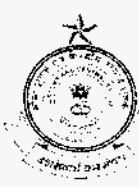


SC



सीमा शुल्क (निवारक) आयुक्त का कार्यालय, सीमा शुल्क भवन,
जामनगर- राजकोट हाईवे, विक्टोरिया ब्रिजके पास,
जामनगर) गुजरात – 361001

Office of the Commissioner of Customs (Preventive),
'SEEMA SHULK BHAVAN', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001
Email: commr-custjmr@nic.in; adj-custjmr@nic.in

दस्तावेज़पहचानसंख्या/ Document Identification Number (DIN)–20240471MM000000F74A

SCN No.: **ADC-04/2024-25**

Date: 10.04.2024

कारण बताओ नोटिस/ SHOW CAUSE NOTICE
(Issued under the provisions of the Customs Act, 1962)

Acting on a specific intelligence, the officers of Customs (Preventive) Commissionerate, Jamnagar intercepted three (3) individuals at Wankaner Railway Station identified as Shri Dhruv, Shri Dipesh and Shri Sonu while they were en route from Mumbai to Rajkot in train No. 22945 (Saurashtra Mail) on October 4, 2023. During the search of their accompanied luggage, officers found various packages containing gold jewelry, silver jewelry, diamond, Apple Watch, Apple I-phone, gold bars, silver bars, etc. out of which some of the gold and silver articles appeared to be imported or of foreign origin. The individuals along with their respective luggage were brought to the HQ Office at Jamnagar. For ascertaining the quantity, value and origin of the gold and silver articles, an approved valuer of the Union Bank of India was called for. During search, it was also found that the goods were not accompanied with legitimate bills/documents and accordingly, the same were detained under Panchnama dated 04.10.2023 (**RUD-1**). The approved valuer submitted a Certificate under his letter head (**RUD-2**) that he in-person inspected the gold and silver articles and has ascertained the market value, origin and weight during Panchnama on 04.10.2023.

2. Shri Dhruv and Shri Dipesh disclosed during the panchnama proceedings that they were tasked with delivering the goods to Shri Bunty Singh of M/s. Surya Logistics, Rajkot, India, and Shri Sonu disclosed that he was tasked to deliver the goods to Shri Paras Bhai of M/s. Swami Narayan Parcel Services, Rajkot, India. Accordingly, Summons was issued to Shri Paras Bhai under section 108 of the Customs Act, 1962.

3. Enquiry Conducted with Shri Parth Singh (Paras Bhai), Prop: of M/s. Swaminarayan Parcel Services, Rajkot

3.1 Statement of Shri Parth Singh (Paras Bhai) was recorded under Section 108 of Customs Act, 1962 on 06.10.2023 (**RUD-3**) wherein he, inter-alia, stated that:

- he is Proprietor of M/s. Swaminarayan Parcel Services having GSTIN:- 27MUGPS9925L1ZF, registered in Mumbai; that his friend (Shri Dilip Singh) who has a firm located in Surat, Gujarat having GSTIN:- 24EMMPS4846A1ZW and they both are working together as an angadia courier services.
- Sonu is an employee of M/s. Swaminarayan Parcel Services and has been working in his firm since one and half years.
- His firm is an angadia service related. His registered place of business is at Mumbai. His firm has a branch at Rajkot located at Soni Bazar, Mandvi Chowk, corner of Kamdhar Sheri.
- produced the description of the items, sender details, receiver details, invoices/voucher No. along with date as provided by the respective sender which is shown as under:-

Sl. No.	Description	Sender's Details	Receiver's Details	Invoice/ Challan No.		Date
				Tax/ Retail Invoice	Labour Issued Voucher	
1	Gold Bar	Ambika Nosepin, Raviwar peth	M/s. Adesara Jewellers, Rajkot	SG-1192		26.09.2023
2	Gold Ornaments	Chintamani Art jewelers, Mumbai	M/s. Adesara Jewellers, Rajkot	482		3.10.2023
3	Gold Ornaments	Vijesh Diamond, Maharashtra	Durlabh Jewellers, Rajkot	Debit Note-1		03.10.2023
4	Gold Bar 999	G S Gold, Mumbai	Zikria Zillani Golam, Rajkot		URD/23-24/0006	03.10.2023
5	Gold Bar	M/s. Nandhari Jewellers, Amritsar	M/s. Adesara Jewellers, Rajkot		Gold Voucher 24	01.10.2023
6	18 Ct Semi finished gold ornaments	Navneet Chain, Mumbai	M/s. OM Touch Lab-AUM Chain, Rajkot	SG-1		03.10.2023
7	Gold Bar & Alloy 75	R L jewels, Mumbai	M/s. Joshimuddin Biswas, Rajkot	Delivery challan- IH-63		03.10.2023
8	Gold Bar & Alloy 75	R L jewels, Mumbai	M/s Sekh badruddin, Rajkot	Delivery challan- IH-62		03.10.2023
9	2 Gold Bar	Shree Nakoda Diamond, Mumbai	L M Jewellers, Rajkot		IH/23-24/39	03.10.2023
10	2 Gold Bar	Shree Nakoda Diamond, Mumbai	L M Jewellers, Rajkot	Delivery challan- DC/23-24/2		03.10.2023

