



अपर आयुक्त कार्यालय
सीमा शुल्क भवन, अलथान भीमराड़ रोड, एसएमसी वार्ड ऑफिस के पास में, अलथान,
सूरत -395017
**OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE, ALTHAN BHIMRAD ROAD, NR. SMC WARD OFFICE,
ALTHAN, SURAT - 395017 Email-custechsurat@gov.in**

PREAMBLE

A	फाइल संख्या / File No.	F. No. GEN/ADJ/ADC/1216/2025-DIV-SRT-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस नं. और तारीख Show Cause Notice no. and date	F.No. VIII/26-11/AIU/CUS/2024-25 dated 22.05.2024
C	मूल आदेश संख्या / Order-In-Original No.	07/LD/ADC/SRT/2025-26
D	द्वारापारित आदेश /ORDER PASSED BY	Lokesh Damor अपर आयुक्त/Additional Commissioner सीमा शुल्क/Customs सूरत/Surat
E	आदेश तिथि / Date of Order	06.11.2025
F	जारी करने की तारीख /Date of Issue	06.11.2025
G	DIN	20251171MN0000713641

- जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।
1. This copy is granted free of charge for the private use of the person to whom it is issued.
- इस आदेश से अपने को व्यथित महसूस करनेवाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, 1962 के अंतर्गत फार्म सी. ए. 1 और 2 दी जानी चाहिए। इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।
2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.
- अपील के साथ निम्नलिखित चीजे संलग्न की जाए।
3. The following documents must be enclosed alongwith the appeal.
(क) अपील की प्रति, तथा (a) A copy of the appeal and
(ख) आदेश यह प्रतिया अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो।
(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

Brief Facts of the case:-

The Surat Police's Special Operations Group (SOG) had arrested 04 persons in connection with smuggling of approx 7.15 Kgs of Gold in Paste form through Surat International Airport on 28/29.04.2023. Accordingly, the DRI, Regional Unit, Surat vide letter dated 01.05.2023 requested the Commissioner of Police, Surat to share information viz Panchnama, Statements, FSL Data of seized mobiles, if any or any other relevant/necessary documents to enable DRI to initiate action against the said persons under the provisions of Customs Act, 1962.

2) The Police Inspector, Special Operations Group (SOG), Surat vide letter dated 06.05.2023 (Javak No 588/2023) **(RUD-01)** forwarded a copy of (i) Dumas Police Station First Information Report (FIR) No 11210006230213/2023 dated 29.04.2023, (ii) Panchnama dated 29.04.2023 and (iii) statements dated 29.04.2023 of 04 persons.

3) Based on specific intelligence, Surat Police's Special Operations Group (SOG) intercepted a Car Honda Civic GJ 03 BA 5838 near S K Nagar Chokdi, Surat which had picked up two passengers from the Surat Airport. The car had a total of 4 persons, 2 persons who had come to receive 2 other persons at the airport. On frisking all 04 persons, gold in Paste form was recovered from the 2 passengers who had been picked up from the airport - Shri Nirav Ramnikbhai Davariya (Passport Number W0681460) and Shri Fenil Rajeshbhai Mavani (Passport Number R4541560). **3576 grams** of Gold in Paste form was recovered from **Shri Nirav Ramnikbhai Davariya** and **3582 grams** of Gold in Paste form was recovered from **Shri Fenil Rajeshbhai Mavani**. Thus, a total of **7158 grams** of Gold in Paste form, valued at **Rs. 4,29,48,000/-** (Rs 6,000/- per gram) was recovered from both person by SOG, Surat. No Gold in any form was recovered from the two other persons in the car - Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya, who had gone to Surat International Airport to pick up Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani.

4) After completion of panchnama proceedings and recording of statement of all 04 persons, Surat Police's Special Operations Group (SOG) arrested all 04 persons under the provision of Section 420, 467, 468 and 120(b) of Indian Penal Code.

5) DRI, Regional Unit, Surat vide letter dated 25.05.2023 requested the Police Inspector, SOG, Surat City to provide a copy of (i) Valuation Report related to Gold paste seized during Panchnama dated 29.04.2023 (ii) Passport, Tickets and Boarding Pass of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani (iii) Identification Documents of all 04 accused, if available with his office and (iv) FSL Data of all mobiles seized during the investigation till date.

6) Police Inspector, Special Operations Group (SOG), Surat vide letter dated

25.05.2023 (Javak No 666/2023) **(RUD-02)** forwarded the Copy of (i) Valuation Report dated 29.04.2023 (ii) Passport, Tickets and Aadhar Card of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani (iii) Aadhar Card of Shri Sawan Shantilal Rakholiya.

7) Thereafter, DRI, Regional Unit, Surat moved an application before the Hon'ble Chief Judicial Magistrate, Surat requesting custody of all 04 persons so that action under the provisions of Customs Act, 1962 could be initiated in the case.

8) The Hon'ble Chief Judicial Magistrate, Surat vide Order dated 24.05.2023 **(RUD-03)** granted custody for 01 day for recording of the statement of all 04 persons and investigating the role of the person in smuggling of gold in paste form from Surat International Airport and directed to produce the said persons before the court without unnecessary delay after recording their statement. The custody of all 04 persons was taken from the Jailer (Under Trail), Lajpore Central Jail, Surat on 29.05.2023 by the officers of DRI, Regional Unit, Surat.

9) Summons dated 29.05.2023 was given to **Shri Fenil Rajeshbhai Mavani** for recording of his statement by officers of DRI, Regional Unit, Surat. Statement of **Shri Fenil Rajeshbhai Mavani**, Son of Rajeshbhai Mavani, Age-28 Years (D.O.B. 01-01-1995), residing at Flat No 201, Building No D-1, Shlok Residency, Utran, Surat (Mobile No. 9099990660/9737040693) was recorded on 29.05.2023 **(RUD-04)** under Section 108 of Customs Act, 1962 wherein he interalia stated that he holds Passport bearing no. R4541560; his bank accounts are maintained with Kotak Bank, Hira Baug and IndusInd Bank, Hira Baug; that he did not remember the account numbers of the same; that his e-mail id is fenilmavani1195@gmail.com; that he was living with his parents viz father Shri Rajeshbhai and mother Smt Vashaben, his wife Smt Komal Mavani and his son Shivay Mavani at the above mentioned premises since the past 06 years; that he was in the business of Photography and is having studio in the name of "Dot Touch Photo Studio" in Tulsi Arcade, Sudama Chowk, Mota Varachha. On perusal of the panchnama dated 29.04.2023 drawn by Police Sub Inspector, SOG, Surat City, he stated that the contents mentioned therein were true and correct. He also agreed with the recovery and subsequent seizure of gold in paste form from him and Shri Nirav Ramnikbhai Davariya; he stated that he and his friend Shri Nirav Ramnik Davariya boarded Air India Express Flight on 28.04.2023 from Sharjah International Airport and arrived in India (Surat) on the same day i.e 28.04.2023; that after collecting their luggage, they came out of the airport terminal and were received by Shri Umesh Rameshbhai Bhikadiya and Shri Sawan Shantilal Rakholiya at the parking area of the airport; that they sat in the car and when they were heading towards Varachha in the wee hours of 29.04.2023, the car was intercepted by SOG Police near S K Nagar Chokdi on Dumas Road at around 01.00 am; that during his physical search, pouches of gold paste were recovered from him as detailed below:-

- **02** pouches of Gold Paste weighing **248 Grams and 246 Grams** were

recovered from **Pocket of the Jeans** which he was wearing.

- **03** pouches of Gold Paste weighing **612 Grams, 609 Grams and 611 Grams** were recovered from his **underwear** which he was wearing.
- **02** pouches of Gold Paste weighing **625 Grams and 631 Grams** were recovered from his **shoes** which he was wearing.

9.1) The gold paste recovered from him from various parts is tabulated in Table-1 below:-

Table-1

Sr No	Description of Items he (Fenil) was wearing	No of Pouches	Weight (in Grams)
1	Pocket of Jeans	02	248
			246
2	Underwear	03	612
			609
			611
3	Shoes	02	625
			631
Total		07	3582

9.2) He agreed that **3582 gram of Gold Paste** was recovered from him from **07 different pouches by SOG Police** during panchnama proceedings.

9.3) On being asked regarding recovery of gold paste from Shri Nirav Ramnikbhai Davariya, he stated that he agreed that Gold Paste was recovered from pouches from Shri Nirav Ramnikbhai Davariya as detailed below:-

- **02** pouches of Gold Paste weighing **246 grams and 245 Grams** were recovered from **Pocket of the Jeans** which he (Nirav) was wearing.
- **03** pouches of Gold Paste weighing **609 Grams, 610 Grams and 615 Grams** were recovered from the **underwear** which Nirav was wearing.
- **02** pouches of Gold Paste weighing **625 Grams and 626 Grams** were recovered from the **shoes** which Nirav was wearing.

9.4) Summary of the gold paste recovered from Shri Nirav Ramnikbhai Davariya is tabulated in Table-2 below:-

Table-2

Sr No	Description of items worn by Shri Nirav Ramnikbhai Davariya	No of Pouches	Weight (in Grams)

1	Pocket of Jeans	02	246
			245
2	Underwear	03	609
			610
			615
3	Shoes	02	625
			626
Total		07	3576

9.5) He agreed that **3576 grams of Gold Paste** was recovered from **07 different pouches** from **Shri Nirav Ramnikbhai Davariya**.

9.6) He further agreed that **7158 Grams** of Gold Paste was recovered and seized during the panchnama proceedings dated 29.04.2023 drawn by SOG police, Surat; the valuation of the same was carried by assuming a rate of Rs.6,000/- per gram, totally **Rs.4,29,48,000/-**; he further agreed that no Gold Paste was recovered from Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya and in token of having seen, read, understood and agreed with the contents of the panchnama, he put his dated signature on the last page of the above said Panchnama.

9.7) On being asked the purpose of his visit to Dubai and on whose instructions he had made the visit, he stated that his friend, Shri Nirav Ramnikbhai Davariya, had informed him about the offer made by one of his (Shri Nirav Ramnikbhai Davariya) friends - Shri Sawan Shantilal Rakholiya, regarding an all expense paid trip to UAE (all expenses related to flight, hotel and exploring the country will be borne by one Shri Umesh Rameshbhai Bhikadiya who is a friend of Shri Sawan Shantilal Rakholiya) wherein on return they would have to smuggle/carry gold which would be handed over to them/him in Dubai by a person known to/working for Shri Umesh Rameshbhai Bhikadiya. He stated that Shri Nirav Ramnikbhai Davariya informed him that Shri Sawan Shantilal Rakholiya had said that they would not have to bear any charges and would be visiting UAE for free, so he, alongwith Shri Nirav Ramnikbhai Davariya, agreed to accept the lucrative offer; that he and his friend, Shri Nirav Ramnikbhai Davariya, were also to get extra Rs.15000 each, on giving gold to Shri Umesh Rameshbhai Bhikadiya in Surat.

9.8) Thereafter, Shri Umesh Rameshbhai Bhikadiya sent two Air India flight tickets, alongwith Visa, to his friend Shri Nirav Ramnikbhai Davariya on his whatsapp number on 23.04.2023. The tickets were booked for 8:00 AM on 24.04.2023 from Mumbai to Dubai.

9.9) On being asked how he reached Mumbai airport, he stated that the taxi was hired by Shri Umesh Rameshbhai Bhikadiya for Mumbai airport on 23.04.2023 and that he travelled in it to reach there; on being asked regarding payment of taxi charges, he stated that Shri Umesh Rameshbhai Bhikadiya had already paid the charges as it was arranged by him; on being asked regarding the stay at Dubai, he stated that Shri Nirav Ramnikbhai Davariya was co-

ordinating regarding the same and that he did not have exact knowledge about the same; that on reaching Dubai, they (he and his friend Shri Nirav Ramnikbhai Davariya) took Taxi to Hotel Wescott, Dubai, opposite to Al Ghubaiba Metro Station; that they stayed in Room No 208 of the hotel. He further stated that one person visited them and informed that Shri Parth Sharma has sent him to give them 1100 Dirhams (him and his friend Shri Nirav Ramnikbhai Davariya); that they (he and his friend Shri Nirav Ramnikbhai Davariya) used the 1100 Dirhams to visit nearby places and for food; that the same person (who gave them 1100 Dirham on 24.04.2023) visited them in the afternoon of 28.04.2023 and informed that Shri Parth Sharma had sent him and he gave an underwear to him and his friend Shri Nirav Ramnikbhai Davariya and instructed them to wear the same; that he also gave pouches of different sizes; that they (he and his friend Shri Nirav Ramnikbhai Davariya) were informed that Gold in paste form was packed in all pouches of different sizes as well as in the given underwear too; that they were informed that 03 pouches of Gold in paste form of different sizes were already stitched inside underwear before the same were given to them.

9.10) He stated that as per the instructions of the person sent by Shri Parth Sharma, they (he and his friend Shri Nirav Ramnikbhai Davariya) hid pouches of gold paste in their shoes and in the pocket of their Jeans pants; that the person sent by Shri Parth Sharma informed them that some Chemical was mixed with Gold and as a result of it, Gold Paste would not be detected by the metal detector or DMFD gate and that they can clear immigration security at airport easily; that they (he and his friend Shri Nirav Ramnikbhai Davariya) had hidden approx 3.5 Kgs of Gold Paste each on their body viz Underwear, Shoes and Pockets of Jeans pants; that the same person of Shri Parth Sharma dropped them at Sharjah airport in his car on 28.04.2023; that he and his friend Shri Nirav Ramnikbhai Davariya travelled on different PNRs; that PNR of his ticket was UZYTQ; that he did not know the PNR of his friend Shri Nirav Ramnikbhai Davariya's ticket; that they (he and his friend Shri Nirav Ramnikbhai Davariya) came to India via Air India Flight IX 172 from Sharjah to Surat on 28.04.2023; that as per plan Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya came to pick them from Surat International Airport in a car; that Surat Police's SOG stopped their car near S K Nagar Chokdi and on frisking, gold paste was found from him and his friend Shri Nirav Ramnikbhai Davariya; that they were supposed to give gold to Shri Umesh Rameshbhai Bhikadiya, friend of Shri Sawan Shantilal Rakholiya; that he did not have any knowledge to whom he (Shri Umesh Rameshbhai Bhikadiya) was going to hand over the said gold paste further; that he had visited Sri Lanka 02 months ago for pre wedding shoot and he had also visited Thailand 1.5 years ago.

9.11) On being asked whether, he had declared the gold paste brought by him before Customs authorities at Surat International airport, he stated that they have not declared the said gold paste before Customs authorities at Surat International Airport as pre-decided by him, Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya.

9.12) On being asked regarding knowledge of gold paste in pouches, he stated that he had knowledge that gold was there in the pouches in the form of paste as per the offer given by Shri Umesh Rameshbhai Bhikadiya that they have to bring gold from Dubai in lieu of free expenses of Dubai trip; that he had knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities is an offence under Customs Act, 1962.

10) Summons dated 29.05.2023 was given to **Shri Nirav Ramnikbhai Davariya** for recording of his statement by the officers DRI, Regional Unit, Surat. Statement of **Shri Nirav Ramnikbhai Davariya**, Son of Ramnikbhai Davariya, Age-26 Years (D.O.B 18-09-1996), residing at Flat No D-302, Gokuldharm Society, Abraham Road, Mota Varachha, Surat (Mobile No. 9924614092) was recorded on 29.05.2023 (**RUD-05**) under Section 108 of Customs Act, 1962 wherein he interalia stated that he holds Passport bearing no. W0681460; that his bank account is maintained with IndusInd Bank, Hira Baug Branch and Axis Bank, Sudama Chowk Branch and that he does not remember the account number; that his e-mail id is davariyanirav@gmail.com; that he is living with his wife Smt Niraliben and his elder brother Shri Kirtibhai on a rented premises since the past 03-04 years; that he was doing a job in Diamond Firm "M/s Arya Impex" having office premises at Mini Bazaar, Varachha, which was involved in Diamond trading business; that he was getting salary of Rs 25,000 per month. On perusal of panchnama dated 29.04.2023 drawn by Police Sub Inspector, SOG, Surat City, he stated that the contents mentioned therein are true and correct; he also agreed with the seizure of the Gold in paste form from him and Shri Fenil Rajeshbhai Mavani. He stated that he and Shri Fenil Rajeshbhai Mavani boarded Air India Express Flight on 28.04.2023 from Sharjah International Airport and arrived in India (Surat) on 28.04.2023; that after collecting their luggage they came out of the airport terminal where they were received by Shri Umesh Rameshbhai Bhikadiya and Shri Sawan Shantilal Rakholiya in parking area at the airport; that they then sat in the car and when they were heading towards Varachha in car on 29.04.2023, the car was intercepted by SOG Police near S K Nagar Chokdi on Dumas Road at around 01.00 am; that during his physical search, Gold Paste was recovered in pouches from him as detailed below:-

- **02** pouches of Gold Paste weighing **246 Grams and 245 Grams** were recovered from **Pocket of the Jeans** which he was wearing.
- **03** pouches of Gold Paste weighing **609 Grams, 610 Grams and 615 Grams** were recovered from his **Underwear** which he was wearing.
- **02** pouches of Gold Paste weighing **625 Grams and 626 Grams** were recovered from his **shoes** which he was wearing.

10.1) The gold paste recovered from him from various parts is tabulated in **Table-2** in **Para 9.4** above. He agreed that **3576 Grams** of Gold Paste was recovered from him from **07 different pouches** by SOG Police during

panchnama proceedings.

10.2) He also agreed that Gold Paste was recovered from pouches from Shri Fenil Rajeshbhai Mavani as detailed below:-

- **02** pouches of Gold Paste weighing **248 Grams and 246 Grams** were recovered from **Pocket of the Jeans** which he was wearing.
- **03** pouches of Gold Paste weighing **612 Grams, 609 Grams and 611 Grams** were recovered from his **underwear** which he was wearing.
- **02** pouches of Gold Paste weighing **625 Grams and 631 Grams** were recovered from his **shoes** which he was wearing.

10.3) The gold paste recovered from **Shri Fenil Rajeshbhai Mavani** from various parts is tabulated in **Table-1** in **Para 9.1** above. He agreed that **3582 Grams** of Gold Paste was recovered from **07** different pouches from **Shri Fenil Rajeshbhai Mavani**.

10.4) He further agreed that **7158 Grams** of Gold Paste was recovered and seized during the panchnama proceedings; the valuation of the same was carried by assuming rate of Rs.6,000/- per gram, totalling to **Rs.4,29,48,000/-**; he further agreed that no Gold Paste was recovered from Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya and in token of having seen, read, understood and agreed with the contents of the panchnama, he put his dated signature on the last page of the above said Panchnama.

10.5) On being asked why he had visited Dubai and on whose instructions, he stated that his friend Shri Sawan Shantilal Rakholiya informed him that he could get an all expense paid trip to UAE (all expense related to flight, hotel and exploring the country will be borne by his friend Shri Umesh Rameshbhai Bhikadiya) if he agreed to smuggle/carry gold on his return to India, which would be handed over to him in Dubai by a person known to Shri Umesh Rameshbhai Bhikadiya.

