

F. No. VIII/10-82/ DRI-AZU /O&A/HQ/2024-25  
OIO No. 222/ADC/SRV/O&A/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

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

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**DIN: 20250171MN000000958E**

**PREAMBLE**

A	फ़ाइल संख्या/ File No.	:	VIII/10-82/ DRI-AZU /O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-82/ DRI-AZU /O&A/HQ/2024-25 Dated 03.06.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>222/ADC/SRV/O&amp;A/2024-25</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>09.01.2025</b>
E	जारी करनेकी तारीख/ Date of Issue	:	<b>09.01.2025</b>
F	द्वारापारित/ Passed By	:	<b>SHREE RAM VISHNOI,</b> ADDITIONAL COMMISSIONER
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	<b>1) SHRI JAINAM JAIN,</b> PROPRIETOR OF M/S. JAINAM JEWELS, 51/53, SAAS BAHU PLAZA, 3RD FLOOR, 36A, OPPOSITE MANGAL MURTI TEMPLE, VITHALWADI, KALBADEVI ROAD, MUMBAI-400002  <b>2) SHRI DASHRATH KUMAR,</b> C/O M/S. JAINAM JEWELS, 51/53, SAAS BAHU PLAZA, 3 <sup>RD</sup> FLOOR, 36A, OPPOSITE MANGAL MURTI TOUNCH, VITHALWADI, KALBADEVI ROAD, MUMBAI- 400002  <b>3) SHRI NEVIL SONI,</b> S/O SHRI KANTILAL SONI, A-234, APNA NAGAR, NR. AMBAJI TEMPLE, GANDHIDHAM, KUTCH- 370201  <b>4) M/S. PATEL MADHAVLAL MAGANLAL &amp; COMPANY,</b> JAIN DHARAMSHALA BUUILDING, MARCHIPOLE, RATENPOLE, AHMEDABAD, GUJARAT  <b>5) SHRI MAHENDRABHAI SHAMBHUBHAI,</b> (EMPLOYEE OF M/S. PATEL MADHAVLAL MAGANLAL & COMPANY) RESIDING AT 7/90, BRAHAMANVAS BALOL, MEHSANA, GUJARAT.  <b>6) SHRI RAMANBHAI KACHARABHAI PATEL,</b> (EMPLOYEE OF M/S. PATEL MADHAVLAL MAGANLAL & COMPANY) RESIDING AT A-31,

			SWAMI VIVEKANAND NAGAR, PATAN ROAD, UNJHA, MEHSANA, GUJARAT – 384170
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5     %(अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**BRIEF FACTS OF THE CASE**

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

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

3. Accordingly, the examination of the baggage of the passengers was done in separate rooms of the DRI, Ahmedabad office under respective Panchnamas dated 07.06.2023. During examination of the bags of two passengers, who identified themselves as Shri Patel Mahendrabhai Shambhubhai, residing at 7/90, Brahamanvas Balol, Mehsana, Gujarat, and Shri Ramanbhai Kacharabhai Patel, residing at A-31, Swami Vivekanand Nagar, Patan Road, Unjha, Mehsana, Gujarat – 384170, both employees of Angadia firm- M/s Patel Madhavlal Maganlal & Company, the officers found that their bags contained various parcels. The officers opened each and every

parcel contained in the bags and prepared inventory of all the goods found during the examination of baggages.

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

TABLE-I

S. No.	Description as mentioned on packet	Weight	Sender	Addressed to
1	2 Yellow colour bars (Without markings)	3286.160gms (as per packing list)	Kalamandir, Surat	Auro Metal Refinery Pvt. Ltd, Suruchi House 10,44, Parimal Soc B/H Docter House Ellis Bridge, Ahmedabad.
2	8 Yellow colour Bars having markings Argor Heraeus SA Switzerland 100 g, Melter Assayer 999.0 followed by serial number (The serial number is partially scratched)	100gms each	Jainam	Nevil Soni , Ahmedabd
3	8 Yellow colour Bars having markings sam 100 g Gold, 999.0 followed by serial number (The serial number is partially scratched)	100gms each	Jainam	Nevil Soni , Ahmedabd
4	2 Yellow Colour Bars having markings valcambi Suisse 100g gold 999.0 followed by serial number (The serial number is partially scratched)	100gms each	Jainam	Nevil Soni , Ahmedabd
5	1 Yellow colour Bar having markings UBS 100 g gold 999.0 Switzerland Melter Assayer followed by serial number (The serial number is partially scratched)	100 gms	Jainam	Nevil Soni , Ahmedabd
6	1 Yellow colour bar having markings PAMP MMTc 100g GOLD 999.0 Melter Assayer followed by serial number (The serial number is partially scratched)	100 gms	Jainam	Nevil Soni , Ahmedabd
7	1 Yellow Colour Bar (Without markings) of irregular shape	489.480 gms as per voucher	Pradeep bhai, Solanki Jewellers	Abhishek bhai, 1328, Mandui Ni Pole Matawalo khancho Hari kishandas sheth Ni Pole, Astodia, Ahmedabad
8	3 Yellow colour Piece (Without markings) concealed in Indian Currency of irregular shape	262.009 gms as mentioned on the packing material. Indian Currency value Rs 22750/-	Gemcraft , Mumbai Contact No. 9819780002	Dhanlaxmi Chain, Jitu Bhai, C.G Road, Ahmedabad Contact No. 9998190884
9	2 Yellow colour Bars 'RRG'	1 (100 gms) and 1 (50 gms) as per invoice	Damodar as Jewellers, Alkapuri Arcade, R.C. Dutt Road, Vadodara-390005	Jaykumar Labhchandra Mandalia, 120, Zaveri Chambers, Ratan Pole, Manek Chowk, Ahmedabad- 380001
10	1 Yellow colour Bar 'RRG'	100 gms as per invoice	Damodardas Jewellers, Alkapuri Arcade, R.C. Dutt Road, Vadodara-390005,	Pramukh Jewellers, 1139-A, Pagathiyawalo Khancho, Devji Saraiyani pole, Manek Chowk, Ahmedabad- 380001
11	1 Yellow colour Bar 'RRG'	100 gms as per invoice	Damodardas Jewellers, Alkapuri Arcade, R.C. Dutt Road, Vadodara-390005,	RBZ Jewllers Pvt Ltd, Block D, Ondeal Retail Park, Nr Rajpath Club, SG Highway, Ahmedabad - 380054
12	1 Yellow colour Bar 'JDR'	100 gms as per markings on the gold	RB	Shilp Jewellers

13	5 Yellow colour pieces of irregular shape along with Indian Currency	7.81 gms as per the slip found inside the parcel. Indian Currency Rs. 1100/-	Laxmi Gold	Gujarat Gold Centre
14	1 Yellow colour piece of irregular shape	Not found	Kalamandir, Surat	Aura Metal Refinery Pvt Ltd

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

5. On the reasonable belief that these goods were liable for confiscation under the provisions of the Customs Act, 1962, the officers placed the said goods under detention for further investigation.

**6. ACCORDINGLY, STATEMENT OF SHRI PATEL HASMUKHBHAI, PARTNER IN M/S. PATEL MADHAVLAL MAGANLAL & COMPANY (ANGADIA FIRM), JAIN DHARAMSHALA BUILDING, MARCHIPOLE, RATANPOLE, AHMEDABAD, GUJARAT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 15.06.2023:-**

6.1 Shri Hasmukhbhai Patel, Partner in M/s Patel Madhavlal Maganlal & Company voluntarily presented himself on 15.06.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his statement. His statement was thus recorded on 15.06.2023, wherein he stated that:-

- I. He joined the firm as a partner in the year 1989 which was established by his father in the year 1974 with an aim of doing business in the field of Angadia (Courier).
- II. Their firm is engaged in work related to courier of various goods and their firm specialized in courier services of precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. from one location and deliver the same to the location as specified by the sender of the parcel. On the services provided by them their clients pay GST@18% as per the CGST rules and regulations.
- III. Their company’s pickup vehicles generally go to their customers’ office to collect the goods in majority of cases. In their dealing of precious parcels, while collecting goods, the parcels are sealed by the sender of the parcel and they do not know the exact description of goods and believe in description of goods mentioned on the parcel by the sender and collect freight on the basis of value declared by the sender of the parcel. They insist to take copy of invoice or delivery challan from the senders of the parcel to which majority of the customers informs us that the same is attached inside the parcel or sometimes outside the parcel.
- IV. The parcels are delivered by them to the customers at their premises and sometimes in case of urgency the customer collects the parcel from their branch. They do not accept parcels related to foreign currency and foreign origin gold in bars or any other form, but sometimes the customer mis-declare the correct description and nature of the goods in the parcel..

V. He was shown the Panchnama dated 07.06.2023, wherein the parcels carried by their Angadiya employee were detained. On perusal, he submitted following documents in respect of the gold detained vide Panchnama dated 07.06.2023 as in Table-II:

TABLE-II				
S. No.	Description as mentioned on packet	Documents submitted	Details of Sender	Details of recipient
1	2 Yellow colour bars (Without markings)	Copy of delivery challan issued by M/s Kalamandir, Surat	Kalamandir, Jewellers Limited, Surat 9978146777	Auro Metal Refinery Pvt. Ltd, Suruchi House 10,44, Parimal Soc B/H Doctor House Ellis Bridge, Ahmedabad. 9825855588
2	8 Yellow colour Bars having markings Argor Heraeus SA Switzerland 100 g, Melter Assayer 999.0 followed by serial number (The serial number is partially scratched)	No Documents submitted	Jainam, 7715066590/ 8866820836  51/53, Vittal Vadi, Saas bahu Building, Third floor, Kalba devi, Mumbai	Nevil Soni, Ahmedabd 8238979797 Nevil Soni, Ahmedabd As above
3	8 Yellow colour Bars having markings sam 100 g Gold, 999.0 followed by serial number (The serial number is partially scratched)	No Documents submitted		
4	2 Yellow Colour Bars having markings valcambi Suisse 100g gold 999.0 followed by serial number (The serial number is partially scratched)	No Documents submitted		
5	1 Yellow colour Bar having markings UBS 100 g gold 999.0 Switzerland Melter Assayer followed by serial number (The serial number is partially scratched)	No Documents submitted		
6	1 Yellow colour bar having markings PAMP MMTC 100g GOLD 999.0 Melter Assayer followed by serial number (The serial number is partially scratched)	No Documents submitted		
7	1 Yellow Colour Bar (Without markings) of irregular shape	Copy of delivery challan issued for job work by M/s Solanki Jewellers, Mumbai	Pradeep bhai, Solanki Jewellers 9920258989	Abhishek bhai, 1328, Mandui Ni Pole Matawalo khancho Hari kishandas sheth Ni Pole, Astodia, Ahmedabad, 9825077413
8	3 Yellow colour Piece (Without markings) concealed in Indian Currency of irregular shape	Copy of Karigar issue -MFG by M/s Gemcraft , Mumbai to M/s Dhanlaxmi, Ahmedabad	Gemcraft , Mumbai Contact No. 9819780002	Dhanlaxmi Chain, Jitu Bhai, C.G Road, Ahmedabad Contact No. 9998190884
9	2 Yellow colour Bars 'RRG'	Copy of Delivery challan issued by M/s Damodardas Jewellers, Vadodara	Damodardas Jewellers, Alkapuri Arcade, R.C. Dutt Road, Vadodara- 390005, 02652431774	Jaykumar Labhchandra Mandalia, 120, Zaveri Chambers, Ratan Pole, Manek Chowk, Ahmedabad- 3800019825203609
10	1 Yellow colour Bar 'RRG'	Copy of Delivery challan issued by M/s Damodardas Jewellers, Vadodara	Damodardas Jewellers, Alkapuri Arcade, R.C. Dutt Road, Vadodara- 390005, 02652431774	Pramukh Jewellers, 1139-A, Pagathiyawalo Khancho, Devji Saraiyani pole, Manek Chowk, Ahmedabad- 380001 9824654010
11	1 Yellow colour Bar ‘RRG’	Copy of Delivery challan issued by M/s Damodardas Jewellers, Vadodara	Damodardas Jewellers, Alkapuri Arcade, R.C. Dutt Road, Vadodara- 390005, 02652431774	RBZ Jewllers Pvt Ltd, Block D, Ondeal Retail Park, Nr Rajpath Club, SG Highway, Ahmedabad - 380054 9377958212
12	1 Yellow colour Bar 'JDR'	Copy of Job Order issue	RB 9825244291	Shilp Jewellers, 7926441362
13	5 Yellow colour pieces of irregular shape along with Indian Currency	Copy of issue voucher original	Laxmi Gold, Surat 9978706199	Gujarat Gold Centre

14	1 Yellow colour piece of irregular shape	Copy of delivery challan issued by M/s Kalamandir, Surat	Kalamandir, Jewellers Limited, Surat 9978146777	Auro Metal Refinery Pvt. Ltd, Suruchi House 10,44, Parimal Soc B/H Doctor House Ellis Bridge, Ahmedabad.9825855588
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**6.2** However, Shri Hasmukhbhai Patel, the proprietor of the Angadia firm, could not produce any documents relating to goods (gold bars) mentioned at Sr. No. 2, 3, 4, 5 and 6 of the above Table-II, as the customers (sender/recipient) had not submitted any documents to him. He assured that he will again ask the customer (sender/recipient) to submit the documents related to goods (gold bars) mentioned at Sr. No. 2, 3, 4, 5 and 6 of the above table.

