. presupposes the fact that they were aware of the existence of each and every jeweller in all the seven emirates which comprised UAE; there were hundreds of jewellers registered in the UAE and to assume that a jeweller in India would be aware of each and every one of them was completely baseless and farcical;
- in the circumstances, the confiscation of the said bangles on the alleged basis that the same could not be considered jewellery was illegal and without authority of law; after provisional release, 6 bangles were yet in the custody of the Department;
- Mr. Jaykumar Begani had deposed that they had exported 24 karat gold jewellery and 24 karat gold coins to UAE, which went to establish that there was a demand for 24 karat gold jewellery in the UAE;
- they had already exported 5 consignments of 995 purity gold jewellery;
- there was no evidence to show that the goods that the dealers examined of the Noticees and those that they dealt in themselves were of the same kind; the goods might be of different type, quality, design, exported to different countries, etc;
- therefore, the evidence of the dealers was highly questionable without any documentation or any other evidence to prove its veracity;
- they requested for cross examination of some persons, whose opinion was held to be of a crucial nature;
- the persons with whom the enquiries had been made were the Noticee's competitors (trade rivals) and therefore no reliance whatsoever could be placed on their statements;
- some of the persons whose statements had been relied upon had in fact exported goods of the same kind and variety which have been allowed as gold jewellery;
- Order for Gold Bangles of 24 karat was received by them from one Mr. Prasad, who was a broker in the UAE, who was known to the Managing Director and

therefore, the Noticees executed the Order; the Managing Director had deposed that they had exported 24 karat gold bangles earlier in point of time; the Chairman had also deposed that the Noticees had exported five consignments of about 260 kgs. of 995 purity gold mainly consisting of plain gold bangles weighing 90 to 100 gms to the UAE;

- in so far as the making charges are concerned, they had charged 4.5% as their making charges and as in terms of the Policy, the minimum value addition required was 4%, they had complied with the said value addition norms and it was not open for the Department to challenge the percentage of the making charges as charged by the Noticees, on the ground that the actual making charges was much lower;
- the allegation that export of over 185 kgs of plain gold bangles of 24 karat in a short span of twenty days was just a farce is without any basis as the same is based on job workers and experts had deposed that the said gold bangles could not be considered jewellery;
- the allegation that the Noticees and importers in UAE were "hand in glove" were completely without any basis whatsoever; no evidence whatsoever had been led in the SCN to substantiate this bald allegation;
- foreign buyer in Sharjah, UAE had classified the said gold bangles exported by the Noticees as Gold Jewellery, which declaration had been accepted by the Customs authorities in Sharjah;
- the allegation that there was no Letter of Credit insisted upon by the Noticees despite the fact that the Order placed by their buyer in the UAE was worth crores, was mis-placed as the Department had failed to appreciate that they had established a business relationship with the said buyer over a period of time; the Department ought to have appreciated that in the gems and jewellery industry, most of the business was conducted on the basis of trust;
- it is denied that the FOB value of the gold bangles did not cover the value of gold used in the manufacture and therefore the value addition was negative, when the value of the locally procured gold was taken into account, for the purpose of calculation of value addition in terms of Para 4A.6 of the Policy;
- all the gold which had been used to make the jewellery which been exported/attempted to be exported was duty paid; they intended to take the benefit of duty free import of gold only after fulfillment of their export obligation;
- the ratio of the judgment of the Hon'ble Supreme Court in Om Prakash Bhatia Vs. CC 2003 (155) ELT 423 was in the peculiar facts of that case and could not be applied in the facts of present case;
- in the facts of the present case, in terms of section 14 of the Act, it was the transaction value of the export goods which was to be accepted as the buyer in UAE and the seller were not related and the price was the sole consideration;
- value as declared by them was liable to be accepted and can not be rejected in terms of Rule 8 of the Valuation Rules and is not required to be re-determined under Rule 3(3); in terms of Rule 8, it was only when proper officer had reason to doubt the truth or accuracy of the value declared, he must ask the exporter to

furnish further information; that there was no evidence led by the Department to doubt the truth or accuracy of the value declared;

- there was no mis-declaration on their part, there was no contravention of Section 50 and therefore the goods could not be held liable to confiscation;
- goods which were already exported could not be held liable to confiscation and consequently, no redemption fine could be imposed;
- as there was no contravention on their part, of either the provisions of the Act or the FTDRA or any other rules and regulations, the transaction value was liable to be accepted, the goods were not liable to confiscation and no penalty could be imposed on them or its Directors under section 114.

RECORDS OF CROSS EXAMINATION OF WITNESSES BEFORE EARLIER ADJUDICATING AUTHORITY:

15. Out of six persons for whom request for cross-examination was made, Shri Chandreshbhai Rasiklal Soni, Proprietor, M/s. Jayendra Jewellers and Shri Harshadbhai Shantilal Soni, Proprietor, M/s. Dharmik Jewellers were cross examined and records of cross examination is as under.

15.1. CROSS EXAMINATION OF SHRI CHANDRESHBHAI SONI, PROPRIETOR, M/S. JAYENDRA JEWELLERS, AHMEDABAD:

Shri Chandreshbhai Soni's cross-examination as mentioned below was undertaken by Shri Nankani. Shri Nankani asked Shri Chandreshbhai that whether he would like to be asked questions in English, Hindi or Gujarati. Shri Chandreshbhai replied that he was more comfortable in Gujarati. On further query from Shri Nankani, Shri Chandreshbhai said even Hindi was fine. Accordingly, cross examination was done in Hindi and its English translation is reproduced below:

Q. Whether you are in the local trading or in export business also?

R. Local trading.

Q. That means you have no experience about the foreign market and the items being sold/traded therein?

R. I have no experience but I have knowledge about that.

Q. With reference to your statement dated 9.10.2009, were you issued a summons by the customs authorities?

R. No summons was issued to me. First I was called at the time when the goods were seized and again on 9th I was called for giving my opinion on the gold consignments.

Q. Were you called earlier also by the department for the examination of goods? R. No.

Q. At the time of drawing panchnama didn't you tell the officers that you are not in export business.

R. I was not asked such questions by the department.

Q. Whether on 9th October when you had come the gold was shown to you?

R. Yes.

Q. When you did not know English how did you sign the panchnama and statements?

R. These were signed after the contents was read to me by the officers.

Q. When you came for statement whether the statement of Harshadbhai who was also present with you during panchnama proceedings was shown to you?

R. No.

Q. Whether Harshadbhai Soni is in your relation?

R. I don't know him.

Mr. Nankani wanted to show the statement of Shri Harshadbhai Soni (last but one para of the first page) to Shri Chandreshbhai and desired that Shri Chandreshbhai should compare this with corresponding portion of his statement. This was disallowed and Mr. Nankarni was requested to keep his cross examination limited to the content stated by Chandreshbhai.

Q. When you have no export experience then on what basis you are saying that you have the knowledge about the foreign market?

R. On the basis of my business circle.

Q. This business circle is of Ahmedabad?

R. Yes Ahmedabad.

Cross Examination of Shri Chandreshbhai was concluded.

15.2. CROSS EXAMINATION OF SHRI HARSHADBHAJI S. SONI, PROPRIETOR OF M/S. DHARMIK JEWELLERS:

Shri Harshadbhai S. Soni, Proprietor of M/s. Dharmik Jewellers was called for Cross Examination and his cross-examination as mentioned below was undertaken by Shri Nankani. Shri Harshadbhai was asked about the language in which he was comfortable for examination by Shri Nankani to which he replied that he was comfortable with Gujarati. It was further asked that if the questions were put to him in Hindi by Shri Nankani whether it would be alright to which he replied in affirmative. The cross examination was conducted accordingly and is reproduced below.

Q. What is your Education Qualification?

R. Graduation.

Q. Is your business in the local market or you also do export?

R. Local business.

Q. Were you earlier also called by the department for examination of the goods etc.?

R. No.

Q. Do you have any special qualification like Diploma etc. in gold jewellery?

R. No.

Q. Did any departmental officer know you?

R. No.

Q. Then why were you called by the department during the panchnama proceedings?

R. One of the acquaintance of the officers knew me and accordingly I was told to come as a witness.

Q. The purpose told to you when you were called for the panchnama?

R. I was informed that I had to see some goods and say whether it was gold or not.

Q. On 9th of May when you were called did you tell the officers that you had no experience in the export business?

R. I was never asked this question so I have not given any such information.

Q. At the time of recording of statement dated 08.10.2009 whether questions were put to you by the officers or the whole statement was given in the form of narration by you?

R. Questions were put to me.

Q. Mr. Nankani drew the attention of Shri Harshadbhai on the following portion of his statement "From my experience in the business of gold jewellery I can say that normally in India jewellery of 22 Karat is used and in Foreign countries jewellery of 14 to 22 karat is used. In India studded jewellery is also manufactured out of 14 to 18 karat gold. There is hardly any demand of 24K jewellery in India or foreign country. On being asked I state that normally bangles of 10 to 25 gms are used as ornaments jewellery. Only in some cases bangles of 40 to 50 gms are worn. Very heavy bangles of above 90 grams cannot normally be worn or used as jewellery." Thereafter he asked him that when he has no experience of export business on what basis he has given factual information on the same in his statement?

R. My statement was based on my experience in the local jewellery market.

Q. For your statement on 8th October 2009 whether you were Issued summons or called over the phone?

R. I was called over the phone.

Cross Examination of Shri Harshadbhai Soni is concluded.

15.3. On the query about the need of remaining four people for cross examination, Shri Nankani informed that cross examination of Shri Kishorebhai Zaveri and Shri Shantibhai Patel would suffice for their purpose. He further added that these two persons were important as they had stated in their statements that they were also in export business of Gold Jewellery.

15.4. CROSS-EXAMINATION OF SHRI SHANTIBHAI PATEL, PROPRIETOR OF M/S. JAYKRISHNA JEWELLERS:

Cross examination of Shri Shantibhai Patel, Proprietor of M/s. Jaykrishna Jewellers was conducted by Shri Sheerazi, Advocate. On being asked, Shri Patel stated that he would like to be questioned in Hindi and reply in Hindi. The cross examination was accordingly done in Hindi and English translated version is reproduced below.