10.6) He stated that his friend Shri Sawan Shantilal Rakholiya also informed that he would not have to bear any charges and would get to visit UAE for free, so he agreed with this lucrative offer; that he informed about this offer to his friend Shri Fenil Rajeshbhai Mavani who also agreed to accept the offer; that Shri Umesh Rameshbhai Bhikadiya sent him, on 23.04.2023, on his whatsapp number, two flight tickets of Air India flight from Mumbai to Dubai scheduled to fly on 24.04.2023 in the morning around 8:00 AM, alongwith Visa. On being asked how he reached Mumbai airport, he stated that a taxi was hired by Shri Umesh Rameshbhai Bhikadiya for Mumbai airport on 23.04.2023 and that he travelled in it to reach there; on being asked regarding payment of taxi charges, he stated that Shri Umesh Rameshbhai Bhikadiya had already paid the charges as it was arranged by him. On being asked regarding his stay at Dubai, he

stated that, as directed by Shri Umesh Rameshbhai Bhikadiya, Shri Parth Sharma (+91-9157925125) had sent the details of their hotel stay at Dubai by whatsapp message on his mobile; that on reaching Dubai, they (he and his friend Shri Fenil Rajeshbhai Mavani) took a taxi to Hotel Wescott, Dubai, opposite Al Ghubaiba Metro Station where they stayed in Room No 208 of the Hotel.

10.7) He stated that one person visited them and informed that Shri Parth Sharma has sent him to give them 1100 Dirhams (he and his friend Shri Fenil Rajeshbhai Mavani); that they (he and his friend Shri Fenil Rajeshbhai Mavani) used 1100 Dirhams to visit nearby places and food; that in the afternoon of 28.04.2023, the same person visited them (who had given them 1100 Dirham on 24.04.2023) and informed that Shri Parth Sharma had sent him; that he gave an underwear each to him and his friend Shri Fenil Rajeshbhai Mavani and instructed them to wear the same during the return journey to India; that he also gave pouches of different sizes.

10.8) He stated that the said person informed him and his friend, Shri Fenil Rajeshbhai Mavani, that Gold in paste form was packed in pouches of different sizes as well as in the underwear handed over to them; that 03 pouches of gold in paste form of different sizes were already stitched inside the underwear before the same were given to them. He stated that as instructed by the person sent by Shri Parth Sharma, they (he and his friend Shri Fenil Rajeshbhai Mavani) hid pouches of gold paste in Shoes and pocket of Jeans. He further stated that the same person sent by Shri Parth Sharma informed that a Chemical was mixed with Gold and as a result of it, gold paste would not be detected by the metal detector or DMFD gate and they could clear immigration security at airport easily; they (he and his friend Shri Fenil Rajeshbhai Mavani) had hidden **approx 3.5 Kgs** of Gold Paste each on their body viz **Underwear, Shoes and Pocket of Jeans**; that the same person sent by Shri Parth Sharma dropped them at Sharjah airport in his car on 28.04.2023; that he and his friend Shri Fenil Rajeshbhai Mavani travelled on different PNRs; that the PNR of his ticket was L8FZ7X; that he did not know the PNR of his friend Shri Fenil Rajeshbhai Mavani's ticket.

10.9) He stated that they (he and his friend Shri Fenil Rajeshbhai Mavani) came to India via Air India Flight IX 172 from Sharjah to Surat on 28.04.2023; as it was pre decided, Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya had come to pick them up from Surat International Airport in a car; Surat Police's SOG stopped their car near S K Nagar Chokdi and on frisking, gold paste was found from him and his friend Shri Fenil Rajeshbhai Mavani; that they were supposed to handover gold to Shri Umesh Rameshbhai Bhikadiya, friend of Shri Sawan Shantilal Rakholiya; that he did not have any knowledge to whom Shri Umesh Rameshbhai Bhikadiya was going to hand over the gold paste further.

10.10) He stated that he had visited Dubai on one more occasion in the past for the same purpose; that he and Shri Sawan Shantilal Rakholiya travelled to UAE from Surat on 16.02.2023; that he came back to India (Surat)

on 22.02.2023 from UAE and Shri Sawan Shantilal Rakholiya came back to India (Surat) on 19.02.2023 from UAE; that he and Shri Sawan Shantilal Rakholiya had not smuggled gold in paste form in the month of Feb 2023; that there was a plan to smuggle gold in paste form but the same was cancelled as some case was booked at Surat International Airport.

10.11) On being asked whether he had declared the gold paste brought by him before Customs authorities at Surat International airport, he stated that they had not declared the said gold paste before Customs authorities at Surat International airport as it was pre-decided by him, Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya. On being asked regarding knowledge of gold in form of gold paste in pouches, he stated that he had knowledge that gold was there in the pouches in form of gold paste as it was mentioned in the offer given by Shri Umesh Bhikahriya and that they have to bring gold from Dubai in lieu of all expenses paid trip of Dubai and cash of Rs 15,000/-; that he had knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities is an offence under Customs Act, 1962.

11) Summons dated 29.05.2023 was given to **Shri Sawan Shantilal Rakholiya** for recording of his statement by the officers of DRI, Regional Unit, Surat. Statement of **Shri Sawan Shantilal Rakholiya**, Son of Shantilal Rakholiya, Age-29 Years (D.O.B 10-06-1993), residing at Flat No 204, Building No J, Shripad Avenue, Yogi Chowk, Sarthana, Surat was recorded on 29.05.2023 (**RUD-06**) under Section 108 of Customs Act, 1962 wherein he interalia stated that he holds Passport bearing no. S5648475; his bank account is maintained with Varachha Co Oeprative Bank and he did not remember the account number of the same; that his e-mail id is sawanrakholiya123@gmail.com; that he is living with his wife Smt Nisha and his son Nakshtra; that he was in the business of Carting (Reti) near Bodli Village, Near Karjan. On perusal of panchnama dated 29.04.2023 drawn by Police Sub Inspector, SOG, Surat City, he stated that the contents mentioned therein are true and correct; that he also agreed with the seizure of the Gold in paste form from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani;

11.1) He agreed that Gold Paste was recovered in pouches from Shri Nirav Ramnikbhai Davariya as detailed in **Para 9.3** and details tabulated in **Table-2** in **Para 9.4** above; that **3576 Grams** of Gold Paste was recovered from **07** different pouches from **Shri Nirav Ramnikbhai Davariya**.

11.2) He also agreed that Gold Paste was recovered from **Shri Fenil Rajeshbhai Mavani** as detailed in **Para 9** and details tabulated in **Table-1** in **Para 9.1** above; that total **3582 Grams** of Gold Paste was recovered from **07** different pouches from **Shri Fenil Rajeshbhai Mavani**.

11.3) He agreed that **7158 Grams** of Gold Paste was recovered and seized during the panchnama proceedings; that valuation of the same was carried out by assuming Rs.6,000/- per grams, totally amounting to

Rs.4,29,48,000/-; he agreed that no Gold Paste was recovered from him and Shri Umesh Rameshbhai Bhikadiya and in token of having seen, read, understood and agreed, he put his dated signature on the last page of the above said Panchnama.

11.4) He stated that approx. 04 months ago, he met Shri Umesh Rameshbhai Bhikadiya near a Pan Shop where he had gone for smoking; that he had requested Shri Umesh Rameshbhai Bhikadiya that he was in need of money as he had incurred loss in his business, and that he also required the money for the operation of his mother; that he also required money for the delivery of his 1st child which was due too; that he requested Shri Umesh Rameshbhai Bhikadiya to lend him money for a few months; that Shri Umesh Rameshbhai Bhikadiya informed him to arrange for persons who have a passport and who would agree to travel to UAE and carry/smuggle Gold for him (Umesh) from there and in return he (Umesh) would give him Rs.10000/- for each person; that Shri Umesh Rameshbhai Bhikadiya informed that all arrangement related to Flight Tickets, Hotel Stay, Food etc would be borne by him and extra money would also be given to them; that Shri Umesh Rameshbhai Bhikadiya informed that in return, they would have to bring/carry/smuggle Gold handed over to them by someone known to him (Shri Umesh Rameshbhai Bhikadiya) in Dubai; that he had travelled outside India twice; that he had travelled to UAE both times, once in Dec 2022 and another time in Feb 2023; that he and Shri Nirav Ramnikbhai Davariya had gone to UAE together in the month of Feb 2023 from Surat; that he had come back to India (Surat) 2-3 days earlier than Shri Nirav Ramnikbhai Davariya; that he and Shri Nirav Ramnikbhai Davariya travelled to UAE from Surat on 16.02.2023; that Shri Nirav Ramnikbhai Davariya came back to India (Surat) on 22.02.2023 from UAE and he came back to India (Surat) on 19.02.2023 from UAE; that he and Shri Nirav Ramnikbhai Davariya had not smuggled gold in paste form in the month of Feb 2023; that there was a plan to smuggle gold in paste form at that time but the same was cancelled as some case was booked at Surat International Airport; that he had gone to his sister Smt Kajalben Hiteshbhai Kotadiya's place in the month of Dec 2022 in search of a job in Dubai.

11.5) He stated that he again offered Shri Nirav Ramnikbhai Davariya to visit Dubai for the same purpose i.e. smuggling of gold paste from Dubai without declaring before Customs authorities at Surat International Airport (which they could not execute in Feb 2023) and that Shri Nirav Ramnikbhai Davariya agreed; that he also asked him to arrange for another person who could visit Dubai along with him for the same purpose; that after enquiring, he suggested the name of his friend Shri Fenil Rajeshbhai Mavani; that Shri Fenil Rajeshbhai Mavani agreed to accept the lucrative offer and that he informed regarding the same to Shri Umesh Rameshbhai Bhikadiya.

11.6) He further stated that Shri Umesh Rameshbhai Bhikadiya already had the contact details of Shri Nirav Ramnikbhai Davariya as he had visited Dubai once earlier alongwith him in Feb 2023; that Shri Umesh Rameshbhai Bhikadiya co-ordinated with Shri Nirav Ramnikbhai Davariya regarding Flight Tickets and Visa as they also knew each other; that he and Shri Umesh

Rameshbhai Bhikadiya went to Surat International Airport on 28.04.2023 to pick up Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani as they were coming back to Surat from Sharjah; that he and Shri Umesh Rameshbhai Bhikadiya had gone to Surat International Airport in the car (Honda Civic GJ 03 BA 5838) belonging to his cousin brother (his wife's sister's husband) Shri Pradeepbhai Pansuriya; that he was using this car from past 03-04 months.

11.7) He further stated that on arrival of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani, they got into the car and all 04 were moving towards Varachha and Shri Umesh Rameshbhai Bhikadiya was driving the car; that he was sitting beside him; that Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani were sitting in the back seat; that Surat Police's SOG stopped their car near S K Nagar Chokdi and on frisking, gold paste was found from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani; that nothing was found from him and Shri Umesh Rameshbhai Bhikadiya; that for arranging passengers to visit Dubai and bring gold from there, Shri Umesh Rameshbhai Bhikadiya has offered him Rs.10,000/- per person. He further stated that till date he had not received any incentive; that he does not know any person by the name of Shri Parth Sharma; that he had never met any person by the name Shri Parth Sharma; that he had knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962.

12) Summons dated 29.05.2023 was given to **Shri Umesh Rameshbhai Bhikadiya** for recording of his statement by the officers of DRI, Regional Unit, Surat. Statement of **Shri Umesh Rameshbhai Bhikadiya**, son of Rameshbhai Bhikadiya, Age-33 Years (D.O.B 10.05.1989), residing at Flat No 802, Ravi Building, Rajhans Swapna, Near Sarthana Jakatnaka, Sarthana, Surat was recorded on 29.05.2023 (**RUD-07**) under Section 108 of Customs Act, 1962 wherein he interalia stated that he holds Passport bearing no. K5590505; his bank account is maintained with Equitas Bank, Hirabagh Branch and Kotak Bank, Sarthana Jakatnaka Branch and account numbers of which he does not remember; that his e-mail id was umeshbhikadiya@gmail.com; that he was living with his parents viz father Shri Rameshbhai Narshibhai Bhikadiya and mother Smt Rasilaben Bhikadiya, his brother Shri Chetanbhai Bhikadiya and his wife Smt Asmitaben Bhikadiya, his wife Smt Hardika Bhikadiya and their Son Nityam from last 05 years at the above said address; that the said premises was owned by Smt Asmitaben Bhikadiya; that he was doing business in the name of Bapa Sitaram Laser at Khata No 32, Valinath Society, Kapodra, Surat which was involved in laser art on wood and acrylic raw materials. On perusal of panchnama dated 29.04.2023 drawn by Police Sub Inspector, SOG, Surat City, he stated that the contents mentioned therein are true and correct. He also agreed with the seizure of the Gold in paste form Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani.

12.1) He also agreed that Gold Paste was recovered in pouches from **Shri Nirav Ramnikbhai Davariya** as detailed in **Para 9.3** and details tabulated in **Table-2** in **Para 9.4** above; that **3576 Grams** of Gold Paste was recovered from

07 different pouches from **Shri Nirav Ramnikbhai Davariya**.

12.2) He also agreed that Gold Paste was also recovered in pouches from **Shri Fenil Rajeshbhai Mavani** as detailed in **Para 9** and details tabulated in **Table-1** in **Para 9.1** above; that **3582 Grams** of Gold Paste was recovered from **07** different pouches from **Shri Fenil Rajeshbhai Mavani**.

12.3) He agreed that **7158 Grams** of Gold Paste was recovered and seized during the panchnama proceedings; that the valuation of the same was carried out by assuming Rs.6,000/- per gram, totally amounting to **Rs.4,29,48,000/-**. On being asked regarding the owner of Gold Paste, he stated that the said Gold Paste was being brought/smuggled on the directions of Shri Parth Sharma and in token of having seen, read, understood and agreed on its contents, he put his dated signature on the last page of the above said Panchnama.

12.4) He agreed that no Gold Paste was recovered from him and Shri Sawan Shantilal Rakholiya by SOG, Surat; that both his phones of Samsung and Oppo brand were seized by SOG, Surat. On being asked regarding Shri Parth Sharma, he stated that the real name of Shri Parth Sharma was Shri Baldev Mansukhbhai Sakhreliya who was his elder brother-in-law residing at A-103, Kaveri Habitat, Sarthana Surat.

12.5) On being asked regarding involvement in smuggling of gold paste, he stated that he had met Shri Baldev Mansukhbhai Sakhreliya (Mobile No.9601347698, 9316270283) 5-6 months ago in Mahidharpura for some work; that Shri Baldev Mansukhbhai Sakhreliya informed him that some gold had to be brought/smuggled from Dubai for which passengers/carriers were required and his work would be to drop and receive the passengers to and from Surat Airport; that Shri Baldev Mansukhbhai Sakhreliya asked him to provide the details of known persons who possess passport and that he would arrange tour for them to Dubai on his (Shri Baldev) expense; that Shri Baldev Mansukhbhai Sakhreliya further informed him that all arrangement related to Flight Tickets, Hotel Stay, Food etc would be borne by him and that money would also be given to them and in return, they would have to bring Gold handed over by Shri Baldev Mansukhbhai Sakhreliya himself or by a person working for him in Dubai.

12.6) He stated that Shri Baldev Mansukhbhai Sakhreliya asked him to arrange a person who has a passport and that in return Baldev Mansukhbhai Sakhreliya would give him Rs.25,000/- for each person; that Shri Baldev Mansukhbhai Sakhreliya had asked him not to reveal his name in front of any carier and introduce him as "Parth Sharma" instead of Shri Baldev Mansukhbhai Sakhreliya.

12.7) He stated that approx. 04 months ago, he met Shri Sawan Shantilal Rakholiya near a Pan Shop where he had gone for smoking; that Shri Sawan Shantilal Rakholiya had told him that he was in need of money and requested him to lend money for a few months; that he then informed Shri

Sawan Shantilal Rakholiya that there was one person by name Shri Parth Sharma (Real Name - Shri Baldev Mansukhbhai Sakhreliya) who requires persons having a passport to travel to UAE and bring back/carry back Gold for him (Shri Parth Sharma alias Shri Baldev Mansukhbhai Sakhreliya) and that in return Shri Sawan Shantilal Rakholiya would get Rs.10,000/- for each person such person that he arranged; that all arrangement related to Flight Tickets, Hotel Stay, Food etc would be borne by Shri Parth Sharma (Real Name- Shri Baldev Mansukhbhai Sakhreliya) and that some money would also be given to the passengers, for bringing Gold given by a person working for Shri Baldev Mansukhbhai Sakhreliya in Dubai.

12.8) He stated that Shri Sawan Shantilal Rakholiya informed about his friend Shri Nirav Ramnikbhai Davariya and both (Shri Sawan and Shri Nirav) visited Dubai in the month of Feb 2023 and all their expenses were borne by Shri Baldev Mansukhbhai Sakhreliya; that both returned separately by different flights and neither of them had carried Gold or Gold paste.

12.9) He stated that thereafter, in the month of April, when Shri Baldev Mansukhbhai Sakhreliya asked him to arrange a person for Dubai, he asked Shri Nirav Davariya, who agreed and asked him to arrange for one more person and he suggested the name of his friend, Shri Fenil Rajeshbhai Mavani; that both Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani agreed to accept the lucrative offer and were ready to go to UAE; that he used to contact Shri Baldev Mansukhbhai Sakhreliya on his whatsapp number +91-9157925125; that Shri Parth Sharma (Real Name - Shri Baldev Mansukhbhai Sakhreliya) had made all arrangements related to Flight Tickets, Hotel Stay, Food etc.; that Shri Baldev Mansukhbhai Sakhreliya had directed him to hand over gold to Shri Vicky a.k.a Shri Vishal having (mobile number +85254859479) after receiving the same in Surat from both Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani; that he had also talked with Shri Vicky (+85254859479) on whatsapp and had informed him to meet him (Shri Vicky) when Gold is received by him in Surat.

12.10) On being asked regarding the profession/job details of Shri Vicky, he stated that Shri Vicky has a shop on the third floor in New DTC Market, Mahidharpura. On being asked regarding the residence of Shri Vicky, he stated that he does not know about the residence of Shri Vicky. He further stated that he and Shri Sawan Shantilal Rakholiya went to Surat International Airport on 28.04.2023 to pick up Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani as they were coming back to Surat from Sharjah; that he and Shri Sawan Shantilal Rakholiya had gone to Surat International Airport in the Car Honda Civic GJ 03 BA 5838 which belonged to the relative of Shri Sawan Shantilal Rakholiya; that on arrival of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani, all 04 of them were moving towards their home and that he was driving the car; that Shri Sawan Shantilal Rakholiya was sitting beside him; that Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani were sitting in the back seats; that gold paste was found from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani and nothing was found from him and Shri Sawan Shantilal Rakholiya;

12.11) On being asked regarding the declaration of gold paste by both Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya, he stated that Shri Baldev had informed that they converted gold into paste by mixing a chemical, so that it cannot be detected by metal detector or DMFD gate and hence, they were not required to declare it before Customs authorities at Surat International Airport and also instructed to conceal the same on their body at pre-decided places.

12.12) He said that he had knowledge that bringing gold from foreign countries without declaring before Customs Authorities and dealing with such goods is an offence under Customs Act, 1962; that he had travelled outside India twice; that he had travelled to UAE both the times - once in April 2021 and another time in Nov 2021; that he had not smuggled gold at the time of travel.

12.13) On being asked regarding the other person involved he stated that he does not know about any other person's involvement but there was a person named DM a.k.a Shri Dilip who contacts and drops/receives the passengers at Dubai Airport in the absence of Shri Baldev Mansukhbhai Sakhreliya. He was shown statement dated 29.05.2023 of Shri Fenil Rajeshbhai Mavani, Shri Nirav Ramnikbhai Davariya & Shri Sawan Shantilal Rakholiya and on the perusal of the same and agreeing with the same, he put his dated signature on last page of the statements.