11	Gold Bar	Shree Nakoda Diamond, Mumbai	Mangilal, Rajkot		IH/23-24/41	03.10.2023
12	Gold Bar	Shree Nakoda Diamond, Mumbai	Mangilal, Rajkot	DC/23-24/4		03.10.2023
13	Gold Bar	Shree Nakoda Diamond, Mumbai	Khodiyar Jewellers, Rajkot	DC/23-24/3		03.10.2023
14	Gold Bar	Shree Nakoda Diamond, Mumbai	Khodiyar Jewellers, Rajkot		IH/23-24/40	03.10.2023
15	Gold Bar	The Nose Pin Hub, Maharashtra	M/s. P.B. Jewellers, Rajkot		IH-39	03.10.2023
16	New Gold Ornaments	Poonam Jewels, Maharashtra	Sarkar Jewellers, Rajkot	ORN-23-24/050		03.10.2023
17	New Gold Ornaments	Poonam Jewels, Maharashtra	Soni Jayantilal Fulchand bhai, Surendranagar	ORN-23-24/051		03.10.2023
18	New Gold Ornaments	Poonam Jewels, Maharashtra	Radhey Gold and Silver, rajkot	ORN-23-24/049		03.10.2023
19	Gold bar	Chandoba Jewels, Mumbai	M/s, Samriddhi jewelers, Rajkot		IH-55	03.10.2023

- that Shri Sonu, the employee of his firm used to collect the delivery from Mumbai and enroute at Surat also receives parcel from Shri Dilip bhai and delivers at Rajkot office.
- that they received the parcel in the packed condition; that in respect of Gold parcels/ packets the name of sender and receiver was written along with the phone number, value and weight; that in respect of Silver packets the name of sender & receiver, Phone number and weight were mentioned.

3.2 Further statement of Shri Parth Singh (Paras Bhai), Prop: of M/s. Swaminarayan Parcel Services, Rajkot was recorded on 10.10.2023 (**RUD-4**) wherein he inter-alia stated that:-

- produced the description of the items, sender details, receiver details, invoices/voucher No. along with date as provided by the respective sender on his mobile No. which is shown as under:-

S. No.	Description	Sender Name	Recipient Name	Inv. No.	Issue Voucher/Delivery Challan/Material Out/Debit Note/Karighar Issue	Date
1	18Ct Gold ornaments	Shraddha Gold's india Pvt Ltd, Surat	Bansidhar Jewellers, Rajkot	S/61		03.10.2023
2	22Ct Gold ornaments	Shraddha Gold's india Pvt	Vikas Jewellers	S/62		03.10.2023