Q. What is your education qualification?

A. I have done First Year Arts and I have 35 years' experience in gems and jewellery business.

Q. Are you involved in both local and export business?

A. I only do local business.

Q. Have you been summoned earlier by the department for examination of similar goods?

A. Being President of Gem and Jewellery Association, if Customs Department need any advice from me I am called.

Q. Do you have any special qualification, diploma etc. in gold jewellery?

A. I am government registered valuer.

Q. Whether any department officer is known to you?

A. No.

Q. Were you summoned for recording your statement or called?

A. I was called over the phone.

Q. At the time you were called, were you told the purpose for which you were being called?

A. I was told to come to check some inventory.

Q. Did the officers ask you whether you had experience in export of jewellery at the time of calling you to the office?

A. No.

Q. When your statement was recorded was it in Question and Answer form or just recorded in a statement form.?

A. I am not able to re-collect.

Q. Do you know Chandreshbhai Soni and Harshadbhai Soni ?

A. They might be from the staff of the company whose inventory I was checking but I am not sure.

Q. Can you read 2 sentences from your statement. "According to my experience in the business of gold jewellery I can say that such bangles will never be accepted as jewellery in the trade of gold jewellery. I further state that normally 24 karat i.e. 995 to 999 purity jewellery is not used for wearing as ornament because pure gold is very soft and the ornaments made out of it easily gets out of shape even due to little pressure." Read. When you have no experience in export of jewellery how you can say that such jewellery is not in use abroad?

A. Due to my tour abroad in government delegation etc., I have knowledge about the jewellery business abroad.

Q. You have said in your statement that 24 karat jewellery is not used for wearing as ornaments as it would go out of shape easily and there is hardly any demand of 24 karat jewellery, that in UAE mostly 21 or 22 karat gold jewellery is in demand. Is there any demand at all, however minor for 24 karat jewellery?

A. The people who want to buy gold for investment purpose order 24 karat jewellery but for use as jewellery such jewellery is never used.

Q. You have stated that you have visited UAE, USA etc. and attended many gold jewellery trade fares in India and abroad. Are you aware of any other jeweler having exported gold jewellery of 24 karats to the UAE?

A. I don't have knowledge in this regard.

15.5. CROSS-EXAMINATION OF SHRI KISHOREBHAI ZAVERI, DIRECTOR OF M/S. ZAVERI & CO. PVT. LTD.

Cross examination of Shri Kishorebhai Zaveri, Director of M/s. Zaveri & Co. Pvt. Ltd. was conducted by Shri Sheerazi, Advocate. On query Shri Zaveri stated that he would like to be questioned in Hindi and reply in Hindi. The cross examination was accordingly done in Hindi and English translated version is reproduced below:

Q. What is your level of education?

A. B.Com.

Q. For how many years have you been in the business of gold jewellery?

A. 25 to 30 years.

Q. Name the companies/ firms in which you do the jewellery business.

A. My main company is Zaveri and Company Pvt. Ltd., and there are many other sister units.

Q. Do you have any manufacturing unit in SEZ area?

A. Yes, I have.

Q. Do you export jewellery? In which company name have you exported jewellery?

A. Presently I am not exporting jewellery. Earlier we were in export business which is basically handled by my brother.

Q. What is your position in Zaveri and Company Pvt. Ltd.?

A. Director.

Q. Have you been summoned earlier by the department for examination of similar goods?

A. No.

Q. Do you have any special qualifications / diploma etc. in gold jewellery?

A. No.

Q. Whether any department officer is known to you?

A. No.

Q. Were you summoned for recording your statement, or telephoned?

A. I was called over the phone.

Q. At the time you were called, were you told for what purpose you were being called?

A. I was told that I am required for verification of certain jewellery.

Q. When you were called by the officer whether the officers inquired about his experience in export of jewellery?

A. No.

Q. When your statement was being recorded, was it in a Question Answer format or were you asked to record your statement?

A. I do not recollect.

Q. Can you read a sentence from your statement "According to my experience in the business of gold jewellery I can say that such bangles will never be accepted as jewellery in the trade of gold jewellery. I further state that normally 24 karat i.e.. 995 to 999 purity jewellery is not used for wearing as ornament because pure gold is very soft and the ornaments made out of it easily gets out of shape even due to little pressure." You have said in your statement that 24 karat jewellery is not used for wearing as ornaments as it would go out of shape easily and there is hardly any demand of 24 karat jewellery, that in UAE mostly 21 or 22 karat gold jewellery is in demand. Is there any demand for 24 karat jewellery.

A. As personal jewellery, 24 karat jewellery is never used. However, for investment purpose and for the purpose of safety, certain people may order for 24 karat jewellery.

Q. Have you made any exports of gold jewellery to the UAE and if yes, what is the karat of gold used in such exports?

A. I have not exported any jewellery.

Q. 3 invoices (as annexed) were shown to Shri Zaveri and thereafter following question: Is it not true that the gold jewellery of 24 karat is exported to UAE?

A. Export is being handled by my brother as I am only in retailing business.

Q. Do you know Chandreshbhai Soni and Harshadbhai?

A. No.

Annexed: 3 invoices of Zaveri

15.6. After cross examination of the witnesses, the noticee submitted their defence reply vide letter 27.10.2010, wherein it is contended, inter alia, that:

- from the record of cross examination of Shri Harshadbhai Soni, Shri Chandreshbhai Soni and Shri Shantilal Patel, it was absolutely clear that the said individuals, despite being in the jewellery business for a number of years, had admitted that they had not been themselves involved in the export of jewellery and Shri Harshadbhai had admitted that his statement was based on his experience in the local jewellery market and that Shri Shantibhai had admitted that he had no experience in export of jewellery, he had knowledge about the jewellery business abroad due to his tours abroad as part of government delegations etc.;
- in view of these circumstances, statements made by the said jewellers during investigation could not support the allegations in the SCN and must be discarded as having no evidentiary value;
- Shri Kishore Zaveri was shown three invoices which clearly showed that M/s. Zaveri & Company Pvt. Ltd. had themselves exported .995 fineness gold bangles to the UAE; therefore, the allegation in the SCN that gold jewellery was not exported from India to the UAE was misplaced and not based on market realities;
- It was irrelevant whether gold jewellery was worn or not; if a customer or importer of gold jewellery places an order for supply of 24 karat gold jewellery and the same was supplied, then the same was to be considered as gold jewellery;
- the jewellers who gave statements were Noticee's trade rivals and no reliance whatsoever could be placed on their statements for ascertaining whether the gold bangles could be considered to be gold jewellery or not.

PERSONAL HEARINGS:

16. M/s Forever as well its Chairman Shri Jatin Mehta and its Managing Director Shri Jai Kumar Begani were granted opportunity of personal hearing on 05.05.2025, 13.05.2025 & 21.05.2025 in compliance with the Principles of Natural Justice and the letter for personal hearing was sent to the following addresses available, however, the noticees did not attend the Personal Hearing. Further, letters of personal hearing were also sent on the available email address info@foreverjewel.com of the Noticee. Moreover,

the letters of Personal Hearing were pasted on the Notice Board of the Office of Principal Commissioner of Customs, Ahmedabad-380009. Details of letter for Personal Hearing issued are mentioned in below mentioned Table.

Table

Name of Noticee	Address of the Noticees	Date of issue of Personal Hearing letter	Date of Personal Hearing Fixed
M/s. Forever Precious Jewellery & Diamonds Ltd.	"Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad, 380009	21.04.2025 06.05.2025 13.05.2025	05.05.2025 13.05.2025 21.05.2025
Shri Jatin Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Ltd.	"Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad, 380009	21.04.2025 06.05.2025 13.05.2025	05.05.2025 13.05.2025 21.05.2025
Shri Jai Kumar Begani, Managing Director of M/s. Forever Precious Jewellery & Diamonds Ltd.	"Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad, 380009	21.04.2025 06.05.2025 13.05.2025	05.05.2025 13.05.2025 21.05.2025

From the aforesaid facts, it is observed that sufficient opportunity has been granted to M/s Forever as well its Chairman Shri Jatin Mehta and its Managing Director Shri Jai Kumar Begani but they choose not to join the personal hearing. It is observed that the letters of Personal hearing were sent on the addresses as mentioned in Show Cause Notice.

TRANSFER OF CASE INTO CALL BOOK:

17. I note that the original adjudicating authority, vide OIO No. 10/Commr/ACC-Ahmedabad/2011 dated 04.04.2011, adjudicated the case. Being aggrieved from the said OIO, M/s Forever Precious Jewellery & Diamonds Ltd., Shri Jatin Mehta and Shri Jai Kumar Begani files appeals before the Hon'ble Tribunal, Ahmedabad. The Tribunal decided the appeals vide Order No. A/12532-12574/2017 dated 14.09.2017, remanding the matter back to the adjudicating authority with all issues left open, in view of its earlier decision in the case of Rahul Arora. It is pertinent to note that the Hon'ble Tribunal did not examine the merits of the case in its order. The remand was made on the grounds of the pending case before the Hon'ble Supreme Court regarding the jurisdiction of the Directorate of Revenue Intelligence to issue show cause notices prior to 06.07.2011. As the matter was subjudice before the Apex Court, the case was transferred to the Call Book. Subsequently, the Hon'ble Supreme Court, in its judgment dated 07.11.2024 passed in Review Petition No. 400 of 2021 in Civil Appeal No. 1827 of 2018 v. Commissioner of Customs, extensively analyzed the jurisdictional issue concerning the DRI's authority to issue show cause notices, along with other related issues, and ruled in favor of the Department. Accordingly, the case was withdrawn from the Call Book.

DISCUSSION AND FINDINGS:

18. I have carefully gone through the relevant records, the written submission dated 01.02.2010 made by the Noticees before the earlier adjudicating authority, records of past cross examinations, as well as compilation of statutory provisions and case laws.

18.1. I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to M/s Forever as well its Chairman Shri Jatin Mehta and its Managing Director Shri Jai Kumar Begani but they did not participate in the adjudication proceedings inspite of the fact that service of letters for personal hearings were done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

- a) *by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;*
- b) *by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*
- c) *by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;*
- d) *by making it available on the common portal;*
- e) *by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;*
- f) *by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.*

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticee, but they did not respond as if they did not have anything to submit in their defence.

18.2. I find that M/s Forever as well its Chairman Shri Jatin Mehta and its Managing Director Shri Jai Kumar Begani have failed to appear for Personal Hearing, inspite of being given opportunity to appear in person several times as detailed in foregoing para

for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings *ex-parte* in terms of merit of the case.

18.3. With regard to proceeding to decide the case *ex-parte*, support is drawn from the following case laws:

18.3.1. Hon'ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs & C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.) has held that:

19. No doubt hearing includes written submissions and personal hearing as well but the principle of *Audi Alteram Partem* does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another v. M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

18.3.2. Hon'ble Tribunal of Mumbai in the case of Sumit Wool Processors v. CC, Nhava Sheva reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai) has observed as under:

“8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an *alibi* to escape the consequences of law. Accordingly, we reject the plea made by them in this regard.”

18.3.3. Hon'ble High Court of Delhi in the case of Saketh India Ltd Vs. Union of India reported in 2002 (143) ELT 274 (Del), has observed that:

“Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant inspite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case.”

18.3.4. The Hon'ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner of Central Excise, Ahmedabad-II reported in 2004 (171) ELT 412 (Tri. Mumbai) has held that:

“Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated.”