**7. DURING THE COURSE OF INVESTIGATION, A SEARCH WAS CARRIED OUT AT PREMISES OF M/S. SHREE JAINAM JEWELS (SENDER OF THE PARCELS AT SR. NO. 2, 3, 4, 5 AND 6 OF THE ABOVE TABLE AS PER ANGADIA FIRM AND AS MENTIONED ON PARCELS), 51/53, SAAS BAHU PLAZA, 3<sup>RD</sup> FLOOR, 36A, OPPOSITE MANGAL MURTI TEMPLE, VITHALWADI, KALBADEVI ROAD, MUMBAI -400002 ON 21.06.2023:**

**7.1** Business premise of M/s Shree Jainam Jewels, the sender of the parcels as per Angadia firm, was searched under Panchnama dated 21.06.2023, located at 51/53, Saas Bahu Plaza, 3rd Floor, 36A, Opposite Mangal Murti Temple, Vithalwadi, Kalbadevi Road, Mumbai-400002. The two persons namely, Shri Mahipal Jain, father of Shri Jaiman Jain, the proprietor of firm M/s Shree Jainam Jewels, and Shri Dashrath Kumar, the main employee in the firm, were present. Shri Mahipal Jain has informed about the business of the firm M/s Shree Jainam Jewels that his son Shri Jaiman Jain is the proprietor and this firm is in business of dealing in gold bullion marketing and trading of golden jewellery.

**7.2** Shri Mahipal Jain and Shri Dashrath Kumar, during the search in the presence of independent panchas, denied that they or their firm had not handed over any parcel to any person of the Angadia firm M/s. Patel Madhavlal Maganlal & Company on 06.06.2023.

**7.3** During the search proceedings, in the presence of independent panchas, a person Shri Dayabhai Babbaldas Patel was called for, who is an employee from the Angadia firm M/s Patel Madhavlal Maganlal & Company. Shri Dayabhai Babbaldas Patel has informed, in the presence of independent panchas, that he himself had collected two parcels form Shri Dashrath Kumar on 06.06.2023, and identified Shri Dashrath Kumar by looking at the face of Shri Dashrath Kumar. However, Shri Dashrath Kumar continued to deny of handing over any parcel to any person of the Angadia firm M/s Patel Madhavlal Maganlal & Company.

**8. DURING THE COURSE OF INVESTIGATION, A SEARCH WAS CARRIED OUT AT RESIDENTIAL PREMISES OF SHRI NEVIL KANTILAL SONI (INTENDED RECIPIENT OF THE PARCELS AS PER ANGADIA FIRM & AS MENTIONED ON PARCEL), LOCATED AT BH-1A, 234, APNA NAGAR, NEAR AMBAJI TEMPLE,**

**GANDHIDHAM, KUTCH-370201 & AT OFFICE PREMISES OF SHRI NEVIL SONI, LOCATED AT OFFICE NO. 6, FIRST FLOOR, PLOT NO. 257, WARD -12B, ZAVERI BAZAR, GANDHIDHAM, ON 21.06.2023:**

**8.1** Residential premise of Shri Nevil Soni, the intended recipient of the parcels as per Angadia firm, located at BH-1A, 234, Apna Nagar, Near Ambaji Temple, Gandhidham, Kutch-370201, was searched on 21.06.2023, under Panchnama dated 21.06.2023. During the search, Shri Nevil Soni informed the officers that he along with his father Shri Kantilal Soni is engaged in the business of property agent mainly.

**8.2** Shri Nevil Soni, during the search, in the presence of independent panchas, informed that he do local trading of rough gold from his office premises located at Zaveri Bazar, Gandhidham. Thereafter, under the running Panchnama, office premise of Shri Nevil Soni located at Office No. 6, First Floor, Plot No. 257, Ward 12B, Zaveri Bazar, Gandhidham, was searched. Upon reaching at the location, it is noticed that a sign board of a firm M/s R. K. & Company is sticking thereon.

**9. DURING THE COURSE OF INVESTIGATION, STATEMENT OF SHRI NEVIL SONI (INTENDED RECIPIENT OF THE PARCELS AS PER ANGADIA FIRM), PROPRIETOR M/S. R.K. & COMPANY, OFFICE NO. 6, FIRST FLOOR, PLOT NO. 257, WARD -12B, ZAVERI BAZAR, GANDHIDHAM WAS RECORDED UNDER SECTION 108 OF CUSTOMS ACT, 1962, ON 21.06.2023:**

**9.1** Shri Nevil Soni, the intended recipient of the parcel containing 2 kg gold bar, has voluntarily presented himself on 21.06.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit, Regional Unit - Gandhidham to tender his statement in response to summons issued to him. Shri Nevil Soni was shown copies of two Panchnamas (i) Panchnama dated 07.06.2023 drawn at the office of the DRI, Zonal Unit, Ahmedabad, along with Annexures; (ii) Panchnama dated 21.06.2023 drawn at A-234, Apna Nagar, Nr. Ambaji Temple, Gandhidham, Kutch-370201, and he put his dated signature in token of having seen and perused the same.

**9.2** Shri Nevil Soni's statement was thus recorded on 21.06.2023, wherein *interalia* he stated, that he is using the mobile no. - 8758429797 & 8238979797; that M/s R. K. & Company is a proprietorship firm and his father Shri Kantilal Soni is proprietor, and he, his father & one person Shri Balbhadra Singh as office boy are working the firm; that they do the trading of rough gold and silver in the local market, along with their work of property agent; that in their local languages rough gold is called 'rani gold' which is made after melting of old gold ornaments; that their firm is not involved in import-export of any goods; that he knew the Angadia firm M/s Patel Madhavlal Maganlal & Company, Ahmedabad, and which have a branch in Gandhidham also; that they never involved in any business transaction with this Angadia firm and have no contact details of any person of this firm; that they or their firm has not purchased any gold from Mumbai; that he do not know any person going by the name of Jainam.

**9.3** Shri Nevil Soni, has been shown Annexure-B of Panchnama dated 07.06.2023, which indicates that 20 Gold Bars of foreign origin having total weight of 2 Kgs which were seized from the baggage of Angadia firm M/s Patel Madhavlal Maganlal & Company, Ahmedabad. When he was shown & pointed out that these Gold Bars were destined at his name sent from the person Jainam, Mumbai, through the Angadia firm, he denied knowledge of any person of name Shri Jainam, and denied having made any transaction with him. He stated that this gold is not related to them or their firm.

**10. RELEASE OF THE INDIAN ORIGIN GOLD:-**

**10.1** Shri Hasmukhbhai Patel on behalf of Angadia firm M/s. Patel Madhavalal Maganlal & Company had submitted certain documents as detailed in Table-II at Para 6.1 above, pertaining to their Indian origin gold detained under the Panchnama dated 07.06.2023.

**10.2** The representative of the said Angadia firm was called to the DRI office and the goods as mentioned in the table in the para 6.2 above, except the goods mentioned at Sr. Nos. 2, 3, 4, 5 and 6, were released to the Angadia firm. The proceedings thereof were recorded under Panchnama dated 22.06.2023 in the presence of the independent panchas and Shri Hasmukhbhai Patel, the representative of the said Angadia firm.

**10.3** Thus, the goods (20 Gold Bars) without legitimate documents, as detailed in below Table-III, were not released and continued under detention for further investigation:-

**TABLE- III**

S. No.	Parcel No.	Item Description	Details of sender	Details of recipient
1	2	8 Yellow Colour Bars having markings Argor Heraeus SA Switzerland 100 g, Melter Assayer 999. Followed by serial no.(partially scratched)	Jainam, 7715066590/ 8866820836 51/53, Vittal Vadi, Saas Bahu Buiding, Third Floor, Kalba Devi Mumbai	Nevil Soni, Ahmedabad 8238979797
2	3	8 Yellow colour Bars having markings sam 100 g Gold, 999 followed by Serial Number (The serial number is partially scratched)		
3	4	2 Yellow Colour Bars having markings Valcambi Suisse 100 g Gold 999 followed by serial number (The serial number is partially scratched)		
4	5	1 Yellow Colour Bar having markings UBS 100 g gold 999 Switzerland Melter Assayer followed by Serial number (The serial number is partially scratched)		
5	6	1 Yellow colour Bar having markings PAMP MMTC 100 g Gold 999 Melter Assayer followed by serial number (The serial number is partially scratched)		

**11. VALUATION AND SEIZURE OF DETAINED GOODS-**

**11.1** Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer, examined the detained gold in presence of independent panchas and Shri Hasmukhbhai Patel under



panchnama dated 11.09.2023 drawn at DRI office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad. Shri Kartikey Vasantrai Soni, the Gold Assayer examined the detained gold in presence of independent panchas and Shri Hasmukhbhai Patel under Panchnamas dated 07.06.2023 & 22.06.2023, both drawn at DRI office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad. The Gold Assayer certified the purity of Gold, weight, rate of gold for detained 20 Gold Bars vide his valuation report dated 18.09.2023. As per the valuation report, the gold bars, total 20 in nos., are having Imported Markings, weigh 2000 grams or 2 kg in total, have 999 purity and are valued at Rs. 1,21,00,000/-.

**11.2** From the valuation report, it was determined that the detained gold as mentioned in the table above are of foreign origin. Further, the sender or the intended recipient of the gold could not produce the relevant documents pertaining to the import of the said gold. In view of the same, the detained goods were placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962. The details of seizure memo and goods seized are as given in Table-IV:-

**TABLE- IV**

S. N.	Parcel No.	Item Description	Weight	Value	Seizure Memo DIN/Date
1	2	8 Yellow Colour Bars having markings Argor Heraeus SA Switzerland 100 g, Melter Assayer 999. Followed by serial no.(partially scratched)	2000 gms. or 2.0 Kgs	Rs. 1,21,00,000/-	DIN- 202310DDZ10000 611838 dated 05.10.2023
2	3	8 Yellow colour Bars having markings sam 100 g Gold, 999 followed by Serial Number (The serial number is partially scratched)			
3	4	2 Yellow Colour Bars having markings Valcambi Suisse 100 g Gold 999 followed by serial number (The serial number is partially scratched)			
4	5	1 Yellow Colour Bar having markings UBS 100 g gold 999 Switzerland Melter Assayer followed by Serial number (The serial number is partially scratched)			
5	6	1 Yellow colour Bar having markings PAMP MMTC 100 g Gold 999 Melter Assayer followed by serial number (The serial number is partially scratched)			

**FURTHER INVESTIGATION:-**

**12. DURING THE COURSE OF FURTHER INVESTIGATIONS, STATEMENT OF SHRI HASMUKHBHAI PATEL, PARTNER IN M/S. PATEL MADHAVLAL MAGANLAL & COMPANY, JAIN DHARAMSHALA BUILDING, MARCHIPOLE, RATANPOLE,**

**AHMEDABAD, GUJARAT, WAS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 29.01.2024:**

**12.1** Summons dated 16.01.2024, was issued to Shri Patel Hasmukhbhai, Partner, M/s. Patel Madhavlal Maganlal & Company, Jain Dharamshala Building, Marchipole, Ratanpole, Ahmedabad, Gujarat and accordingly his statement under section 108 of Customs Act, 1962 was recorded on 29.01.2024. He was shown panchnama dated 11.09.2023 vide which the examination of the detained gold was done by the Government-Approved-Valuer. He perused the same and put his dated signature on last page of the same. He was shown the valuation report of Shri Kartikey Vasantray Soni dated 18.09.2023, and he also put a dated signature on the report in the token of perusal of the same. He stated that after perusing the said valuation report, it appeared to him that the gold bars weighing 02 kgs in total, pertaining to M/s. Shree Jainam Jewels and Shri Nevil Soni were of foreign origin as all the gold bars had foreign Markings - **SAM, UBS, MMTC-PAMP, ARGOR, and VALCAMBI SUISSE**. He stated that it appeared that the gold bars handed over to them for delivery by M/s. Shree Jainam Jewels, Mumbai were of foreign origin.

**12.2** He was shown the panchnama dated 21.06.2023 drawn during the search at the premises of M/s Shree Jainam Jewels, 51/53, Saas Bahu Plaza, 3<sup>rd</sup> Floor, 36A, Opposite Mangal Murti Touch, Vithalwadi, Kalbadevi Road, Mumbai by the departmental officers. He perused the said Panchnama and put his dated signature on the last page of the said Panchnama. He was specifically asked to peruse the fact in the same Panchnama dated 21.06.2023 that Shri Mahipal Jain, father of Shri Jaiman Jain and Shri Dashrath Kumar, an employee of M/s Shree Jainam Jewels had denied that they had not handed over any gold on 06.06.2023 to M/s. Patel Madhavlal Maganlal & Company. On being asked about the same, he stated that Shri Dashrath Kumar had booked a parcel with them on 06.06.2023 for delivery to Shri Nevil Soni, Ahmedabad, same parcels which contained 02 KGs of gold. He stated that Shri Dayabhai Babbaldas Patel, an employee of M/s. Patel Madhavlal Maganlal & Company had personally taken the delivery from Shri Dashrath Kumar of M/s. Shree Jainam Jewels on 06.06.2023 from their premises. He further stated that they had also issued receipt during booking of the parcel and also made entry in the booking register. He stated that Shri Mahipal Jain and Shri Dashrath Kumar are untruthful where they informed that they had not handed over any parcel to their firm in Mumbai on 06.06.2023.