		Ltd, Surat	Rajkot		
3	Old Gold	R R ornaments, Mumbai	R N Jewellers, Rajkot	205	03.10.2023
4	Not Mentioned	Dhanlaxmi Jewellers, Hyderabad	Ankit Adesara, Rajkot	1023	02.10.2023
5	Fine Gold	AL-Mannan Jewels, Hyderabad	Mallick Jewellery, rajkot	732	02.10.2023
6	Fine Gold	AL-Mannan Jewels, Hyderabad	Mallick Jewellery, rajkot	730	02.10.2023
7	Fine Gold	AL-Mannan Jewels, Hyderabad	Mallick Jewellery, rajkot	731	02.10.2023
8	Gold Bar/ Gold ornaments	Mandal Manufacturing, Mumbai	Niyamotullah Mohibuliah Shekh, Rajkot	1	03.10.2023
9	Gold Bar	Mandal Manufacturing, Mumbai	Safiya Ornaments, Rajkot	2	03.10.2023
10	Gold Bar	Hreenkar Jewellery, Maharashtra	Milan chains, Rajkot	9	03.10.2023
11	Gold ornaments	Vijesh Art Diamond, Mumbai	Durlabh Jewellers, Rajkot	1	03.10.2023
12	Gold Bar/ Gold ornaments	Chintamani Art Jewellers, Mumbai	Meena Jewellers, Rajkot	483	03.10.2023
13	Gold Bar/ Gold ornaments	Chintamani Art Jewellers, Mumbai	Meena Jewellers, Rajkot	484	03.10.2023
14	22 CT ornaments	Samruddhi Gold, Surat	Tanvi Gold CAST LLP, Rajkot	PRT/1	03.10.2023
15	Of gold sets with diamonds	Ratih Jewels LLP, Surat	Darshan Jewells, Rajkot		03.10.2023
16	Of gold sets with diamonds	Ratih Jewels LLP, Surat	Shreeji Jewellers	K5134	03.10.2023
17	Of gold sets with diamonds	Ratih Jewels LLP, Surat	Parv Gold	K5113	03.10.2023
18	18 ct mix gold ornaments	Ugra Impex		567	03.10.2023
19	Gold Bar	Vijay Shnati ARTS, Maharashtra	Vijay Shnati Arts, Rajkot	JW/ISSD/22-23/66	03.10.2023
20	Mix gold ornaments	Anil K Bafna, Mumbai	rajesh Jewellers, Rajkot	AV/1	28/09/2023
21	Gold Bar	G.S. Gold, Mumbai	Zikria Zillani Golam, rajkot	6	03.10.2023
	Bullion Gold Purchase	Shashwat Gold LLP, Mumbai	G.S. Gold, Mumbai	2598	25.09.2023
	Billion Gold Purchase	Shashwat Gold LLP, Mumbai	G.S. Gold, Mumbai	2668	27.09.2023
	Bullion Gold Purchase	Shashwat Gold LLP, Mumbai	G.S. Gold, Mumbai	2746	03.10.2023
22	Gold Bar	R L Jewels, Mumbai	Josimuddin Biswas, Rajkot	IH-63	03.10.2023
	Bullion Purchase	Kaka Gold LLP, Mumbai	R L Jewels, Mumbai	SG-7226	29.09.2023
23	Gold Bar	R L Jewels, Mumbai	Sekh Badruddin, Rajkot	IH-62	03.10.2023

	Gold Coin	SPN Gold & Previous Metal India Pvt Ltd, Mumbai	R L Jewels, Mumbai	4899		27.09.2023
24	Gold Bar	VPB Enterprise LLP, Mumbai	Shree Raj Gold, Rajkot	877		03.10.2023
25	Gold Bar	Shreeji Art, Mumbai	Shree Raj Gold, Rajkot		99/23-24	03.10.2023
	Gold Bar	M.S Gold, Maharashtra	Shreeji Art, Mumbai	495		08.09.2023
	Gold Bar	M.S Gold, Maharashtra	Shreeji Art, Mumbai	491		06.09.2023
26	Gold Bar	The Nose Pin Hub, Mumbai	Brijesh J Ranpara		IH-40	03.10.2023
	Gold Bar	Rudhprakash Bullion LLP, Mumbai	The Nose Pin Hub, Mumbai	1070		23.09.2023
27	Gold Bar	The Nose Pin Hub, Mumbai	P B Jewellers, Rajkot		IH-39	03.10.2023
	Gold Bar	Rudhprakash Bullion LLP, Mumbai	The Nose Pin Hub, Mumbai	1053		21.09.2023
	Gold Bar	Rudhprakash Bullion LLP, Mumbai	The Nose Pin Hub, Mumbai	1079		26.09.2023
28	Gold Bar	The Nose Pin Hub, Mumbai	rajesh Jewellers, Rajkot		IH-41	03.10.2023
	Gold Bar	Rudhprakash Bullion LLP, Mumbai	The Nose Pin Hub, Mumbai	1106		27.09.2023
29	Gold Bar	R C Jain, Mumbai	Bhavin Jewellers, Rajkot		IH-271	03.10.2023
	Gold Bar	Arihant Bullion and jewels LLP, Mumbai	R C Jain, Mumbai	10975		22.09.2023
	Gold Bar	Arihant Bullion and jewels LLP, Mumbai	R C Jain, Mumbai	11737		03.10.2023
30	Gold Bar	Shree Nakoda Diamond, Mumbai	Khodiyar Jewellers, Morbi		DC/23-34/3	03.10.2023
31	Gold Bar	Shree Nakoda Diamond, Mumbai	Mangilal, Rajkot		DC/23-34/4	03.10.2023
32	Gold Bar	Shree Nakoda Diamond, Mumbai	L M jewellers, Rajkot		DC/23-34/2	03.10.2023
	Buillion purchase for S.No 30, 31, 32	R C Bullion, Mumbai	Shree Nakoda Diamond, Mumbai	2123		20.09.2023
33	Gold Bar	Sora Jewels, Mumbai	Tanvi Findings, rajkot		DC/23-24/669	03.10.2023
	Gold Bar	Mantr Jewels, Mumbai	Sora Jewels, Mumbai	MH/3054/ MJ/2023		27.09.2023

- that he does not have bill for goods under packets No. A-39-Plastics Pins, A-40-Apple watch, A-41 I-phone Pro Max, A-44-electronics gadgets with sim, A-45 plastics granules and 2 gold bar bill from two different suppliers.