13) As per the findings of the investigation until then, all 04 persons viz **(i)** Shri Fenil Rajeshbhai Mavani (Passport Number R4541560) **(ii)** Shri Nirav Ramnikbhai Davariya (Passport Number W0681460) **(iii)** Shri Sawan Shantilal Rakholiya and **(iv)** Shri Umesh Rameshbhai Bhikadiya were arrested on 29.05.2023 **(RUD-08)** by the officers DRI, Regional Unit, Surat under Section 104 of Customs Act, 1962 and produced before the Hon'ble Chief Judicial Magistrate, Surat after following due procedure and all 04 persons were sent to judicial custody by the Hon'ble CJM, Surat.

14) Further, DRI, Regional Unit, Surat further learnt that Surat Police's Special Operations Group (SOG) had arrested 01 more person viz. Shri Vishal Dhirubhai Gabani in connection to smuggling of approx 7.15 Kgs of Gold Paste through Surat International Airport. Following which DRI, Regional Unit, Surat moved an application before the Hon'ble Chief Judicial Magistrate, Surat requesting custody of Shri Vishal Dhirubhai Gabani in order to enable DRI, Regional Unit, Surat to record his statement under Section 108 of Customs Act, 1962 and initiate action under the provisions of Customs Act, 1962. Hon'ble Chief Judicial Magistrate, Surat granted custody for recording of the statement of Shri Vishal Dhirubhai Gabani. Accordingly, the custody of Shri Vishal Dhirubhai Gabani was taken from the Jailer (Under Trail), Lajpore Central Jail, Surat on 27.07.2023 by the officers of DRI, Regional Unit, Surat.

15) Summons dated 27.07.2023 was given to **Shri Vishal Dhirubhai Gabani** for recording of his statement by the officers of DRI, Regional Unit,

Surat. Statement of **Shri Vishal Dhirubhai Gabani**, Son of Shri Dhirubhai Gabani, Age-34 Years (D.O.B. 23-12-1989), residing at House No 71, Shreeji Society, Near Dabholi Circle, Singanpore, Surat (Mobile No. 9712910910/+85254859479) (Lodged in Lajpore Central Jail, Surat) was recorded on 27/28.07.2023 (**RUD-09**) under Section 108 of the Customs Act, 1962 wherein he interalia stated that he is also known by the name "Vicky" in the society; that he holds Passport bearing no U8323654 and PAN Card bearing no ASHPG3376N; that his savings bank account was maintained with Bank of India, Bhagal Branch, Surat and that he does not remember the account number of the same; that his e-mail id is vishal.gabani23@gmail.com; that he was living with his Parents viz father Shri Dhirubhai Gabani and mother Smt Geetaben Gabani, his wife Smt Shilpa Gabani, his Son Master Akshar Gabani (08 years) and his daughter Miss Shamrathi Gabani (06 Months) at the above mentioned premises since the past 14-15 years; that the residential premises was owned by his father Shri Dhirubhai Gabani; that his parents were living their retired life; that he has 01 elder Brother Shri Kalpesh Gabani who was working in a Diamond Firm situated in Mahidharpura, Surat and was staying at House No 5, Radhika Society, Opp Cancer Hospital, Ved Road, Katargam, Surat alongwith his wife Smt Saritaben Gabani, his 01 elder daughter Miss Trushti Gabani and his 01 younger son Master Kushal Gabani; that he has 01 elder sister Smt Kajalben who is married to Shri Sumitbhai Bhingradiya and they are staying at Nilkanth Sky, Chapra Batha, Amroli, Surat. Shri Sumitbhai Bhingradiya is doing business related to embroidery/textile.

15.1) He stated that he got married to Smt Shilpa Munjani in the Year 2012; his father-in-law was Shri Himmatbhai Munjani and he was living in Laxmiwadi Society, Ved Gurukul Road, Katargam, Surat and was basically from Village Parwala, Taluka Umralla, District Bhavnagar, Gujarat; that he does not have any immovable property in his name; that he has movable property i.e. Hero Honda splendor having registration number GJ-05-BM-0132 in his name; that he was running a business of embroidery machine in name of "Radhika Fashion" from Shree Ram Industrial, Bhari Mata Road, Pandol, Katargam, Surat. On being asked regarding the office premises in New DTC Market, Mahidharpura, he stated that he does not have any office premises in New DTC Market; that he had started a firm in the name of "Vishal General Trading LLC" 03-04 months ago in UAE from 310, Al Shamal Building, Deira, Dubai, UAE for trading of finished goods such as burkha, saree, dress etc; that approx. 04 months ago, he met Shri Umesh Rameshbhai Bhikhadiya in Surat and they exchanged mobile number and remained in contact with each other through whatsapp; that Shri Umesh Rameshbhai Bhikhadiya introduced him to Shri Baldev Manshukbhai Sakhereliya having contact number +91-9157925125, who resided at A-103, Kaveri Habitat, Sarthana, Surat; that Shri Baldev Manshukbhai Sakhereliya informed him that he was engaged in buying Gold from UAE and smuggling the same into India without declaring the same before the Customs Authorities and selling the smuggled Gold in India; that Shri Baldev Manshukbhai Sakhereliya offered to join his business at a commission of 3-4% of the amount lent by him for purchase of gold; that on arriving in Surat from UAE in the month of April, 2023, Shri Baldev Manshukbhai Sakhereliya informed him that he (Shri Baldev) was sending a few persons to UAE and asked

him (Shri Vishal) to give money to Shri Dilipbhai alias D.M. in UAE as per his capacity; that he made a whatsapp call to Shri Dilipbhai alias D.M. and informed him to arrange around 2,75,000 Dirhams in UAE. On being asked regarding the mode of sending money to Shri Dilipbhai alias D. M., he stated that Shri Dilipbhai alias D. M asked him to give equivalent amount in Indian Rupees to a person working for him in India; that the said person (who was sent by Shri Dilipbhai) approached him and collected the said amount and he gave money to him after confirming with Shri Dilipbhai alias D.M. on whatsapp number and he did not know the name or mobile number of the person sent by Shri Dilipbhai alias D. M.

15.2) On being asked regarding how he came in contact with Shri Dilipbhai alias D.M., he stated that he visited Dubai in the month of January-2023 during the process of setting up of his company in Dubai and met him (Shri Dilip) in UAE; that Shri Dilipbhai alias D.M. had bought Gold from 2,75,000 Dirhams in UAE for Shri Baldev Sakhreliya. On being asked regarding providing money to Shri Dilipbhai alias D.M. in past, he stated that he had not given any money to Shri Dilipbhai alias D.M. in the past. He was shown panchnama dated 29.04.2023 drawn by Police Sub Inspector, SOG, Surat City and he agreed with the seizure of the Gold in paste form from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani. On perusal of the same, he stated that **3576 grams** of Gold Paste was recovered from **07** different pouches from **Shri Nirav Ramnikbhai Davariya** and **3582 Grams** of Gold Paste was recovered from **07** different pouches from **Shri Fenil Rajeshbhai Mavani** and in token of having seen, read, understood and agreed with its contents, he put his dated signature on the last page of the above said Panchnama.

15.3) On being asked regarding all arrangement related to stay of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani in UAE, he stated that he did not have knowledge of the same. He was shown statement dated 29.05.2023 of Shri Umesh Rameshbhai Bhikadiya recorded under Section 108 of Customs Act, 1962 and on perusal of the same, he put his dated signature on the last page of the said statement. On being asked, he stated that he does not agree that Shri Baldev Mansukhbhai Sakhreliya had directed Shri Umesh Rameshbhai Bhikadiya to hand over gold to him after receiving the same from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani in Surat; that he went to China on 23rd April 2023 from Mumbai and he was not in India when Gold in paste form was seized by SOG, Surat City Police; that after completing his business related work in China, he went to Bangkok, Thailand where his family joined him on 04.05.2023; that his family came back to India on 18.05.2023 from Thailand and he went to UAE from Thailand; that he came back to India from UAE on 30.05.2023.

15.4) On being asked, he agreed that he received a call from Shri Umesh Rameshbhai Bhikadiya on his whatsapp number +85254859479; that he informed Shri Umesh Rameshbhai Bhikadiya to take directions from Shri Baldev Sakhreliya as he was in China; that he had knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962.

16) Based on the investigation thus far, **Shri Vishal Dhirubhai Gabani** was arested on 28.07.2023 (**RUD-10**) by the officers DRI, Regional Unit, Surat, under Section 104 of Customs Act, 1962 and produced before the Hon'ble Chief Judicial Magistrate, Surat after following due procedure and Shri Vishal Dhirubhai Gabani was sent to judicial custody by the Hon'ble CJM, Surat.

1 7) Summons dated 31.07.2023 was given to **Shri Shreyash Dineshbhai Chalodiya** for recording of his statement by the officers DRI, Regional Unit, Surat. Statement of **Shri Shreyash Dineshbhai Chalodiya**, Son of Dineshbhai Chalodiya, Age – 24 Years (D.O.B. 31.10.1998), residing at E-1202, Sanskriti Residency, Behind D Mart, Mota Varachha, Surat (Mobile No. 7600150060) was recorded on 01.08.2023 (**RUD-11**) under Section 108 of Customs Act, 1962 wherein he interalia stated that his PAN Card No. was BITPC3224J and his Aadhar Card No was 7274 4049 1804; that he has a savings account with Kotak Mahindra Bank, Kapodara Branch, Surat and Current Account (in the name of Keshav Tour) with HDFC Bank, Katargam Branch, Surat and that he does not remember account number of the same; that his personal e-mail id was shreyanshchalodiya@gmail.com and his firm's email id was shreekeshavtour@gmail.com; that he lives with his parents viz father Shri Dineshbhai Chalodiya and mother Smt Rekhaben Chalodiya and his elder brother Shri Ashish Chalodiya and his wife Smt Dikshita Chalodiya; that his residential premises was in the name of his father Shri Dineshbhai Chalodiya; that one person named Shri Parth Sharma having whatsapp number +91-9157925125 contacted him on whatsapp for flight ticket bookings in the month of Feb 2023; that Shri Parth Sharma informed that he was in Dubai and he enquired regarding price of flight tickets to and from UAE for various passengers; that thereafter, Shri Parth Sharma started getting flight tickets booked on a regular basis; that he used to get details of passengers from Shri Parth Sharma on whatsapp and he use to forward the flight tickets booked to Shri Parth Sharma on whatsapp; that he used to receive payment in Cash as well as in his HDFC Bank Account through various bank accounts; that he came to know in the month of March 2023 that Shri Parth Sharma's real name was Shri Baldev Sakhreliya; that he had received cash from Shri Umesh Rameshbhai Bhikhadiya once in the month of March 2023. On being asked regarding whatsapp chat between him and Shri Baldev Sakhreliya alias Shri Parth Sharma, he stated that since he was in the business of booking flight tickets, hotel bookings etc he had kept disappearing messages feature on in his whatsapp and therefore, no chats were available in his mobile as on date.

17.1) On being specifically asked regarding flight tickets of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani, he stated that he had booked tickets of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani for travelling from Bombay to Dubai via Air India Flight No AI 909 dated 24.04.2023 and also booked tickets of Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani for travelling from Sharjah to Surat via Air India Express Flight No IX 172 dated 28.04.2023; he produced copies of the above flight tickets booked by him through Makemytrip running from Page No 1 to 20

and put his dated signature of the first and last page of the same in token of its corectness. The details of the same are tabulated as under:-

Table-3

Sr No	Name of Passenger	Flight No	Flight Date	From/To	PNR
1	Shri Fenil Rajeshbhai Mavani	Air India Flight No. AI 909	24.04.2023	Bombay to Dubai	5QZXMS
2	Shri Nirav Ramnikbhai Davariya	Air India Flight No. AI 909	24.04.2023	Bombay to Dubai	5R3QXN
3	Shri Fenil Rajeshbhai Mavani	Air India Express Flight No. IX 172	28.04.2023	Sharjah to Surat	UZYTQI
4	Shri Nirav Ramnikbhai Davariya	Air India Express Flight No. IX 172	28.04.2023	Sharjah to Surat	L8FZ7X

17.2) On being asked, he stated that he had booked above said tickets on directions of Shri Baldev Sakhreliya alias Shri Parth Sharma.

18) An attempt was made to search the residential premies of Shri Baldev Sakhreliya viz A-103, Kaveri Habitat, V T Nagar Road, Sarthana, Surat by the officers of DRI, Regional Unit, Surat. A visit report dated 31.05.2023 **(RUD-12)** was prepared when it was learnt that the said residential premises was closed for the past 20 days.

19) Summons dated 01.06.2023 **(RUD-13)** were issued to Shri Baldev Sakhreliya to appear in person on 02.06.2023 for recording of the statement under the provisions of Customs Act, 1962 by the officers DRI, Regional Unit, Surat. Summons returned undelivered with the remark that the premises was closed.

20) Summons dated 08.08.2023 **(RUD-14)** were issued to Shri Baldev Sakhreliya to appear in person on 11.08.2023 for recording of the statement under the provisions of Customs Act, 1962 by the officers of DRI, Regional Unit, Surat. The summon was received at the residential premises of Shri Baldev Sakhreliya.

21) Summons dated 14.08.2023 **(RUD-15)** was issued to Shri Baldev Sakhreliya to appear in person on 21.08.2023 for recording of the statement under the provisions of Customs Act, 1962 by the officers DRI, Regional Unit, Surat.

22) It was later learnt that Surat Police's Special Operations Group (SOG) had arested 01 more person viz. Baldev Mansukhbhai Sakhreliya in connection with smuggling of approx 7.15 Kgs of Gold Paste through Surat International Airport. Therefore, DRI, Regional Unit, Surat moved an application before the Hon'ble Chief Judicial Magistrate, Surat requesting custody of Shri

Baldev Mansukhbhai Sakhreliya in order to enable DRI, Regional Unit, Surat to record his statement under Section 108 of the Customs Act, 1962. The Hon'ble Chief Judicial Magistrate, Surat granted custody for recording of the statement of Shri Baldev Mansukhbhai Sakhreliya. Accordingly, custody of Shri Baldev Mansukhbhai Sakhreliya was taken from the Jailer (Under Trail), Lajpore Central Jail, Surat on 27.03.2024 by the officers DRI, Regional Unit, Surat.

23) Summons dated 27.03.2024 was given to **Shri Baldev Mansukhbhai Sakhreliya** for recording of his statement by the officers of DRI, Regional Unit, Surat. Statement of **Shri Baldev Mansukhbhai Sakhreliya** (Mobile No. 9157925125, 9601347698, 8980383109, 9316270283), S/o Shri Mansukhbhai Sakhreliya, aged about 31 years (D.O.B. 11.09.1993), Proprietor of Khanak Export, Plot No.208, Ground Floor, Rang Avdhut Soc-1, Nr. Krishna Park, Puna-Saroli Road, Surat, residing at A-103, Kaveri Habitat, V T Nagar Road, Sarthana, Surat (Lodged in Lajpore Central Jail, Surat) was recorded on 27.03.2024 (**RUD-16**) under Section 108 of Customs Act, 1962 wherein he interalia stated that he is not known by any other name in the society, he has the knowledge of computers and that he can read, write and understand Hindi, English and Gujarati languages; that his personal e-mail id is baldevsakhreliya69@gmail.com; that he has one savings bank account A/c 724601000102 in ICICI Bank, Yogi Chowk Branch, Surat. On being asked, he stated that his father is Shri Mansukhbhai Sakhreliya (age- 58 years), mother Smt. Shardaben Mansukhbhai Sakhreliya (age- 57 years), wife is Smt. Hiral Baldev Sakhreliya (age- 28 years) and brother Shri Ankur Sakhreliya (age -27 years) and brother's wife is Smt. Bhumi Ankur Sakhreliya (age- 26 years). On being asked, he stated that he has a brother and 5 sisters and all are married.

23.1) On being asked, he stated that he holds passport no. V4529094 valid up to 21.12.2031, that his PAN Card having No. is EQTPS9819E and his Aadhar Card No. is 8355 9600 6588. On being asked, he stated that he was born in 1993 in Amreli district and studied BCA from Saurashtra University; that in 2014, he moved to Surat from Amreli and started as a free lancer in diamond industry in Surat and from 2016 to 2018, he worked as a broker in Textile Industry in Surat. He said that from 2018, he started his proprietorship firm in the name of M/s Khanak Export, (GSTIN. 24EQTPS9819E1Z2), Plot No. 208, Ground Floor, Rang Avdhut Soc-1, Nr. Krishna Park, Puna-Saroli Road, Surat, Gujarat, 395010, which is engaged in the export of textile material to M/s Grand Hills General Trading LLC Dubai.

23.2) On being asked, he stated that he used to visit Dubai frequently as he is working as Manager in Dubai based firm M/s Grand Hills General Trading LLC, Dubai and he has applied for Manager Visa of the said firm of Dubai. When asked about the firm of Dubai he stated that one Indian person Shri Nilesh Borad is a Partner of the said firm and the second partner is a Dubai citizen. On being asked regarding address of M/s Grand Hills General Trading LLC, Dubai, he stated that the address of M/s Grand Hills General Trading LLC, Dubai is Shop No. 8, Bahareni Building, Nearby Sia Mosque, Meena Bazar, Bur Dubai.

23.3) On being asked regarding the reason for not appearing before DRI Surat in spite of several summons dated 01.06.2023, 08.08.2023 & 18.08.2023 issued, he stated that he received the summons but could not to comply with the same as he was in Dubai. Further, Shri Baldev Mansukhbhai Sakhreliya was asked to peruse the statement of Shri Fenil Rajeshbhai Mavani dated 29.05.2023 wherein he (Fenil) stated that one person visited him and informed that Shri Parth Sharma had sent 1100 Dirhams to him (Fenil Rajeshbhai Mavani) to visit nearby places and food; that the same person handed over an underwear and passed on the instructions to wear the same and gave pouches of different sizes containing gold paste to hide in shoes and pockets of jeans pants and the same person also dropped him at Sharjah Airport. Shri Baldev Mansukhbhai Sakhreliya perused the said statement and in token of its perusal, he appended his dated signature on the last page of the said statement. On being asked regarding the above stated facts he stated that he had not arranged 1100 Dirhams or the underwear and pouches having the gold paste; that it was arranged by Shri Dilip who resides in Dubai. On being asked about Shri Dilip he stated that Shri Dilip, whose full name he does not know, had visited M/s Grand Hills General Trading LLC, Dubai in Dec-2022, where they met for the first time and that Shri Dilip knew that he was earlier involved in a case of gold smuggling through Surat Airport; that Shri Dilip said that he also wanted to smuggle gold through Airport and asked him if he can arrange passengers for the same for which he will be given a commission of Rs. 35,000/- per passenger; that Shri Dilip further said that all the arrangement for expenses of those passengers and money to be given to them, the commission for arranging passengers and the arrangement of gold paste will be done by Shri Dilip himself; that Shri Dilip instructed that he (Baldev) introduce himself as "Parth Sharma" to the people concerned with the smuggling racket; that the person who gave Shri Fenil Rajeshbhai Mavani the money and underwear and pouches having the gold paste was also arranged by Shri Dilip and that he did not know that person nor did he give him any such instructions.