**12.3** He was shown the statement of Shri Nevil Soni dated 21.06.2023. On being asked to peruse the part of statement of Shri Nevil Soni, "Q.7 and Q.10 of the statement where he is asked about the contact details of M/s. Patel Madhavlal Maganlal and the 02 kgs of gold of foreign origin detained by the DRI under Panchnama dated 07.06.2023", he stated that he had inquired about the same from his office and it was found that some parcels were delivered by their firm to Shri Nevil Soni in the past also. Further, he stated that the parcel detained under Panchnama dated 07.06.2023 had paper wrapped on the parcel which had specifically mentioned the sender of the parcel as "Jainam" and intended recipient of the parcel as "Nevil Soni" with their phone nos. He stated that Shri

Nevil Soni is untruthful when he said that he didn't do any business with his firm or he did not know any Jainam. He stated that his staff had also informed that Shri Nevil Soni had come outside the DRI, Ahmedabad office in the morning of 07.06.2023 when he got to know that his parcels had been detained by the officers of DRI, Ahmedabad.

**12.4** He stated that earlier two more parcels in May or June'2023, booked from Mumbai, were delivered by their firm to Shri Nevil Soni in Ahmedabad, and Shri Nevil Soni had personally collected those parcels from their office in Ahmedabad. He stated that he will submit the proof of the same within three days' time. Accordingly, he has submitted copies of receipts.

**12.5** He stated that he has no knowledge about as to from where Shri Jaiman of M/s. Shree Jainam Jewels had sourced the said foreign origin gold of 2 KGs, as they merely took delivery of the parcels from their shop and that too was handed over to them in a plastic wrapping by M/s. Shree Jainam Jewels.

**12.6** He stated that they do not own any ownership of the said gold, as the ownership of the gold lies completely either with Shree Jainam Jewels, Mumbai or with Shri Nevil Soni who lives in Gandhidham.

**13. NON-APPEARANCE AND NON-COOPERATION BY SHRI JAUMAN JAIN, PROPRIETOR OF M/S. SHREE JAINAM JEWELS AND SHRI DASHRATH KUMAR, EMPLOYEE IN THE FIRM M/S. SHREE JAINAM JEWELS IN FURTHER INVESTIGATION IN RESPECT OF SEIZURE OF 2 KGS. OF GOLD HAVING VALUE OF RS.1,21,00,000/-**

**13.1** Summons dated 21.06.2023 and 27.05.2024 were issued to Shri Jaiman Jain, Proprietor of M/s. Shree Jainam Jewels, and Shri Dashrath Kumar, employee in the firm M/s. Shree Jainam Jewels, in connection with the instant investigation related to 20 Gold Bars, weighing total 2 kgs., of Foreign origin detained vide Panchnama dated 07.06.2023, wherein their presence for recording of statement and production of following documents were sought:-

1. KYC Documents;
2. Ownership proof documents;

**13.2** In response to above, Shri Jaiman Jain, vide his letter dated 22.06.2023, submitted that the Summons dated 21.06.2023 appeared to be vague in nature, and he sought Advocate's presence during the recording of statement. Subsequently, he did not appear for recording of statement on the scheduled date and time.

**13.3** Shri Dashrath Kumar, vide his letter dated 22.06.2023, also sought Advocate's presence during the recording of statement. Subsequently, he too did not appear for recording of statement on the scheduled date and time.

**13.4** It was also revealed that Shri Jaiman Jain and Shri Dashrath Kumar did not appear before the officers of DRI, Ahmedabad for investigation till date.

**14. NON-APPEARANCE AND NON-COOPERATION IN FURTHER INVESTIGATION IN RESPECT OF SEIZURE OF 2 KGS. OF GOLD HAVING VALUE OF RS.1,21,00,000/- BY SHRI NEVIL SONI:-**

**14.1** Summons dated 16.01.2024 were issued to Shri Nevil Soni, in connection with the instant investigation related to 20 Gold Bars, weighing total 2 KGs., of Foreign origin detained vide Panchnama dated 07.06.2023, wherein his presence for recording of statement and production of following documents were sought:-

1. Sales and Purchase of Gold Bars from 01.04.2023 to 06.06.2023 and details of payment received;
2. Details of import of gold or purchase of foreign origin gold.

**14.2** In response to said Summons, Shri Nevil Soni, has sent an e-mail to DRI, AZU' official e-mail id on 25.01.2024, informed that he was attending a training at Dubai at that time and could not be able to present himself before DRI, till 27.02.2024. He also stated in the e-mail that his submission made during the recording of his statement on 21.06.2023 may be taken on record. It was also revealed that Shri Nevil Soni did not appear before the officers of DRI, Ahmedabad for investigation till date.

**15.** It appeared that the burden of proof in case of 'Gold' in terms of Section 123(1) of Customs Act, 1962, that they were not smuggled goods shall be laid on Shri Jaiman Jain, Proprietor of M/s Shree Jainam Jewels, Shri Dashrath Kumar, and Shri Nevil Soni and M/s. Patel Madhavlal Maganlal & Company. And during the course of investigation, they could not provide legitimate documents of import of said foreign origin gold seized vide seizure memo dated 05.10.2023.

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

**17. LEGAL PROVISIONS:-**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*“On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of*

*such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.”*

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

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

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

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

*“In this Act, unless the context otherwise requires,*

*...*

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

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

*...*

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

*...*

*(22) “goods” includes-*

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

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

*...*

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

*...*

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

...

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

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

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

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

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

**m) Section 77 of the Customs Act 1962:**

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

**n) Section 110 of Customs Act, 1962:**

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

**o) Section 111 of Customs Act, 1962: Confiscation of improperly imported goods, etc.:**

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

*.....*

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*.....*

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

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

*.....*

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

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

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

*Any person,-*

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

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

*shall be liable, -*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*

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

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

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

*(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between*



*the declared value and the value thereof or five thousand rupees, whichever is the highest;*

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

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

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

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

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

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

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

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

*-*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*

*(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.”*

**t) As per Customs Baggage Declaration Regulations, 2013, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.**

**u) Customs Notification No. 50 /2017 –Customs dated 30.06.2017, as amended, issued by the Central Government; and RBI Circular No. 25 dated 14.08.2013 [RBI/2013-14/187, AP (DIR Series)] permit the import of gold into India by eligible passenger/specified entities, subject to certain conditions.**

v) In terms of the Circular No. 34/2013-Cus. issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT which are as follows:

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

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

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

## **18. Summary of the Investigation:-**

**18.1** It appeared from the investigation that:

- (a) During the search of the baggage of the passengers intercepted outside Kalupur Railway Station on 07.06.2023, two employees working for Aangadia firm - M/s. Patel Madhavlal Maganlal & Company – one, Shri Mahendrabhai Shambhubhai and other, Shri Ramanbhai Kacharabhai Patel were found in possession of certain amount of gold. The said gold was subsequently detained on the reasonable belief that the same are liable for confiscation under the provisions of the Customs Act, 1962 as the same may have been smuggled being foreign origin.
- (b) As per the labels present on the parcels of the gold detained on 07.06.2023 and documents submitted by Shri Hasmukhbhai Patel, Partner in Angadia firm M/s Patel Madhavlal Maganlal & Company, Ahmedabad, during his statement dated 15.06.2023; it was held that 20 Gold Bars, having total weight of 2 Kgs, was being sent by Jainam to Nevil Soni.
- (c) Accordingly, searches were conducted at premises of both the sender of the parcels i.e. Jainam, and the intended recipient of the parcel i.e. Shri Nevil Soni. During the search at the office premises of Jainam i.e. M/s. Shree Jainam Jewels, Shri Mahipal Jain, the father of Shri Jainam Jain and Shri Dashrath Kumar, employee of M/s Shree Jainam Jewels, informed that they have not handed over any parcel to any person of the said Angadia firm. During the search, one person namely Shri Dayabhai Babbaldas Patel, of Angadia firm M/s. Patel Madhavlal Maganlal & Company, was called for. He informed that he had taken two small parcels from Shri Dashrath Kumar, and confirmed the same after looking at the face of Shri Dashrath Kumar. However, Shri Dashrath Kumar refused this incident and reasserted that he did not hand over any parcel to any person of Angadia firm M/s Patel Madhavlal Maganlal & Company.
- (d) During the recording of Statement, Shri Nevil Soni, the intended recipient of the parcels containing 20 gold bars, denied having any knowledge of Jainam, Mumbai, and stated that he never purchased any gold from Jainam, Mumbai. He also stated that he did not have business activity with the Angadia firm M/s Patel Madhavlal Maganlal & Company, and confirmed that detained goods (2 KGs Gold bars) are not related to him or their firm.
- (e) Shri Kartikey Vasantray Soni, Gold Assayer, examined the said gold in presence of independent panchas and the representative of the Aangadiya firm and certified the purity of Gold, weight, rate of gold vide his valuation report dated 18.09.2023 ascertained that the said 20 Gold Bars, having total weight of 2 KGs, are of foreign origin and their fair value as per market rate are Rs. Rs.1,21,00,000/-. Accordingly, the detained goods were seized vide Seizure Memo dated 05.10.2023.
- (f) Further statement of Shri Hasmukh Patel has been recorded on 29.01.2024, and he was shown Panchnama dated 21.06.2023 drawn at office premises of M/s Shree Jainam Jewels. On perusal, and further questioning, he confirmed that Shri Dashrath Kumar, himself, had booked a parcel with them on 06.06.2023, and his employee Shri Dayabhai Babbaldas Patel had personally taken delivery from Shri Dashrath Kumar from the office premises of M/s Shree Jainam Jewels. He held that both Shri Mahipal Jain and Shri Dashrath Kumar were being untruthful, when they denied handing over of parcels. Next, Shri Husmukh Patel has been

asked to peruse the Statement of Shri Nevil Soni dated 21.06.2023. He informed that Shri Nevil Soni was being untruthful when he denied any business activity with their firm, as in the past they have delivered parcels to Shri Nevil Soni as well. He stated that his staff had told him that Shri Nevil Soni had come outside of DRI's Ahmedabad Office in the morning of 07.06.2023, the date on which parcels detained by the officers of DRI, Ahmedabad.

- (g) Shri Hasmukh Patel, of M/s Patel Madhavlal Maganlal & Company, Ahmedabad, vide their letter dated 29.01.2024, provided their No Objection for disposal of seized goods, in the event of adjudication or appellate authority orders so.
- (h) From the above, it appeared that the said foreign origin gold, i.e. 20 gold bars, having total weight of 2 KGs., pertaining to M/s. Shree Jainam Jewels are smuggled goods in terms of Section 2(39) of Customs Act, 1962.
- (i) The burden of proving that the Gold seized from the Angadia firm M/s Patel Madhavlal Maganlal & Company under Panchnama dated 07.06.2023 are not smuggled goods, lies on M/s. Shree Jainam Jewels, Shri Nevil Soni, M/s. Patel Madhavlal Maganlal & Company respectively. It appeared that during the investigation, all of them have failed to provide proof that the said foreign origin gold, i.e. 20 gold bars, having total weight of 2 KGs., pertaining to M/s Shree Jainam Jewels are not smuggled goods. Thus, it appeared that the said foreign origin gold weighing 2 KGs in total valued at Rs.1,21,00,000/- (Rupees One Crore Twenty One Lakhs only) were liable for confiscation under the provisions of Section 111 (d), (j), (l) & (m) of Customs Act, 1962.
- (j) Further, it appeared that Shri Jainam Jain, Proprietor of M/s Shree Jainam Jewels, Shri Dashrath Kumar, employee of M/s Shree Jainam Jewels and Shri Nevil Soni are culpable and the act of omission and commission made on their part for the smuggling of gold which are liable for confiscation, has rendered them liable for penalty under Section 112(a), 112(b) & 117 of the Customs Act, 1962.
- (k) It also appeared that M/s Patel Madhavlal Maganlal & Company failed in their obligation to report the possession of foreign origin gold which are liable for confiscation under Section 111 of the Customs Act, to respective revenue authorities. By indulging themselves through their employees Shri Mahendrabhai Shambhubhai and other, Shri Ramanbhai Kacharabhai Patel, in such acts of omission and commission, they rendered them liable for penal action under Section 112(a), 112(b) & 117 of the Customs Act, 1962.