18.3.5. The Hon'ble Supreme Court in the case of Jethmal Vs. Union of India reported in 1999 (110) ELT 379 (S.C.) has held as under:

7. Our attention was also drawn to a recent decision of this Court in *A.K. Kripak v. Union of India* - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of *audi alteram partem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.

18.3.6. Hon'ble Delhi Tribunal in the case of Commissioner of C.Ex. Vs. Pee Iron & Steel Co. (P) Ltd. reported in as 2012 (286) E.L.T. 79 (Tri. – Del) [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)**] has observed that:

“9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed *ex parte* order against the respondent.”

18.4 In view of the discussion held in Para 18 to 18.3.6. above, I proceed to adjudicate the Show Cause Notice No. DRI/AZU/INT-22/2009 dated 28.10.2009 *ex parte*.

19. 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 06.07.2011, in view of the judgement of the Hon'ble Tribunal in its Order No. A/12532-12574/2017 dated 14.09.2017 in the present case.

20. I would like to refer 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.

21. 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 Section 5. 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 Law* 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. Ganeswara 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."

22. 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.

23. I find that the Hon'ble Tribunal, in its orders dated 14.09.2017, has remanded the present case back to the adjudicating authority on the grounds of pendency of case before the Hon'ble Supreme Court regarding jurisdiction of DRI to issue show cause notice prior to 06.07.2011. It is pertinent to note that the Hon'ble Tribunal has not examined the merits of the case in its order. As the issue of show cause notice issued by the DRI is settled by the Hon'ble Supreme Court, therefore, I proceed to examine the merits of the case.

24. I note that the case originated from the intelligence received by officers of the Directorate of Revenue Intelligence, Ahmedabad, indicating that M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, was exporting a consignment of approximately 100 Kgs. of crude bangles of 0.995 (24 Karat) purity from the Air Cargo Complex, Ahmedabad (ACC), in the guise of Plain Gold Jewellery under the Advance Authorisation Scheme. On visiting the ACC, the officers identified a consignment belonging to M/s. Forever, intended for export under Shipping Bill No. 1122303 dated 06.05.2009 and Invoice No. ASD/HO/05/001 dated 05.05.2009. The consignment comprised 1,015 pieces of gold bangles of 0.995 fineness, weighing a total of 100,047.76 grams and valued at USD 2,946,411 (FOB). The consignment was consigned to M/s. Italian Gold FZC, Sharjah Airport International Free Zone, Sharjah, U.A.E., under Advance Authorisation No. 0310439347/3/03/00 dated 13.08.2007 issued to M/s. Forever by the DGFT, Mumbai, for the import of 800 Kgs. of gold of 995/999 purity and the export of 772.946 Kgs. of 99.1 purity Plain Gold Jewellery. The FOB value of the consignment was declared as Rs. 14,62,89,306.15.

24.1. On preliminary examination of the said consignment under Panchnama dated 07.05.2009, it was found that the impugned bangles appeared to be of 0.995 purity. Each bangle weighed between 90 to 105 grams, was of almost identical size, and featured the same embossed design. Most of the bangles were not in proper shape and appeared deformed due to the malleable nature of 24 Karat gold. Further, in some cases, the joints were not properly aligned before soldering. These observations confirmed the suspicion and the intelligence received by the DRI.

24.2. For the purpose of ascertaining the precise nature of the goods under export, two jewellers, viz. Shri Chandreshbhai Rasiklal Soni, Proprietor, M/s. Jayendra Jewellers, and Shri Harshadbhai Shantilal Soni, Proprietor, M/s. Dharmik Jewellers, who were cross examined by the noticees on 19.8.2010, were called in as experts for specialized examination, under panchnama dated 09.05.2009. They opined, inter alia, that:

- based on their experience and knowledge, the bangles were of 24 Karats purity, i.e., with a fineness of 995 to 999;
- all the bangles were of almost the same size and had the same design embossed on them;
- these bangles were loosely packed in plastic bags, each containing about 50 bangles, with no individual paper, plastic or box packing for each bangle;
- all the bangles were not in proper shape and were de-shaped;

- there was no marking of Karatage or purity on the bangles, which is normally present on gold jewellery meant for local or foreign sale;
- in many of the bangles, the joints were not properly aligned before soldering;
- finishing of the bangles examined by them clearly showed that the said bangles can never be accepted as jewellery even in the local market than how it can be accepted for sale as jewellery in the foreign market;
- since these bangles were of 24 Karat purity, they would easily go out of shape when a little pressure was applied on them;
- normally 24 Karat, i.e. 995 to 999 purity jewellery is not used for adornment as it easily goes out of shape;
- normally, in India and in foreign countries, jewellery of 14 to 22 Karat is used;
- normally bangles of 10 to 25 Gms are used as ornaments /jewellery and are normally made of 22 Karat gold; such heavy bangles of over 90 grams cannot be worn or used as jewellery;
- these bangles appear to be only strips of gold embossed with some design and given a roughly round shape and soldered at the ends to give them a shape of bangles. Such bangles cannot be accepted as jewellery in the trade.

24.3. On terra firma, based on their opinion, it apparently appeared that the said so-called bangles could not be considered as jewellery. Accordingly, 1009 pieces, weighing about 99.840 Kgs, valued at approximately Rs.13.78 crores (excluding samples), were seized by the DRI.

25. I note that during the course of the enquiry, statements of the aforementioned two experts who examined the consignments of the so-called bangles under the panchnama dated 09.05.2009 were recorded under Section 108 of the Customs Act, 1962. I find that Shri Harshadbhal Shantilal Soni, Proprietor of M/s. Dharmik Jewellers, Ahmedabad, in his statement dated 08.10.2009, besides confirming the facts of panchnama dated 09.05.2009, stated, inter alia, that they were into the business of manufacture and sale of gold jewellery since over 40 years in the name of M/s. Dharmik Jewellers; he joined the said business around 1988-1999; that all the bangles were of almost the same size and the same design embossed on them, which would not be possible in case of such a big consignment of over 1000 pieces of bangles; that as seen by them these bangles were loosely packed in plastic bags and normally such large consignments of gold jewellery are not packed in this manner; that almost all the bangles were not in proper round shape and were out of shape; that there was no marking of Karatage or purity on the bangles, which was normally done on the gold jewellery meant for local sale or exports; that in many of the bangles the joints were also not aligned properly before soldering; that finishing of the bangles examined by them was also not proper and it appeared that the said bangles were not even polished properly. He further stated that based on his extensive experience in the gold jewellery trade, he could say that such bangles would not be accepted as jewellery in the trade and could not be worn as ornaments. He explained that jewellery made of 24 Karat gold (i.e., 995 to 999 purity) is generally not used for wearing, as pure gold is very soft, easily deforms under slight pressure, and wears off quickly; that from his experience in the

business of gold jewellery he could say that normally in India jewellery of 22 Karat is used and in foreign countries jewellery of 14 to 22 Karat is used; that there is hardly any demand of 24 K jewellery in India or foreign country; that the bangles appeared as if strips of gold were manufactured out of 24 Karat gold bars and were given a roughly round shape and soldered to resemble bangles; however, being made of 24 Karat gold, most of them were out of shape when examined, and such bangles cannot be accepted as jewellery or used as ornaments.

25.1. I note that the other panch witness, Shri Chandreshbhai Rasiklal Soni, Proprietor of M/s. Jayendra Jewellers, Ahmedabad, in his statement dated 09.10.2009, fully endorsed the above views expressed by Shri Harshadbhai Shantilal Soni.

25.2. I further find that to doubly ensure the authenticity of the nature of the goods, the six samples of the so-called bangles, drawn under panchnama dated 07.05.2009, were then shown by the officers of the DRI to experts in the jewellery profession, namely Shri Kishore Zaveri, Director of M/s Zaveri & Co. Pvt. Ltd., Ahmedabad, and Shri Shantibhai Patel, Proprietor of M/s Jaykrishna Jewellers, Ahmedabad, under panchnama dated 14.10.2009. These experts were of the opinion that the so-called bangles, of 24 Karats, i.e., of 995 to 999 fineness, were almost of the same size with the same design embossed on them; that these bangles were not in proper shape and were de-shaped; that there was no marking of Karatage or purity on the bangles, which is normally present on gold jewellery meant for local or foreign sale; that finishing of the so-called bangles examined by them was such that they could not be accepted as jewellery in the local market or for export; that being of 24 Karat purity, these bangles could have gone out of shape even by little pressure applied on them during packing or transportation; that normally, 24 Karat, i.e., 995 to 999 purity jewellery is not used for adornment as it easily goes out of shape; that jewellery of 14 to 22 Karats is normally used both in India and foreign countries; that bangles of 10 to 25 grams are generally used as ornaments/jewellery and are made of 14 to 22 Karat gold; that such heavy bangles of over 90 grams cannot be worn or used as jewellery; that subject bangles appeared to be merely strips of 24 Karat gold embossed with some design, given a roughly round shape, and soldered at the ends to give them the appearance of bangles, and such bangles cannot be accepted as jewellery in the trade.

25.3. I further note that during the investigation, statement of Shri Kishore Zaveri, Director of M/s Zaveri & Co. Pvt. Ltd., was recorded on 16.10.2009 under Section 108 of the Customs Act, 1962, in which he interalia reiterated the above opinion given to the officers of the DRI during the panchnama proceedings dated 14.10.2009. He further informed, inter alia, that he had been in the business of manufacturing and selling gold jewellery for over 25 years and was fully conversant with the gold and gold jewellery trade; that they also exported plain as well as studded gold jewellery to the UAE, Singapore, USA, and Middle East countries since 2003-04; that they normally exported plain and studded bangles, rings, earrings, pendants, etc.; that the jewellery exported by them was of 22 Karat; that they had also exported gold medallions of 24 Karat; that 24 Karat gold is very soft and jewellery made from it would go out of shape easily, and

therefore there was hardly any demand for 24 Karat jewellery; that they normally paid Rs. 50 to Rs. 150 per gram as making charges in wholesale for plain gold jewellery to their labour engaged in manufacturing plain gold jewellery; that the wholesale making charges for studded gold jewellery ranged from Rs. 225 to Rs. 450 per gram; that being in the trade of manufacturing and selling gold jewellery, he had visited the UAE, Singapore, USA, and Middle East countries and had also attended many gold jewellery trade fairs in India as well as abroad; however, he had hardly seen any demand for 24K jewellery; that in the UAE also, mostly 21 Karat or 22 Karat gold jewellery was in demand; that some of the big jewellery manufacturers of Indonesia, Italy, Thailand, etc., had started manufacturing 24 Karat gold jewellery, but these were made using sophisticated machines and were not of pure 24 Karat gold, i.e., 999 or 995 purity, but of 990 purity, meaning they used some alloy of about 0.09%; that moreover, this jewellery was of very light weight, ranging from less than 5 grams up to 25 grams; that this jewellery was also very expensive; that they had never heard of UAE-based companies, namely M/s Al Abia Jewellery, UAE, M/s Al Mufied Jewellery FZE, UAE, and M/s Italian Gold FZC, UAE, during their business of exporting gold jewellery.