23.4) Thereafter, Shri Baldev Mansukhbhai Sakhreliya was asked to peruse the statement of Shri Nirav Ramnikbhai Davariya dated 29.05.2023 wherein Shri Nirav stated that Shri Parth Sharma had sent the details of hotel stay at Dubai on the whatapp of Shri Nirav Ramnikbhai Davariya and that one person visited him and informed that Shri Parth Sharma has sent 1100 Dirhams to him (Nirav Ramnikbhai Davariya) to visit nearby places and to spend on food; that the same person handed over an underwear, pouches of gold and informed that a chemical had been mixed with gold & as a result of it, Gold paste would not be detected by metal detector or DMFD gate and he could clear immigration security at airport easily and that person also dropped him at Sharjah Airport. Shri Baldev Mansukhbhai Sakhreliya perused the said statement and in token of its perusal, he appended his dated signature on the last page of the said statement. On being asked regarding the above stated facts he re-stated that all the arrangement for expense of those passengers and money to be given to them, the commission for arranging passengers and the arrangement of gold paste was done by Shri Dilip; that it was Shri Dilip who had instructed him to introduce himself as "Parth Sharma" to the carriers and other people involved in the smuggling racket; that the person who gave Shri

Nirav Ramnikbhai Davariya the money and underwear and pouches having the gold paste was also arranged by Shri Dilip and that he did not know the person who handed over the money, underwear and pouches nor did he give that person any such instructions.

23.5) Thereafter, Shri Baldev Mansukhbhai Sakhreliya was asked to peruse the statement of Shri Umesh Rameshbhai Bhikadiya dated 29.05.2023 wherein Shri Umesh had stated that Shri Parth Sharma is Shri Baldev Manshukhbhai Sakhreliya; that he (Shri Umesh) had met Shri Baldev Manshukhbhai Sakhreliya in Maidharpura 5 to 6 months ago; that Shri Baldev Manshukhbhai Sakhreliya informed him that he had to bring gold from Dubai and for that he required passengers and that his (Shri Umesh Rameshbhai Bhikadiya) work would be to drop and pickup passengers from Airport; that Shri Baldev Manshukhbhai Sakhreliya had asked him to collect details of consenting carriers having Passport which he would send to Dubai at his expense; that Shri Baldev Manshukhbhai Sakhreliya had informed him that expenses of flight ticket, hotel and food would be borne by him (Shri Baldev Manshukhbhai Sakhreliya) and the passengers would also be given a commission in lieu of carrying/smuggling gold for Shri Baldev Manshukhbhai Sakhreliya; that Shri Baldev Manshukhbhai Sakhreliya said that for arranging passengers he would be given Rs. 25,000/- per passenger; that Shri Baldev Manshukhbhai Sakhreliya had instructed him to not reveal his real name and to introduce him as "Parth Sharma"; that in Feb-2023 Shri Sawan Shantilal Rakholiya and Shri Nirav Ramnikbhai Davariya both went to Dubai and their expense was borne by Shri Baldev Manshukhbhai Sakhreliya and both returned via separate flights and neither brought gold/ gold paste; that in April-2023 Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani accepted the lucrative offer and Shri Baldev Manshukhbhai Sakhreliya used to contact them on mobile no. 9157925125; that their hotel, flight and food expense was borne by Shri Baldev Manshukhbhai Sakhreliya; that Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani had to deliver the gold paste to him (Umesh), which he would handover to Shri Vicky a.k.a Shri Vishal having (mobile number +85254859479) after receiving the same in Surat from both Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani; that Shri Baldev Manshukhbhai Sakhreliya had told him that he had converted gold into paste by mixing a chemical so that it cannot be detected by metal detector or DMFD gate and hence, they (Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani) are not required to declare it before Customs authorities at Surat International Airport and Shri Baldev Manshukhbhai Sakhreliya also instructed to conceal the same on their body at pre-decided places; that there is a person named DM a.k.a Shri Dilip in Dubai who contacts and drops/receives the passengers at Dubai Airport in the absence of Shri Baldev Mansukhbhai Sakhreliya. Shri Baldev Mansukhbhai Sakhreliya perused the said statement and in token of its perusal, he appended his dated signature on the last page of the said statement. On being asked regarding the above stated facts he stated that Shri Dilip wanted to smuggle gold from Dubai and for that he had for some passengers to be arranged and in that regard, he had enquired from Shri Umesh Rameshbhai Bhikadiya to give the names of consenting carriers having a valid Passport; that as Shri Dilip had instructed, he told Shri Umesh

Rameshbhai Bhikadiya that the hotel, flight and food expenses of the passenger and money to be given to them will be borne by him; that Shri Umesh Rameshbhai Bhikadiya would get Rs. 25,000/- per passenger for arranging such persons; that as instructed by Shri Dilip, he told Shri Umesh Rameshbhai Bhikadiya to introduce him as "Parth Sharma"; that all the arrangements for expense of those passengers, the commission for arranging passengers and the arrangement of gold paste was done by Shri Dilip; that as per the instructions of Shri Dilip, he further instructed Shri Umesh Rameshbhai Bhikadiya to handover the smuggled gold paste from both Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani to Shri Vicky a.k.a Shri Vishal having (mobile number +85254859479); that he instructed Shri Umesh Rameshbhai Bhikadiya that as told by Shri Dilip, gold had been converted into paste by Dilipbhai by mixing a chemical so that it cannot be detected by metal detector or DMFD gate and hence, the passengers are not required to declare it before Customs authorities at Surat International Airport; that he passed on the instructions of Shri Dilipbhai to Shri Umesh Rameshbhai Bhikadiya to conceal the pouches containing gold paste on their body at pre-decided places; that DM a.k.a Shri Dilip is the same person who instructs him (Baldev) and does all the arrangements for smuggling of gold in paste form.

23.6) Shri Baldev Mansukhbhai Sakhereliya was then asked to peruse the statement of Shri Vishal Dhirubhai Gabani dated 27/28.07.2023 wherein he stated that Shri Umesh Rameshbhai Bhikadiya introduced him to Shri Baldev Mansukhbhai Sakhereliya having contact number +91-9157925125, who resides at A-103, Kaveri Habitat, Sarthana, Surat; that Shri Baldev Mansukhbhai Sakhereliya informed him about being engaged in buying Gold from UAE and smuggling the same into India without declaring the same before the Customs Authorities and selling smuggled Gold in India; that Shri Baldev Mansukhbhai Sakhereliya offered him to join in the business and offered him a commission of 3-4% of the amount lent by him; that on arriving in Surat from UAE in the month of April, 2023, Shri Baldev Mansukhbhai Sakhereliya informed him that Shri Baldev Mansukhbhai Sakhereliya was sending a few persons to UAE and asked him to give money to Shri Dilipbhai alias D.M. in UAE as per his capacity; that Shri Dilipbhai alias D.M. had bought Gold from 2,75,000 Dirhams in UAE for Shri Baldev Sakhereliya; that he did not agree that Shri Baldev Mansukhbhai Sakhereliya had directed Shri Umesh Rameshbhai Bhikadiya to hand over gold to him after receiving the same from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani in Surat; that he had informed Shri Umesh Rameshbhai Bhikadiya to take directions from Shri Baldev Sakhereliya as he was in China. Shri Baldev Mansukhbhai Sakhereliya perused the said statement and in token of its perusal, he appended his dated signature on the last page of the said statement. On being asked regarding the above stated facts he stated that he had never met Shri Vishal Dhirubhai Gabani and had also not spoken to him over phone; that he had not offered him commission for the amount lent by him; that he had not informed that he was sending some persons to UAE; that he had not asked Shri Vishal Dhirubhai Gabani to give money to Shri Dilip but he knows the fact that Shri Vishal Dhirubhai Gabani had given some money directly to Shri Dilip with which Shri Dilip bought gold paste in UAE; that he had directed Shri Umesh Rameshbhai

Bhikadiya to handover the gold to Shri Vishal Dhirubhai Gabani on the instructions of Shri Dilip; that he did not agree with the said statement as during this time he was in India and he had not given any instructions to Shri Umesh Rameshbhai Bhikadiya.

23.7) Subsequently, Shri Baldev Mansukhbhai Sakhreliya was asked to peruse the statement of Shri Shreyash Dineshbhai Chalodiya dated 01.08.2023 wherein he stated that one person named Shri Parth Sharma having whatsapp number +91-9157925125 contacted him on whatsapp for flight ticket bookings in the month of Feb 2023; that Shri Parth Sharma told him that he was in Dubai and enquired regarding price of flight tickets to and from UAE for various passengers; that thereafter, Shri Parth Sharma started booking flight tickets on regular basis; that he used to get details of passengers from Shri Parth Sharma on whatsapp and he used to forward the flight tickets booked to Shri Parth Sharma on whatsapp; that he used to receive payment in cash as well as in his HDFC Bank Account through various bank accounts; that he came to know in the month of March 2023 that Shri Parth Sharma's real name is Shri Baldev Sakhreliya; that as he is in the business of booking flight tickets, hotel booking etc.; that he had opted for disappearing message feature on his Whatsapp and therefore, no chats were available in his mobile; that he had booked the flight tickets of Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya from Bombay to Dubai on 24.04.2023 and from Sharjah to Surat on 28.04.2023 on directions given by Shri Baldev Sakhreliya alias Shri Parth Sharma. Shri Baldev Mansukhbhai Sakhreliya perused the said statement and in token of its perusal, he appended his dated signature on the last page of the said statement. On being asked regarding the above stated facts he said that he enquired regarding price of flight tickets to and from UAE for various passengers; that he used to forward the details of the passengers as received from Shri Umesh Rameshbhai Bhikadiya to Shri Shreyash Dineshbhai Chalodiya; that he used to receive the payment in cash from Shri Dilip which he used to give to Shri Shreyansh Dineshbhai Chalodiya for booking of flight tickets; that Shri Umesh Rameshbhai Bhikadiya had given the details of Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya who were going to travel from Bombay to Dubai on 24.04.2023 and from Sharjah to Surat on 28.04.2023.

23.8) On being asked, he stated that the gold paste smuggled by the passengers was to be delivered to the persons identified by Shri Dilip and that he was to communicate the identity of that person to Shri Umeshbhai Rameshbhai Bhikadiya.

23.9) On being asked regarding the number of times he had arranged the passengers for smuggling of gold in the past for Shri Dilip, he stated that he had arranged passengers for smuggling of gold only twice in the past for Shri Dilip, once in the month of February-2023 and second time in April-2023. On being asked regarding the amount of gold smuggled in past for Shri Dilip, he stated that in February-2023 the passengers did not smuggle gold as Shri Dilip could not arrange the gold in paste form at that time and in April-2023, the passengers tried to smuggle approx. 7 kg of gold in paste form through Surat

International Airport.

23.10) On being asked regarding the person to whom the said gold was to be delivered after being smuggled through Surat International Airport in April-2023, he stated that Shri Dilip informed that the said gold paste had to be handed over to Shri Vishal Dhirubhai Gabani, but before the gold could be delivered, SOG, Surat Police had caught the passengers alongwith Shri Umesh Rameshbhai Bhikadiya and Shri Sawan Shantilal Rakholiya.

23.11) On being asked regarding his mobile phone, he stated that he had left his mobile phone with number 9601347698 in the shop of M/s Grand Hills General Trading LLC, Dubai.

23.12) On being asked, he stated that on 25.04.2023 he had boarded Indigo flight from Dubai to Ahmedabad to attend the wedding of his brother-in law, Shri Sharad Bharatbhai Virani in Surajwadi (Badhada), Amreli district on 29/30.04.2023 and after attending the marriage function he had boarded Emirates flight from Bombay to Dubai on 02.05.2023. On being asked regarding his return journey to India, he stated that he returned to Surat from Dubai via Nepal on 10.02.2024 and surrendered himself before SOG, Surat Police on 02.03.2024.

23.13) He further stated that, he is aware that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962.

23.14) On being asked regarding any past show cause notice issued/ investigation pending under Customs Act, 1962 against him, he stated that he had been arrested in May-2022 by the officers of DRI, Surat in connection with seizure of smuggled gold recovered from the premises of M/s CRV Jewels, Surat.

23.15) On being asked whether a person named Shri Dillip Virani interrogated in the case of M/s CRV Jewels and Shri Dilip are the same person, he stated that Shri Dilip Virani and Shri Dilip are not the same persons.

24) During the investigation, Shri Baldev Mansukhbhai Sakhreliya was arested on 28.03.2024 **(RUD-17)** by the officers DRI, Regional Unit, Surat, under Section 104 of Customs Act, 1962 and produced before the Hon'ble Chief Judicial Magistrate, Surat after following due procedure and Shri Baldev Mansukhbhai Sakhreliya was sent to judicial custody by the Hon'ble CJM, Surat.

VARIOUS CORRESPONDANCES DONE IN THE CASE

25) Letter dated 02.06.2023 was issued, by the officers DRI, Regional Unit, Surat to the Secratary, New DTC Building, Mahidharura, Surat to provide details of office premises of 3rd Floor of the building and Shri Naman Dineshbhai Doshi vide letter dated 02.06.2023 **(RUD-18)** provided details of the

owner of office premises situated on 3rd Floor of the said building. Letter dated 02.06.2023 was issued, by the officers DRI, Regional Unit, Surat, to the Secretary, New DTC-A Building, Mahidharura, Surat and Shri Brijesh Mishra, Supervisor, New DTC-A Building vide letter dated 03.06.2023 (**RUD-19**) provided details of the owner/tenant of office premises situated on 3rd Floor of the said building.

26) In the meantime, certified copies of Subscriber Details, CAF, Identification documents submitted by the subscriber and the Call Data Reports for the period from 01.02.2023 to 30.04.2023 for the Mobile Number **7698158980** was called for from the Nodal Officer, Bharti Telemedia Ltd, Ahmedabad vide letter F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 30.05.2023 by the officers DRI, Regional Unit, Surat.

27) Certified copies of Subscriber Details, CAF, Identification documents submitted by the subscriber and the Call Data Reports for the period from 01.02.2023 to 30.04.2023 for the Mobile Number **9157925125** was called for from the Nodal Officer, Reliance Jio Infocomm Limited, Ahmedabad vide letter F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 30.05.2023 by the officers DRI, Regional Unit, Surat.

28) Certified copies of Subscriber Details, CAF, Identification documents submitted by the subscriber and the Call Data Reports for the period from 01.02.2023 to 30.04.2023 for the Mobile Number **9099990660, 9737040693, 9924614092, 8469332402 and 9726874441** was called for from the Nodal Officer, Vodafone Idea Limited, Ahmedabad vide letter F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 30.05.2023 by the officers DRI, Regional Unit, Surat.

29) Certified copies of Subscriber Details, CAF, Identification documents submitted by the subscriber and the Call Data Reports for the period from 01.02.2023 to 30.04.2023 for the Mobile Number **9712910910** was called for from the Nodal Officer, Bharti Telemedia Ltd, Ahmedabad vide letter F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 31.07.2023 by the officers DRI, Regional Unit, Surat.

30) Duty Manager, Air India Express, Surat International Airport was requested to provide certified passenger manifest of Air India Express Flight No IX 172 dated 28.04.2023 vide letter DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 30.05.2023 by the officers DRI, Regional Unit, Surat. Shri Deep Mehta, Officer, Air India vide letter dated nil provided Passenger Manifest of Flight No IX-172 dated 28.04.2023 (**RUD-20**).

31) Duty Manager, Air India, Mumbai International Airport was requested to provide the certified passenger manifest of Air India Flight No AI 909 dated 24.04.2023 vide letter DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 30.05.2023 by the officers DRI, Regional Unit, Surat. Vide Email dated 07.06.2023, the Passenger Manifest of Air India Flight No AI 909 dated 24.04.2023 was forwarded. (**RUD-21**).

32) Letters vide F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 01.05.2023, 25.05.2023, 08.08.2023 and 12.04.2024 (**RUD-22**) were written by the officers DRI, Regional Unit, Surat to SOG, Surat for FSL data of mobiles seized during investigation. In response to this office, SOG vide letter F.No. nil dated 12.04.2024 (**RUD-23**) informed that all mobiles were deposited in FSL, Surat and the extracted/retrieved data had not been received by them and as soon as data is received from FSL, Surat, they will provide the same.

33) Letters vide F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 10.08.2023 and 15.04.2024 (**RUD-24**) were written by the officers DRI, Regional Unit, Surat to the Assistant Commissioner of Customs, Surat International Airport, Surat seeking the copies of declarations filed by the passengers landing at Surat Airport from Sharjah on 28/29.04.2023. Till date no reply has been received from the Assistant Commissioner of Customs, Surat.

PANCHNAMAS AND CORRESPONDANCES IN COURT

34) Further, Criminal Misc Application No 5704/2023 was moved on 14.06.2023 before the Hon'ble Court of Additional Sr Civil Judge & Additional Chief Judicial Magistrate wherein it was requested to direct Surat Police's Special Operations Group (SOG) to hand over the seized 7.15 Kgs (approx) of Gold in paste form to DRI, Regional Unit, Surat at pre decided premises of Gold Refinery and remain present during the extraction of Gold from Gold Paste under Panchnama proceedings at the said premises of Gold Refinery, in presence of Higher Officer as well as Investigation Officer, Surat Police's Special Operations Group (SOG). The Hon'ble Court vide order dated 31.08.2023 (RUD-25) ordered Surat Police's Special Operations Group (SOG) to hand over the goods in "as it is as was" condition to DRI under Panchnama proceedings in the presence of two independent Panchas.

35) Further, in pursuance of Order dated 31.08.2023 of Hon'ble Additional and Additional Chief Judicial Magistrate, the muddamal (Gold Paste) was handed over in "as is as was" by the SOG to DRI in the presence of two independent witnesses under panchnama proceedings dated 17.10.2023 (RUD-26). Details of the muddamal handed over are tabulated as under:

Table-4

Marking on Box	Description	Weight in grams
A	Gold in paste form recovered from Fenil Rajeshbhai Mavani	3641.00
B	Gold in paste form recovered from Nirav Ramnikbhai Davariya	3664.50
C	Packing material from which the gold paste was recovered from Fenil Rajeshbhai Mavani	172.50
D	Packing material from which the gold paste was recovered from Nirav Ramnikbhai Davariya	182.00
Total weight of all boxes alongwith seal		7660.00

36) After taking over the muddamal (Gold paste) from SOG in presence of the panchas and officers of Surat Police, Special Operation Group and officer of Dumas Police Station, the officers of DRI, Regional Unit, Surat placed each of the 4 plastic boxes into separate green envelopes and sealed all the envelopes with DRI Lac Seal in such a way that the same cannot be tampered with. Thereafter, a paper slip describing the goods inside the green envelopes which was duly signed by the officer of DRI, Regional Unit Surat, officer of Special Operation Group, Surat Police, officer of Dumas Police Station and the panchas was pasted on the respective green envelope.

37) An application was moved before the Hon'ble Chief Judicial Magistrate, Surat by the officers DRI, Regional Unit, Surat wherein it was requested to grant permission for extraction and refining of Gold from Gold Paste under the panchnama proceedings in the presence of 02 independent panchas, the officers of Surat Police's Special Operations Group (SOG), the officers of DRI, Regional Unit, Surat, all the accused and a government approved valuer. Thereafter, Hon'ble Chief Judicial Magistrate, Surat vide order dated 25.01.2024 (**RUD-27**) ordered to refine the gold paste with a government approved valuer and make a report to the Court in this regard.