**19.** Thereafter, a Show Cause Notice was issued vide F. No. VIII/10-82/DRI-AZU/O&A/HQ/2024-25 dated 03.06.2024 to - (1) Shri Jainam Jain, Proprietor of M/s. Jainam Jewels, 51/53, Saas Bahi Plaza, 3rd Floor, 36A, Opposite Mangal Murti Temple, Vithalwadi, Kalbadevi Road, Mumbai-400002; (2) Shri Dashrath Kumar, C/o M/s. Jainam Jewels, 51/53, Saas Bahu Plaza, 3rd Floor, 36A, Opposite Mangal Murti Tounch, Vithalwadi, Kalbadevi Road, Mumbai- 400002; (3) Shri Nevil Soni, S/o Shri Kantilal Soni, A-234, Apna nagar, Nr. Ambaji Temple, Gandhidham, Kutch-370201; (4) M/s. Patel Madhavlal Maganlal & Company, Jain Dharamshala Buuilding, Marchipole, Ratenpole, Ahmedabad, Gujarat; (5) Shri Mahendrabhai Shambhubhai, residing at

7/90, Brahamanvas Balol, Mehsana, Gujarat (employee of M/s. Patel Madhavlal Maganlal & Company) and (6) Shri Ramanbhai Kacharabhai Patel, (employee of M/s. Patel Madhavlal Maganlal & Company) residing at A-31, Swami Vivekanand Nagar, Patan Road, Unjha, Mehsana, Gujarat – 384170; by the Additional Commissioner of Customs, Ahmedabad to show cause as to why:-

- a. The 20 gold bars having imported markings and weighing 2000 grams or 2 Kg in total, having purity 999 and valued at Rs.1,21,00,000/- (Rupees One Crore Twenty-One Lakhs Only) pertaining to M/s. Shri Jainam Jewels and Shri Nevil Soni, Gandhidham placed under seizure vide seizure memo (DIN-202310DDZ10000611838) dated 05.10.2023, should not be absolutely confiscated under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962.
- b. Penalty should not be imposed on Shri Jainam Jain, Proprietor of M/s. Jainam Jewels, 51/53, Saas Bahi Plaza, 3rd Floor, 36A, Opposite Mangal Murti Temple, Vithalwadi, Kalbadevi Road, Mumbai-400002 under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- c. Penalty should not be imposed on Shri Dashrath Kumar, C/o M/s. Jainam Jewels, 51/53, Saas Bahu Plaza, 3<sup>rd</sup> Floor, 36A, Opposite Mangal Murti Tounch, Vithalwadi, Kalbadevi Road, Mumbai- 400002 under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- d. Penalty should not be imposed on Shri Nevil Soni, S/o Shri Kantilal Soni, A-234, Apna nagar, Nr. Ambaji Temple, Gandhidham, Kutch-370201 under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- e. Penalty should not be imposed on M/s. Patel Madhavlal Maganlal & Company, Jain Dharamshala Buuilding, Marchipole, Ratenpole, Ahmedabad, Gujarat under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- f. Penalty should not be imposed on Shri Mahendrabhai Shambhubhai, residing at 7/90, Brahamanvas Balol, Mehsana, Gujarat (employee of M/s. Patel Madhavlal Maganlal & Company) under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- g. Penalty should not be imposed on Shri Ramanbhai Kacharabhai Patel, (employee of M/s. Patel Madhavlal Maganlal & Company) residing at A-31, Swami Vivekanand Nagar, Patan Road, Unjha, Mehsana, Gujarat – 384170 under section 112 (a)/112 (b)/117 of the Customs Act, 1962;

## **20. WRITTEN SUBMISSIONS:-**

**20.1** In response to the show cause notice, Shri Jainam Jain, Proprietor of M/s. Jainam Jewels, 51/53, Saas Bahi Plaza, 3rd Floor, 36A, Opposite Mangal Murti Temple,

Vithalwadi, Kalbadevi Road, Mumbai-400002 (noticee no. 1), and Shri Dashrath Kumar, C/o M/s. Jainam Jewels, 51/53, Saas Bahu Plaza, 3rd Floor, 36A, Opposite Mangal Murti Tounch, Vithalwadi, Kalbadevi Road, Mumbai- 400002; ( "noticee no. 2" ) submitted a reply through his authorised representative Shri Brijesh Pathak, Advocate, as under:-

1. At the outset their clients deny each and every singular allegation made in the notice, as it appears that the same is without any basis of whatsoever nature and so also contradictory to the correct facts and circumstances of the case.
2. The Show Cause Notice does not contain any document to show that any such declaration was produced by Hasmukhbhai Patel, whereby it could have been verified as to the declaration made by the sender of the goods.
3. Their client Noticee No. 2 denied having handed over any consignment for the purposes of delivery to Mr. Nevil Soni at Ahmedabad. Similarly, statement of Nevil Soni was also recorded, who also had denied of having received or placing of order for any such articles from Noticee No. 1.
4. Their client state that the gold for which the documents were produced were allowed to released.
5. Their clients deny that they have no relation to the gold seized by the officers of the DRI and have no claim over the same. Their clients submit that they had never booked any parcel or delivery at Ahmedabad. Hence, the examination of Hasmukhbhai Patel, partner of the Angadiya firm would be of utmost necessity.
6. Section 124 does not empower authority to issue Show Cause Notice.
7. From reading of the provisions of Section 124, it is clear and unambiguous, that the same clarifies the following:
  - a. The provision prescribes certain commandments in sub-section (1) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act;
  - b. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audi alteram partem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act;
  - c. The authority in whom the power to issue show cause in terms of the said provision is patently unclear;
  - d. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear;
  - e. Employment of the word 'notice' in first proviso to subsection (1) is also not reflective/ indicative of the power of issuance of a show cause notice envisaged under sub-section (1);
  - f. Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and
  - g. Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous' and express language employed therein merely sets out the necessity to give a notice

and the features/ characteristics of such notice – fulfilment whereof would lend the said 'notice' necessary validity in the eyes of law.

8. Section 124 does not confer any power to issue Show Cause Notice upon any authority as such, hence the entire proceeding initiated on the basis of such provision, vitiates the fundamental basis on which the same stands. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall, in such situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/workfalls, comes into play and applies in the present case. Hon'ble Supreme Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to the present proceedings.
9. It is no more res integra that:
  - a. Taxation statutes have to be strictly interpreted; and
  - b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.
10. In the present case, without an iota of doubt, it may be appreciated that the explicit language of section 124 of the Act neither confers any power to issue show cause notice nor envisages issuance of show cause notice by invocation of the provisions therein. The only reference qua show cause notice therein is limited to spotlight adherence to the principles of natural justice, bereft whereof no order of confiscation or imposition of penalty under Chapter XIV of the Act can be passed.
11. Therefore, the captioned show cause notice issued under section 124 of the Act, which does not confer any such power inasmuch is without jurisdiction and authority of law and the same deserves to be dropped, in the interest of justice.

Cross-examination:

12. Statements of Hasmukhbhai Patel has been recorded, which is the sole basis for implicating my clients though during the search proceeding, my client Noticee No. 2 had denied having booked any parcel through the Angadiya firm My clients are not claiming the goods. There is no proof produced to show that my client Noticee No. 2 had visited the office premises of the Angadiya firm for booking of the parcel. The sole basis to implicate my clients are the statements where it has been alleged that my client Noticee No. 2 had handed over the goods Apart therefrom' no other evidence has been relied upon.
13. The story cooked up in the Show Cause Notice does not match to the allegation or to the conclusion drawn thereupon. Allegation appears to have been made as regards alleged foreign origin gold being traded' however my clients reiterate that they have never dealt with gold of foreign origin that has any association or link of being smuggled in nature' The business carried out by my clients are in a transparent manner, under the cover of proper tax paid invoices and hence the seized goods have no relation to my clients of whatsoever nature.
14. The story cooked up in the Show Cause Notice does not match to the allegation or to the conclusion drawn thereupon. Allegation appears to have been made as regards alleged foreign origin gold being traded' however my clients reiterate that

they have never dealt with gold of foreign origin that has any association or link of being smuggled in nature' The business carried out by my clients are in a transparent manner, under the cover of proper tax paid invoices and hence the seized goods have no relation to my clients of whatsoever nature.

15. The prima-facie quest of adjudication proceeding is to reach to the root of the matter after examining the witnesses and statements relied upon in the Show Cause Notice. As your honour is an impartial adjudicating authority the persons whose statements have been relied upon may be called upon and examined as provided under section 138 B of the Customs Act, 1962. My clients request you to kindly examine all such persons whose statements have been relied upon in the Show Cause Notice against my clients' since such statements are sole basis for issuing the Show Cause Notice qua my clients, since such an exercise will be in the course of the principles of natural justice and fair play in adjudication proceedings. Reference is also drawn to the procedure prescribed by the Board and various guidelines and directions issued by the Hon'ble Supreme Court and High Court mandating that examination / cross examination is an important integral part of adjudication proceedings and not granting of the same amounts to violation of principles of natural justice and fair play.
16. Section 138B of the Act deals with relevancy of statements and reports under certain circumstances' It provides that only when the person who has made the statement is examined as a witness in the case before the court' the Court is of the opinion that the statement should be admitted' then only it has value. Otherwise, any statement recorded does not have any value or cannot be relied upon in the proceedings, since the validity of the same has not been tested by court of law, the truth of the facts which it contains when a person who made the statement and/or gave the report is examined as a witness in the case before the court and the court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. Your honour being an impartial Adjudicating Authority before relying upon such statements will have to examine the validity of such statements. Hence, till such time the examination of the persons whose statements have been relied upon is conducted by your office, such statements do not have any evidentiary value.
17. After examination-in-chief, their clients would cross-examine the persons whose statements are relied upon and also the Officers, who recorded the statement, to verify as to whether the statements were recorded voluntarily and, in the manner, prescribed by the Board and Hon'ble Supreme Court. They relied upon the following cases:-
  - Jindal Drugs Pvt. Ltd. & Anr vs UOI reported in 2016-TIOL-1230-HC-P&H-CX;
  - Andaman Timber (Infra), reported in 2015 (324) ELT 641 (S.C.)
  - Krishan Kishore Agarwal, reported in 2019 (366) ELT 970 (Del)
18. Adjudicating authority is duty bound to conduct examination of all the persons whose statements have been relied upon in the Show Cause Notice. So also, since no independent corroborative evidence has been brought in the Show Cause Notice in support of the allegation made therein examination and cross-examination of



the persons making the statement is of utmost importance. The entire basis of allegation is based on "if" and "buts" or assumptions and presumptions and such allegations are not sustainable, since assumptions and presumptions cannot be made basis for deciding the Show Cause Notice. They relied upon the case of A. Tajudeen, reported in 2014-TIOL-85-SC-FEMA. In the present case apart from one solitary statement no independent corroborative evidence has been produced to prove the allegation against my clients and hence the impugned show cause notice is devoid of merits and deserves to be dropped.

19. It is settled law that bald statements in absence of any evidence to corroborate the same cannot be relied upon to form basis of the Show Cause Notice. Even otherwise, statements cannot be a substantive piece of evidence. Reliance is placed on judgment of the Hon'ble SC in the case against Noor Aga v/s State of Punjab (2008) 16 SCC 417, wherein it has been held that statements are reliable only if voluntary.
20. Hon'ble High Court of Chhatisgarh in TAXC 54/2017 filed by Hi Tech Abrasives Ltd vs CCE, Raipur has held that "So for a statement to be treated 'relevant' and 'admissible' under the law 'mere recording' of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice.
21. Hon'ble High Court in Mehar Singh Vs. The Appellate Board Foreign Exchange 1986 (10) DRJ 19, while dealing with a case under the Foreign Exchange Regulation Act, 1973, decided the appeal in favour of the Appellants on the short ground that the applications made to the Director of Enforcement and before the Appellate Board during the pendency of the appeal to summon four witnesses for cross examination, were not dealt with by the authorities below. It was held by the Tribunal as under:  
-5. Non-summoning of the said witnesses for purposes of cross-examination has resulted in miscarriage of justice.
22. Hon'ble Supreme Court of India in the case of Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & others reported in (2013) 4 SCC 465, has inter alia held that the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice' In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.
23. In Prem Singh vs. Special Director' Enforcement Directorate, CRL A. 276 of 2008, Delhi High Court' decided on 24.04.2014, whereby it was held that the denial of right to cross examine the witnesses would cause prejudice to the accused as statements of witnesses are not substantive evidence in themselves.
24. The Constitutional bench of the Hon'ble Supreme Court of India in Khem Chand Vs' Union of India AIR 1958 SC 300 has defined the meaning of the term – reasonable opportunity to include an opportunity to defined by cross examining the witnesses produced against the accused.

25. The penultimate allegation made qua their clients are at para 17.1. The only basis for invoking the penal provision is that allegedly my client Noticee No. 1 failed to cooperate and alleging that the burden of proof is upon the person who had sent the goods. My clients state that the burden under Section 123 is upon the person from whose possession the goods have been seized or any other person who claim to be the owner thereof. The gold bars were seized from the possession of the employees of Angadiya and my clients have never claimed ownership of the same. Hence, no burden lies upon my clients under section 123 of the Customs Act, 1962.
26. The penalty under section 112 can be imposed only for improper importation of goods. In the present case, there has been no improper importation of goods. Mere allegation has been made as regards the gold bars seized which is alleged to be of foreign origin. No role has been attributed for the purposes of invoking section 112 qua their clients. Section 112 relates only to the act committed or omitted to commit or any omission at the time of import of the goods. Hence, none of the provisions of section 112 would stand attracted qua their clients.
27. Similarly section 117 has also been invoked in the Show Cause Notice. Section 117 deals with the situation where the contravention is committed in relation to any provision of the act for which no express penalty is elsewhere provided for. In the present case, when penal provision of section 112 has already been invoked, then section 117 could not have been invoked and goes beyond the very concept of imposing penalty under section 117. Hence, the proposal made in the Show Cause Notice is completely misconceived and illegal and on this ground alone, the Show Cause Notice deserves to be dropped.
28. Their clients state that they will file detailed reply to the Show Cause Notice after the preliminary issue as regards examination/ cross-examination is decided.