- that 2 different gold bar businessmen does not have GST registration therefore 2 bills cannot be produced.
- He has no idea about the cash of Rs. 15,430/- as the packet received in sealed conditions.

4. Since, Shri Parth Singh, Proprietor of M/s. Swami Narayan Parcel Services, Rajkot receiver of the goods from Shri Sonu could not provide the legitimate documents evidencing the origin of goods or the import documents evidencing the import duty payment of the goods and on reasonable belief that the said goods are smuggled, the same were detained on 04.10.2023 and on having been given sufficient time on dates 06.10.2023, 10.10.2023 & 14.10.2023, the gold, which appears to be smuggled, as certified by the Appraiser having total weight of 2207.91 grams having an approximate market worth of Rs. 1,22,84,588/- along with an Apple Watch and an Iphone Pro Max both having market value worth of Rs. 2,44,900/- were placed under seizure vide Seizure Memo dated 16.10.2023 (**RUD-5**) under the provision of Section 110 of the Customs Act, 1962 under the reasonable belief that the same are liable to confiscation under section 111 of Customs Act, 1962. The seized goods are kept at Godown of Customs Division, Jamnagar at Room No. 236, 2nd floor, Seema Shulk Bhavan, Jamnagar-Rajkot Highway, Near Victoria Bridge, Jamnagar.

4.1. The details of the seized goods are as under in two tables.

TABLE-I

Type	Description of Goods	CATEGORY	Weight in Gms	Value (in Rs.)
A-10	Gold Pieces	IMPORT	51.37	300514
A-15	Gold Pieces	IMPORT	46.44	271674
A-18	Gold Bar	IMPORT	100	585000
A-20	Gold Bar	IMPORT	100	585000
A-21	Gold Bar/ Gold Piece	IMPORT	203	1187550
A-23	Gold Pieces	IMPORT	131.6	769860
A-24	Gold Pieces	IMPORT	90	526500
A-25	Gold Pieces	IMPORT	60.89	356206
A-28	Gold Pieces	IMPORT	23.23	135895
A-30	Gold Bar	IMPORT	406.54	2378259
A-33	Gold Bar	IMPORT	16.72	97753
A-34	Gold Pieces	IMPORT	105.14	615069
A-36	Gold Pieces	IMPORT	204.3	1195155
A-48	Gold Pieces	IMPORT	336.6	1969110
B-2	Gold Pieces	IMPORT	119.9	69790

B-4	Gold Pieces	IMPORT	149.98	877383
C-8	Gold Coin	IMPORT	62.2	363870
Total			2207.91	12284588

TABLE-II

Type	Description of Goods	CATEGORY	Weight in Gms	AMOUNT (in Rs.)
A-40	Apple Watch	IMPORT	NA	44,900
A-41	Iphone Pro Max	IMPORT	NA	200000
Total				2,44,900

5. On the basis of the sender details provided by Shri Parth Singh, Proprietor of M/s. Swaminarayan Parcel Services, Rajkot, summons under section 108 of the Customs Act, 1962 was issued to M/s. R C JAIN (GSTIN:27AFEPJ6310B1Z1), Ground Floor, Shop No 4, 16 HO Building, Anantawadi, Bhuleshwar, Mumbai, Maharashtra, 400002 (hereinafter referred to as "the noticee" for the sake of brevity) on 01.11.2023, 21.11.2023 and 07.12.2023.