25.4. I further note that during the investigation, statement of Shri Shantibhai Patel, Proprietor of M/s Jaykrishna Jewellers, was recorded on 16.10.2009 under Section 108 of the Customs Act, 1962, in which he inter alia reiterated the above opinion given to the officers of the DRI during the panchnama proceedings dated 14.10.2009. He further informed, inter alia, that they had been in the business of selling gold jewellery for the past 30 years and that he was currently the President of the Gem & Jewellery Trade Council of India and the Jewellery Association, Ahmedabad; that he was also a member of the Gem & Jewellery Export Promotion Council, Bombay; that they normally paid Rs. 80 to Rs. 200 per gram as making charges in wholesale for plain gold jewellery to the labour engaged in manufacturing it; that the wholesale making charges for studded gold jewellery ranged from Rs. 80 to Rs. 180 per gram; that being in the trade of manufacturing and selling gold jewellery, he had visited the UAE, USA, etc., and had also attended many gold jewellery trade fairs in India as well as abroad; however, he had hardly seen any demand for 24K jewellery, and in the UAE also, mostly 21 Karat or 22 Karat gold jewellery was in demand.

26. I further note that the seized bangles were manufactured by M/s. Tapubhai Dayalji & Sons on behalf of M/s. Forever Precious Jewellers and Diamonds Pvt. Ltd. Accordingly, statement of Shri Dineshbhai Tapubhai Soni, Partner of M/s. Tapubhai Dayalji & Sons, was recorded on 07.05.2009 and 11.05.2009 under Section 108 of the Customs Act, 1962. In his statements dated 07.05.2009 and 11.05.2009, he deposed, inter alia, that he had been doing job work for M/s. Forever Precious Jewellers and Diamonds Pvt. Ltd. since April 2009; that he had met Shri Jay Begani sometime in March 2009, when Shri Jay Begani enquired about job charges for manufacturing bangles of 24 Karat gold, weighing between 90 grams to 120 grams per piece for export purpose; that upon his inquiry about the design and finish required for these bangles, Shri Jay Begani informed him that any design would suffice and minimal finishing was required, and that the bangles should merely look like bangles in appearance; that when

asked about the size of the bangles to be manufactured, Shri Jay Begani stated that any size would do, provided the weight was between 90 grams to 120 grams per piece; that Shri Jay Begani also requested him to quote their lowest price and not to focus much on the design and finishing; that since such crude-type bangles could be easily manufactured by them with minimal labor, he informed Shri Jay Begani that they could manufacture such bangles at about Rs. 40,000/- per 100 kilograms; that during 2009-10, between 04.04.2009 and 29.04.2009, they had manufactured about 460 kilograms of 24 Karat purity bangles for M/s. Forever. I further find that on being asked regarding the process carried out by them for manufacture of such bangles, he revealed that they received 1 Kg gold bars from M/s. Forever, which they cut into five strips; rolled these strips to uniform thickness, passed these uniform strips through roller machine to obtain long strips of the desired thickness; these strips were subsequently passed through another roller machine to emboss the design on them. Thereafter, the strips were cut into the desired length, shaped into a circular form resembling bangles, and soldered at the ends using cadmium. He further confirmed that 99 kilograms of such bangles were manufactured in a single day and delivered to M/s. Forever; that, in wholesale, their job charges for normal designs of 22 Karat jewellery ranged from Rs. 40-60 per gram; that they had also charged the same rate of about Rs. 40 to 50 per gram to M/s. Forever when they made 22 Karat gold jewellery for them for their local sales; but in this case, they charged only Rs. 0.40 per gram, as per Shri Begani's request to keep costs minimal without any concern for design or finish; that, as there was no craftsmanship involved in the manufacture of the said bangles, they could manufacture and supply up to 100 kilograms of bangles to M/s. Forever within a day at this rate. On seeing photographs of the bangles that were being exported by M/s. Forever, he confirmed that these were manufactured by them. On being queried regarding the bangles being de-shaped and mutilated, he stated that, since these bangles were manufactured out of 24 Karat gold, they would easily lose shape even with slight pressure during storage or transportation. On query by the officers that many of the bangles found in the export consignments of M/s. Forever, the ends were not properly aligned before soldering, he stated that due the urgency of making the bangles and supplying the same to M/s. Forever in some cases this could have happened due to the carelessness of the workers. Moreover, M/s. Forever had not insisted on quality and finishing. I also find that he clearly mentioned that, except for their job charges of Rs. 4/- per 10 grams, they had neither charged nor received any other remuneration from M/s. Forever.

27. I find that Shri Jaikumar Begani, Managing Director of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, in his voluntary statement recorded on 15.05.2009, stated that the average weight of jewellery exported by their company was approximately 8-12 grams per piece for rings and earrings, 15-30 grams for pendants, 50-100 grams for bangles, and 40-50 grams for bracelets. He further stated that they had obtained only one Advance Authorization for the export of plain gold jewellery of 995 purity, allowing import of approximately 800 kilograms of gold of the same purity. No import or local procurement without payment of duty had been made under this authorization as of then, and the benefit was to be availed after fulfilling the export

obligations. He also disclosed that they had a quality control department at their corporate office in Ahmedabad, where they normally carried out quality checks for the jewellery not manufactured by them, especially for exports and where it was not possible to bring the jewellery to Ahmedabad or not possible to send their quality check personnel to the job workers premises, they relied on their job worker who were working for them for substantial period of time. He confirmed that five consignments of 995 purity plain gold jewellery were exported under this license through the Air Cargo Complex, Ahmedabad, three to Alabia Jewellery FZE and two to Al Mufied Jewellery FZE, both located in the Sharjah Airport International Free Zone, U.A.E. Of these, two consignments (Shipping Bill Nos. 1115007 dated 16.02.2009 and 1115220 dated 18.02.2009), comprising pendants, earrings, and a few bangles, were manufactured by M/s. Emerald Jewel Industries Pvt. Ltd., Coimbatore. The remaining three consignments (Shipping Bill Nos. 1120438 dated 15.04.2009, 1120539 dated 16.04.2009, and 1121212 dated 24.04.2009), consisting of bangles, were manufactured by M/s. Tapubhal Dayalji Soni & Sons, Ahmedabad. He undisputedly accepted that they contracted M/s. Tapubhal Dayalji Soni & Sons for manufacturing 24K gold bangles at a rate of 40 paise per gram and received up to 100 kilograms of manufactured bangles within a day or two of gold supply to them. As regards the manufacturing charges, he stated that for other types of gold jewellery, job charges ranged from 3.5% to 4% of the gold value for bangles (Rs. 49– Rs.56 per gram, assuming a gold value of Rs.1400 per gram), and 4% to 6% (Rs.56– Rs.64 per gram) for pendants, rings, and earrings, depending on the design. He also added that Machine-made bangles cost around Rs.10– Rs.12 per piece. He further stated that in his 15-year career in the jewellery trade, he had not previously dealt in 24K gold jewellery. I find that he confirmed the fact that for all consignments of 24K gold bangles, they charged approximately 4.5% as making charges, while paid only 0.003% (40 paise per gram) as job work charges. He stated that as per the Foreign Trade Policy, a minimum value addition of 4% was required, and overseas orders were placed accordingly, specifying a 4.5% value addition. I find that on being shown some of the photographs of the bangles being exported by them, he acknowledged that the bangles appeared badly mutilated and deformed, and in some instances, the ends were not properly aligned before soldering. He further disclosed that 24K gold was very malleable and therefore the bangles made out of 24 K gold would get deformed easily due to the pressure applied on them, due to packing and transportation, as about 50 bangles were loosely packed in one plastic bag and 10 such plastic bags were packed in one aluminum box for export and that this was the same packing method used for previous exports of 24K gold bangles.

27.1. I further find that Shri Jatin Rajnikant Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, and CMD of M/s. Su Raj Diamonds & Jewellery Ltd., Mumbai, in his voluntary statement recorded on 27.05.2009, stated that M/s. Forever had obtained an Advance Authorisation Certificate from the DGFT for the import of gold and export of gold jewellery. Under this Authorisation, they had, until then, exported five consignments totalling approximately 260 kg of gold of 995 purity. These consignments primarily consisted of plain gold bangles, each weighing between

90 to 100 grams, and were exported through the Air Cargo Complex, Ahmedabad. He further confirmed that a consignment of over 100 kg of 995 purity bangles, tendered to export via Shipping Bill No. 1122303 dated 06.05.2009, was destined for M/s. Italian Gold FZC, Sharjah Airport International Free Zone, Sharjah, U.A.E. He admitted that, for all the consignments of 24K gold bangles exported by them, they had charged approximately 4.5% as making charges, however, they have been actually paying only 40 paise per piece, equivalent to roughly 0.003%, towards making charges. He also stated that as per the value addition norms under the Foreign Trade Policy, a minimum of 4% value addition is mandatory and accordingly, they had obtained orders from their overseas buyers with a value addition of 4.5%. I find that on being shown some of the photographs of the bangles being exported by them, he confirmed that the bangles appeared badly mutilated and deformed, and in some instances, the ends were not properly aligned before soldering. He further disclosed that 24K gold was very malleable and therefore the bangles made out 24 K gold tend to deform easily under pressure during packing and transportation. I further find that on being asked whether the bangles in such mutilated condition, as was being exported by them can be accepted as jewellery in the trade, he did not reply clearly and stated that they had received orders for such 24K gold bangles and were exporting them accordingly.

28. M/s. Forever vide their letter dated 14.05.2009 submitted details of procurement of gold and gold jewellery exported during 2008-2009 and 2009-2010. I note that the details regarding the same are provided in para 16 of the show Cause Notice.

29. From the above discussion, following undisputed facts emerge:-

- M/s. Forever obtained Advance Licence No. 0310439347/3/03 dated 13.08.2007 for import of gold with 995/999 purity and export of plain gold jewellery of 991 purity;
- A consignment weighing 100.048 kgs, described as bangles of 995 purity, was being exported by M/s. Forever under Shipping Bill No. 1122303 dated 06.05.2009. This consignment was subsequently seized by the DRI;
- Prior to this, M/s. Forever had exported three shipments of similar gold jewellery of 995 fineness under the same Advance Authorisation.
- The consignment of purported gold jewellery under seizure was manufactured on job work basis by Shri Dineshbhai Tapubhai Soni of M/s. Tapubhai Dayalji Soni & Sons.
- The gold jewellery under seizure consisted of:
 - a) Bangles made of 24-carat gold, i.e., with a fineness of 995 to 999;
 - b) All bangles were of nearly the same size and had the same embossed design on them;
 - c) The bangles were loosely packed in plastic bags, each containing approximately 50 bangles, without any individual packing such as paper, plastic covers, or boxes;
 - d) Most of the bangles were deformed and not in proper shape;
 - e) There was no indication or marking of purity on any of the bangles;
 - f) In many bangles, the joints on the bangles were not properly aligned before soldering.