**20.2** In response to the show cause notice, Shri M/s. Patel Madhavlal Maganlal & Company and their employees Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel submitted a written submission dated 28.11.2024 as under:-

1. At the outset, they denied the allegations made against them in the subject Show Cause Notice.
2. It is submitted that Noticees No. 4, 5 & 6 have neither imported nor abetted in alleged improper import of seized gold. They are not owner of the seized gold, as ownership of seized gold is completely either by Shree Jainam Jewellers, Mumbai or with Shri Nevil Soni.
3. They denied and reiterate that they have not smuggled the seized gold or abetted smuggling of the seized gold. This is mere unsustainable presumption of investigating Officers, without having any valid evidence for such presumptions. They have not smuggled gold into India or purchased or sold or knowingly dealt with any smuggled gold, as alleged in SCN. Their firm has, during normal course of our business as an Angadia firm, simply received sealed packet at Mumbai said to contain gold without knowing that it was gold of foreign origin, from Shri Dashrath Kumar from the office premises of M/s Shree Jainam Jewels for delivery to Shri

Nevil Soni. The Noticee No. 4, 5 & 6 were not at all aware that the packets given to them at Mumbai contained smuggled gold or gold with markings showing it of foreign origin. Documentary evidences submitted by them like copies of our receipt No. 4105 dt. 06-06-2023 and 4106 dt. 06-06-2023 shows names and details of the sender of parcel containing the seized gold and receiver of the said parcels. During the investigation, their employee at Mumbai has also identified sender namely Shri Dashrath Kumar from office premises of M/s Shree Jainam Jewels as sender of gold parcel containing the seized gold.

4. Though, restricted item for import, all gold with foreign marking in Bombay or Ahmedabad etc. could not be considered or said to be smuggled gold. Noticee No. 4 also state and submit that the supplier of seized gold at Mumbai and receiver of the said seized gold at Ahmedabad are obviously making untruthful statements or lying, when they deny their nexus with the seized gold in question for the reasons best known to them or to avoid their penal liability or shift such liability on others related to seized gold. Noticee No. 4,5 & 6 have stated the facts as they are and submitted that their staff at Mumbai had received sealed packet containing gold from Shri Dashrath Kumar from office of M/s Shree Jainam Jewels as sender of gold parcel and Nevil as the receiver of the said parcel. This is the correct fact in this case and the statements of Noticee No. 4, 5 & 6 are truthful and acceptable evidences.

5. They have submitted the evidences to show that the same sender had forwarded parcels on 03-06-2023 and 31-05-2023 from Mumbai to Ahmedabad which were received by Shri Nevil Soni at Ahmedabad mentioning his mobile and Aadhaar numbers as given in his statements to officers.

6. Further, evidences are not on records to show that Noticee Nos. 4, 5 & 6 are liable for any penalty as proposed in this SCN dated 03-06-2024. In absence of any clinching or positive evidences on records, penalty u/s 112(a) of Customs Act 1962 can be imposed on importers or their abettors, who may have improperly imported goods. However, such penalty u/s 112(b) of Customs Act 1962 can be imposed on the persons who may have dealt with the smuggled goods, knowing that such goods were the smuggled goods liable to be confiscated. Accordingly, in absence of clinching or acceptable or positive evidences the Noticee No. 4, 5 & 6 are not liable to any such penalty as proposed against them under Section 112(a), 112(b) and 117 Customs Act, 1962.

7. It is clarified that the DRI Intelligence was not specific only for the Noticee No. 4, 5 & 6 and investigation has not adduced reliable evidences to support allegation made on assumptions and presumptions for proposing to impose penalty on Noticee No 4, 5 & 6. This case is not on any definite reasons/conclusions with positive evidence against the Noticee No 4, 5 & 6. This case is on "suspicion", but it is settled principle that suspicion, however, great it may be but it can not take place of truth. It is settled principle that when there are two interpretation possible, interpretation beneficial to trade should be applied. In facts of this case, investigation has doubted documents submitted by Noticee No 4, but investigation has not come out with any contrary evidence against Noticee No 4, 5 & 6. Therefore, Applying the settled

principles of law, confiscation and penalty qua Noticee No 4, 5 & 6 proposed on such “suspicion” is not justified or sustainable in the law. As far as noticee M/s Patel Madhavlal Maganlal & Company, Ahmedabad and their 2 of the employees are concerned, submission is that DRI investigation has not adduced any evidence to show that the seized gold was smuggled into India and that seized gold in question is either imported improperly by Noticee No 4, 5 & 6 or the seized gold was placed under seizure at any of the entry point of import into India. The gold in question has been seized in town after it entered into India. It may have changed many hands after its import into India. However, allegations in SCN on Noticee No 4, 5 & 6 are not correct and also not supported by evidence.

8. Noticee No. 4 further submit that Except normal records to show movement of goods by Angadia from one station to the other station, no elaborate records are required to be maintained in India by Angadias. No Rules or Regulations mandating maintenance of records for movement of goods including movement of gold in India are prescribed. The Established Law does not require mentioning of brand or mark of foreign marked gold even on sale documents by the traders in India. Noticee No. 4, 5 & 6 submit that movement of gold under seizure was duly recorded in firm's records of 06-06-2023 with details of the sender from Mumbai and the receiver in Ahmedabad. The show cause notice has not disputed documents produced by Noticee No. 4 showing possession of gold with details of sender and receiver of gold as required by any Angadia firms. Show Cause Notice does not allege that transaction of sending parcel from Mumbai to Ahmedabad between noticee No 4, and sender or receiver is fake or questionable. However, allegation is that Noticee 4, failed to produce documents related to licit importation of gold, which never is their gold nor it is possible to be produced by them. Thus, it has to be considered that the burden of proof on Noticee No 4 stands discharged. Noticee No. 4, 5 & 6 submit that applying ratio of the decisions in facts of this case, it may kindly be held that the seized gold is not liable to confiscation for any of the act or omission or abetment of Noticee No. 4, 5 & 6. It is also submitted that the revenue's case is only on the basis that seized gold with foreign marks is smuggled into India, but investigation has not established first with any positive evidence that seized gold in question was actually smuggled into India by or by abetment of the Noticee No. 4, 5 & 6 and that they are not liable to any penalty proposed u/s 112(a) of the Customs Act 1962, as alleged in this case.

9. There is no “act, omission or abetment” in any such alleged mis-declaration of gold or documents on our part at the time of import of the said gold or investigation carried out by DRI has adduced any such material, which has lead to believe any person with reasonable prudence that the seized gold was liable to confiscation only on “act, omission or abetment” in such alleged improper import of said gold.

10. Similarly, section 112(b) clearly provides that penalty can be imposed under this section only when someone has done any positive act or dealt with smuggled gold which he knows or has reason to believe that such gold is liable to confiscation under section 111 of Customs Act 1962. However, as per the allegation in this SCN, though it alleges that they have dealt with the seized gold, but there is nothing on

record to show that they had any knowledge that the said gold was smuggled gold. There is nothing on record to suggest that we had any role in smuggling of such gold or dealing with the smuggled gold, which placed under seizure. There is no positive evidence brought on record during investigation to prove that the gold was smuggled into India and we had dealt with such smuggled gold knowing that it was smuggled into India. Thus, clear evidence of knowledge or reason to believe that they dealt with gold which was smuggled and it was liable to confiscation has to be adduced on record by the investigation, which is not existing at all. The undisputed fact remains that we had never knowingly dealt with any such smuggled gold which was known to us as smuggled gold and it was liable to confiscation. Therefore, proposals to impose penalty on Noticee No 4, 5 & 6 under section 112(a) or under 112(b) of Customs Act 1962 invoked in this case, is not sustainable, justified or attracted in this case.

11. Noticee No 4, 5 & 6 had carried on normal angadia business and not dealt with smuggled gold knowingly. Noticee No 4 had received sealed packet for sending from Mumbai to Ahmedabad in the normal business as angadia [courier]. Therefore, Noticee No. 4, 5 & 6 are not liable to any penalty, though the seized gold may also be confiscated.

12. Burden of proof is on revenue first to prove that seized gold is smuggled by Noticee No 4, 5 & 6 and it is liable to confiscation. In town seizure cases also investigation/revenue has to establish with reliable positive evidences beyond any doubt that Noticee No 4, 5 & 6 had knowledge or reason to believe that such seized gold was liable to confiscation.

13. The person can be penalized for particular or specific prejudicial activity, but one cannot be penalized or charged for all the activities referred to in the section 112(a) or 112(b) ibid without adducing any evidence to substantiate prejudicial activity against the person. There is no tangible evidence adduced to prove specific prejudicial activity alleged.

14. SCN is solely based on presumptions not permitted by law. Without prejudice to our rights and contentions, they also object to proposed penalty u/s 117 ibid. They emphatically deny the allegations made against them and submit that they never had any intention to deal with the smuggled gold. When penalty u/s 112(a) or 112(b) ibid is not imposable, there is no other justification to impose any penalty u/s 117 ibid which provides for Penalties on contravention, etc. of any provision of Customs Act or abets any such contravention or who fails to comply not and not expressly mentioned. Thus, if penalty is not justify under 112(a) and 112(b) ibid, the SCN has also not specified any other provisions of the Customs Act or Rules and regulations under Customs Act 1962 which have been violated by the Noticee, attracting penalty under section 117 ibid.

15. They request to drop the penalty proposed against Noticee No 4, 5 & 6 in this SCN dated 03-06-2024.

## **21. PERSONAL HEARINGS:-**

**21.1** Shri N K Tiwari, Consultant on behalf of Shri Nevil Soni appeared for personal hearing on 14.11.2024 and requested for cross-examination of Panchas of the panchnama dated 21.06.2023 drawn at the residence of Shri Nevil Soni at Gandhidham. They have not presented any submission till date.

**21.2** Shri P. P. Jadeja, Consultant attended personal hearings on behalf of M/s. Patel Madhavlal Maganlal & Company and their employees Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel, on 29.11.2024 and reiterated the written submission dated 28.11.2024 and requested to drop the penalties proposed in the SCN.

**21.3** Shri Brijesh Pathak, Advocate attended personal hearings on behalf of Shri Jainam Jain, Proprietor of M/s. Jainam Jewels and Shri Dashrath Kumar, on 27.12.2024 and reiterated the written submission dated 06.06.2024. They also requested for dropping of proceedings.

## **22. DISCUSSION AND FINDINGS:-**

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

**22.2** I find that while acting upon specific intelligence, the officers of DRI intercepted 15 passengers outside Kalupur Railway Station, Ahmedabad at around 04:50 hrs. on 07.06.2023. During the examination of the baggage of the passengers at the office of DRI, Ahmedabad Zonal Unit ("AZU"), bags of two passengers, Shri Mahendrabhai Shambhubhai ("noticee no. 5") and Shri Ramanbhai Kacharabhai Patel ("noticee no. 6"), employees working for Aangadiya firm- M/s. Patel Madhavlal Maganlal & Company ("noticee no. 4" or "the aangadia firm"), the officers found that certain parcels were containing gold which appeared to be of foreign origin. A detailed investigation revealed that "20 Gold Bars of foreign origin gold weighing 2 Kgs. having **SAM, UBS, MMT-C-PAMP, ARGOR, VALCAMBI** markings" was being sent by Shri Jainam Jain, Proprietor of M/s. Jainam Jewels ("noticee no. 1") to Shri Nevil Soni ("noticee no. 3"). Shri Kartikey Vasantry Soni, Gold Assayer, examined and certified that said gold bars are of foreign origin and their fair value as per market rate are Rs.1,21,00,000/- respectively. The said Gold bars were placed under seizure vide Seizure Memos dated 05.10.2023 under the provisions of Section 110 of Customs Act, 1962. Statements of all noticees and others were recorded u/s 108 of the Customs Act, 1962 and the aforesaid show cause notice was issued proposing confiscation of said gold bars under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 and penalties on all the noticees under Section 112(a), 112(b) & 117 of the Customs Act, 1962. Thus, I find that the issue before me to decide as to:

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

- b. Whether the noticees are liable for penalties under Section 112(a), 112(b) & 117 of the Customs Act, 1962.

Before deciding on above issues, I proceed to discuss the authority of the Additional Commissioner of Customs, Ahmedabad to issue the aforesaid Show-cause notice under Section 124 of the Customs Act, 1962. I find that the said goods were placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962 by the departmental officers and the power of adjudicate all the cases of confiscation and penalties are governed by Section 122 of the Customs Act, 1962,

**“Section 122. Adjudication of confiscations and penalties. -**

*In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged, -*

- (a) **without limit**, by a <sup>1</sup>[Principal Commissioner of Customs or Commissioner of Customs]or a <sup>2</sup>[**Joint Commissioner of Customs**];  
<sup>3</sup>[(b) up to such limit, by such officers, as the Board may, by notification, specify.]”