VALUATION AND SEIZURE:

38) In pursuance of order dated 25.01.2024 of the Hon'ble Chief Judicial Magistrate, Surat, the extraction of pure Gold was carried out from the said muddamal (Gold paste) at Jay Renuka, Gold and Silver Tounch Refinery, 3/389, Navapura, Near Kumbharwada Tower, Surat under the panchnama proceedings on 21.03.2024 (**RUD-28**) in the presence of Special Operations Group, Surat Police, two independent panchas, the accused from whom the muddamal was seized by the SOG, Surat that is Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya and Photographer. The details of Gold recovered from Box marked as "**A & B**" is tabulated in Table-6 below. Further, **no gold** was recovered from the box marked as "**C & D**" as it contained packaging material. The whole proceeding was done under videography and photography.

Table-5: Details of Gold Extracted from the Muddamal

Sr. No.	Marking on the Box	Accused from whom gold paste was recovered	Weight of the plastic box along-with gold paste (in grams)	Description of the gold extracted	Weight of the Gold extracted (in grams)
1	A	Fenil Rajeshbhai Mavani	3673.20	Big bar	3197.350
2	A	Fenil Rajeshbhai Mavani		Small Piece	52.540
3	B	Nirav Ramnikbhai Davariya	3693.80	Big bar	3175.520
4	B	Nirav Ramnikbhai		Small Piece	45.240

		Davariya		
		Total	7725.7	6470.65

39) Thereafter, valuation of Gold was done by Shri Salim Jafarbhaj Daginawala, registered valuer authorized by Govt of India, Central Board of Direct Taxes, Regd no. CAT VIII/67/97-98 w.e.f. 29.01.1998 and he provided a certificate bearing number 218 dated 21.03.2024 (**RUD-29**) having the description of item, carat, quantity, net wt., market rate, market value and total value. The details of the value given by Shri Salim Jafarbhaj Daginawala is tabulated as under:-

Table-6: Details of Valuation of the Extracted Gold

Sr. No.	Marking on the Box	Description of the gold extracted	Weight of the Gold extracted (in grams)	Carat	Market rate	Market Value
1	A	Big bar	3197.350	24	6900	22061715
2	A	Small Piece	52.540	24	6900	362526
3	B	Big bar	3175.520	24	6900	21911088
4	B	Small Piece	45.240	24	6900	312156
Total			6470.65			44647485

40) According to the valuation report given by Shri Salim Jafarbhaj Daginawala, Seizure memo bearing DIN: 202403DDZ1000000E227 dated 22.03.2024 (RUD-30) was issued by the officers DRI, Regional Unit, Surat for seizure of 6470.65 grams of foreign origin Gold, totally valued at Rs. 4,46,47,485/- (market value) under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same are liable to confiscation under the provisions of Customs Act, 1962.

EXTENSION OF TIME LIMIT FOR ISSUANCE OF SHOW CAUSE NOTICE

41) As the investigation could not be completed within the time line as defined in Section 110 of the Customs Act, 1962, the Additional Director, DRI, Zonal Unit Ahmedabad, vide letter F.No. DRI/AZU/SRU-19/2023 dated 17.11.2023 (**RUD-31**) requested the Commissioner of Customs, Ahmedabad for grant of extension of 06 months in terms of Section 110(2) of the Customs Act, 1962. The Additional Commissioner of the Customs, Ahmedabad, vide letter dated 20.11.2023 (**RUD-32**) informed that the Commissioner of Customs, Ahmedabad has granted extension of 06 months for issuance of Show Cause Notice in this case.

LEGAL PROVISIONS:

42) The provisions of law, relevant to import of goods in general and the Policy and Rules relating to the import of gold in particular, the liability of the goods for confiscation and liability of the persons concerned for penalty of improper/illegal imports under the provisions of the Customs Act, 1962 and other laws for the time being in force applicable in the instant case are

summarized below:-

FOREIGN TRADE POLICY

i. **Para 2.26 of Foreign Trade Policy 2015-20:**

- a. *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.

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.

FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

iii. **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.

iv. **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.

v. **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

vi. **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.

FOREIGN TRADE (REGULATION) RULES, 1993

vii. **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.

viii. **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.*

CUSTOMS ACT, 1962

ix. **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 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;*

(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;

x. **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.

xi. **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;

xii. **Section 77 of the Customs Act 1962:**

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

CUSTOMS BAGGAGE DECLARATION REGULATIONS, 2013

- xiii. 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.

CUSTOMS NOTIFICATION NO. 50 /2017

- xiv. 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.

CIRCULAR NO. 34/2013-CUS

xv. 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 for confiscation under the Customs Act, 1962.

CBIC'S INSTRUCTIONS

xvi. 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.

xvii. **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.

xviii. **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;

.....

xix. **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, or

(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 ⁴ [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 ⁵ [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 ⁶ [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.

xx. Section 119. Confiscation of goods used for concealing smuggled goods.

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

xxi. 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,² [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

43) 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 thereunder, 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 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.

SUMMARY OF THE INVESTIGATION

44) From the investigation conducted it appears that:

- a. On 29.04.2023 around 01:00 AM, Surat Police's Special Operations Group (SOG) intercepted Car Honda Civic GJ 03 BA 5838 near S K Nagar

Chokdi, Surat and on frisking of all 04 passengers of the car; Gold in Paste form was recovered from Shri Nirav Ramnikbhai Davariya (Passport Number W0681460) and Shri Fenil Rajeshbhai Mavani (Passport Number R4541560). Both, Shri Nirav Ramnikbhai Davariya (Passport Number W0681460) and Shri Fenil Rajeshbhai Mavani (Passport Number R4541560), had landed in Surat from Sharjah via Air India Express Flight No IX 172 dated 28.04.2023.

- b. **3576 Grams** of Gold in Paste form was recovered from **Shri Nirav Ramnikbhai Davariya** and **3582 Grams** of Gold in Paste form was recovered from **Shri Fenil Rajeshbhai Mavani**. Thus, **7158 Grams** of Gold in Paste form, valued at **Rs.4,29,48,000/-** (Rs 6,000/- Per Gram), was recovered from both persons by SOG, Surat.
- c. Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya had gone to Surat International Airport to pick up Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani. No Gold in any form was recovered from Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya. The search and seizure proceedings were carried out under Panchnama dated 29.04.2023 by Surat Police's Special Operations Group (SOG).
- d. Statement of (i) Shri Nirav Ramnikbhai Davariya (ii) Shri Fenil Rajeshbhai Mavani (iii) Shri Sawan Shantilal Rakholiya and (iv) Shri Umesh Rameshbhai Bhikadiya was recorded by Special Operations Group (SOG), after which they were all arrested under the provisions of Section 420, 467, 468 and 120(b) of Indian Penal Code.
- e. DRI, Regional Unit, Surat moved an application before the Hon'ble Chief Judicial Magistrate, Surat requesting custody of all 04 persons in order to record their statements under Section 108 of Customs Act, 1962 and initiate action under the provisions of Customs Act, 1962. The statement of (i) Shri Nirav Ramnikbhai Davariya (ii) Shri Fenil Rajeshbhai Mavani (iii) Shri Sawan Shantilal Rakholiya and (iv) Shri Umesh Rameshbhai Bhikadiya was recorded on 29.05.2023 under Section 108 of Customs Act, 1962.
- f. Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani accepted in their respective statements recorded u/s 108 of Customs Act, 1962 that they had smuggled gold in paste form through Surat International Airport. Thus, it appears that **7158 Grams of Gold in Paste Form** is smuggled goods in violation in terms of Section 2(39) of Customs Act, 1962. Further, Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya knowingly concerned themselves in smuggling of Gold Paste through Surat International Airport by arranging the passengers for smuggling of gold and by coordinating the smuggling activity and receiving the passengers/carriers from Surat International Airport for further delivery. All 04 persons viz **(i)** Shri Fenil Rajeshbhai Mavani (Passport Number R4541560) **(ii)** Shri Nirav Ramnikbhai Davariya (Passport Number W0681460) **(iii)** Shri Sawan Shantilal Rakholiya and **(iv)** Shri Umesh Rameshbhai Bhikadiya were arested on 29.05.2023 under Section 104 of Customs Act, 1962 and produced before the Hon'ble Chief Judicial Magistrate, Surat after following due procedure and all 04 persons were sent to judicial custody by the Hon'ble CJM, Surat.

- g. Thereafter, on learning that SOG had arrested another person, Shri Vishal Dhirubhai Gabani, in the said case, DRI Surat moved an application before the Hon'ble Chief Judicial Magistrate, Surat requesting custody of Shri Vishal Dhirubhai Gabani in order to record his statement under Section 108 of Customs Act, 1962 and initiating action under the provisions of Customs Act, 1962.
- h. Statement of Shri Vishal Dhirubhai Gabani was recorded on 27/28.07.2023 under Section 108 of Customs Act, 1962. Shri Vishal Dhirubhai Gabani was found to have arranged money to buy gold in UAE for the purpose of smuggling the same into India and has aided, abetted and consciously concerned himself in smuggling of gold in paste form through Surat International Airport. He was arested on 28.07.2023 under Section 104 of Customs Act, 1962 and produced before the Hon'ble Chief Judicial Magistrate, Surat after following due procedure and Shri Vishal Dhirubhai Gabani was sent to judicial custody by the Hon'ble CJM, Surat.
- i. DRI, Surat moved a Criminal Misc Application No 5704/2023 on 14.06.2023 before the Hon'ble Court of Additional Sr Civil Judge & Additional Chief Judicial Magistrate for custody of the seized gold paste or muddamal in this case (approx 7.15 Kgs of Gold in paste form) from SOG. The Hon'ble Court vide order dated 31.08.2023 ordered the Surat Police's Special Operations Group (SOG) to hand over the Gold paste (muddamal) to DRI, Surat in "as it is as was" under panchnama proceedings in presence of two independent panchas.
- j. In pursuance of the order of Hon'ble Court, custoday of Gold paste was taken over from Surat Police's Special Operations Group (SOG) in "as it is as was" under panchnama proceedings dated 17.10.2023 in presence of two independent panchas.
- k. As the investigation could not be completed with the time line as defined in Section 110 of the Customs Act, 1962, the Additional Director, DRI, Zonal Unit Ahmedabad, vide letter DRI/AZU/SRU-19/2023 dated 17.11.2023 requested the Commissioner of Customs, Ahmedabad for grant of extension of 06 months in terms of Section 110(2) of the Customs Act, 1962. The Additional Commissioner of the Customs, Ahmedabad, vide letter dated 20.11.2023 informed that the Commissioner of Customs, Ahmedabad had granted extension of 06 months for issuance of Show Cause Notice in this case.
- l. In the meantime, an application to allow the extraction and valuation of Gold from seized Gold paste, in presence of SOG, Surat and the accused, was made before the Hon'ble Court of Chief Judicial Magistrate. The Hon'ble Court of Chief Judicial Magistrate vide order dated 25.01.2024 ordered to refine the Gold from gold paste and make a report to Court.
- m. In pursuance of the order of Hon'ble Chief Judicial Magistrate, Surat order dated 25.01.2024, the extaction of pure Gold was carried out from the said muddamal (Gold paste) at Jay Renuka, Gold and Silver Touch Refinery, 3/389, Navapura, Near Kumbharwada Tower, Surat under panchnama proceedings dated 21.03.2024 in presence of Special Operations Group Surat Police, two independent panchas, the accused from whom the muddamal had been seized (Shri Fenil Rajeshbhai Mavani

- and Shri Nirav Ramnikbhai Davariya) and the photographer. The total quantity of gold extracted from gold paste is **6470.65 Grams**. The details of Gold recovered is tabulated in **Table-5** in **Para 38** above.
- n. Thereafter, valuation of Gold was done by Shri Salim Jafarbhaji Daginawala, registered valuer authorized by Govt of India, Central Board of Direct Taxes, Regd no. CAT VIII/67/97-98 w.e.f. 29.01.1998 and he provided a certificate bearing number 218 dated 21.03.2024 having the description of item, carat, quantity, net wt., market rate, market value and total value. The total value of **6470.65 Grams** of gold is **Rs. 44647485/-**. The details of the value given by Shri Salim Jafarbhaji Daginawala is tabulated in **Table-6** in **Para 39** above.
- o. Accordingly, a seizure memo bearing DIN: 202403DDZ1000000E227 dated 22.03.2024 was issued for seizure of **6470.65 grams** of foreign origin Gold totally valued at Rs. **4,46,47,485/- (market value)** under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same is liable to confiscation under the provisions of Customs Act, 1962.
- p. Upon learning about the arrest of another person, Shri Baldev Mansukhbhai Sakhreliya, in the instant case by the SOG, DRI Surat moved an application before the Hon'ble Chief Judicial Magistrate, Surat requesting custody of Shri Baldev Mansukhbhai Sakhreliya in order to record his statement under Section 108 of Customs Act, 1962 and initiate action under the provisions of Customs Act, 1962.
- q. Statement of Shri Baldev Mansukhbhai Sakhreliya was recorded on 27.03.2024 under Section 108 of Customs Act, 1962. Shri Baldev Mansukhbhai Sakhreliya arranged a carrier to carry the gold from UAE for the purpose of smuggling the same into India and has aided, abetted and consciously concerned himself in smuggling of gold in paste form through Surat International Airport. He was arrested on 28.03.2024 under Section 104 of Customs Act, 1962 and produced before the Hon'ble Chief Judicial Magistrate, Surat after following due procedure and Shri Baldev Mansukhbhai Sakhreliya was sent to judicial custody by the Hon'ble CJM, Surat.
- r. Letters vide F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 01.05.2023, 25.05.2023, 08.08.2023 and 12.04.2024 were written to SOG, Surat for FSL data of mobiles seized during investigation. In response to this office letter, SOG vide letter F.No. nil dated 15.04.2024 informed that all mobiles were deposited in FSL, Surat which data has not been received by them and as soon as data receive from FSL, Surat, they will provide the same.
- s. Letters vide F. No. DRI/AZU/SRU/C/INV-08(ENQ-07)/2023 dated 10.08.2023 and 15.04.2024 were written to the Assistant Commissioner of Customs, Surat International Airport, Surat seeking the copies of declarations filed by the passengers who landed at Surat Airport from Sharjah on 28/29.04.2023. Till date no reply has been received in reply. In fact in the statement of Shri Fenil Rajeshbhai Mavani, Shri Nirav Ramnikbhai Davariya, Shri Umesh Bhikhadiya and Shri Sawan Rakholiya, they all had accepted that Shri Fenil Rajeshbhai Mavani and

Shri Nirav Ramnikbhai Davariya will not file any declaration before the Customs Authority as already planned by them.

SEIZURE OF GOLD:

45) From the investigation conducted, it appears that Shri Baldev Mansukhbhai Sakhreliya formed a syndicate alongwith Shri Umesh Bhikhadiya, Shri Sawan Rakholiya for smuggling of Gold in paste form from UAE via flight scheduled to Surat from Sharjah. It appears that Shri Baldev Mansukhbhai Sakhreliya with the help of Shri Umesh Bhikhadiya and Shri Sawan Rakholiya had hired Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani to visit Sharjah and carry/smuggle the gold in paste form on behalf of Shri Baldev Mansukhbhai Sakhreliya at the time of their return.

46) It appears that **7158 Grams** of Gold in Paste form valued at **Rs.4,29,48,000/-** (Rs 6,000/- Per Gram) recovered from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani by Surat Police's Special Operations Group (SOG) under panchnama dated 29.04.2023 is smuggled goods, as both the persons failed to produce any evidence establishing the duty paid nature of said gold. It appears that the said Gold in paste form was smuggled through Surat International Airport on 28.04.2023 in contravention of the provisions of Foreign Trade Policy and the provisions of Custom Act, 1962.

47) The custody of the seized 7158 grams gold paste was taken over by DRI under panchanama proceedings dated 17.10.2023 and extraction and valuation of the same was conducted under panchanama proceedings dated 21.03.2024 wherein the total weight of extracted gold came out to be 6470.65 gram of foreign origin Gold (99.9 purity) valued at Rs. 4,46,47,485/- (market value) which was seized by the officers of DRI vide Seizure Memo DIN: 202403DDZ1000000E227 dated 22.03.2024 under the provisions of Section 110 of Customs Act, 1962, under reasonable belief that the same are liable for confiscation under the provisions of Customs Act, 1962. Further, the empty Box-C containing the packaging material recovered from Shri Fenil Rajeshbhai Mavani and Box-D containing the packaging material recovered from Shri Nirav Ramnikbhai Davariya was also placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same are liable to confiscation under the provisions of Customs Act, 1962. It appears that 6470.65 grams of foreign origin Gold (99.9 purity) having total value of Rs. 4,46,47,485/- (Four Crore Forty Six Lakhs Forty Seven Thousand Four Hundred and Eighty five only) (market value) is liable to confiscation under the provisions of Section 111 (d), (i) & (j) of the Customs Act, 1962.

ROLE PLAYED BY VARIOUS PERSONS

48.1) Shri Baldev Mansukhbhai Sakhreliya:

- It appears that Shri Baldev Mansukhbhai Sakhreliya had played a vital role in the smuggling of gold in paste form as he made the offer to Shri

Umesh Rameshbhai Bhikadiya to arrange consenting carriers having Passport and offered to bear all expenses of the hotel, flight and food of the passengers, give them a commission as well in return for carrying/smuggling gold into India on their return. For his services, Shri Umesh Rameshbhai Bhikadiya would get Rs. 25,000/- per passenger for arranging such persons. Further, Shri Baldev Manshukbhai Sakhereliya was the one to instruct Shri Umesh Rameshbhai Bhikadiya to collect the smuggled gold paste from both Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani and hand over the same to Shri Vicky a.k.a Shri Vishal. He had insisted that Shri Umesh Rameshbhai Bhikadiya introduced him as "Parth Sharma" to the people concerned with the smuggling racket. In spite of knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962, Shri Baldev Mansukhbhai Sakhereliya aided and abetted in smuggling of gold in paste form through Surat International Airport by concealing his original name, as revealed from the statement of Shri Umesh Rameshbhai Bhikadiya and Shri Shreyash Dineshbhai Chalodiya and was an active part of smuggling racket by helping in arranging passengers for smuggling of gold.

- Further, it is pertinent to mention that **Shri Baldev Mansukhbhai Sakhereliya** is also a noticee in a **Show Cause Notice issued vide F.No. VIII/10-34-O&A-ADC-CRV-2022-23 dated 14.10.2022**, related to **M/s CRV Jewles, Surat**, case booked by DRI, Regional Unit, Surat itself in the year 2022 which also involved smuggling of gold via Surat International Airport.

48.2) **Shri Fenil Rajeshbhai Mavani:**

- It appears that Shri Fenil Rajeshbhai Mavani had played a vital role in the smuggling gold in paste form through Surat International Airport as he agreed and accepted the offer to smuggle gold into India in lieu of an all expense paid trip to UAE and a commission. Together, he and Shri Nirav Ramnikbhai Davariya smuggled 7158 Grams of Gold Paste through Surat International Airport while being aware that bringing gold from foreign countries without declaring before Customs Airport authorities is an offence under Customs Act, 1962. He accepted that no declaration was filed before the Customs authorities. The gold paste was recovered from his possession (underwear, shoes and pocket of Jeans). He and his friend Shri Nirav Ramnikbhai Davariya were to get extra Rs 15000 each on giving gold to Shri Umesh Rameshbhai Bhikadiya in Surat.
- He and his friend Shri Nirav Ramnikbhai Davariya were well aware about the Customs Act and procedures as they were informed by the person sent by Shri Parth Sharma (Shri Baldev Sakhereliya) that Gold in paste form was packed in pouches of different sizes and 03 pouches of gold in paste

form was already stitched inside underwear and that he and his friend Shri Fenil Rajeshbhai Mavani should be able to hide the pouches of gold paste in Shoes and pocket of Jeans as a chemical had been mixed with Gold and as a result of it, gold paste would not be detected by the metal detector or DMFD gate and they should be able to clear immigration security at airport easily. Thus, it appears that Shri Fenil Rajeshbhai Mavani indulged in carrying, removing, transporting and keeping the smuggled gold while knowing that the goods were smuggled goods and liable for confiscation under the Customs Act, 1962.