5.1. Statement of Shri Vikram Rameshkumar Jain, Authorised Power of Attorney by Shri Rameshkumar Chunilal Jain, Proprietor of M/s. R C JAIN, was recorded under Section 108 of Customs Act, 1962 on 15.12.2023 (**RUD-6**) wherein he, inter-alia, stated that:

- He has been given power of attorney by his father, Shri Rameshkumar Chunilal Jain, Proprietor of M/s. R C Jain (GSTIN : 27AFEPJ6310B1Z1) who is a senior citizen and unable to attend, therefore he had been nominated and appointed as lawful attorney to appear and attend the summons under section 108 of the Customs Act, 1962 .
- that he has been associated with this firm since more than 10 years and he is the manager in the firm; the statement will be legally binding to his father who is the proprietor of the firm
- that his firm purchase gold bar from suppliers of gold bullion and thereafter manufacture gold ornaments as well as do job work for other traders.
- that as per seizure memo dated 16.10.2023 only parcel No. A-48 of 336.6 grams of Gold Pieces belongs to his firm, and also claimed to be the owner of parcel No. A-48.

- In respect of Parcel No. A-48 of 336.6 grams Gold pieces, he had been assigned job work to make gold ornaments from M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE), Andhra Pradesh. He submitted the copy of the tax invoice No. G/23-24/11736 dated 03.10.2023 issued by M/s. Arihant Bullion and Jewels LLP (GSTIN:- 27ABIFA5289N1ZQ) wherein Gold Bar having serial No. AL 462271 to AL 462287 of total 1700 grams have been shipped to his firm and billed to M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE). The payment of the 1700 grams of Gold Bar was done by M/s. Mahalaxmi Jewellers. Further he submitted the copy of tax invoice ref No. OD23100MUM358 dated 29.09.2023 issued to M/s. Arihant Bullion And Jewels LLP wherein 250 Nos of 100 grams of Gold Bar (i.e 25 kgs) has been purchased from Yes Bank through M/s. Brink's India Private Limited and the Serial Number AL 462271 to AL 462287 is mentioned in delivery challan dated 03.10.2023 having MAWB No. 17682779244. They had cut the pieces of the said gold bars and sent for job work for making gold balls which is used in making gold chain to M/s. Bhavin Jewellers, Rajkot (GSTIN:- 24AAQFB6168C1ZG) vide Voucher No. IH-271 dated 03.10.2023. Out of the cut pieces, he cannot say which of the four bar has been cut and sent to M/s. Bhavin Jewellers, Rajkot.
- On being asked about the documents with regard to its legitimate purchase and/or Customs duty paid documents, he stated that the seized gold pieces i.e., parcel No. A-48 of 336.6 grams of Gold Pieces had been purchased by M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE) and shipped to their firm from M/s. Arihant Bullion and Jewels LLP (GSTIN:- 27ABIFA5289N1ZQ). Further, as the purchase of the Gold bar is directly from the bank which is a legal purchase and no customs duty is involved in it.
- On being shown and perused the Section 123(1)(b) of the Customs Act, 1962 wherein Burden of proof in certain cases, 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 (b)- in any other case, on the person, if any, who claims to be the owner of the goods so seized to which he agreed and put his dated signature on it.
- When asked about the documents submitted and as per the section 123(1)(b) of the Customs Act, 1962 it does not prove that the said parcel A-48 of 336.6 of Gold Pieces is not smuggled goods to which he stated the said parcel A-48 of 336.6 grams of Gold Pieces is of Domestic nature.

6. In terms of Section 123 (1)(b) of the Customs Act, 1962, the burden of proof in case of 'Gold' that they are not smuggled goods shall be (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized. It appears that Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN has admitted in his statement dated 15.12.2023 that he is the owner of the goods under parcel No. A-48 consisting of 336.6 grams of gold pieces and that the said gold pieces are of domestic nature and no customs duty is involved. However, he could not provide any legitimate documents so as to prove that the said gold pieces of 336.6 grams wrapped in parcel No. A-48 (seized vide seizure memo dated 16.10.2023), are of domestic nature and also could not provide any legal documents so as to prove that the said gold pieces of 336.6 grams are not smuggled.

7. **Legal Provisions:**

7.1 The provisions of law, relevant to import of goods in general, the Foreign Policy and Rules relating to the import of gold, the liability of the goods for confiscation and liability of the persons concerned for 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 under:-

i. **Para 2.26 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.

ii. **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.

iii. 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.

iv. **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.

v. **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.

vi. **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

vii. **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.

viii. **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.

ix. **Rule 14 of the Foreign Trade (Regulation) Rules, 1993: Prohibition regarding making, signing of any declaration, statement or documents,**

(2) *No person shall employ any corrupt or fraudulent practice for the purposes of importing or exporting any goods.*

x. **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-

- a. vessels, aircrafts and vehicles;
- b. stores;
- c. baggage;
- d. currency and negotiable instruments; and
- e. 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 ²² [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.

xi. 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.

xii. 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.

xiii. 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.

xiv. 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.

xv. 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 unloading thereof;*

.....
(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;*

xvi 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:

xvii. 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.*

xviii. 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.