In view of the above, it is to clear that the Show Cause Notice was issued by the proper officer as prescribed by the Customs Act, 1962 and now, I proceed to decide the issues before me as proposed by the aforesaid SCN.

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

**22.3.1** I find that “20 Gold Bars of foreign origin gold weighing 2 Kgs” (“said Gold Bars”) recovered from the employees of M/s. Patel Madhavlal Maganlal & Company have foreign markings given as under:

S. No.	Marking
1	8 Yellow colour Bars having markings <b>ARGOR HERAEUS SA Switzerland 100 g, Melter Assayer 999.0</b> followed by serial number (The serial number is partially scratched)
2	8 Yellow colour Bars having markings <b>SAM 100 g Gold, 999.0</b> followed by serial number (The serial number is partially scratched)
3	2 Yellow Colour Bars having markings <b>VALCAMBI SUISSE 100G GOLD 999.0</b> followed by serial number (The serial number is partially scratched)
4	1 Yellow colour Bar having markings <b>UBS 100 g gold 999.0 Switzerland Melter Assayer</b> followed by serial number (The serial number is partially scratched)
5	1 Yellow colour bar having markings <b>PAMP MMTC 100g GOLD 999.0 Melter Assayer</b> followed by serial number (The serial number is partially scratched)

I find that the bars have foreign markings such as **SAM, UBS, PAMP MMTC, ARGOR HERAEUS SA, VALCAMBI SUISSE** etc. In this connection, I would like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** as quoted under:-

“34. The scope of Section 123 of the Customs Act, 1962 was discussed by the Supreme Court in Union of India & Ors. v. Rajendra Prabhu & Anr.,

*(2001) 4 SCC 472 = 2001 (129) E.L.T. 286 (S.C.). It was held that where the authorities on the basis of materials on record, which may be sufficient in the circumstances of the case came to conclusion that gold biscuits have been in possession of the respondents were liable for confiscation and respondents committed offence under Section 112, even without taking option of presumption under Section 123, the Department could have directed confiscation as the burden in such case falls upon the person from whose possession such gold biscuits of foreign markings were seized. In this case the Supreme Court held that the High Court could not have interfered with the findings of the authorities on the ground that the Department had failed to discharge initial burden of proving that the goods were smuggled.*

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

In above case law, Hon’ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statement of Shri Hasmukhbhai Patel, Partner in Angadia firm M/s Patel Madhavlal Maganlal & Company, I find that no evidence of valid import of the said Gold Bars was produced before the departmental officers. The excerpt is given below:-



S. No.	Description as mentioned on packet	Documents submitted	Details of Sender	Details of recipient
1	2 Yellow colour bars (Without markings)	Copy of delivery challan issued by M/s. Kalamandir, Surat	Kalamandir, Jewellers Limited, Surat 9978146777	Auro Metal Refinery Pvt. Ltd, Suruchi House 10,44, Parimal Soc B/H Doctor House Ellis Bridge, Ahmedabad.9825855588
2	8 Yellow colour Bars having markings Argor Heraeus SA Switzerland 100 g, Melter Assayer 999.0 followed by serial number (The serial number is partially scratched)	No Documents submitted	Jainam, 7715066590/88668 20836  51/53, Vittal Vadi, Saas bahu Building, Third floor, Kalba devi, Mumbai	Nevil Soni, Ahmedabd 8238979797
3	8 Yellow colour Bars having markings sam 100 g Gold, 999.0 followed by serial number (The serial number is partially scratched)	No Documents submitted		
4	2 Yellow Colour Bars having markings valcambi Suisse 100g gold 999.0 followed by serial number (The serial number is partially scratched)	No Documents submitted		
5	1 Yellow colour Bar having markings UBS 100 g gold 999.0 Switzerland Melter Assayer followed by serial number (The serial number is partially scratched)	No Documents submitted		
6	1 Yellow colour bar having markings PAMP MMTc 100g GOLD 999.0 Melter Assayer followed by serial number (The serial number is partially scratched)	No Documents submitted	Jainam, As above	Nevil Soni, Ahmedabd As above

**22.3.2** I further find that the said Gold Bars were further examined by Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer (“Assayer”), in presence of independent panchas and Shri Hasmukhbhai Patel, Partner in Angadia firm M/s Patel Madhavlal Maganlal & Company under panchnama dated 11.09.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 18.09.2023. I find that the assayer in his valuation report clearly mentioned that the said Gold Bars were of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** wherein the Hon’ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking, as quoted under:-

“29. So far, the appeal of Revenue against Mr. Sanjay Soni is concerned, I find that admittedly it is a case of town seizure. Out of the 5 gold bars and 1 cut piece seized from Mr. Sanjay Soni, there is foreign marking - ‘rand refinery’ only on one gold bar. There is no such foreign marking admittedly on the other pieces recovered and seized. Thus, I hold that in absence of any evidence brought on record as to the allegation of smuggling, the provisions of Section 123 of the Act are not attracted in the case of other 4 pieces and the cut piece of the gold bar seized. I hold Section 123 is attracted only in

*the case of one gold bar having foreign marking, as the person - Mr. Sanjay Soni from whom the foreign marked gold was recovered, have not been able to explain the licit source and have also stated that this gold may have arisen by way of smuggling into India through Bangladesh. Accordingly, modifying the order of Commissioner (Appeals), **I uphold the absolute confiscation with respect to one piece of gold having the marking 'rand refinery' weighing 998.600 gram valued at Rs. 31,95,520/-, as per the valuation report.***

In view of the above, I held that the said Gold Bars, bearing foreign markings and being examined by the Government approved Assayer or Valuer, are of the foreign origin based on the Valuation Report dated 18.09.2023.

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

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

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

**22.3.4** I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of said **Gold Bars of 2000 gms** having foreign markings were found in the possession of employees of Aangadia firm M/s. Patel Madhavalal Maganlal & Company. The sender of the said gold bar is Shri. Jainam Jain of M/s Shree Jainam Jewels as per written on the package and as per statement of Shri Patel Hasmukhbhai, Partner, M/s Patel Madhavalal Maganlal & Company. I find that M/s Patel Madhavalal Maganlal & Company

could not produce any import document showing that the gold were imported through legal means. As the import of the said gold bar is prohibited and no documentary evidence of the import of the said Gold bars were produced, I hold that the said Gold bars are smuggled goods.

**22.3.5** I find that Shri Jainam Jain has denied in his submission about sending the said Gold bars. Also, his main employee, Shri Dashrath Kumar during the search denied handing over the parcels containing these Gold bars. However, the person of the Aangadia M/s Patel Madhavlal Maganlal & Company identified Shri Dashrath Kumar that he handed over the said parcels containing the Gold bars of foreign origin.

In presence of we panchas, officers ask Shri Mahipal Jain and Shri Dashrath Kumar whether they had given some parcel of gold to angadia firm M/s Patel Madhavlal Maganlal on 06.06.2023 for which they say that they did not handed over any parcel to any person of the said angadia firm from this premises. In between these proceedings, on being called by officers, one person Shri Dayabhai Babbaldas Patel enters and introduces himself from Angadiya firm M/s Patel Madhavlal Maganlal. On being asked by officers, in presence of we panchas, Shri Dayabhai Babbaldas Patel informs that he had taken two small parcels from Shri Dashrath Kumar on 06<sup>th</sup> June, 2023 and confirms the same after looking at the face of Shri Dashrath Kumar. On being confronted, Shri Dashrath Kumar refuses for the same and conveys that he did not hand over any parcel to the said person of Angadia Firm M/s Patel Madhavlal Maganlal.

In consequence of the provisions of Section 123, that Shri Jainam Jain, of M/s. Shree Jainam Jewels was sender of the smuggled gold, however, in his submission and during the search, they denied sending the said gold bars, the form in which gold was being carried namely Gold bars, all these circumstances establish beyond a shadow of doubt that the said Gold bars of foreign origin were possessed by the noticee Shri Jainam Jain of M/s. Shree Jainam Jewels with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observed by the Madras High Court in **Malabar Diamond Gallery P. Ltd. vs. Additional Director General, Directorate of Revenue Intelligence, Chennai - 2016 (341) E.L.T. 65 (Mad.):**-

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

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

*“86. If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited. For prohibitions and*

*restrictions, Customs Act, 1962, provides for machinery, by means of search, seizure, confiscation and penalties. Act also provides for detection, prevention and punishment for evasion of duty.”*

**22.3.6** I further find from the statement of Shri Nevil Soni dated 21.06.2023, the receiver of said Gold bars as written on the parcels and as per statements of Shri Hasmukhbhai Patel, Partner in Angadia firm M/s Patel Madhavlal Maganlal & Company, that he did not know any person named Jainam Jain and he did not do any business with M/s Patel Madhavlal Maganlal & Company, there is no discharge of burden of proof as required under Section 123 of the Customs Act, 1962 by either sender or by the recipient. I find that the said Gold Bar has been smuggled into India.

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

**22.4.1** I find that that the Show Cause Notice proposed absolute confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 of above said Gold Bars i.e. “20 Gold bars weighing 2000 gms. And having foreign markings” having market value Rs.1,21,00,000/-.

**22.4.2 Section 111 of Customs Act, 1962: Confiscation of improperly imported goods, etc.:**

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

*.....*

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*.....*

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

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

*.....*

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

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the*

*declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;”*

**22.4.3** From the discussion in foregoing paras, I find that said Gold Bars i.e. “20 Gold bars weighing 2000 gms. And having foreign markings” having market value Rs.1,21,10,000/-recovered from two employees working for Aangadia firm - M/s. Patel Madhavlal Maganlal & Company – one, Shri Mahendrabhai Shambhubhai and other, Shri Ramanbhai Kacharabhai Patel, were seized vide Seizure Memo dated 05.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the said gold bar were smuggled into India with an intention to evade payment of Customs duty. From the Valuation Report and non-production of import documents along with denial of both sender Shri Jainam Jain, of M/s. Shree Jainam Jewels and the recipient Shri Nevil Soni, from ownership of the said Gold bars, it was found that the same were of foreign origin and had been brought into India without any valid import documents which made them smuggled Gold as defined under Section 2(39) of the Customs Act, 1962.

**22.4.4** The said smuggling of Gold thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020. I find that as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized or the person who was taking the ownership of the said Gold bars. In the present case, neither Shri Jainam Jain, nor Shri Nevil Soni has discharged their burden by disowning the said Gold bars. “”

**22.4.5** From the facts discussed above, it is evident that said gold i.e. “20 gold bars weighing 2000 gms and having foreign markings” having market value Rs.1,21,10,000/-, are liable for confiscation, under the provisions of Sections 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By owning the said gold without valid import documents made the impugned goods fall within the ambit of ‘smuggling’ as defined under Section 2(39) of the Act.

**22.4.6** I find that as per Section 2(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon’ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation

and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the Gold Bars were smuggled into India. In view of the above discussions, I hold that the said gold bars are liable for absolute confiscation. I rely on the case decided by the Hon'ble High Court of Madras in respect of **Malabar Diamond Gallery Pvt Ltd**, where the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

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

**22.4.7** Further, I am not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act. I rely on the judgment of the Hon'ble High Court of Madras in the matter of **Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.)** held as-

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

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

**22.4.8** Given the facts of the present case before me and the judgments and rulings cited above, I hold the said gold bars i.e. "20 Gold Bars weighing 2000 gms. Having foreign markings" having market value Rs.1,21,10,000/-, placed under seizure

would be liable to absolute confiscation under Section 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

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

**SHRI JAINAM JAIN, PROPRIETOR OF M/S. JAINAM JEWELS & SHRI DASHRATH KUMAR, EMPLOYEE OF M/S SHREE JAINAM JEWELS:-**

**22.5.1** I find that Shri Jaiman Jain, Proprietor of M/s. Shree Jainam Jewels, 51/53, Saas Bau Plaza, 3rd Floor, 36A, Opp. Mangal Murti Touch, Vithalwadi, Kalbadevi Road, Mumbai was sender of the said 20 Gold bars weighing 2000 grams having foreign markings as per written in the parcels and the statement of Shri Hasmukhbhai Patel, Partner of M/s. Patel Madhavlal Maganlal & Company. I find that Shri Jainam Jain was summoned dated 21.06.2023 and 27.05.2024 for his presence for recording of statement and production of KYC documents and ownership proof documents in connection of the said Gold bars, however he vide his letter dated 22.06.2023, submitted that the Summons dated 21.06.2023 appeared to be vague in nature, and he sought Advocate's presence during the recording of statement. Subsequently, he did not appear for recording of statement on the scheduled date and time.

**22.5.2** I find, in similar manner, Shri Dashrath Kumar, Employee of M/s. Jainam Jewels, 51/53, Saas Bahu Plaza, 3rd Floor, 36A, Vithalwadi, kalbadevi Road, Mumbai was issued summons dated 21.06.2023 and 27.05.2024 for his presence for recording of statement, however, Shri Dashrath Kumar, vide his letter dated 22.06.2023, also sought Advocate's presence during the recording of statement. Subsequently, he too did not appear for recording of statement on the scheduled date and time.