48.3) **Shri Nirav Ramnikbhai Davariya:**

- It appears that Shri Nirav Ramnikbhai Davariya, had played a vital role in the smuggling of gold in paste form through Surat International Airport as he agreed and accepted the offer to smuggle gold into India in lieu of an all expense paid trip to UAE and a commission. Together, he and Shri Fenil Rajeshbhai Mavani smuggled 7158 Grams of Gold Paste through Surat International Airport, while being aware that bringing gold from foreign countries without declaring before Customs Airport authorities is an offence under Customs Act, 1962. He accepted that no declaration was filed before the Customs authorities regarding the gold paste. The gold paste was recovered from his possession (underwear, shoes and pocket of Jeans). He and his friend Shri Fenil Rajeshbhai Mavani were to get extra Rs 15000 each on giving gold to Shri Umesh Rameshbhai Bhikadiya in Surat.
- He and his friend Shri Fenil Rajeshbhai Mavani were well aware about the Customs Act and procedures as they were informed by the person sent by Shri Parth Sharma (Shri Baldev Sakhreliya) that Gold in paste form was packed in pouches of different sizes and 03 pouches of gold in paste form was already stitched inside underwear and that he and his friend should be able to hide the pouches of gold paste in Shoes and pocket of Jeans as a chemical had been mixed with Gold and as a result of it, gold paste would not be detected by the metal detector or DMFD gate and they should be able to clear immigration security at airport easily. Thus, it appears that Shri Fenil Rajeshbhai Mavani indulged in carrying, removing, transporting and keeping the smuggled gold while knowing that the goods were smuggled goods and liable for confiscation under the Customs Act, 1962.

48.4) **Shri Sawan Shantilal Rakholiya:**

- It appears that Shri Sawan Shantilal Rakholiya had played a vital role in the smuggling of gold in paste form as he accepted the lucrative offer given by Shri Umesh Rameshbhai Bhikadiya to arrange the consenting carriers (Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani) who have passport and who agree to travel to UAE and carry/smuggle Gold for

him from there on their return to India. In return, Shri Umesh Rameshbhai Bhikadiya would give him Rs.10000/- for each person and bear all expenses related to Flight Tickets, Hotel Stay, Food etc and give a commission to the carrier too. Shri Sawan Shantilal Rakholiya arranged the passengers to smuggle gold into India in spite of knowing that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962. It appears that Shri Sawan Shantilal Rakholiya has personally indulged himself in aiding and abetting for smuggling of Gold Paste through Surat International Airport.

48.5) **Shri Umesh Rameshbhai Bhikadiya:**

- It appears that Shri Umesh Rameshbhai Bhikadiya had played a vital role in the smuggling gold in paste form as he accepted the lucrative offer given by Shri Baldev Mansukhbhai Sukhrelia alias Parth Sharma of getting money in return for arranging the persons/carriers (Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani) who have passport and who consent to travel to UAE for an expense paid trip and in lieu bring/carry/smuggle gold for him from there. For arranging such passengers, Shri Baldev Mansukhbhai Sukhrelia would give Rs.25000/- for each consenting person. Umesh Rameshbhai Bhikadiya arranged the passengers to smuggle the gold in spite of having knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962. He passed on the offer given to him by Baldev Sakhrelia to Shri Sawan Shantilal Rakholiya who in turn arranged the carriers - Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani to smuggle the gold. He was also involved in the delivery of the smuggled goods/gold to the concerned person. Thus, it appears that Shri Umesh Rameshbhai Bhikadiya indulged himself in carrying, removing, transporting and keeping the smuggled gold while knowing that the goods were smuggled goods and liable for confiscation under the Customs Act, 1962.

48.6) **Shri Vishal Dhirubhai Gabani:**

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- It appears that Shri Vishal Dhirubhai Gabani had played a vital role in the smuggling gold in gold paste through Surat International Airport as he is engaged in buying Gold from UAE and smuggle the same into India without declaring the same before the Customs Authorities and selling smuggled Gold in India on a commission of 3-4% of the amount invested/provided by him for purchase of gold in Dubai. He accepted the offer of Shri Baldev Mansukhbhai Sakherliya and arranged around 2,75,000 Dirhams in UAE in April-23 to buy the gold for Shri Baldev Mansukhbhai Sakherliya. He was well aware about the fact that bringing gold from foreign countries without declaring before Customs Airport

authorities and dealing with such goods is an offence under Customs Act, 1962. It appears that Shri Vishal Dhirubhai Gabani has indulged himself in aiding, abetting and consciously concerned himself with smuggling of Gold in Paste form through Surat International Airport.

CONTRAVENTION AND CHARGES

49.1) Shri Baldev Manshukbhai Sakhereliya:

- It appears that Shri Baldev Manshukbhai Sakhereliya with the help of Umesh Rameshbhai Bhikadiya, Shri Sawan Shantilal Rakholiya, Shri Nirav Ramnikbhai Davariya, Shri Fenil Rajeshbhai Mavani and Shri Vishal Dhirubhai Gabani hatched the conspiracy for smuggling Gold paste from Sharjah through Surat International Airport. He played an active role for hiring of carriers /pasengers for carying the gold from Sharjah to Surat and booked their air tickets and hotel stay for them. It appears that all the expenses of air tickets, transport and hotel expenses at Sharjah of syndicate members/passengers were borne by him. He played a vital role in smuggling of 6470.65 grams of foreign origin Gold (99.9 purity) total value at Rs. 4,46,47,485/- (market value). Also in the past, he is a noticee in SCN related to smuggling of gold case from Surat International Airport in the year 2022. It appears that he was having culpable mental state and the act of omission and commission made on his part for the aiding and abetting in smuggling of gold which are liable for confiscation under Section 111(d), 111(i) and 111(j) have rendered himself liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962.

49.2) Shri Fenil Rajeshbhai Mavani:

- It appears that Shri Fenil Rajeshbhai Mavani had played major role in the smuggling of gold paste into India. He carried the smuggled gold paste from Sharjah to Surat, without valid documents or customs declaration and ended up smuggling 3582 Grams of Gold Paste through Surat International Airport while being aware that bringing gold from foreign countries without declaring before Customs Airport authorities is an offence under Customs Act, 1962. It appears that he was having culpable mental state and the acts of omission and commission on his part in the smuggling of gold which is liable for confiscation **Section 111(d), 111(i) and 111(j)** have rendered himself liable for penalty under **Section 112 (a) & (b)** of the **Customs Act, 1962**.

49.3) Shri Nirav Ramnikbhai Davariya:

- It appears that Shri Nirav Ramnikbhai Davariya had played major role in the smuggling of gold paste into India. He actively carried/ smuggled gold paste from Sharjah to Surat without valid documents or customs declaration and smuggled 3576 Grams of Gold Paste through Surat

International Airport while being aware that bringing gold from foreign countries without declaring before Customs Airport authorities is an offence under Customs Act, 1962. It appears that he was having culpable mental state and the acts of omission and commission made on his part in the smuggling of gold paste which is liable for confiscation **Section 111(d), 111(i) and 111(j)** have rendered himself liable for penalty under **Section 112 (a) & (b)** of the **Customs Act, 1962**.

49.4) **Shri Sawan Shantilal Rakholiya:**

- It appears that Shri Sawan Shantilal Rakholiya was an active syndicate member of the group involved in smuggling of gold paste through Surat International Airport and he arranged consenting passengers for smuggling gold paste through Surat airport. He was fully aware about the smuggling of Gold paste with the help of the passengers accompanying Shri Umesh Rameshbhai Bhikadiya. It appears that he was having culpable mental state and the acts of omission and commission made on his part for the smuggling of gold which are liable for confiscation **Section 111(d), 111(i) and 111(j)** have rendered himself liable for penalty under **Section 112 (a) & (b)** of the **Customs Act, 1962**.

49.5) **Shri Umesh Rameshbhai Bhikadiya:**

- It appears that Umesh Rameshbhai Bhikadiya was an active syndicate member of the group involved in smuggling of gold paste through Surat International airport and he arranged consenting passengers to smuggle the gold paste through Surat airport. He was fully aware about the smuggling of Gold paste through the passengers accompanying with Shri Baldev Manshukbhai Sakhereliya. It appears that he was having culpable mental state and the acts of omission and commission on his part in the smuggling of gold which is liable for confiscation **Section 111(d), 111(i) and 111(j)** have rendered himself liable for penalty under **Section 112 (a) & (b)** of the **Customs Act, 1962**.

49.6) **Shri Vishal Dhirubhai Gabani:**

- It appears that Shri Vishal Dhirubhai Gabani was an active syndicate member of group involved in smuggling of gold paste through Surat International airport and arranged around 2,75,000 Dirhams in UAE in April-23 to buy the gold for Shri Baldev Manshukbhai Sakhereliya. He was well aware that smuggling of gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962. It appears that he was having culpable mental state and the acts of omission and commission on his part in relation to the smuggling of gold which is liable for confiscation **Section 111(d), 111(i) and 111(j)** have rendered himself liable for penalty under

Section 112 (a) & (b) of the Customs Act, 1962.**SHOW CAUSE:**

50) Therefore, a show cause notice F.No. VIII/26-11/AIU/CUS/2024-25 dated 22.05.2024 was issued to (1) **Shri Fenil Rajeshbhai Mavani**, residing at Flat No 201, Building No D-1, Shlok Residency, Utran, Surat (e-mail id: fenilmavani1195@gmail.com) and (2) **Shri Nirav Ramnikbhai Davariya**, residing at Flat No D-302, Gokuldharm Society, Abraham Road, Mota Varachha, Surat (e-mail id: davariyanirav@gmail.com) to show cause in writing to the Additional Commissioner of Customs, I/c of Surat International Airport, Surat, having his office situated on 4th Floor, CUSTOMS HOUSE, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007, within thirty days of receipt of the Notice, as to why: -

- i. **6470.65 grams** of foreign origin Gold (99.9 purity) recovered from 7158 Gold paste seized by SOG, Police, Surat, totally valued at **Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only)** (market value) should not be **confiscated absolutely** under the provisions of **Section 111(d), 111(i) and 111(j)** of the **Customs Act, 1962**.
- ii. Empty **Box –C** which was containing the packaging material recovered from **Shri Fenil Rajeshbhai Mavani** and **Box-D** which was containing the packaging material recovered from **Shri Nirav Ramnikbhai Davariya** was taken over from the SOG of Police, Surat should not be **confiscated absolutely** under the provisions of **Section 119** of the **Customs Act, 1962**.

51) Further, (1) **Shri Fenil Rajeshbhai Mavani**, residing at Flat No 201, Building No D-1, Shlok Residency, Utran, Surat (e-mail id: fenilmavani1195@gmail.com) (2) **Shri Nirav Ramnikbhai Davariya**, residing at Flat No D-302, Gokuldharm Society, Abraham Road, Mota Varachha, Surat (e-mail id: davariyanirav@gmail.com) (3) **Shri Sawan Shantilal Rakholiya**, residing at Flat No 204, Building No J, Shripad Avenue, Yogi Chowk, Sarthana, Surat (e-mail id: sawanrakholiya123@gmail.com) (4) **Shri Umesh Rameshbhai Bhikadiya**, residing at Flat No 802, Ravi Building, Rajhans Swapna, Near Sarthana Jakatnaka, Sarthana, Surat (e-mail id: umeshbhikadiya@gmail.com) (5) **Shri Vishal Dhirubhai Gabani**, residing at House No 71, Shreeji Society, Near Dabholi Circle, Singanpore, Surat (email id: vishal.gabani23@gmail.com) (6) **Shri Baldev Mansukhbhai Sakhreliya**, residing at A-103, Kaveri Habitat, V T Nagar Road, Sarthana, Surat (e-mail id: baldevsakhreliya69@gmail.com) were also called upon to show cause in writing to the Additional Commissioner of Customs, I/c of Surat International Airport, Surat, having his office situated on 4th Floor, CUSTOMS HOUSE, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007, within thirty days of receipt of the Notice, as to why: -

- (i) Penalty should not be imposed upon them under **Section 112 (a) & (b)** of the Customs Act, 1962;

52). DEFENCE SUBMISSIONS:

5 2 . 1 . In response to the said Show Cause Notice F.No. VIII/26-11/AIU/CUS/2024-25 dated 22.05.2024, one of the noticees viz; **Shri Baldev Mansukhbhai Sakhreliya** submitted his written submissions vide letter dated 24.03.2025 wherein, he inter-alia mainly stated as under:

- He denied each and every allegation made in the show cause notice under reply. Allegations not specifically dealt with or rebutted hereinbelow may be treated as summarily denied and never admitted.
- Against the gold seizures made on 29.04.2023, show cause notice under section 124 has been issued only on 22.05.2024. The show cause notice should have been issued before 29.11.2023. No notice of extension was issued to him under section 110(2) of the Customs Act, 1962 meaning thereby he is not at all liable for any acts or omissions leading to the confiscation of the seized gold.
- The gold has been seized in paste form from other persons and not from him by the police.
- DRI got his signature in typed sheets by threat and intimidation on 27.03.2024. Only on 28.02.2025, he received the DVD/CD containing his statement.
- Cross examination of the following persons who have incriminated him as mentioned in the show cause notice is required to be granted in the interest of natural justice and the adjudication to be in compliance with section 138 B of the Customs Act, 1962:- Shri Fenil Rajeshbhai Mavani; Shri Nirav Ramnikbhai Davariya; Shri Umesh Rameshbhai Bhikadiya; Shri Vishal Dhirubhai Gabani; Shri Shreyash Dineshbhai Chalodiya. Reliance is placed on the following precedents in support of his plea for cross examination/examination of himself. Amit Ghosh Versus CC-2023 SCC Online CESTAT 2365; Andaman Timber Industries-2015 SCC Online SC 1051 ;CC Versus Shakil Ahmed Khan-2019 SCC Online All 4068.
- When no gold had been recovered from him in any form, he cannot be alleged to have any culpable mental state punishable under the Customs Act, 1962.
- It is well settled law that statements of co-noticee cannot be adopted as legal evidence to penalise the accused unless the material particulars by statements are collaborated with independent evidence. The show cause notice contains no except statements recorded under independent evidence custody of the DRI.
- For the proposition that no penalty can be imposed on him under section 112 (b), reliance is placed on paragraphs 5.13 to 5.18 of the Tribunal decision reported as Hershadbhai Kantibhai Savaliya Versus CC-2022 SCC Online CESTAT 3350.
- He requested to (a) grant examination of himself and cross examination of the persons as mentioned; (b) if cross examination is not granted, a speaking order may be passed in terms of jurisdictional High Court decision reported as Mahek Glazes Private Limited Versus UOI – 2013(7) TMI 128- Gujarat High Court.

52.2. In response to the said Show Cause Notice F. No. F.No. VIII/26-11/AIU/CUS/2024-25 dated 22.05.2024, one of the noticees viz; **Shri Umesh Rameshbhai Bhikadiya** submitted his written submissions vide letter dated 24.03.2025 wherein, he inter-alia mainly stated as under:

- He denied each and every allegation made in the show cause notice under reply. Allegations not specifically dealt with or rebutted hereinbelow may be treated as summarily denied and never admitted.
- Against the gold seizures made on 29.04.2023, show cause notice under section 124 has been issued only on 22.05.2024. The show cause notice should have been issued before 29.11.2023. No notice of extension was issued to him under section 110(2) of the Customs Act, 1962 meaning thereby he is not at all liable for any acts or omissions leading to the confiscation of the seized gold.
- The gold has been seized in paste form from other persons and not from him by the police.
- DRI got his signature in typed sheets by threat and intimidation. He has not been given a copy of the statement till date by DRI.
- Since he had already been made an accused in the smuggling case by police, the statement recorded by DRI keeping him under court granted custody cannot be treated a confession. Reliance placed on paragraph 43 of the judgement reported as Kanhaiyalal Versus Union of India – 2008 SCC Online SC 90.
- He should be granted an opportunity for personally appearing for his examination.
- No gold was recovered from him as per the SCN.
- Cross examination of the following persons who have incriminated him as mentioned in the show cause notice is required to be granted in the interest of natural justice and the adjudication to be in compliance with section 138 B of the Customs Act, 1962:- Shri Fenil Rajeshbhai Mavani; Shri Nirav Ramnikbhai Davariya; Shri Umesh Rameshbhai Bhikadiya; Shri Vishal Dhirubhai Gabani; Shri Shreyash Dineshbhai Chalodiya. Reliance is placed on the following precedents in support of his plea for cross examination/examination of himself. Amit Ghosh Versus CC-2023 SCC Online CESTAT 2365; Andaman Timber Industries-2015 SCC Online SC 1051 ;CC Versus Shakil Ahmed Khan-2019 SCC Online All 4068.
- When no gold had been recovered from him in any form, he cannot be alleged to have any culpable mental state punishable under the Customs Act, 1962.
- It is well settled law that statements of co-noticee cannot be adopted as legal evidence to penalise the accused unless the material particulars by statements are collaborated with independent evidence. The show cause notice contains no except statements recorded under independent evidence custody of the DRI.
- For the proposition that no penalty can be imposed on him under section 112 (b), reliance is placed on paragraphs 5.13 to 5.18 of the Tribunal decision reported as Hershadbhai Kantibhai Savaliya Versus CC-2022

SCC Online CESTAT 3350.

- He requested to (a) provide DVD/CD containing the relied upon documents with further opportunity to rebut the same; (b) grant examination of himself and cross examination of the persons as mentioned; (c) if cross examination is not granted, a speaking order may be passed in terms of jurisdictional High Court decision reported as Mahek Glazes Private Limited Versus UOI – 2013(7) TMI 128- Gujarat High Court.

52.3. In response to the said Show Cause Notice F. No. F.No. VIII/26-11/AIU/CUS/2024-25 dated 22.05.2024, one of the noticees viz; **Shri Vishal Dhirubhai Gabani** submitted his written submissions vide letter received in this office through mail on 13.10.2025, wherein, he inter-alia mainly stated as under:

- The noticee, Shri Vishal Dhirubhai Gabani, submits that the allegations made against him in the Show-Cause Notice (SCN) are unsubstantiated, vague, and unsupported by evidence, and therefore the entire proceedings deserve to be dropped. The Department's case, he asserts, rests merely on statements of co-accused persons and assumptions without any corroborative proof or recovery from him.
- The SCN alleges that 7.15 kg of gold paste was seized on 29 April 2023 from two persons—Nirav Davariya and Fenil Mavani—upon arrival from Sharjah to Surat. However, no gold or contraband was found from Shri Gabani. He emphasizes that he was not even present in India on the date of seizure, having travelled abroad for business.
- The noticee's verified travel record shows he departed Mumbai to China on 23 April 2023, attended an embroidery machinery exhibition in Guangzhou until 27 April, went to Bangkok on 3 May, later to Dubai on 18 May, and returned to India only on 30 May 2023. He was thus outside Indian jurisdiction throughout the period when the alleged smuggling occurred, as also confirmed in his statement recorded under Section 108 of the Customs Act.
- None of the key witnesses—Fenil Mavani, Nirav Davariya, or Sawan Rakholiya—mention Shri Gabani's name in their statements. The allegation linking him stems solely from Umesh Bhikadiya, who under alleged custodial pressure claimed that the gold was meant for a person called "Vicky" or "Vishal" using mobile number +852 5485 9479. The Department has no ownership proof, call records, or digital link connecting that number to the noticee.
- Shri Gabani further clarifies that he has no office or business in New DTC Market, Mahidharpura, Surat, contrary to what the SCN assumes. Departmental verification supports this. Hence, the identity of "Vicky" remains unverified, and the alleged connection with the noticee is speculative and baseless.
- He stresses that the confession of a co-accused is not substantive evidence under Section 30 of the Indian Evidence Act (now Bharatiya Sakshya Adhiniyam 2023) unless independently corroborated. Since no

corroboration exists, reliance on such statements violates the settled principle that guilt cannot be inferred from hearsay or association.