xix. 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.

xx. 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:

- Metals and Minerals Trading Corporation Limited (MMTC);
- Handicraft and Handloom Export Corporation (HHEC);
- State Trading Corporation (STC);
- Project and Equipment Corporation of India Ltd. (PEC);
- STC Ltd.;
- MSTC Ltd.;
- Diamond India Ltd. (DIL);
- Gems and Jewellery Export Promotion Council (G & J EPC);

- A star Trading House or a Premier Trading House under Paragraph 3.10.2 of the Foreign Trade Policy and
- 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-Cus. issued by the Directorate General of Export Promotion and the same is liable to confiscation under the Customs Act, 1962.

xxi. The 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.

8. 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 appears 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. In other words, gold imported under baggage are free from any restrictions/ prohibitions only if the stay abroad by the passenger is not less than six months. Further, as per Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 and para 2.12 of the Foreign Trade Policy 2015-20, no import should take place without a valid Importer-Exporter code allotted by the DGFT. Hence, it appears that the noticee has clearly contravened the provisions of Foreign Trade Regulations.

8.1. Further, 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.

8.2. Furthermore, Hon'ble Supreme Court of India in the case of Om Prakash Bhatia reported in 2003 (155) ELT 423(SC), has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after the clearance of goods and if such conditions are not fulfilled then in such a case the goods would fall within the ambit of 'prohibited goods'.

9. CONTRAVENTIONS

As per the provisions of Section 46 of the Customs Act, 1962, importer of any goods is required to make entry thereof by presenting electronically on the customs automated system to the proper officer, a bill of entry for home consumption in the prescribed form and manner. As per the provisions of Section 47 of the Act, where the proper officer of Customs is satisfied that the goods were entered for home consumption and the importer had paid the import duty assessed thereon, he may make an order permitting clearance of the goods for home consumption. Therefore, any goods imported into India and cleared for home consumption without presenting a bill of entry for home consumption and payment of customs duty assessed thereon, is in violation of the provisions of Section 46 and 47 of the Act and consequently 'illegal import' in terms of as defined under Section 11A(a) of the Customs Act, 1962 and "smuggled" in terms of as defined under Section 2(39) of the Customs Act, 1962.

10. SUMMARY OF THE INVESTIGATION

10.1.1. Whereas, on the basis of evidences brought on record, it transpires that the Noticee had made the gold bar cut to pieces to deceive its smuggled identity. The same has been smuggled into India illegally and illicitly in contravention of the provisions, prohibitions, restrictions, regulations etc. imposed at relevant time, as discussed hereinabove. Further, no documents proving the legal possession or import of the said seized A-48 parcel containing 336.6 (Three Hundred Thirty Six point Six) Grams of FOUR GOLD PIECES has been provided by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN. No documents evidencing that the legal possession or purchase of the said gold pieces through Banks or Nominated Agencies was produced by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN during investigation.

10.1.2. Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN stated in his voluntary statement dated 15.12.2023 that they had been assigned job work to make gold ornaments by M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE), Andhra Pradesh and accordingly submitted a

copy of tax Invoice No. G/23-24/11736 dated 03.10.2023 issued by M/s. Arihant Bullion and Jewels LLP (GSTIN:- 27ABIFA5289N1ZQ) wherein 17 GOLD BARS (each weighing 100 Grams) having serial No. AL 462271 to AL 462287 of total 1700 grams have been shipped to his firm and billed to M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE), Andhra Pradesh. Further, he submitted a copy of tax invoice ref No. OD23100MUM358 dated 29.09.2023 issued to M/s. Arihant Bullion And Jewels LLP wherein 250 Nos of 100 grams of Gold bar (i.e. 25 kgs) has been purchased from Yes Bank through M/s. Brink's India Private Limited and the Serial Number AL 462271 to AL 462287 is mentioned in delivery challan dated 03.10.2023 having MAWB No. 17682779244.