**22.5.3** I also find that a search was conducted at office premises of M/s. Shree Jainam Jewels on 21.06.2023, wherein, from the panchnama proceedings, I find that Shri Dashrath Kumar, informed Shri Jainam Jain to come to the premises, however Shri Jainam Jain did not come and his father Shri Mahipal Jain informed that Shri Jainam Jain is out of town for 2 days and has gone to Bangalore. I also find that Shri Mahipal Jain and Shri Dashrath Kumar informed that they have not handed over any parcel to any person of the said Angadia firm. I further find that, one person namely Shri Dayabhai Babbaldas Patel, of Angadia firm M/s Patel Madhavlal Maganlal & Company, was called for identification and he identified that Shri Dashrath Kumar handed over him two small parcels. However, Shri Dashrath Kumar refused and reasserted that he did not hand over any parcel to any person of Angadia firm M/s Patel Madhavlal Maganlal & Company.

**22.5.4** I find that Neither Shri Jainam Jain, the Proprietor of M/s. Jainam Jewels nor Shri Dashrath Kumar, Employee of M/s. Jainam Jewels joined the investigation and tendered their statement. I find that they also failed to provide the documents, i.e.,



F. No. VIII/10-82/ DRI-AZU /O&A/HQ/2024-25

OIO No. 222/ADC/SRV/O&A/2024-25

sale/purchase ledger for 01.04.2024 to 06.06.2024, details of import/ purchase of foreign origin gold made by them, details of payment received from Shri Nevil Soni etc. to the departmental officers during the investigation. I find in their written submission also, they denied ownership of the said Gold bars. I find from the submissions of the Aangadia firm M/s. Patel Madhavlal Maganlal & Company that Shri Jainam had sent parcels to Shri Nevil Soni prior to the subject date i.e. 06.06.2023 as evident from the receipts and accounts of M/s. Patel Madhavlal Maganlal & Company:-

પટેલ માધવલાલ મગનલાલની કું									
મોકલનાર	પારસલ પ્રકાર	નોટ વિમો	લેનાર	વજન	વી.પી. રૂપિયા	GST સહિત ડીલી. ચાર્જ	GST સહિત ચાર્જના રોકાણ		
શ્રી જૈનમ	સી	૧૦૦૦૦	દિલ્લિપભાઈ નાથર	✓		૦			
શ્રી જૈનમ	સી	૧૨૦૦૦૦	શ્રી રામચંદ્ર સોની	✓		૬૬			
શ્રી જૈનમ	સી	૨૨૦૦૦૦	શ્રી રામચંદ્ર સોની	✓		૧૧૪			
શ્રી જૈનમ	સી	૧૦૦૦૦	શ્રી રામચંદ્ર સોની	✓		૨૦૦૦			
શ્રી જૈનમ	સી	૨૬૦૦૦	શ્રી રામચંદ્ર સોની	✓		૧૦૦૦			
શ્રી જૈનમ	સી	૧૦૦૦૦	શ્રી રામચંદ્ર સોની	✓			૧૦		
શ્રી જૈનમ	સી	૧૦૦૦૦	શ્રી રામચંદ્ર સોની	✓			૧૦		

જુના આંગડીઆ

ડીલીવરી આપેલા માલની પહોંચ

પટેલ માધવલાલ મગનલાલની કું

રવાના તા. - ૨૦૨૨ ડીલી. તા. - ૫-૨૦૨૩

મોકલનાર - જૈનમ

મું - જૈનમ

પારસલ નંગ 1

કિંમત/વીમો રૂ. ૨૧૮૬૫૨

નોટ રૂપિયા ૧૬૬૫૧

ચાંદી કિ.ગ્રામ.

GST સહિત ડીલીવરી ચાર્જ રૂ.

ડીલીવરી કરનાર હા.

ઉપરના માલની ડીલીવરી જોઈ તપાસી લીધી છે.

લેનાર Nevil Soni 8238979797

હા. સહી N.V. Soni

ટેકાણું ૨૧૧૧૧૧.૫૬૦૨૧૭૬૬૨૫૫

જુના આંગડીઆ

ડીલીવરી આપેલા માલની પહોંચ

પટેલ માધવલાલ મગનલાલની કું

રવાના તા. - ૨૦૨૨ ડીલી. તા. - ૫-૨૦૨૩

મોકલનાર - જૈનમ

મું - જૈનમ

પારસલ નંગ

કિંમત/વીમો રૂ. અંકે રૂ. ૧૦૦૦

નોટ રૂપિયા ૨૦૦૦૦૦

ચાંદી કિ.ગ્રામ.

GST સહિત ડીલીવરી ચાર્જ રૂ.

ડીલીવરી કરનાર હા.

ઉપરના માલની ડીલીવરી જોઈ તપાસી લીધી છે.

લેનાર જૈનમ ૨૧૧૧૧૧

હા. સહી Nevil Soni N.V. Soni 8238979797

ટેકાણું

આધાર-કાર્ડ - ૫૬૦૨૧૭૬૬૨૫૫

**22.5.5** I find that both Shri Jainam Jain and Shri Dashrath Kumar have lied about sending the said Gold bars through the Aangadia firm and disowned the Gold, in order to save themselves from the consequences which may flow on account of dealing with smuggled gold. I also find that they had intentionally tried to non-cooperate with



the investigation. The excerpt of the statement of Shri hasmukh Patel of M/s. Patel Madhavlal Maganlal & Company is given below:-

dated 21.06.2023 that Shri Mahipal Jain, father of Shri Jaiman Jain and Shri Dashrath Kumar, an employee of M/s. Jainam Jewels had denied that they had not handed over any gold on 06.06.2023 to M/s. Patel Madhavlal Maganlal & Company. On being asked about the same, I state that Shri Dashrath Kumar had booked a parcel with us on 06.06.2023 for delivery to Shri Nevil Soni, Ahmedabad, the parcel containing 02 kgs of gold. I state that Shri Dayabhai Babbaldas Patel, an employee of M/s. Patel Madhavlal Maganlal & Company had personally taken delivery from Shri Dashrath Kumar of M/s. Jainam Jewels on 06.06.2023 from the premise of M/s. Jainam Jewels. I further state that we had also issued receipt during booking of the parcel and also made entry in the booking register. I undertake to submit a copy of the booking receipt and copy of the page containing entry in the booking register to your office within three days' time. I state that Shri Mahipal Jain and Shri Dashrath Kumar are untruthful when they informed that they had not handed over any parcel to our firm in Mumbai on 06.06.2023.

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

**22.5.7** For the similar reasons, I find Shri Dashrath Kumar had knowingly indulged/concerned himself in abetment of sell/purchase of said foreign origin smuggled gold which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who acquires possession of or is in **any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that Shri Dashrath Kumar, Employee of M/s. Jainam Jewels is culpable and the act of omission and commission made on his part for concerning himself in purchasing and selling of the smuggled gold which are liable for confiscation, has rendered him liable for penalty under Section 112 of the Customs Act, 1962.

**22.5.8** I find that Shri Jainam Jain and Shri Dashrath Kumar has raised the questions about the panchnama and statement recorded of Shri Hasmukh Patel, of M/s. Patel Madhavlal Maganlal & Company in their submission, however, I find that every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passengers/owner of the Aangadia Firm. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.

**22.5.9** I also find that Shri Jainam Jain and Shri Dashrath Kumar are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act by not co-operating during the investigation and also not discharging the burden of proof under Section 123 of the Customs Act truthfully.

**SHRI NEVIL SONI:**

**22.5.10** I find that Shri Nevil Soni was recipient of the said 20 Gold bars weighing 2000 grams having foreign markings as per written in the parcels and the statement of Shri Hasmukhbhai Patel, Partner of M/s. Patel Madhavlal Maganlal & Company. I find that Shri Nevil Soni during his statement denied knowing any person with name 'Jainam'.

**Q.9:- As per the panchnama, which you have already perused, please state whether you know any person namely Shri Jainam?**

Ans:- No, I don't know any person whose name as Shri Jainam.

**Q.10:- As per annexure-B of Panchnama dated 07.06.2023, total 20 Gold Bars, having weight 100 grams each of foreign origin were seized from the baggage of Angadiya firm Madhalal Maganlal, Ahmedabad. The said gold was destined at your name from the person Jainam, Mumbai through the said angadiya firm. Please state whether the said foreign origin gold related to you?**

Ans:10- I don't know any person whose name is Jainam and also I don't made any transaction from any person from Mumbai. Therefore, I state that the said gold is not related to me or my firm.

I find that Shri Nevil Soni during his statement denied doing any business with M/s. Madhavlal Maganlal & Company.

**Q.6:- Whether you know the angdiya firm Madhalal Maganlal, situated at Ahmedabad?**

Ans:- Yes, I know the firm. His branch is also situated in Gandhidham.

**Q.7 Please state the name & contact detail of the person to whom you do contact in the above said angadiya firm Madhalal Maganlal, Ahmedabad?**

Ans. I don't do any business with the said firm therefor I have no contact detail of the same.

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I find further from the statement of Shri Hasmukhbhai Patel of M/s. Madhavlal Maganlal & Company, that Shri Nevil Soni had done business with them in the past and was present at the time of detention of parcels nearby office of DRI, Ahmedabad.

where he is asked about the contact details of M/s. Patel Madhavlal Maganlal and the 02 kgs of gold of foreign origin detained by the DRI under Panchnama dated 07.06.2023. On being asked about the same, I state that I had inquired about the same from my office and it was found that some parcels were delivered by us to Shri Nevil Soni in the past also. Further, I state the parcel detained under Panchnama dated 07.06.2023 had paper wrapped on the parcel which had specifically mentioned the sender of the parcel as Jainam and intended recipient of the parcel as Nevil Soni with their phone nos. I state that therefore, Shri Nevil Soni is untruthful when he says that he didn't do any business with our firm or he does not know any Jainam. I further state that my staff had also informed me that Shri Nevil Soni had come outside the DRI, Ahmedabad office in the morning of 07.06.2023 when he got to know that his parcels had been detained by DRI, therefore, it clearly indicates that Shri Nevil Soni was worried as his parcels had been detained.

Shri Hasmukhbhai Patel of M/s. Madhavlal Maganlal & Company also stated that Shri Nevil Soni has received parcels from their office personally in May and June 2023.

On being asked about the deliveries made by us to Shri Nevil Soni in the past, I state that earlier two more parcels in May or June 2023, booked from Mumbai, were delivered by us to Shri Nevil Soni in Ahmedabad. I state that Shri Nevil Soni had personally collected those parcels from our office in Ahmedabad. I also undertake to submit the proof of the same within three days' time.

I find that during the Personal hearing, M/s. Madhavlal Maganlal & Company submitted the receipt as mentioned above, which was signed by Shri Nevil Soni. I find that the signature in these receipt were appeared to be same as that in the statement dated 21.06.2023 of Shri Nevil Soni.

જુના આંગડીઆ		ડીલીવરી આપેલા માલની પહોંચ	
<b>પટેલ માધવલાલ</b>		<b>મગનલાલની કં.</b>	
રવાના તા.	- ૨૦૨૩	ડીલી. તા.	૫-૬-૨૦૨૩
મોકલનાર	મું. <i>જનમજી</i>		
પારસલ નંગ	1	અંકે રૂ.	૨૧૪૮૫૫૨
કિંમત/વીમો રૂ.			૨૬૮૫૧
નોટ રૂપિયા			
ચાંદી કિ.ગ્રામ.			
GST સહિત ડીલીવરી ચાર્જ રૂ.			
ડીલીવરી કરનાર હા.			
ઉપરના માલની ડીલીવરી જોઈ તપાસી લીધી છે.			
લેનાર	NEVIL SONI 8238979797		
હા. સહી	<i>N. V. Soni</i>		
ટેકાણું	21/11/2023 4562966296		

જુના આંગડીઆ		ડીલીવરી આપેલા માલની પહોંચ	
<b>પટેલ માધવલાલ</b>		<b>મગનલાલની કં.</b>	
રવાના તા.	- ૨૦૨૩	ડીલી. તા.	૫-૬-૨૦૨૩
મોકલનાર	મું. <i>જનમજી</i>		
પારસલ નંગ		અંકે રૂ.	૧૦૦૦
કિંમત/વીમો રૂ.			૨૧૪૮૫૫૨
નોટ રૂપિયા			
ચાંદી કિ.ગ્રામ.			
GST સહિત ડીલીવરી ચાર્જ રૂ.			
ડીલીવરી કરનાર હા.			
ઉપરના માલની ડીલીવરી જોઈ તપાસી લીધી છે.			
લેનાર	NEVIL SONI 8238979797		
હા. સહી	<i>N. V. Soni</i>		
ટેકાણું	21/11/2023 4562966296		

**22.5.11** I find that Shri Nevil Soni was summoned dated 16.01.2024 for his presence for recording of statement and production of KYC documents and ownership proof documents in connection of the said Gold bars, however he vide his email dated

25.01.2024, submitted that he is currently attending a training at Dubai and could not be able to present himself before DRI, till 27.02.2024. Subsequently, he did not appear for recording of statement afterwards.