- The noticee's own statement, recorded while he was in custody, is claimed to have been taken under coercion and without legal assistance, making it involuntary and unreliable. The Supreme Court has repeatedly ruled that custodial confessions require corroboration, which is absent here. There is no financial trail, fund transfer, or incriminating material linking him to the alleged act.
- The SCN also refers to a supposed arrangement of 2,75,000/- Dirhams, allegedly remitted by the noticee for gold purchase. However, no banking record, invoice, WhatsApp chat, or hawala trail has been produced. The alleged intermediary "D.M." remains unidentified. The Department has no proof of any money movement, rendering the charge of conscious involvement untenable under Section 112 of the Customs Act.
- Shri Gabani operates a legitimate embroidery business, Radhika Fashion, Surat, and owns Vishal General Trading LLC (UAE), dealing in garments—not gold. He has no prior offences or customs violations. His implication appears to arise from mistaken identity, equating him wrongly with another "Vicky." Moreover, no recovery, communication, or delivery of gold ever took place, since the carriers were arrested before any delivery.
- He requests cross-examination of all persons whose statements have been used against him—Fenil Mavani, Nirav Davariya, Umesh Bhikadiya, Sawan Rakholiya and Baldev Sakhreliya—to test their credibility and contradictions. The right to cross-examine, he contends, is a fundamental element of natural justice, and denial of such opportunity would vitiate the adjudication process.
- The noticee firmly denies violation of Sections 111(d), (i), (j) and 112(a)/(b) of the Customs Act. These provisions apply only to persons knowingly involved in illegal import or possession of smuggled goods. Since he neither possessed nor had knowledge of any such activity, their invocation is unjustified. Judicial precedents—Metplast India, Prestige Impex, Dhanak Madhusudan Ranji, Sri Natraj Trading Co., and Lalit Jain v. CESTAT—are cited to support that penal liability cannot rest on conjecture or uncorroborated statements.
- In conclusion, Shri Gabani submits that no evidence—documentary, digital, or testimonial—connects him to the alleged offence. He was abroad when the seizure occurred; no gold, funds, or messages link him to the co-accused; and the Department has failed to prove even a prima facie case. The attempt to equate "Vicky" with him is speculative. Therefore, in the interest of justice, he prays that the Show-Cause Notice dated 22 May 2024 be quashed and all proceedings against him be dropped, as they are baseless, factually incorrect, and legally unsustainable.

52.4 No defence reply/written submissions have been received from the other three noticees viz; (1) **Shri Fenil Rajeshbhai Mavani**, (2) **Shri Nirav Ramnikbhai Davariya**, and (3) **Shri Sawan Shantilal Rakholiya** in this case.

53. PERSONAL HEARING:

53.1 All the six noticees were granted first opportunity of personal hearing on 10.09.2025 through virtual mode, however none of the noticees attended personal hearing on the said date. The letters for personal hearing were sent through Speed Post at the available addresses as well as on the provided e-mail IDs of the noticees.

53.2 Second opportunity of personal hearing was accorded on 17.09.2025 to all the six noticees through virtual mode and this time Shri S. Suriyanarayanan, Advocate and the authorized representative of Shri Baldev Mansukhbhai Sakhreliya attended the hearing in virtual mode. During hearing he requested for cross examination of other noticees and reiterated their written submissions dated 24.03.2025. The remaining five noticees neither attended hearing nor made any submission for extension/adjournment of hearing. The letters for personal hearing were sent through Speed Post at the available addresses as well as on the provided e-mail IDs of the noticees.

53.3 However, to follow the principles of natural justice, a third opportunity of personal hearing was accorded on 09.10.2025 through virtual mode to the remaining five noticees. The letters for personal hearing were sent through Speed Post at the available addresses as well as on the provided e-mail IDs of the noticees. Yet again, the noticees failed to appear for personal hearing. Shri Viken Shah, Advocate and authorised representative of Shri Vishal Dhirubhai Gabani vide mail dated 13.10.2025 submitted his defence submission wherein he requested for personal hearing. The other noticees neither submitted any request for adjournment nor sought any extension of date of hearing.

53.4 Conceding the request of Shri Viken Shah, Advocate and authorised representative of Shri Vishal Dhirubhai Gabani and to follow the spirit of principle of natural justice, fourth and final opportunity of personal hearing was accorded on 23.10.2025 through virtual mode to all the remaining five noticees. The letters for personal hearing were sent through Speed Post at the available addresses as well as on the provided e-mail IDs of the noticees. This time Shri Viken Shah, Advocate and authorised representative of Shri Vishal Dhirubhai Gabani attended the hearing in virtual mode on 23.10.2025. During hearing he stated that:

"the FIR was lodged by SOG on 29/04/2024 where two persons were arrested with Gold. During interrogation, one of the accused, Umesh (RUD7), mentioned the name of a person named Vishal, with one foreign mobilenumber and address. But, Surprisingly any of them are not associated with Vishal.. While as per RUD 16 the statement of mastermind Baldev, denied any role of Vishal. Vishal have no office at the place claimed and its undisputed fact as per RUD18. No recoveries of mobile or gold were made from their client. There is no chat in their Mobile with any of accused..

He further submitted that this is a case of mistaken identity. His client Vishal was in China from 23 to 27. And from 27 he was in Bangkok. They have submitted copy of Passport immigration stamps evidencing the same in their earlier written submission.

He reiterated their earlier written submission dtd 10/07/2025.

He lastly requests and that in light of submissions made by them,

proceedings against them may please be dropped.”

The other noticees neither attended hearing nor made any submission for extension/adjournment of hearing.

54. DISCUSSION & FINDINGS:

54.1 I have carefully gone through and examined the facts and evidences available on record, defence submissions, records of personal hearing, the relevant legal provisions envisaged under the Customs Act, 1962, allied acts and relevant rules made there under, the relied upon documents etc. I have carefully studied all the Statements of the persons recorded under Section 108 of the Customs Act and carefully considered the facts of the case. Further, sufficient opportunities to be heard in person were extended to all the noticees of the SCN following the Principle of Natural Justice, out of total 06 noticees, only two noticees named Shri Baldev Mansukhbhai Sakhreliya and Shri Vishal Dhirubhai Gabani availed the opportunity of personal hearing and rest failed to appear. In view of above, it is obvious that the Noticees are not bothered about the ongoing adjudication proceedings and they do not have anything to say in their defence. I am of the opinion that sufficient opportunities have been offered to the Noticees in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

54.2 I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to the noticees but some noticees did not participate in the adjudication proceedings inspite of the fact that service of letters for personal hearings were done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

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

- a. *by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;*
- b. *by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*
- c. *by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;*
- d. *by making it available on the common portal;*
- e. *by publishing it in a newspaper widely circulated in the locality in which*

the person to whom it is issued is last known to have resided or carried on business; or;

- f. *by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.*

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

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

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

54.3 I find that the noticees viz. Shri Fenil Rajeshbhai Mavani; Shri Nirav Ramnikbhai Davariya; Shri Sawan Shantilal Rakholiya and Shri Umesh Rameshbhai Bhikadiya have failed to appear for Personal Hearing, inspite of being given opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

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

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

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

21. It may be recalled here that the requirement of natural justice varies

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

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

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

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

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

of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

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

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

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

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

54.4.6 In view of the discussion held in Para 54 to 54.4.5 above, I proceed to adjudicate the Show Cause Notice No. VIII/26-11/AIU/CUS/2023-24 dated 22.05.2024 ex parte in respect of four noticees.

54.5. I now proceed to examine the core issues involved in the present case. I have carefully perused the facts and evidence placed before me. The questions that need to be addressed in this matter fall within the purview of the Customs Act, 1962 and the allied laws, and are as follows:

- i. Whether the goods seized falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;
- ii. Whether, Gold net weighing 3249.89 Grams extracted from the gold paste found concealed in possession of Shri Fenil Rajeshbhai Mavani having a

market value of Rs. 2,24,24,241/- is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 or otherwise;

- iii. Whether, Gold having net weight of 3220.76 Grams extracted from the gold paste having a market value of Rs. 2,22,23,244/- recovered from the possession of Shri Nirav Ramnikbhai Davariya is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 or otherwise;
- iv. Whether, packing material used to conceal the gold paste recovered from Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya respectively, which were used for the concealment of gold are liable for confiscation under Section 119 of the Customs Act, 1962 or otherwise;
- v. Whether the act of the Noticee No. 1 to Noticee No. 06 renders them to be penalized discretionarily under Section 112 of the Customs Act, 1962;

54.6 I find that it is on record that based on specific intelligence, Surat Police's Special Operations Group (SOG) intercepted a Honda Civic car (GJ 03 BA 5838) on 29.04.2023 near S.K. Nagar Chokdi, Surat, and recovered 7,158 grams of gold in paste form (worth ₹4.29 crore) concealed on the bodies of Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya, who had arrived from Sharjah via Air India Express Flight IX 172 on 28.04.2023. Subsequent DRI investigation revealed that both carriers acted on instructions of Shri Umesh Rameshbhai Bhikadiya and Shri Sawan Shantilal Rakholiya, under the direction and financing of Shri Baldev Mansukhbhai Sakhreliya alias Parth Sharma, the principal conspirator.

54.7 The statements of Shri Fenil Mavani and Shri Nirav Davariya recorded under Section 108 of the Customs Act are clear, self-incriminating, and consistent with one another. Both admitted that they travelled to UAE on the instructions of Shri Umesh Rameshbhai Bhikadiya and Shri Sawan Shantilal Rakholiya, who offered them an all-expense-paid trip to Dubai in exchange for smuggling gold back to India. They further admitted that, in Dubai, a person acting for Shri Baldev Mansukhbhai Sakhreliya alias Parth Sharma gave them specially stitched underwear and pouches containing gold paste, and instructed them to conceal the same in their clothes and footwear. Both clearly stated that they were aware the goods were gold and that they deliberately chose not to declare them before Customs at Surat International Airport.

54.8 It is also on record that the extraction of pure Gold was carried out from the Gold paste, so recovered from the possession of Shri Fenil Mavani and Shri Nirav Davariya at Jay Renuka, Gold and Silver Tounch Refinery, 3/389, Navapura, Near Kumbharwada Tower, Surat under the panchnama proceedings on 21.03.2024 in the presence of Special Operations Group, Surat Police, two independent panchas, the accused from whom the muddamal was seized by the SOG, Surat that is Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya and Photographer. The whole proceeding was done under videography and photography. The details of Gold recovered is as under:-

Details of Gold Extracted from the Muddamal

			Weight of the		Weight of
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Sr. No.	Marking on the Box	Accused from whom gold paste was recovered	plastic box along with gold paste (in grams)	Description of the gold extracted	the Gold extracted (in grams)
1	A	Fenil Rajeshbhai Mavani	3673.20	Big bar	3197.350
2	A	Fenil Rajeshbhai Mavani		Small Piece	52.540
3	B	Nirav Ramnikbhai Davariya	3693.80	Big bar	3175.520
4	B	Nirav Ramnikbhai Davariya		Small Piece	45.240
Total			7725.7		6470.65

According to the valuation report given by Shri Salim Jafarbhay Daginawala, registered valuer authorized by Govt of India, a total of 6470.65 grams of foreign origin Gold, totally valued at Rs. 4,46,47,485/- (market value) was recovered and seized under the provisions of Section 110 of Customs Act, 1962.

54.9 I further find that the statements of Shri Umesh Bhikadiya and Shri Sawan Rakholiya corroborate these facts. Shri Bhikadiya admitted that he arranged passengers having valid passports on the direction of Shri Baldev Sakhreliya, that he was responsible for logistics, and that he would receive ₹25,000 per passenger for his role. Shri Sawan Rakholiya confirmed he recruited carriers and acted as intermediary between Shri Umesh Bhikadiya and the carriers. Both also admitted that they travelled earlier to Dubai in February 2023 for similar smuggling activity, which was aborted due to heightened vigilance at Surat Airport — thereby evidencing continuity of illegal intent and a pre-existing conspiracy.

54.10 The statement of Shri Baldev Mansukhbhai Sakhreliya alias Parth Sharma, the principal conspirator, further establishes the chain of culpability. Though he initially attempted to deflect blame on one “Shri Dilip alias D.M.” residing in Dubai, he admitted that he had knowledge of and association with the said Dilip, that he had earlier engaged in gold smuggling through Surat Airport, and that he used the pseudonym “Parth Sharma” for concealment of identity. The fact that flight bookings for the carriers were made through Shri Shreyash Dineshbhai Chalodiya, the travel agent, on the direct instructions of Shri Baldev Sakhreliya, and that funds for tickets were provided by him, further confirms his leadership role in the smuggling network.

54.11 I find that Shri Vishal Dhirubhai Gabani (alias Vicky), arrested later, admitted in his statement that he was in contact with Shri Umesh Bhikadiya and Shri Baldev Sakhreliya and that he was to receive the smuggled gold from the carriers for further disposal in the domestic market. His mobile number and communications corroborate his link to the conspiracy. The chain of transactions between the Dubai supplier (Dilip), the financier (Sakhreliya), the logistic managers (Bhikadiya and Rakholiya), the carriers (Mavani and

Davariya), and the receiver (Gabani) is complete and unbroken.

54.12 Regarding prohibition of goods as envisaged under Section 2(33) of Customs Act, 1962, I find that the noticee Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya had clearly confessed to carrying gold of 24 carat net weighing 6470.65 grams extracted from the gold paste concealed in the jeans, shoes and underwears worn by them, which they had attempted to clear illicitly from Surat International Airport, Surat by hiding it on person and without declaring it to the Customs Authorities and thereby violating the Para 2.27 of the Foreign Trade Policy 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. 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. In this regard, I find that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following:-

“Further, Section 2(33) of the Act defines “Prohibited Goods” as under. - Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with. “From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either ‘absolutely’ or ‘subject to such conditions’ to be fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression ‘prohibited’ used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negated the said contention and held thus:- “... what clause (d) of Section 111 says is 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 is liable to be confiscated. “Any prohibition” referred to in

that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression “any prohibition” in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions ‘prohibiting’, ‘restricting’ or ‘otherwise controlling’, we cannot cut down the amplitude of the word “any prohibition” in Section 111(d) of Customs Act, 1962. “Any prohibition” means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition.

54.12.1 Further, in case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court (i.e the Hon'ble jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."

54.12.2 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods"*. Relying on the ratio of the above judgments state above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, *ibid*.

54.12.3 Relying on the ratio of the judgments stated above, I find that the goods brought by/found in possession of Noticees Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya respectively, falls under the category of “Prohibited Goods” under the definition of Section 2(33) of the Customs Act, 1962.

54.13 Under their submission, three noticees have asked for cross examination of co-noticees. In this regard, I note that it is not mandatroy to allow cross examination during adjudication proceedings under Section 138 B (2) of the Customs Act, 1962. In the instant case, as detailed in the preceding paras, the facts and events have been establsihed not only through statements but also through documentary evidences. I find that cross examination is not expressly mentioned in Section 124 and Section 122 of Customs Act, 1962. I further find that the source of cross examination lies in the statute in Section 138B of the Customs Act. Sub-Section 138(B) (2) uses the words "shall so far as may be" which suggests the primacy and desirability of exercise of power for permitting cross-examination in the interest of justice. It is explicit that cross-examination is not a mandatory requirement and the discretion has to be applied cautiously. The relevance of cross-examination, the identity of the

person sought to be cross-examined, the context of their statements, and the nature of the dispute are all critical considerations. In taxation matters, which are civil in nature, the standard for appreciating evidence is based on the principle of preponderance of probability, unlike criminal proceedings where the strict provisions of the Indian Evidence Act apply. I find that Statements recorded under Section 108 of Customs Act are voluntary/ confessional in nature. It is on the principle of natural justice that both sides should be heard fairly and reasonably, that if any reliance is placed on evidence or record against a person, then the evidence or record must be placed before him for his information, to comment and criticism. However, natural justice does not necessarily mandate formal cross-examination in every case. So long as the party charged has a fair and reasonable opportunity, to see, comment and criticise the evidence, statement or record on which the charge has been made against him, the demand and test of the natural justice satisfied. Cross examination in that sense is not the technical cross examination in a court of Law in the witness box, as held in judgment of Kishanlal Agarwal vs. Collector of Land Customs, AIR 1967. Further, it is held that denial of cross examination does not lead to violation of principles of natural justice. The following case laws are relevant and further support the above view:-

- i. Poddar Tyres (Pvt) Ltd vs. Commissioner-2000 (126) E.L.T 737:- wherein it has been held that cross examination not a part of natural justice but only that of procedural justice and not a 'sine qua non'.
- ii. Kumar jagdish Ch. Sinha Vs. Collector-2000 (124) E.L.T 118 (Cal H.C)- in this case it has been held that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- iii. A.K Hanbeen Motarred Vs. Collector-2000(125) E.L.T 173 (Mad H.C):- wherein it has been held that the strict rule of the burden of proof applicable to criminal prosecution may not be applicable to proceedings before customs authorities.
- iv. Shivom Ply N-wood Pvt Ltd Vs. Commissioner of Customs & Central Excise, Aurangabad-2004 (177) E.L.T 1150 (Tri. Mumbai):- wherein it has been held that cross examination not to be claimed as a matter of right.

54.14 Furthermore, I find that it is a well settled position that proceedings before a quasi-judicial authority are not on the same footing as proceedings before a court of law. It is within the discretion of the quasi-judicial authority to decide whether or not to allow request of cross examination, based on the requirements of natural justice in a given case. Denial of such a request has consistently been held not to violate the principles of natural justice in quasi-judicial proceedings, as upheld in the following case laws:

- a. In the case of kanungo & co. Vs. Collector of Customs, Calcutta and others [1993 (13) E.L.T 1486 (S.C)] wherein it was unequivocally held that for proceedings under Customs Act, the right to compliance to the principle of natural justice does not cover the right to cross examination witnesses. Relevant para is reproduced wherein the Hon'ble Supreme

Court observed as follows:-

“in our opinion, the principles of natural justice donot require that in matters like this the person who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordinlgy, I hold that there is no force in the third contention of the appellant.”