10.1.3. On perusal of the documents/ invoices submitted by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN in support of legal possession of above said seized 336.6 (Three Hundred Thirty Six point Six) Grams of FOUR GOLD PIECES under parcel No. A-48, it appears that M/s. Arihant Bullion And Jewels LLP had purchased 250 Nos of 100 grams of Gold bar (i.e. 25 kgs) from Yes Bank through M/s. Brink's India Private Limited out of which M/s. R C JAIN had received 17 GOLD BARS (each weighing 100 Grams) having serial No. AL 462271 to AL 462287 of total 1700 grams, on behalf of M/s. Mahalaxmi Jewellers, Andhra Pradesh. The seized 336.6 (Three Hundred Thirty Six point Six) Grams of FOUR GOLD PIECES under parcel No. A-48 apparently appears to be different from 17 GOLD BARS (each weighing 100 Grams) having serial No. AL 462271 to AL 462287 as not a single piece could be easily identifiable with the Sr. No. said to have been shipped to his firm. Moreover, they could have easily sent 3 Gold Bars of 100 grams out of 17 GOLD BARS of 100 Grams each easily identifiable with the Serial Number AL 462271 to AL 462287 and only 1 No. of 100 grams could have been cut to 36.6 grams to make it 336.6 grams. Therefore, this material fact indicates that the arguments put forth by the noticee are baseless and have no documentary support. Therefore, the submissions made by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN in his voluntary statement dated 15.12.2023 appears to be incorrect, inconsistent, not matching with the seized gold bar and non-convincing with the documents/ invoices submitted by him during his statement. Thus, it appears that he purposefully submitted the above said documents/ invoices bills with intention to establish the seized goods as genuine domestic purchase gold. But actually it appears to be incorrect as per documentary evidences produced by them.

10.1.4. Therefore, it appears that the Noticee has intentionally submitted the bills to show the seized gold articles i.e., 336.6 (Three Hundred Thirty Six point Six) Grams of FOUR GOLD PIECES under parcel No. A-48, as a domestic

purchase. Since, the nature of the said gold articles being domestic as claimed by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN is not established from the documents/ evidences submitted by them, therefore, the said parcel A-48 containing FOUR GOLD PIECES weighing 336.6 (Three Hundred Thirty Six point Six) grams as shown under:-



appears to be treated as 'Prohibited Goods' as defined under Section 2(33) of the Customs Act, 1962 and 'Smuggled Goods' as defined under Section 2(39) of the Customs Act, 1962, as discussed hereinabove and liable to absolute confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962.

10.1.5. And, whereas, in terms of Section 123 of the Customs Act, 1962, the burden of proving that the said seized FOUR GOLD PIECES under parcel No. A-48 weighing 336.6 (Three Hundred Thirty Six point Six) Grams are not smuggled is on who claims to be the owner of the gold, for which he failed to do so and the story of domestic nature also not established from the documents submitted by the noticee.

10.2. It further appears that purchasing, possessing, keeping and carrying 'Smuggled Goods', which are liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962, was conscious and intentional.

10.3. Further, Gold Pieces of parcel number A-48 as per seizure memo dated 16.10.2023, appears to be liable to absolute confiscation, in view of the settled law as discussed in paras 8.1 & 8.2 above. Clause (d) of Section 111 of the Customs Act, 1962 provides that any goods which are imported or attempted to be imported, contrary to any prohibition, imposed by any law for the time being in force in this country are liable to be confiscated. "Any prohibition", referred to in this section applies to every type of "prohibition". That prohibition

may be complete or partial. It is well settled law that any restriction on import or export is to an extent a prohibition, and therefore the expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Restriction is one type of prohibition. In the instant case, as the goods do not full fill the conditions for their import as they violate the guidelines of RBI, provisions of Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and the provisions of the Customs Act, 1962 and rules framed there under, as discussed above, and it is well settled law that importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after the clearance of goods and if such conditions are not fulfilled then in such a case the goods would fall within the ambit of 'prohibited goods', said goods are to be deemed prohibited. Whereas, it appears that the Noticee during the course of inquiry failed to discharge the onus to prove that seized goods i.e., parcel No. A-48 containing 336.6 (Three Hundred Thirty Six point Six) grams of FOUR GOLD PIECES seized from the angadia service provider i.e M/s. Swaminarayan Parcel Services were not smuggled as per Section 123 of the Customs Act, 1962. Therefore, the seized goods i.e., parcel No. A-48 containing 336.6 (Three Hundred Thirty Six point Six) grams of FOUR GOLD PIECES and valued at Rs.19,69,110/-, which were illegally and illicitly imported contrary to prohibition imposed under various laws discussed as above for the importability of gold by way of regulation/ restriction/ control/ order etc. appears liable to absolute confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962.

10.4. It further appears that all the aforesaid acts of omission and commission made on the part of the Noticee for the smuggling of gold have rendered the subject smuggled FOUR GOLD PIECES of 336.6 (Three Hundred Thirty Six point Six) grams valued at Rs.19,69,110/- liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962, appears to have rendered themselves liable to penalty under Section 112 of the Customs Act, 1962.