**22.5.12** I find that Shri Nevil Soni had lied about the said Gold bars through the Aangadia firm and disowned the Gold, in order to save himself from the consequences which may flow on account of dealing with smuggled gold. I also find that he had intentionally tried to non-cooperate with the investigation. As discussed in foregoing paras, it was found that the said Gold bars are of foreign origin and found to be smuggled into India, therefore, I find that Shri Nevil Soni had knowingly indulged/concerned himself in purchase of said foreign origin smuggled gold which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that Shri Nevil Soni is culpable and the act of omission and commission made on his part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, has rendered him liable for penalty under Section 112 of the Customs Act, 1962.

**22.5.13** I also find that Shri Nevil Soni requested during the personal hearing for cross-examination of Panchas of the panchnama dated 21.06.2023 drawn at the residence of Shri Nevil Soni at Gandhidham. I also find that they have not presented any other submission till date. In this connection, I like to reply on the judgment of Hon'ble Madras High Court in the case of **KIBS HOISERY MILL P.LTD vs SPL. DIR. DTE. OF ENFORCEMENT, NEW DELHI reported at 2016 (344) ELT 24 (Mad.)** wherein it was held that "*Noticee were bound to submit their reply to show cause notice, follow procedure contemplated under Acts/Rules, and could not device their own procedure as per their whims and fancies.*"

Also, I would like to rely on the judgment of Hon'ble Allahabad High Court in the case of **KANPUR CIGARETTES LTD VS. UNION OF INDIA reported at 2016 (344) ELT 82 (All.)** wherein it was held that "*there is no right procedurally or substantively on in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded, for cross-examination before the reply to the show cause Notice is filed*". It was also held that "*the petitioner cannot insist that the petitioner be first permitted to cross-examine the witnesses and thereafter it would submit its reply*".

Further, I find that during the present case is not relied upon the search conducted at the noticee's residence and in that case, the statement of Panchas are also not relied in the Show Cause Notice and I hold that cross-examination of the Panchas of the panchnama dated 21.06.2023 drawn at the residence of Shri Nevil Soni at Gandhidham, is unnecessary in the present case. I find that Shri Nevil Soni has resorted to delay tactics with an intent to stall the adjudication process.

**22.5.14** I find that Shri Nevil Soni has raised the questions about the panchnama dated 21.06.2023 drawn at the residence of Shri Nevil Soni at Gandhidham and also denied statement recorded of Shri Hasmukh Patel, of M/s. Patel Madhavlal Maganlal & Company in their submission, however, I find that every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passengers/owner of the Aangadia Firm. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. I rely on the judgment of **T. MANIVANNAN Versus COMMISSIONER OF CUSTOMS, TUTICORIN reported at 2017 (348) E.L.T. 513 (Tri. - Chennai)** as held under:-

*“Evidence gathered under Section 108 of the Customs Act, 1962 is not from an accused or accused person. The words “accused” or “accused person” is used only in a generic sense in law. Recording of the proceeding by customs being pre-accusation stage that is not extracted from an accused. Therefore, customs officer is not a police officer as is defined under Evidence Act and Code of Criminal Procedure. Accordingly, appellant’s plea that the exculpatory statement of the appellant has credence in evidences does not sound well when he had pre-meditated design to commit fraud against Revenue”*

**22.5.15** I also find that Shri Nevil Soni is liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act by not co-operating during the investigation and also not discharging the burden of proof under Section 123 of the Customs Act truthfully.

**M/S PATEL MADHAVLAL MAGANLAL & COMPANY AND SHRI PATEL MAHENDRABHAI SHAMBHUBHAI AND SHRI RAMANBHAI KACHARABHAI PATEL**

**22.5.16** I find that in present case, two employees namely Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel of M/s. Patel Madhavlal Maganlal & Company (“Aangadia Firm”) were intercepted by the officers of DRI in the ‘Pick up’ area outside the Kalupur Railway Station, Ahmedabad and on the examination of the baggage of the those two employees, the officers of DRI found that certain parcels containing gold which appeared to be of foreign origin. I find that the employees of the Aangadia Firm could not produce any documents showing legitimate import of the said goods and these goods appeared to be of the nature of smuggled goods. I find from the statement of Shri Hasmukhbhai Patel, Partner in M/s. Patel Madhavlal Maganlal & Company recorded under section 108 of the Customs Act, 1962 on 15.06.2023, that M/s. Patel Madhavlal Maganlal & Company is specialized in courier services of Precious

and valuable goods, documents, Gems and Jewellery, Diamonds etc. and the said parcels were carried by their employees Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel for delivery to concerned recipients. Further, as discussed in foregoing paras, 20 Gold bars weighing 2000 grams having foreign marking sent by Shri Jainam Jain of M/s. Jainam Jewels were found to be smuggled Gold and found to be liable for confiscation under Section 111 of the Customs Act, 1962.

**22.5.17** I find that M/s. Patel Madhavlal Maganlal & Company and its employees Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel had concerned themselves into smuggling of Gold as they had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I find that Shri Hasmukhbhai Patel, Partner in M/s. Patel Madhavlal Maganlal & Company admitted in his statement dated 15.06.2023 that they cannot accept the parcels containing foreign origin gold for transport. The quoted texted is reproduced below:-

On being asked that which type of goods we may transport in the parcels I state that any legitimate goods with proper invoice can be transported but we mainly accepts parcels related to precious and valuable goods, documents, Gems and Jewellery, Diamonds. On being specifically asked whether we can accept foreign currency, Foreign origin gold I state that we cannot accept the parcels related to foreign currency, Foreign origin gold in bars or any other form, but sometimes it may be possible that the customer may mis declare the correct description and nature of goods in the parcel.

**22.5.18** I find from the statement of Shri Hasmukhbhai Patel that they failed in their obligation to report the possession of foreign origin gold which are liable for confiscation under Section 111 of the Customs Act, to respective revenue authorities. By indulging themselves in such acts of omission and commission, i.e. *“any way concerned in **carrying**, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,”* they rendered them liable for penal action under Section 112(b) of the Customs Act, 1962.

**22.5.19** I find that the employees Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel of M/s. Patel Madhavlal Maganlal & Company are well aware of their company's work as well as nature of their own job. They have to deal with delivery of precious and valuable goods, documents, jewellery, diamonds, cash etc. They were supposed to know the documents required with each type of goods mentioned above and the laws and rules governing their possession, carrying, selling, purchasing etc., ignorance of law is no excuse. I find that merely acting upon the directions of their employer M/s. Patel Madhavlal Maganlal & Company, was not expected from them however while receiving the parcels containing smuggled Gold, they should have checked the documents of legal purchase/import of the said smuggled Gold. I further find that both Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel had concerned themselves in carrying of the smuggled goods i.e. said Gold Bars which they know or have reasons to believe were liable to confiscation under Section 111 of Custom Act, 1962.

**22.5.20** I also find that Shri Mahendrabhai Shambhubhai and Shri Ramanbhai Kacharabhai Patel are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act by not reporting to the concerned authorities about the smuggled gold.

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

### ORDER

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

- a) I order absolute confiscation of 20 gold bars having imported markings and weighing 2000 grams or 2.0 Kg in total, having purity 999 and valued at **Rs.1,21,00,000/- (Rupees One Crore Twenty-One Lakhs Only)** pertaining to M/s. Shri Jainam Jewels and Shri Nevil Soni, Gandhidham placed under seizure vide seizure memo (DIN- 202310DDZ10000611838) dated 05.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- b) I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs Only)** on Shri Jainam Jain, Proprietor of M/s. Jainam Jewels, 51/53, Saas Bahi Plaza, 3rd Floor, 36A, Opposite Mangal Murti Temple, Vithalwadi, Kalbadevi Road, Mumbai-400002 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I refrain from imposing any penalty on Shri Jainam Jain under section 112 (a) of the Customs Act, 1962;
- c) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only )** on Shri Jainam Jain, Proprietor of M/s. Jainam Jewels, 51/53, Saas Bahi Plaza, 3rd Floor, 36A, Opposite Mangal Murti Temple, Vithalwadi, Kalbadevi Road, Mumbai-400002 under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- d) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakhs Only)** on Shri Dashrath Kumar, C/o M/s. Jainam Jewels, 51/53, Saas Bahu Plaza, 3<sup>rd</sup> Floor, 36A, Opposite Mangal Murti Tounch, Vithalwadi, Kalbadevi Road, Mumbai- 400002 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I refrain from imposing any penalty on Shri Dashrath Kumar under section 112 (a) of the Customs Act, 1962;
- e) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only )** on Shri Dashrath Kumar, C/o M/s. Jainam Jewels, 51/53, Saas Bahu Plaza, 3<sup>rd</sup>

Floor, 36A, Opposite Mangal Murti Tounch, Vithalwadi, Kalbadevi Road, Mumbai- 400002 under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;

- f) I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs Only)** on Shri Nevil Soni, S/o Shri Kantilal Soni, A-234, Apna nagar, Nr. Ambaji Temple, Gandhidham, Kutch-370201 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I refrain from imposing any penalty on Shri Nevil Soni under section 112 (a) of the Customs Act, 1962;
- g) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only)** on Shri Nevil Soni, S/o Shri Kantilal Soni, A-234, Apna nagar, Nr. Ambaji Temple, Gandhidham, Kutch-370201 under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- h) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on M/s. Patel Madhavlal Maganlal & Company, Jain Dharamshala Buuilding, Marchipole, Ratenpole, Ahmedabad, Gujarat under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I refrain from imposing any penalty on M/s. Patel Madhavlal Maganlal & Company under section 112 (a) of the Customs Act, 1962;
- i) I impose a penalty of **Rs. 25,000/- (Rupees Ten Thousand Only )** on M/s. Patel Madhavlal Maganlal & Company, Jain Dharamshala Buuilding, Marchipole, Ratenpole, Ahmedabad, Gujarat under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- j) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Mahendrabhai Shambhubhai, residing at 7/90, Brahamanvas Balol, Mehsana, Gujarat (employee of M/s. Patel Madhavlal Maganlal & Company) under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I refrain from imposing any penalty on Shri Mahendrabhai Shambhubhai under section 112 (a) of the Customs Act, 1962;
- k) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only )** on Shri Mahendrabhai Shambhubhai, residing at 7/90, Brahamanvas Balol, Mehsana, Gujarat (employee of M/s. Patel Madhavlal Maganlal & Company) under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- l) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Ramanbhai Kacharabhai Patel, (employee of M/s. Patel Madhavlal Maganlal & Company) residing at A-31, Swami Vivekanand Nagar, Patan



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Road, Unjha, Mehsana, Gujarat – 384170 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I refrain from imposing any penalty on Shri Ramanbhai Kacharabhai Patel under section 112 (a) of the Customs Act, 1962;

m) I impose a penalty of **Rs. 10,000/ -(Rupees Ten Thousand Only )** on Shri Ramanbhai Kacharabhai Patel, (employee of M/s. Patel Madhavlal Maganlal & Company) residing at A-31, Swami Vivekanand Nagar, Patan Road, Unjha, Mehsana, Gujarat – 384170 under section 117 of the Customs Act, 1962 as discussed in foregoing Paras.

**24.** The Show-cause notice bearing no. VIII/10-82/DRI-AZU/O&A/HQ/2024-25 dated 03.06.2024 is disposed of in terms of the para above.

**(SHREE RAM VISHNOI)**

**ADDITIONAL COMMISSIONER**

**F. No. VIII/10-82/DRI-AZU/O&A/HQ/2024-25      Dated    09.01.2025**  
**DIN- 20250171MN000000958E**

**BY SPEED POST:**

To,

- 1) SHRI JAINAM JAIN,**  
PROPRIETOR OF M/S. JAINAM JEWELS,  
51/53, SAAS BAHU PLAZA, 3RD FLOOR,  
36A, OPPOSITE MANGAL MURTI TEMPLE,  
VITHALWADI, KALBADEVI ROAD, MUMBAI-400002
- 2) SHRI DASHRATH KUMAR,**  
C/O M/S. JAINAM JEWELS, 51/53,  
SAAS BAHU PLAZA, 3<sup>RD</sup> FLOOR, 36A,  
OPPOSITE MANGAL MURTI TOUNCH,  
VITHALWADI, KALBADEVI ROAD, MUMBAI- 400002
- 3) SHRI NEVIL SONI,**  
S/O SHRI KANTILAL SONI, A-234,  
APNA NAGAR, NR. AMBAJI TEMPLE,  
GANDHIDHAM, KUTCH-370201
- 4) M/S. PATEL MADHAVLAL MAGANLAL & COMPANY,**  
JAIN DHARAMSHALA BUUILDING, MARCHIPOLE,  
RATENPOLE, AHMEDABAD, GUJARAT
- 5) SHRI MAHENDRABHAI SHAMBHUBHAI,**  
(EMPLOYEE OF M/S. PATEL MADHAVLAL MAGANLAL & COMPANY)  
RESIDING AT 7/90, BRAHAMANVAS BALOL,  
MEHSANA, GUJARAT.
- 6) SHRI RAMANBHAI KACHARABHAI PATEL,**  
(EMPLOYEE OF M/S. PATEL MADHAVLAL MAGANLAL & COMPANY)  
RESIDING AT A-31, SWAMI VIVEKANAND NAGAR,  
PATAN ROAD, UNJHA, MEHSANA, GUJARAT – 384170

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OIO No. 222/ADC/SRV/O&A/2024-25

**Copy to:**

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