- Shri Dineshbhai Tapubhai Soni charged Rs. 400 per kg as making charges for both the seized consignment as well as the earlier exported consignments. Further, between 04.04.2009 and 29.04.2009, approximately 460 kilograms of 24 Karat purity bangles were manufactured for M/s. Forever, and around 100 kg of manufactured gold bangles were supplied to M/s. Forever within a day or two of receiving the gold;
- The individual bangles in the seized lot weighed between 90 and 105 grams;
- The gold bangles previously exported by M/s. Forever under Shipping Bills No. 1120539 dated 16.04.2009, No. 1121212 dated 24.04.2009, and No. 1120438 dated 15.04.2009 under the same Advance Authorisation were of the same type as those in the seized consignment;
- M/s. Forever did not import any gold under the said Advance Authorisation prior to making these exports;
- For the above consignments of 24 K gold bangles exported by them, they charged about 4.5% of total gold value as making charges, whereas they paid only 40 Paise as making charges, which amounts to around 0.003%.

From the above, I find that it is clear that purported gold bangles under Shipping Bill No.1122303 dated 06.05.2009 and the earlier export of 184.998 kgs. of purported gold jewellery of 995 fineness had been exported for fulfilment of export obligation against the Advance Authorisation No. 0310439347/3/03.

WHETHER SUCH PURPORTED GOLD JEWELLERY WAS COVERED FOR EXPORT UNDER ADVANCE AUTHORISATION NO. 0310439347/3/03:

30. I note that, as already mentioned here-in-above, Advance Authorisation No. 0310439347/3/03 was issued to M/s. Forever, under which they were allowed to import duty free gold of purity 995/999 fineness. In accordance with the conditions stipulated under the said Advance Authorisation, the authorization holder was obligated to export plain jewellery manufactured using gold of 991 purity. In order to determine whether M/s. Forever has fulfilled the export obligation under the said authorization, it is necessary to examine whether the goods in question, both the consignment that was seized at the time of export and the three consignments previously exported under the following Shipping Bills: No. 1120539 dated 16.04.2009, No. 1121212 dated 24.04.2009, and No. 1120438 dated 15.04.2009, comply with the required specifications. I find that specifically, for the goods to be eligible towards fulfillment of the export obligation, they must (i) possess a gold purity of 991 and (ii) fall within the category of "plain jewellery" as defined under the Customs Tariff. It is therefore imperative to examine whether the seized consignment, as well as the three earlier consignments, meet these criteria and can rightfully be classified as "plain jewellery" of the requisite purity.

30.1. For interpretation of the term 'jewellery', the DRI, in its Show Cause Notice, has referred to the definition provided in the *Britannica Concise Encyclopedia* and also to

Wikipedia. In their defence, M/s. Forever have referred to the *Thesaurus*. I have examined all these references and it is observed that jewellery is generally described as an object for the adornment of the body. However, it is not necessary to refer to such encyclopedias or other sources when the Customs Tariff itself defines jewellery. The jewellery is classifiable under CTH 7113. As per Note 9 of Chapter 71, the expression "**Articles of jewellery**" means:

(a) any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, ear-rings, watch-chains, fobs, pendants, tie-pins, cuff-links, dress-studs, religious or other medals and insignia); and

(b) articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example with natural or cultured pearls, precious or semi-precious stones, synthetic or reconstructed precious or semi-precious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber jet or coral."

30.2. It is an undisputed fact that the bangles being exported weighed between 90 grams to 105 grams and were of 995 fineness. However, the finish of these bangles was not proper; in several cases, even the ends were not properly jointed before soldering. I find that this fact has been corroborated by the statements of Shri Dineshbhai Tapubhai Soni, Shri Jatin Mehta, and Shri Jai Kumar Begani. These statements also highlight that the normal making charges for gold jewellery are substantially higher than Rs. 400 per kilogram charged by Shri Dineshbhai Tapubhai Soni for manufacturing the bangles exported by M/s. Forever. I further find that in his voluntary statement dated 11.05.2009, Shri Dineshbhai Tapubhai Soni clearly informed that Shri Jaibhai of M/s. Forever had specifically instructed him to manufacture the bangles at the lowest possible cost, without any concern for design or finish. Since there was no craftsmanship involved, they were able to manufacture and supply up to 100 kilograms of bangles in a single day to M/s. Forever and due to these reasons, he could charge a nominal rate of Rs. 4 per 10 grams. He also described the manufacturing process involved in making of subject bangles as under:

- simply cutting 995 gold bars into five strips;
- rolling the cut strips to make their thickness uniform;
- passing the uniform strips through a roller machine to obtain long strips of desired thickness;
- further passing the strips through another roller machine to emboss a design on them;
- cutting the strips into the desired lengths and shaping them into round shape looks like bangles and soldered at the ends with cadmium;

Shri Dineshbhai also confirmed that up to 99 kilograms of such bangles were manufactured in a single day and supplied to M/s. Forever Precious Jewellery & Diamonds Ltd. In total, 460 kilograms of these so-called bangles were manufactured and delivered to M/s Forever, all using the same method described above. From the above, it is evident that Shri Dineshbhai was specifically instructed by Shri Jai to manufacture bangles at the lowest possible cost, without any regard for design or finish.

This instruction is difficult to comprehend, particularly in the context of the jewellery being exported to fulfil an export obligation under the category of "Plain Jewellery." I note that Jewellery, by its very nature, is worn for adornment and to enhance one's appearance, however, the deliberate disregard for design and finish, as instructed by Shri Jai, raises serious questions about the authenticity of the export intent. Furthermore, it is highly implausible to manufacture approximately 100 kg of bangles in a single day with any degree of design, even minimal. The crafting of bangles, even the simplest kind, requires time and attention to ensure quality and symmetry. The process involves careful design, shaping, and finishing, all of which demand both time and skilled workmanship. In the present case, however, the bangles were produced using only basic processes such as cutting and rolling, all within an unusually short timeframe. I find that this, coupled with the absence of design considerations, clearly indicates that M/s. Forever attempted to merely dispatch gold bangles under the guise of "Plain Jewellery" to comply with export norms, rather than making a genuine effort to produce jewellery suitable for international markets.

30.3. It is also a fact, as already mentioned here-in-above, that the purported bangles were of 995 fineness, which made them highly malleable, resulting in the deformation of the bangles. The finish of the bangles was also not proper and these were manufactured by the job worker at nominal charges, which cannot be compared with the normal making charges of gold jewellery in the market. M/s Forever paid approx. 40 paise per gram for manufacturing of the seized/exported bangles, whereas, in general, the charges for plain gold jewellery range from approx. Rs. 50 to Rs. 150 per gram. Moreover, Shri Dineshbhai in his statement confirmed that they had charged Rs. 40 to Rs. 50 per gram for making 22 carats gold jewellery for M/s Forever. These facts have never been disputed by M/s Forever. The Show Cause Notice alleges that 24-carat jewellery, due to its malleability, is not suitable for personal ornamentation and is generally not in demand. M/s. Forever in their defence have contested the claim and argued that with the help of modern technology, it is now possible to achieve a level of hardness in 24-carat gold comparable to that of 22 or 18-carat jewellery. However, I find that they have not claimed that such specified technology was used in the manufacture of the exported or the seized bangles. On the contrary it is un-denied fact that all these so called 24 carats jewellery was made by a job worker, Shri Dineshbhai Tapubhai Soni, using conventional methods as explained above. Furthermore, these bangles did not possess the hardness of 22 carats gold, with the result that most of the bangles under seizure were found to be de-shaped.

30.4. Another relevant fact to be noted is that such a huge quantity of gold bangles roughly about one thousand in numbers were of uniform design, crude finish, and having weight of 90 gms. to 105 gms. Uniform designs for such a large number of expensive item can be explained by way of showing a strong demand for the same in the consumer market. However, M/s. Forever has made no such claim in their defense. I would again refer to note 9 of chapter 71 which says that article of jewellery means a small object of personal adornment. Basically it follows that an article of jewellery is for

personal wear. M/s. Forever has failed to demonstrate that these extremely heavy, crude looking bangles were meant for such a purpose.

30.5. M/s. Forever in their defence on the weight of purported jewellery have contended that for the purpose like marriage etc., jewellery of considerable weights and of higher purity and fineness are normally ordered as compared to the jewellery which is ordinarily worn.

I note that in the present case, it has been factually established that finish of the purported gold jewellery is of exceptionally poor quality. Jewellery intended for purposes such as weddings or other significant personal events, by its very nature, is expected to exhibit a high standard of craftsmanship and superior finishing. The substandard quality of the gold bangles in question is further evidenced by the fact that approx 99 kgs of gold bangles were manufactured by the job worker in a single day. Moreover, jewellery is fundamentally designed for personal adornment. It may be little heavier but not so heavy which would make it impossible for the purpose of personal adornment. Further, the gold bangles were loosely packed in plastic bags, each containing approximately 50 bangles, without any individual packing such as paper, plastic covers, or boxes. The packing of the gold bangles also raises questions on the stand of M/s Forever. Accordingly, the defence put forth by M/s Forever is devoid of merit and I reject the same.

30.6. In order to further defend their case of the subject bangles being jewellery, argument has been made in the defence that jewellery has traditionally been used as form of investment implying thereby that make, finish, shape etc. is of not much relevance to a person buying jewellery for purpose of investment.

I find that this line of reasoning, however, does not withstand logical scrutiny. It is undisputed that gold jewellery can indeed serve as an investment, particularly in light of the consistent appreciation in gold prices, however, the primary and intrinsic purpose of jewellery remains personal adornment. As the saying goes, "*All that glitters is not gold,*" and in this context, it is not merely the gold content but also the form and finesse lend jewellery its value. Moreover, it is important to consider the context in which this jewellery was being transacted. The subject items were intended for export to Sharjah in the United Arab Emirates, a region where pure 24-carat gold biscuits are readily and widely available in the open market. These gold biscuits, being investment-grade commodities, are sold at rates that exclude any form of making charges, thereby offering a far more economical avenue for investment purposes. It is, therefore, illogical to suggest that an individual interested solely in gold investment would deliberately choose to purchase crudely fashioned jewellery by incurring additional making charges averaging around 4.5% of the gold's value when they could simply acquire pure gold bullion at a lower cost and with higher resale value. In essence, I find that if the sole intention were investment, a prudent investor would opt for efficiency, not embellishment. The defence's argument thus falls flat on the face of both market logic and common practice and therefore I reject the same.