10.5 Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN and manager of the said firm, indulged in smuggling of gold into India illegally and illicitly in contravention of the provisions, prohibitions, restrictions, regulations etc. imposed at relevant time, as discussed hereinabove, has rendered the subject smuggled FOUR GOLD PIECES of 336.6 (Three Hundred Thirty Six point Six) grams valued at Rs.19,69,110/- liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962. These acts of omission and commission made on his part for the smuggling of gold which is

liable to confiscation, appears to have rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

11. Now, therefore, M/s. R C JAIN (GSTIN:27AFEPJ6310B1Z1), Ground Floor, Shop No 4, 16 HO Building, Anantawadi, Bhuleshwar, Mumbai, Maharashtra, 400002 is hereby called upon to Show Cause to the Additional Commissioner/ Joint Commissioner of Customs, Customs(Preventive), Jamnagar having his office at Seema Shulk Bhawan, Jamnagar- Rajkot Highway, Near Victoria Bridge, Jamnagar within thirty days from the receipt of this Notice as to why:-

- (i) The recovered and seized foreign origin smuggled FOUR GOLD PIECES contained in parcel number A-48, weighing 336.6 (Three Hundred Thirty Six point Six) grams & valued at Rs.19,69,110/- (Rs. Nineteen Lakhs Sixty Nine Thousand and One Hundred Ten only) should not be confiscated absolutely under Section 111(d), 111 (i) and 111(l) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962.

12. Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN, is hereby called upon to Show Cause to the Additional Commissioner/ Joint Commissioner of Customs, Customs(Preventive), Jamnagar having his office at Seema Shulk Bhawan, Jamnagar- Rajkot Highway, Near Victoria Bridge, Jamnagar within thirty days from the receipt of this Notice as to why:-

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

13. The above noticees are directed to submit their written reply, along with all supporting documents on which they rely in their support, to this notice to the adjudicating authority within 30 days from the date of receipt of this notice, failing which the case is liable to be adjudicated on the basis of evidences/documents available on record.

14. The noticees are further directed to submit in writing to the adjudicating authority stating clearly whether they desire to be heard in person or not. In case no such submission is made or in case they do not appear at the date and time fixed for the personal hearing, without sufficient cause, the case is liable to be decided ex-parte on the merit without further reference to them.

15. This notice is being issued under Section 124 of the Customs Act, 1962, without prejudice to any other action that may be taken against them or any

other person(s) etc., whether mentioned herein above or not, under the Customs Act, 1962 or any other law for the time being in force in India.

16. The department reserves right to add/ alter/ change/ charge etc. in this notice at any stage, before adjudication, on the basis of evidences available or evidences gathered later on.

17. The relied upon documents as listed in the Annexure-A to the Show Cause Notice are enclosed.

Encl: Annexure-A (RUDs as above)

10.04.24
Additional Commissioner

F. No. CUS/2003/2024-Adjn.

Date: 10.04.2024

To the Noticees (By Hand/Registered Post/Speed Post),

1. M/s. R C JAIN (GSTIN:27AFEPJ6310B1Z1), Ground Floor, Shop No 4, 16 HO Building, Anantawadi, Bhuleshwar, Mumbai, Maharashtra, 400002.
2. Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN, Ground Floor, Shop No 4, 16 HO Building, Anantawadi, Bhuleshwar, Mumbai, Maharashtra, 400002.

Copy to:

1. The Additional Commissioner of Customs (Prev.), Jamnagar.
2. The Deputy Commissioner (Prev.), Customs (Preventive) HQ, Jamnagar along with copy meant for the Noticees with a direction to serve the SCN along with RUDs to the above mentioned Noticees and submit dated acknowledgment to this office for record.
3. The Deputy Commissioner, Customs Division, Jamnagar for information and further necessary action please.
4. Guard File.

Annexure - A

List of the Relied Upon Documents (RUD) for the purpose of Show Cause Notice No. ADC-04/2024-25 dated 10.04.2024 issued to M/s. R C JAIN, Mumbai and other.

Sr. No. of RUD	Description of the Documents	Remarks
1	Copy of panchnama dated 04.10.2023	Copy enclosed
2	Certificate letter from Approved Valuer	Copy enclosed
3	Statement of Shri Parth Singh, Proprietor of M/s. Swaminarayan Parcel Services, Rajkot dated 06.10.2023	Copy enclosed
4	Statement of Shri Parth Singh, Proprietor of M/s. Swaminarayan Parcel Services, Rajkot dated 10.10.2023	Copy enclosed
5	Copy of Seizure Memo dated 16.10.2023	Copy enclosed
6	Statement of Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN dated 15.12.2023	Copy enclosed