30.7. With regard to the quality of workmanship on the subject bangles being exported and also on the fact that whether the subject jewellery can be worn or not, M/s Forever in their defence contended that the issue is irrelevant if the customer has placed an order for such jewellery, and the same has been duly supplied.

Even assuming, for the sake of argument, that the bangles supplied by M/s. Forever were manufactured strictly in accordance with an order placed by the overseas importer, the fundamental issue remains: the bangles in question, though claimed to be of 24-carat gold, were found to be of extremely poor workmanship. The items were severely deformed, lacking even the most basic finishing or the essential characteristics typically associated with genuine, wearable jewellery. Moreover, the manner in which these high-value items were packed raises further concerns. The gold bangles, worth crores of rupees, were merely bundled in plastic bags, each containing approximately 50 bangles without any individual packaging such as paper wraps, plastic covers, or boxes. Such careless packing is not only unprofessional but also highly unusual in the trade of precious metals and jewellery, where presentation, protection, and quality assurance are paramount. As the old saying goes, "*A thing of value is cared for with value.*" I further find that the agreement between M/s Forever and the importer does not contain any specific provisions regarding the design, size, packaging, or quality standards of the gold jewellery. However, it is generally expected, especially in international trade involving luxury items, that such details would be stipulated, considering the nature of the product and the financial magnitude involved. It is also implausible to believe that an importer based in the UAE, a region well known for its stringent standards in gold and jewellery trade, would place an order for gold jewellery without specifying any design or quality requirements. The claim that 24-carat gold jewellery, which is inherently malleable and less suited for durable, wearable designs, was ordered without such specifications is highly doubtful. It strains credulity to accept that such an order was placed without further instruction or expectation of quality. In light of the foregoing, I find the defence's contention is not convincing and devoid of merit. Therefore, I reject the arguments advanced by M/s Forever.

30.8. I find that it is undisputed fact that the exports made by M/s. Forever, as well as a few earlier consignments of similar bangles, were carried out under an Advance Authorisation that specifically required the export of plain gold jewellery of 991 purity. Therefore, it is immaterial whether the purported jewellery being supplied conformed to the specific order of the overseas importer. What is relevant is whether the goods exported satisfy the conditions stipulated under the said Advance Authorisation. It has already been established that the goods in question were of 995 purity and, hence, do not fall within the scope of the authorisation, which mandates 991 purity. Furthermore, when evaluating whether the item qualifies as "jewellery" in the context of the Advance Authorisation, reference must be made to the definitions, if available, provided under the Customs Tariff and the Import and Export Policy. Considering the weight, design, and quality of the so-called bangles, they cannot, by any stretch of the imagination, be classified as *small objects of personal adornment*. Consequently, the jewellery currently being exported as well as the similar items previously exported under the same Advance

Authorisation cannot be considered as articles of jewellery as defined under Note 9 of Chapter 71.

30.9. During the personal hearing before the earlier adjudicating authority, cross examination of jewellers who had given their statements on the looks and quality of the subject bangles being exported and who have also given their opinion on the fact whether such crude heavy bangles can be considered as jewellery or not was conducted. It has been contended in defence that opinion of these persons cannot be relied on.

After careful consideration, I concur with this position and have decided not to place any reliance on the opinions obtained by the DRI from these jewellers. As already discussed, I find that the physical characteristics and visual appearance of the goods under seizure, combined with the statements provided by the job worker involved in their manufacture, are sufficient to form a reasoned and independent determination on whether the goods being exported qualify as jewellery or otherwise.

30.10. From the description in the Shipping Bills, the statements of the job worker, Shri Jai Kumar Begani and Shri Jatin Mehta of M/s. Forever, it becomes clear that the consignments exported under Shipping Bill No. 1120539 dated 16.04.2009, Shipping Bill No. 1121212 dated 24.04.2009, and Shipping Bill No. 1120438 dated 15.04.2009 contained goods similar in nature to those presently under seizure. This is not a matter of contention; in fact, it stands as an undisputed fact, even clearly accepted by Shri Jai Kumar Begani and Shri Jatin Mehta, that the so-called jewellery both seized and previously exported was of 995 purity. Furthermore, the seized goods and goods already exported do not correspond with the items listed for export under the relevant Advance Authorisation. As discussed in the foregoing paragraphs, I find no hesitation in reaching the conclusion that the goods in question, both those under seizure and those previously exported, do not qualify as "**small objects of personal adornment**," and therefore can not be treated as jewellery. Instead, they appear to be gold in its crude form, devoid of the craftsmanship and transformation that would merit classification as jewellery. Consequently, I hold that there can be no justification for considering these shipments as contributing towards the fulfillment of the export obligations associated with the said Authorisation.

RE-DETERMINATION OF EXPORT VALUE:

31. It has been alleged in the Show Cause Notice that the average rate of gold charged for the exported items is lower than the average rate at which the gold was purchased. Based on this, it has been inferred that the overseas importers were acting in collusion with the Indian exporter.

As per the details provided by M/s. Forever, which are included in Annexure 'A' of the Show Cause Notice, a total of 420 kg of gold bars were procured from the Bank of Nova Scotia and the Bank of India at a total cost of Rs. 75 crores. M/s. Forever has also provided details of the exports made using the said gold, which are summarized below:

I: Export of 92.6 kgs. of 24 carat gold coins for a total FOB value of Rs.142578395.50

II. Export of 184.998 kg of 24 carat plain gold jewellery (purported bangles) for total FOB value of Rs.273944457.75

III. 100.048 kgs of so called gold bangles of declared FOB value of Rs.148079022.00 which has been seized by the DRI.

These figures are based on the records submitted by M/s. Forever themselves.

From the above, it is evident that:

- The average export price of gold coins (0.999 fineness) comes to Rs. 15,39,723 per kg
- The average price for the three consignments of purported bangles already exported (0.995 fineness) comes to Rs. 14,80,795 per kg
- The average price for the consignment under seizure comes to Rs. 14,80,080 per kg

I find that these export items were manufactured out of 420 kgs. of gold bars procured at an average cost of Rs. 17,85,714 per kg. It is thus beyond doubt that average rate of gold charged for export goods is lower than the average rate of purchase cost of gold. In a trading activity involving gold, the sale price is directly linked to the purchase cost, and under no circumstances the export price of a gold item can be lower than the cost of the gold used to manufacture it. In their defence reply dated 01.02.2010, in paragraph 33, M/s. Forever denied that the FOB value of the gold bangles was less than the value of the gold used in their manufacture. However, they did not provide any calculations or documentary evidence to substantiate this claim. I find that such a defence does not hold any merit considering that the aforementioned calculations are based on the very data provided by M/s. Forever. Therefore, I agree with the contention of the DRI that the pricing structure casts doubt on the authenticity of the transactions between the Indian exporter and the overseas importers.

31.1. The contract entered into by M/s. Forever with the overseas buyers, in connection with the attempted export of the goods under seizure, was found during the investigation and is detailed in paragraph 22 of the Show Cause Notice. As is seen from there, it relates to purchases of 24 carats gold bangles of total weight of 100 kgs. It is noteworthy that the contract lacks critical details such as the number of bangles, their designs, sizes, and individual weights. Furthermore, there is no mention of the prevailing gold rate. However, it is generally expected, especially in international trade involving luxury items, that such details would be stipulated, considering the nature of the product and the financial magnitude involved. It is also impossible to believe that an importer based in the UAE, a region well known for its stringent standards in gold and jewellery trade, would place an order for 100 kg of gold bangles of 24 carat purity without fixing rate of gold and without specifying design, size, weight of individual bangles, etc.

31.2. Another important aspect to be discussed is charging of 4.5% as making charges by the exporter from foreign buyers. It is an undisputed fact, as evident from various statements discussed above, that M/s. Forever paid only 40 paise per gram to the job

worker. According to the statement of the job worker, the manufacturing process employed was very basic, enabling him to produce approx 100 kgs of so-called gold bangles within a day or two. These bangles were either exported or in the process of being exported. It is also established and not even disputed by M/s. Forever that the seized bangles were of very poor workmanship. In their defence, through a letter dated 01.02.2010, M/s. Forever attempted to shift the blame for the poor quality to the job worker. However, this defence is not acceptable, considering that Shri Jai Kumar Begani, Managing Director of M/s. Forever, in his statement dated 15.05.2009, clearly stated that the company had a quality control department at its corporate office in Ahmedabad. This department was responsible for carrying out quality checks on jewellery not manufactured in-house, particularly for exports. Where it was not possible to bring the jewellery to Ahmedabad, or to send quality control personnel to the job worker's premises, the company relied on job workers who had been associated with them for a substantial period of time. It is pertinent to note that the job worker, Shri Dineshbhai Tapubhai Soni, was also based in Ahmedabad. Furthermore, the jewellery produced by him was intended for export, however, Shri Jay specifically instructed them to manufacture bangles at the lowest possible cost, without any regard for design or finish. Therefore, it is difficult to accept that M/s. Forever was not aware of the poor quality of the bangles being exported. It is clearly evident that quality was not a priority for them. I further note that the Hon'ble Supreme Court in the case of Om Prakash Bhatia [2003 (155) ELT 423 (S.C.)] had observed:

"If the goods are easily available in the market, then it would be difficult to arrive at the conclusion that a foreign buyer a prudent businessman would pay ten times more than the prevailing market price of readymade clothes, particularly, in the days where information is easily available through internet or various other sources".

The above observation by the Apex Court was made in the context of examining inflated export values. I note that this observation was made by the Apex Court way back in 2003. It is needless to say that since then, the accessibility and volume of information have increased manifold. Today, even an ordinary individual can readily access details regarding the price structure of specific goods prevailing in various countries. Considering the undisputed fact that similar bangles were earlier exported in three consignments under the same Advance Authorisation, it is obvious that the foreign buyer was fully aware of the nature and quality of the bangles being procured from the Indian exporter. This is not a case where the foreign buyer was deceived by the Indian exporter through exorbitant making charges. It is evident that while M/s. Forever paid manufacturing charges at the rate of 40 paise per gram (approx 0.003% of the gold value), charging the foreign buyer at the rate of 4.5% of the gold value could only have been done in collusion with the buyer. This arrangement appears to have been designed to meet the value addition requirements under the said Advance Authorisation scheme.

31.3. Considering the FOB value declared for the export goods vis-à-vis the procurement price of gold, and further taking into account the nature of the contract recovered during the investigation, as well as the exorbitant making charges, I note that

there is sufficient reason to doubt the truth or accuracy of the declared value of the export goods. I find no merit in the defence put forth by M/s. Forever in para 36 of their defence reply dated 01.02.2010, wherein they contend that the proper officer had no reason to doubt the truth or accuracy of the declared value. M/s. Forever has not provided any concrete basis, supported by documentary evidence, to substantiate their claim that the declared transaction value should be accepted as it is despite the reasons outlined above which cast doubt on its authenticity. As discussed hereinabove, there is enough evidences on record to question the truth or accuracy of the declared value. In absence of any further evidence submitted by M/s. Forever to support the genuineness of the declared export price, I find that the transaction value is required to be rejected in accordance with Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

31.4. In view of the foregoing discussion, I agree that the transaction value of the subject goods has to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. As goods of like kind are not available, the value cannot be determined as per Rule 4 and has to be computed as per Rule 5.

31.5. The consignment under seizure, covered by a contract entered into between M/s. Forever and the overseas buyer was recovered from the Customs House Agent. Based on these documents, and taking into account the undisputed fact that the bangles in question did not involve any specific design or branding, it is evident that no additional charges on account of design or brand need to be included in the valuation of the gold content. As per the records, the only cost incurred in the manufacturing process was Rs. 400 per kilogram, which was paid by M/s. Forever to the job worker as making charges. It is a well established practice in the jewellery trade that separate profit margins are typically not itemized, though, the profit margin is generally embedded within the making charges levied by the manufacturer/job worker. I note that the methodology adopted for determining the value of the export consignment, in accordance with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, has been detailed in para 27.4 of the Show Cause Notice. I agree that in the absence of any explicit reference in the agreement/contract, the price of gold must be taken as the prevailing international market rate on the date of the contract or sale. I also agree that no additional value on account of design or branding should be added. However, I do not agree with the conclusion that the only cost to be added to the gold value is Rs. 400 per kilogram paid as making charges to the job worker. These charges merely represent the amount paid for the manufacturing of the purported gold bangles. In actual trade practices, the making charges quoted by a dealer to a buyer are generally higher, as they incorporate not only the labour cost but also various other expenses i.e. transportation cost, administrative cost, factory/office rent etc as well as dealer's profit margin. From the various statements of various gold dealers enumerated hereinabove it is seen that average making charges varied from Rs.50 to Rs.150 per gram. From the statement of job worker, it is noted that for normal plain gold jewellery,

he used to charge about Rs.40 to Rs.60 per gram and M/s Forever has also paid him the same for their earlier manufacturing for local market. Based on this information, it is reasonable to assume that the making charges quoted by a dealer are roughly double the amount paid by them to the job worker, who is actually making the jewellery. Therefore, in order to arrive at a fair and accurate re-determined transaction value under Rule 5 of the Customs Valuation (Determination of Value of Export goods) Rules, 2007, I am of the opinion that making charges @ Rs.800/- per kg. should be added to the value of gold.

31.6. Accordingly, the value of the 184.998 kgs. of gold already exported by M/s. Forever in April 2009 and 100.048 kgs. which were being exported under shipping bill no. 1122303 dated 6/5/2009 are re-determined as under:

S r. N o.	Invoice No. & Date	Shippi ng Bill No. & Date	Quan tity (in Kgs.)	Declared FOB Value		FOB Value of gold as per Invoice (Rs.)		Making Charge s @ of Rs. 800 per Kg.	Re- determe ned FOB Value (Rs.)
				IN USD	IN INR	IN USD	IN INR		
A	B	C	D	E	F	G	H	I= D*800	J= (H+I)
1	ASD/HO/0 4/004 dated 15.04. 2009	11204 38 dated 15.04. 2009	134.9 63	396958 5.00	19947164 6.25	378416 1.00	19015409 0.25	10797 0.50	19026206 0.75
2	ASD/HO/0 4/005 dated 16.04. 2009	11205 39 dated 16.04. 2009	15.00 1	445023. 00	22362405 .75	425859. 00	21399414 .75	12000. 70	21411415 .45
3	ASD/HO/0 4/006 dated 23.04.2009	11212 12 dated 24.04. 2009	35.03 4	103671 5.00	52110405 .75	992072. 00	49851618 .00	28027. 32	49879645 .32
Total			184. 998	545132 3.00	2739444 57.75	520209 2.00	2614051 23.00	14799 8.52	2615531 21.52
4	ASD/HO/0 5/001 dated 05.05.2009	11223 03 dated 06.05. 2009	100.0 48	294641 1.00	14807902 1.75	281953 2.00	14168148 3.00	80038. 20	14176152 1.20

31.7. M/s. Forever in their defence have strongly relied on the case of CC Vs. Adani Exports Ltd - 2009 (243) ELT 115.

I have carefully gone through the subject judgment of the Hon'ble Tribunal and observed that the facts of that case are substantially different from those in the present matter. In *Adani Exports*, the investigation was initiated only after the goods had already been exported, and the consignments in question had been duly cleared for export following proper examination by the Customs authorities. Moreover, there were no physical samples or characteristics of the export goods available for further examination at that stage. On the contrary, in the present case, the consignment covered under Shipping Bill No.1122303 dated 06.05.2009 was intercepted and seized by the DRI prior

to export. The goods intended for export, which are of the same nature and quality as those previously exported, are available for physical inspection. These goods were examined by qualified jewellery experts, who unanimously opined that the impugned goods were of such poor quality that they could not reasonably be classified or treated as jewellery. In addition to collaboration from the person who manufactured these goods, even M/s. Forever themselves have not contested this. Given the distinguishing facts, the ratio of the cited case law, therefore, is not applicable to the facts and circumstances of the present case.

32. Further, I find that the Noticee has 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.

33. Whether the goods valued at Rs. 40,33,14,643/- exported/attempted to exported by M/s. Forever Precious Jewellery & Diamonds Limited are liable for confiscation under Section 113(d) & (i) of the Customs Act, 1962?

33.1. The present Show Cause Notice also proposes the confiscation of seized goods, valued at Rs. 14,17,61,521/-, under the provisions of Section 113(i) of the Customs Act, 1962. Additionally, it proposes confiscation of exported goods valued at Rs. 26,15,53,122/- under the provisions of Section 113(d) & (i) of the Customs Act, 1962. I observe that goods valued at Rs. 26,15,53,122/- pertain to three consignment exported under Shipping Bill No.1120539 dated 16.04.2009, Shipping Bill No.1121212 dated 24.04.2009 and Shipping Bill No.1120438 dated 15.04.2009 and goods valued at Rs. 14,17,61,521/- pertain to a consignment being exported under Shipping Bill No. 1122303 dated 06.05.2009, which was subsequently seized by the DRI at Air Cargo

Complex, Ahmedabad. Accordingly, I now proceed to examine the issue of confiscation of the impugned goods valued at Rs. 40,33,14,643/- covered under 04 shipping bills.

33.2. As discussed in para supra, M/s Forever had obtained Advance Authorization No. 0310439347/3/03/00 dated 13/08/2007 from JDGFT, Mumbai for import of gold of 995/999 purity. Under this authorization, M/s. Forever was required to export plain gold jewellery of 991 purity. A consignment weighing 100.048 kgs, described as bangles of 995 purity, was being exported by M/s. Forever under Shipping Bill No. 1122303 dated 06.05.2009. This consignment was intercepted and subsequently seized by the DRI. During the investigation, it was revealed that prior to this, M/s Forever had already exported three shipments of similar gold jewellery of 995 fineness, totalling 184.998 kg under Shipping Bill No.1120539 dated 16.04.2009, Shipping Bill No.1121212 dated 24.04.2009 and Shipping Bill No.1120438 dated 15.04.2009 under the same Advance Authorisation. I have already discussed in detail and held in para 30 that the so-called jewellery in all these consignments, both those seized and those previously exported, was of 995 purity and do not correspond with the items specified for export under the relevant Advance Authorisation and therefore cannot be taken into account for the purpose of calculation of fulfillment of export obligation against the said advance authorization. Furthermore, I have also held that the exported and seized goods in question do not qualify as "small objects of personal adornment," and thus can not be classified as "**Plain Gold Jewellery**" as they are nothing but primary gold turned into a form of crude gold bangles. Section 113 (d) of the Customs Act, 1962 provides for *confiscation of any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force*. Further, Section 113 (i) of the Customs Act, 1962 provides for *confiscation of any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77*. In this case, it has been clearly established that M/s. Forever willfully mis-declared the description of the goods as "Plain gold bangles", whereas, the goods were actually round strips of 995 purity gold given a roughly round shape like a bangle and soldered at the ends. M/s Forever also mis-stated and suppressed the true value of the export goods in order to fraudulently fulfill the value addition as required for the purpose of the Advance Authorization and there by not declaring the correct information have violated Section 50 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and the Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, provisions of Section 113 (d) & (i) of the Customs Act, 1962 would come into picture. I thus find that deliberate mis-declaration about the actual description and value of the impugned goods and suppression of material facts in their Shipping Bills in order to fraudulently achieve the value addition as required for the purpose of the Advance Authorization, M/s. Forever Precious Jewellery & Diamonds Limited have rendered the impugned goods liable for confiscation under Sections 113 (i) of the Customs Act, 1962. I, therefore, hold the seized goods (which were attempted to be exported and subsequently released provisionally on execution of a bond for

Rs.14,62,89,306/-, supported by Bank Guarantee for Rs.3,66,00,000/-) valued at **Rs. 14,17,61,521/- (Rupees Fourteen Crore, Seventeen Lakh, Sixty One Thousand, Five Hundred and Twenty One only)** liable to confiscation under the provisions of Section 113 (i) ibid. I also hold the exported goods, valued at **Rs. 26,15,53,122/- (Rupees Twenty Six Crore, Fifteen Lakh, Fifty Three Thousand, One Hundred and Twenty Two only)**, liable to confiscation under the provisions of Section 113 (d) & (i) ibid. Further, since the aforementioned exported goods, having re-determined assessable value of Rs. 26,15,53,122/- are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

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

33.3. Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held interalia as under:-

“
 .
 .

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

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125,

“Whenever confiscation of any goods is authorised by this Act....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)”.

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

33.4. M/s Forever, has contended that the impugned goods are not liable for confiscation under Section 113 of the Customs Act, 1962, on the grounds that there was no mis-declaration on their part; goods which were already exported could not be held liable for confiscation; the confiscation of the said bangles on the alleged basis that the same could not be considered jewellery was illegal and without authority of law.

In this regard, I find that as discussed in the preceding paragraphs, it is evident that M/s. Forever Precious Jewellery & Diamonds Limited was fully aware of the description and purity specifications required for the goods to be exported under the Advance Authorization scheme. They were required to export **“Plain Gold Jewellery”** of 991 fineness to avail the benefit of duty free import of gold under the said advance authorization. However, evidence on record clearly establishes that M/s. Forever willfully failed to comply with these requirements. It has been revealed that Shri Dineshbhai, acting under the explicit instructions of Shri Jai Begani, the Managing Director of M/s. Forever, was directed to manufacture gold bangles at the lowest possible cost, with no emphasis on design, craftsmanship, or overall finish. Shri Dineshbhai has further confirmed that up to 99 kilograms of such bangles of 995 fineness were manufactured in a single day and supplied to M/s. Forever. Further, it has already been established that the exported goods as well as seized goods were of 995 purity, thereby falling outside the permissible scope of the authorisation, which mandates 991 purity. Furthermore, the nature of the seized goods, roughly shaped circular gold strips, soldered at the ends to resemble bangles, makes it abundantly clear that M/s. Forever failed to produce actual jewellery intended for adornment or enhancement of appearance, which is the very essence of what constitutes “jewellery.” Thus, M/s. Forever attempted to merely dispatch gold bangles under the guise of “Plain Jewellery” to comply with export norms, rather than making a genuine effort to produce jewellery suitable for international markets. This conduct demonstrates a deliberate attempt to circumvent the objectives of the Advance Authorization scheme. Furthermore, it is pertinent to note that mis-declaration of the description of the goods as well as mis-declaration in assessable value would not have come to light had the departmental officers not initiated an investigation into the matter. M/s. Forever Precious Jewellery & Diamonds Limited has mis-declared the description of the goods as well as the assessable value in the shipping bills, which clearly establishes *mens rea* on the part of M/s Forever in order to fraudulently achieve the value addition as required

for the purpose of the Advance Authorization. As elaborated earlier, the provisions of Section 113(i) of the Customs Act, 1962, is rightly applicable in this case, as M/s. Forever Precious Jewellery & Diamonds Limited deliberately mis-declared the description and assessable value of the goods, with intent to fulfil the export obligation to get the import duty benefit at later stage under the advance authorization. In view of the foregoing, I find that the contentions raised by M/s. Forever Precious Jewellery & Diamonds Limited are devoid of legal merit, and the judicial precedent relied upon by them is not applicable to the facts and circumstances of the present case.

34. Whether M/s. Forever Precious Jewellery & Diamonds Limited is liable for penalty under Section 114(iii) of the Customs Act, 1962 ?

The Show Cause Notice proposes penalty under the provisions of Section 114(iii) of the Customs Act, 1962 on M/s Forever. Section 114 deals with cases related to penalty for attempt to export goods improperly. The Penalty under Section 114(iii) can be imposed on 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 113, or abets the doing or omission of such an act. In the present case, M/s Forever has deliberately mis-declared the description of the goods, mis-stated and suppressed the true value of the export goods in order to fraudulently achieve the value addition as required for the purpose of the Advance Authorization and thus, M/s. Forever Precious Jewellery & Diamonds Limited has exported and attempted to export the goods in contravention of provision of Section 113 (i) of the Customs Act, 1962. As the goods are exported and attempted to be exported in contravention of the provisions of Section 113(i) of the Customs Act, 1962, I find that penalty under Section 114 (iii) of the Customs Act, 1962 is to be imposed upon M/s. Forever Precious Jewellery & Diamonds Limited.

35. The SCN also propose penalty on Shri Jai Begani, Managing Director of M/s. Forever Precious Jewellery & Diamonds Limited and Shri Jatin Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Limited under Section 114(iii) of the Customs Act, 1962. The Noticees in their defence submitted that there was no contravention on their part, of either the provisions of the Act or the FTDRA or any other rules and regulations; that the transaction value was liable to be accepted; that the goods were not liable to confiscation and therefore no penalty could be imposed on them under section 114 of the Customs Act, 1962.

From the facts and statements on record, it is evident that Shri Jai Begani, in his capacity as the Managing Director of M/s. Forever Precious Jewellery & Diamonds Limited, played a central and direct role in the execution of the fraudulent export scheme. Previously, he had looked after all operations of the Ahmedabad branch of the company and, as per his own statement, he had received the order for the 24K gold bangles being exported through a broker named Mr. Prasad, based in the UAE. Shri Begani admitted of having come into contact with Mr. Prasad approximately two years ago during a visit to Dubai. Shri Dineshbhai, acting under the explicit instructions of Shri Jai Begani, the Managing Director of M/s. Forever, was directed to manufacture gold bangles at the lowest possible cost, with no emphasis on design, craftsmanship, or

overall finish. He also disclosed that in his entire career of over 15 years of trading in gold jewellery he had never dealt with 24 K gold jewellery. In view of these facts, it is clear that Shri Jai Begani was very well aware about this fraudulent export and he played prominent role by contacting the buyer and the job worker. Further, it was revealed that Shri Dineshbhal Tapubhal Soni, Partner of M/s Tapubhal Dayalji Soni & Sons, acted under explicit instructions from Shri Jai Begani to manufacture the gold bangles at the lowest possible cost, deliberately disregarding design, craftsmanship, and finish. This clearly indicates that the export was intended to fulfill formalities rather than deliver quality goods, pointing to an intent to deceive. Shri Begani also acknowledged that throughout his career of more than 15 years in gold jewellery trading, he had never dealt in 24K gold jewellery, thus reinforcing the unusual and suspicious nature of this particular transaction. These facts collectively confirm that Shri Jai Begani was fully aware of, and instrumental in, orchestrating the fraudulent export, establishing his culpability. As regards Shri Jatin Mehta, the Chairman of M/s. Forever Precious Jewellery & Diamonds Limited, it is equally evident that he was not only aware of the day-to-day operations of the company but also complicit in the fraudulent activities. Shri Mehta corroborated the facts stated by Shri Jai Begani and went further to instruct Shri Mustafa Ibrahim Batliwala, a staff member of M/s. Su-raj Diamonds & Jewellery Limited in Mumbai, to forward all correspondence addressed to M/s. Forever Precious Jewellery & Diamonds Pvt. Ltd. to the Ahmedabad office. This act clearly indicates his active involvement in facilitating and managing the flow of documentation critical to the export operation. Being the Chairman, Shri Jatin Mehta held the highest level of responsibility within the company and stood to gain the most from the unlawful scheme. It is apparent that he was not a passive figurehead but a key decision-maker and a principal beneficiary of the fraudulent export attempt. Therefore, I find that Shri Jai Begani, Managing Director and Shri Jatin Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Limited were directly involved in the above mentioned fraudulent export and attempt for export by mis-declaring the value and description of export goods with an obvious intention to fraudulently project achievement of export obligation with reference to the Advance Authorization obtained by them. As I have already held the subject goods are liable for confiscation under Section 113 of the Customs Act, 1962, therefore, I hold that for their acts and commissions, Shri Jai Begani, Managing Director and Shri Jatin Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Limited are liable for penalty under Section 114(iii) of the Customs Act, 1962.

36. In view of my findings in the foregoing paras, I pass the following order-

:: ORDER ::

- (i) I reject the FOB value of Rs.27,39,44,457.75 declared for the export of 184.998 Kgs of gold (mis-declared as plain gold bangles) as per Annexure-B to the show cause notice dated 28.10.2010 and the FOB value of Rs.14,80,79,021.75 declared for 100.048 Kgs. of gold (mis-declared as plain gold bangles) attempted to be exported under Shipping Bill No.1122303 dated 06.05.2009 & Invoice No. ASD/HO/05/001 dated 05.05.2009 and order to re-determine the same as shown in para 31.6 of the OIO under the provisions of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

(ii) I hold the said exported goods viz. 184.998 Kgs of gold (mis-declared as plain gold bangles) having re-determined valued at Rs. 26,15,53,121.52 liable for confiscation under the provisions of Section 113 (d) & (i) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of Rs. 2,60,00,000/- (Rupees Two Crore Sixty Lakh only) in lieu of confiscation under Section 125 of the Customs Act, 1962;

(iii) I hold the said seized goods viz. 100.048 Kgs. of gold (mis-declared as plain gold bangles) attempted to be exported under Shipping Bill No.1122303 dated 06.05.2009 having re-determined value at Rs.14,17,61,521.20 liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. However, I offer M/s Forever Precious Jewellery & Diamonds Ltd., Ahmedabad to redeem the same on payment of a fine of Rs. 1,40,00,000/- (Rupees One Crore and Forty Lakh only) under Section 125 of the Customs Act, 1962.

(iv) The above goods exported by them and declared as "Plain gold bangles" are ordered to be disallowed for fulfillment of export obligation against the said Advance Authorisation No.0310439347/3/03/00 dated 13.08.2007 issued by the JDGFT, Mumbai.

(v) I impose a Penalty of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakh only) on M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, under Section 114(iii) of the Customs Act, 1962.

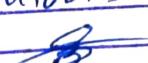
(vi) I order to enforce the bond of Rs. 14,62,89,306/- & bank guarantee of Rs. 3,66,00,000/- executed by them at the time of provisional release of the seized goods towards recovery of Fine and Penalty as imposed on them.

(vii) I impose a Penalty of Rs. 40,00,000/- (Rupees Forty Lakh only) on Shri Jai Begani, Managing Director of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, under Section 114(iii) of the Customs Act, 1962.

(viii) I impose a Penalty of Rs. 40,00,000/- (Rupees Forty Lakh only) on Shri Jatin Mehta, Chairman of M/s. Forever Precious Jewellery & Diamonds Ltd., Ahmedabad, under Section 114(iii) of the Customs Act, 1962.

37. 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.

38. The Show Cause Notice DRI/AZU/INT-22/2009 dated 28.10.2009 is disposed off in above terms.

4. RECEIVED
CUSTOMS (HQ), A'BAD.
DATE : 04/06/2025
SIGN. : 
NAME : 


4.6.2025
(Shiv Kumar Sharma)
Principal Commissioner,
Customs, Ahmedabad

DIN- 20250671MN000022402F
F. No. VIII/10-17/Commr/O&A /09

Date: 04.06.2025

To,

1. M/s Forever Precious Jewellery & Diamonds Ltd., "Forever House", Opp. Nest Hotel, Off C.G. Road, Navrangpura, Ahmedabad, 380009

2. Shri Jai Begani, Managing Director,
M/s Forever Precious Jewellery & Diamonds Ltd.,
"Forever House", Opp. Nest Hotel, Off C.G. Road,
Navrangpura, Ahmedabad, 380009

3. Shri Jatin Mehta, Chairman,
M/s Forever Precious Jewellery & Diamonds Ltd.,
"Forever House", Opp. Nest Hotel, Off C.G. Road,
Navrangpura, Ahmedabad, 380009

Copy to:

(1) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.

(2) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.

(3) The Additional Director General, DRI, AZU with reference to SCN F. No. DRI/AZU/INT-22/2009 dated 28.10.2009.

(4) The Deputy/Assistant Commissioner of Air Cargo Complex, Ahmedabad.

(5) The Superintendent of Customs (Systems) in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.

(6) The RRA, HQ, Ahmedabad Customs.

(7) Guard File.