- b. In the case of Suman Silk Mills Pvt Ltd vs. Commissioner of Customs & C.ex, Baroda [2002 (142) E.L.T 640 (Tri. Mumbai)] Tribunal observed that- *“Natural Justice- Cross Examination-Confessional Statements- No Infraction of Principle of Natural Justice where witnesses not crossed examined when statement admitting evasion were confessional.”*
- c. In the case of Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) E.L.T 433 (Tri.) it was held- *“ In a quasi judicial proceeding, strict rules of evidences need not to be followed. Cross examination cannot be claimed as a matter of right.”*
- d. In the case of Patel Engg. Ltd Vs. UOI reported in 2014 (307) E.L.T 862 (Bom), Hon’ble Bombay High Court has held that :- *“ Adjudication-Cross Examination- Denial of -held does not amount to violation of principle of natural justice in every case, instead it depends on the particular facts and circumstances-thus right of cross examination cannot be asserted in all inquires and which rule or principle of natural justice must be followed depends upon several factors- futher, even if cross examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated.”*
- e. Hon’ble Punjab and Haryana High Court in its decision in case of Azad Engg Works vs. Commissioner of Customs and Central Excise, reported as 2006 (2002) ELT 423 held that :- *“.....it is well settled that no rigid rule can be laid as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interferences with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon’ble Supreme Court in K.L Tripathi Vs State Bank of India and others, AIR 1984 SC 273.”*
- f. Hon’ble Tribunal in case of P Pratap Rao Sait Vs. Commissioner of Customs reported as 1988 (33) ELT (Tri) has held that *“.....the plea of the learnt counsel that the appellant was not permitted to cross examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable”.*
- g. Similarly in A.L Jalauddin Vs. Enforcement Director reported as 2010 (261) ELT 84 (Mad HC) the Hon’ble High Court held that:- *“.....therefore, we do not agree that the principle of natural justice have been violated by not allowing the appellant to cross examine these two persons. We may refer to the paragraph in AIR 1972(SC) 2136=1983 (13)ELT 1486(SC) (Kanungo & Co.Vs Collector of Customs, Calcutta)”*

- h. *In the case of Liyakat Shah Vs. CCE [2000(120) ELT 556], the CESTAT held that Cross examination can be denied if it just delaying tactics to avoid justice.*
- i. *In case of GTC industries Ltd Vs. Commissioner of Customs New Delhi [2011 (264) ELT 433 (Tri-Del.) it has been held that:- "Evidence in adjudication proceeding need not be like the one in criminal cases- Findings in the adjudication based on preponderance of probability- witnesses found to be not innocent but well conversant with the appellants' trade-Statement of witnesses voluntary and not retracted- Reply to SCN not filed and merely raised filmy plea for cross examination prematurely-Right to Cross Examination not required when circumstantial evidence provide reliable basis corroborating statements-witnesses not having enmity with appellant and such witnesses not required to put to cross examination- No right to seek cross examination on filmy plea when burden of proof discharged by revenue- Natural Justice not violated."*

54.15 I find that the two notices (i) Shri Baldev Mansukhbhai Sakhrelia and (ii) Shri Umesh Rameshbhai Bhikadiya in their defence submission submitted that the DRI get their signature in typed sheets by threat and intimidation and they were not been given copy of the statements by DRI. Another noticee Shri Vishal Dhirubhai Gabani also submitted in his defence submission that the statement was recorded while he was in custody and claimed to have been taken under coercion and without legal assistance, making it involuntary and unreliable. Except these three noticees remaining three noticees have never retracted their aforesaid statements recorded under Section 108 of the Customs Act, 1962.

54.15.1 In this regard, I find that in all their statements, the noticees admitted that the statements were given voluntarily and without any inducement, threat, coercion or by any improper means and they signed them after verifying the correctness of the facts, in full presence of mind. I find that none of them has submitted any documentary evidence to substantiate their claim that the statements were obtained under duress or coercion. A retraction of a statement recorded under Section 108 of the Customs Act, 1962, on the grounds of coercion or pressure, must be supported by credible evidence. The law presumes that a statement made under Section 108 is voluntary, and the person giving it is not obligated to endorse any typed statement if it was indeed obtained under coercion, as now alleged. In their statements, they acknowledged and signed the contents after going through panchnama dated 29.04.2023 drawn by Police Sub Inspector, SOG, Surat City, as well as the statements of other individuals. I find that in these statements, they disclosed detailed information about their educational background, business activities. They further mentioned about their family details. Shri Umesh Rameshbhai Bhikadiya stated that he was doing business in the name of Bapa Sitaram Laser at Khata No 32, Valinath Society, Kapodra, Surat which was involved in laser art on wood and acrylic raw materials. Further Shri Baldev Mansukhbhai Sakhrelia stated that he was born in 1993 in Amreli district and studied BCA from Saurashtra University; that in 2014, he moved to Surat from Amreli and

started as a free lancer in diamond industry in Surat and from 2016 to 2018, he worked as a broker in Textile Industry in Surat. He said that from 2018, he started his proprietorship firm in the name of M/s Khanak Export, (GSTIN. 24EQTPS9819E1Z2), Plot No. 208, Ground Floor, Rang Avdhut Soc-1, Nr. Krishna Park, Puna-Saroli Road, Surat, Gujarat, 395010, which is engaged in the export of textile material to M/s Grand Hills General Trading LLC Dubai. He further stated that he used to visit Dubai frequently as he is working as Manager in Dubai based firm M/s Grand Hills General Trading LLC, Dubai and he has applied for Manager Visa of the said firm of Dubai. He further stated that one Indian person Shri Nilesh Borad is a Partner of the said firm and the second partner is a Dubai citizen. He voluntarily stated that the address of M/s Grand Hills General Trading LLC, Dubai is Shop No. 8, Bahareni Building, Nearby Sia Mosque, Meena Bazar, Bur Dubai. Shri Vishal Dhirubhai Gabani stated that *"I don't agree that Shri Baldev Manshukhbhai Sakhrelia had directed Shri Umesh Rameshbhai Bhikhadia to handover gold to me after receiving the same from Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani in Surat."* Had the statement taken under duress, threat, coercion Shri Vishal Dhirubhai Gabani would not have allowed to made any denial remarks in his statement. Further, during personal hearing Shri Viken Shah, Advocate and Authorised representative of Shri Vishal Dhirubhai Gabani relied upon the statement of Shri Vishal Gabani recorded under Section 108 of the Customs Act, 1962. Simultaneously relying upon and retraction from the statement is paradox. I find that the statements of all the noticees contains specific and intricate details, each noticees explain in detail how they came in contact with other person/noticees involved in the case and how they hatched and conspired to execute the plan of smuggling of Gold in paste form into India, their commission, the revelation made about their previous plan in February-2023 to smuggle gold which was aborted due to heightened security, Statement of a travel agent Shri Shreyash Dineshbhai Chalodiya dated 01.08.2023 wherein he stated that one person named Shri Parth Sharma having whatsapp number +91-9157925125 contacted him on whatsapp for flight ticket bookings etc. which could only have been furnished based on their personal knowledge and could not have been invented by the officers who recorded the said statements. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statements in question. It is on the record that the noticees have tendered his statement(s) voluntarily under Section 108 of the Customs Act, 1962. In view of the above, I find that the statements given by noticees under Section 108 of the Customs Act, 1962, were made voluntarily and carry evidentiary value under the law. I find the noticees retraction from their statements as coerced and no voluntary testimony are not tenable. I find that the retraction from the statements is delayed and without any evidence which infer that the retraction is nothing but after thought of the noticees to some how escape the consequences of the law. No noticees filed any complaints with any authority contemporaneously. In this regard I relied upon the flowing legal provisions and case laws:

- **Legal Position:** Retractions valid only if filed promptly with duress evidence (e.g., medical proof). Delayed retractions weak; statements under Section 108 of the Customs Act are judicial

confessions if voluntary.

• **Case Laws:**

- *Vinod Solanki v. UOI* (2009 (233) ELT 157 (SC)): Retraction must prove coercion; mere allegation insufficient.
- *K.P. Abdul Majeed v. CC* (2015, Kerala HC): Burden on retracting party to prove duress; statements admissible unless invalidated.
- Hon'ble Supreme Court in case of *Surjeet Singh Chhabra Vs. U.O.I* [reported in 1997 (89) E.L.T 646 (S.C)] held that ***evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.***
- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that ***“Statement recorded by a Customs Officer under Section 108 is a valid evidence”***
- In 1996 (83) E.L.T 258 (SC) in case of *Shri Naresh J Sukhwani V. Union of India* wherein it was held that ***“It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962”***
- ***There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion*** as held by Hon'ble Supreme Court in case of *K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin* (1997) 3 SSC 721.
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of *Kantilal M Jhala Vs. Union of India*, held that ***“Confessional Statement corroborated by the Seized documents admissible even if retracted.”***
- In the case of *Rajesh Kumar Vs CESTAT* reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our

inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.

- The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "
- In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

*Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. **As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily.** When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*

- The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v.

Union of India - (1992) 3 SCC 178 held as under:

"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."

(emphasis supplied)

- Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30.**

54.15.2 Therefore, I consider their statements material evidence in this case and I rely on the following rulings of various courts, which have underscored the evidentiary value of a statement recorded under Section 108 of the Customs Act, 1962:

- The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that the statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner, inculcating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962, can be used as substantive evidence in connecting the applicant with the act of contravention.

- In the Collector of Customs, Madras, and Ors vs. D. Bhoormull-1983 (13) ELT 1546(S.C.) case, ***the Hon'ble Supreme Court has held that the*** Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records, as well as other documents, are to be evaluated, and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- In the case of ***Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC***. Hon'ble Supreme Court held that the statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

54.16 Given the judgments cited above, I regard the noticees' statement as material evidence. The statements have sufficient evidentiary value to demonstrate that the passenger, intercepted by the SOG, Surat City Police and later on investigated by the DRI under Customs Act, had attempted to smuggle the gold into India. Moreover, 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 passenger/noticees. Also, it is on record that the gold paste was converted in to gold bar at Jay Renuka, Gold and Silver Touch Refinery, 3/389, Navapura, Near Kumbharwada Tower, Surat under panchnama proceedings and valuation of the Gold was done by the Government Approved Valuer by following the due process and submitted their reports vide Certificate bearing number 218 dated 21.03.2024 which clearly indicates that the gold was of purity 999.0/24kt. The 'Test report' indicates that goods are composed of gold with 999.0/24kt purity, which is not in conformity with locally available gold but similar to gold generally smuggled from foreign countries. So, it is a fact that the goods have been seized under the reasonable belief that the goods are smuggled goods as per Section 2(39) of the Customs Act, 1962.

54.17. Now, I take up the other contentions made by the noticees in support of their claim one by one:

I. SCN Being Time-Barred (Issued beyond 6 Months from Seizure, No Extension Notice given) (Raised by Both Shri Baldev Mansukhbhai Sakhrelia and Shri Umesh Rameshbhai Bhikadia)

The Noticees argue that the SCN was issued on 22.05.2024 which exceeds 6 months from SOG seizure (29.04.2023) and no extension notice was given to them under Section 110(2) of the Customs Act, 1962. In this regard I find that the custody of the seized 7158 grams gold paste was taken over by DRI under panchnama proceedings dated 17.10.2023 and extraction and valuation of the same was conducted under panchnama proceedings dated 21.03.2024

wherein the total weight of extracted gold came out to be 6470.65 gram of foreign origin Gold (99.9 purity) valued at Rs. 4,46,47,485/- (market value) which was seized by the officers of DRI vide Seizure Memo DIN: 202403DDZ1000000E227 dated 22.03.2024 under the provisions of Section 110 of Customs Act, 1962, under reasonable belief that the same are liable for confiscation under the provisions of Customs Act, 1962. Further, the empty Box-C containing the packaging material recovered from Shri Fenil Rajeshbhai Mavani and Box-D containing the packaging material recovered from Shri Nirav Ramnikbhai Davariya was also placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same are liable to confiscation under the provisions of Customs Act, 1962. I find that the SCN dated 22.05.2024 was issued well within six months time from the date of seizure made on 22.03.2024 under Customs Act, 1962 by the DRI officials. Now, I peruse the relevant provisions envisaged under Section 110(2) of the Customs Act, 1962 which is as under:

“(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

⁴ [**Provided** that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and **inform the person from whom such goods were seized** before the expiry of the period so specified.”

I find the fact is on record that the Principal Commissioner of Customs, Ahmedabad has granted six months extension for issuance of Show Cause Notice in terms of proviso to Section 110(2) of the Customs Act, 1962 vide letter F. No. VIII/10-25/Pr. Commr./O&A/2023-24 dated 20.11.2023 and this order of extension was served to (i) Shri Nirav Ramnikbhai Davariya and (ii) Shri Fenil Rajeshbhai Mavani the persons from whose possession the gold was seized. The law clearly mandates any such extension is to be informed to the person from whom such goods were seized and not to all prospective noticees. The intent behind the law is to either return the goods to the person from whose possession the goods were seized within six months of seizure of the goods or inform him the reasons for not returning the goods within six months.

Thus the noticees' contention that the SCN is time barred/issued after six months is factually incorrect.

II. Non-Supply of RUDs Violating Natural Justice (Raised by Shri Umesh Rameshbhai Bhikadia)

I find the claim of Noticee Shri **Umesh Rameshbhai Bhikadia** that RUDs were not supplied to him is factually incorrect as the RUDs were supplied to all noticees including Shri **Umesh Rameshbhai Bhikadia** as google link shared on their given mail IDs on 23.05.2024 (The mail is sent through the mail ID customsairportssurat@gmail.com to Shri Umesh Rameshbhai Bhikadia's mail ID umeshbhikadia@gmail.com on 23.05.2024). Further no other noticees raised

such contention which infer that they have received the RUDs. So all the RUDs have been provided to all the noticees before the adjudication proceedings. Section 124 of the Customs Act, 1962 requires SCN to inform grounds but doesn't mandate simultaneous RUD supply. RUDs must be provided before adjudication to allow defence, but non-supply at SCN stage isn't fatal if cured later. Object is fair opportunity, not technical invalidation.

III. Gold Not Seized from Noticees Personally (Raised by Shri Baldev Mansukhbhai Sakhrelia, Shri Umesh Rameshbhai Bhikadia and Shri Vishal Dhirubhai Gabani)

I find the noticees contention that the gold seized by police from carriers, not from them so no liability upon them is not tenable as the various Statements recorded under Section 108 of Customs, Act, 1962 admitted recruitment/funding/delivery and thus are liable for penalty under Section 112 of the Customs Act for abetment. The Supreme Court in *Naresh J. Sukhawani v. UOI* (1995) held that Statements before Customs admissible against abettors.

"It must be remembered that the statement made before the Customs officials is not a statement recorded under [Section 161](#) of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under [Section 108](#) of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the [Customs Act](#). The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

54.17.1 Now I record my findings on some specific defence submissions made by the noticee Shri Vishal Dhirubhai Gabani:

I. Allegations Being Unsubstantiated, Vague, Without Direct Recovery/Evidence (No Gold Seized from Him)

I find the noticees contentions that no recovery have been made from him; that no direct link to seized gold; that SCN rests on inadmissible statements/guilt by association are not tenable as Vishal Dhirubhai Gabani's himself in his statement recorded under Section 108 of the Customs Act admitted funding and coordination with syndicate which was corroborated by Shri Umesh Rameshbhai Bhikadiya and Shri Shri Baldev Mansukhbhai Sakhrelia. His plea about his absence from India during the smuggling is irrelevant as abetment can occur remotely. No direct recovery needed for aiding/abetment smuggling. In this regard I relied upon the following legal provision and case laws:

- **Legal Position:** Direct possession/recovery not required for

abetment under Section 112 of the Customs Act, 1962 (penalty for improper import). Knowledge/abetment is suffice if proven via circumstantial evidence/statements. Section 111 of the Customs Act renders undeclared gold liable for confiscation; abettors liable even without possession. Burden under Section 123 of the Customs Act shifts to accused to prove gold not smuggled if seized on reasonable belief.

- **Case Laws:**

- *Commissioner of Customs (Preventive) v. Rajendra Kumar Damani* (2024, Calcutta HC): Retracted statements admissible if voluntary; mere retraction without duress proof insufficient. Here, Vishal Gabani's retraction delayed/unsubstantiated; co-noticee statements corroborated by his own statement admitting funding/smuggling role.
- *State of Maharashtra v. Mohd. Yakub* (1980 AIR 1111 (SC)): Attempt/abetment in smuggling proven by preparatory acts (e.g., funding, coordination) even without physical seizure. Gabani's admitted UAE/Dubai role (funding 2.75 lakh Dirhams) constitutes abetment.
- *Veera Ibrahim v. State of Maharashtra* (1976 (2) SCC 302): Statements recorded under Section 108 of the Customs Act admissible against abettors; no direct recovery needed if chain of evidence shows involvement.

II. Physical Absence from India on Seizure Date (29.04.2023)

The noticee provides itinerary (China/Thailand/UAE) proving he was abroad at the time of smuggling and claiming their no involvement. In this regard I find the noticee contention not tenable as absence doesn't negate abetment. In this regard I relied upon the following legal provision and case laws:

- **Legal Position:** Physical presence not essential for abetment under Section 112 of the Customs Act, 1962. Orchestration from abroad suffices if knowledge/intent proven. Section 2(39) of the Customs Act, 1962 defines smuggling broadly; abetment includes planning/funding.
- **Case Laws:**
 - *Commissioner of Customs v. Rajendra Kumar Damani* (2024, Calcutta HC): Absence irrelevant if statements show remote involvement (e.g., supplying smuggled gold via associates).

- *Naresh J. Sukhawani v. UOI* (1995 (83) ELT 258 (SC)): Abetment via instructions/funding from abroad; statements under S.108 link non-present abettors.

III. No Mention in Carriers/Rakholiya Statements (RUD-4/5/6)

The Noticee contention that there is no reference to him in primary statements of carriers Shri Nirav, Shri Fenil and even Rakholia. In this regard I find that Umesh Ramnikbhai Bhikadiya's statement explicitly links "Vicky" (Gabani's alias) to delivery and was corroborated by noticee admission in his statement recorded under Section 108 of the Customs Act, 1962. Further, Baldev Mansukhbhai Sakhreliya's statement also corroborates the fact of his involment in the syndicate of smuggling. Carriers' ignorance of full chain common in syndicates and it does not negate his involment on this ground. In this regard I relied upon the following legal provision and case laws:

- **Legal Position:** Evidence (e.g., Shri Bhikadiya's statement linking "Vicky") and Further statement of Shri Baldev is suffice. Co-accused statements admissible under Section 138B of the Customs Act if corroborated.
- **Case Laws:**
 - *Ilias v. Collector of Customs* (1968 AIR 1475 (SC)): Co-accused statements admissible against others if corroborated; no need for direct naming in all statements.
 - *Rajendra Kumar Damani v. CESTAT Ahmedabad* (2022, Gujarat HC): Partial mentions in co-noticee statements sufficient if corroborated by CDRs/mobile links.

IV. No Office in New DTC Market and Mobile Number (+85254859479), Mistaken Identity, not available in India during smuggling.

The noticee denies ownership/documents linking to him. I find that Shri Umesh Bhikadiya's statement links number/office to Gabani corroborated by the noticee himself admission in the statement recorded under Section 108 of the Customs Act, 1962. Shri Vishal Gabani explicitly admitted in his statement dated 27/28.07.2023 recorded under Section 108 of the Customs Act, 1962 that "My name, age, mobile no. as stated above is correct and I am also known by name "Vicky" in society; that approx..04 months ago I met shri Umesh Rameshbhai Bhikhadia in Surat; that shri Umesh introduced me to Shri Baldev Sakhreliya; that Shri Baldev offered to join his business and offered me commission of 3-4% of the amount lend by me; that I received call from Shri Umesh Bhikhadiya on my whats app no. +85254859479; that I came in contact with Shri Dilipbhai alia D.M. in the month of January-2023 during the process of setting up of my company in Dubai; that I informed Shri Umesh Bhikhadiya to take directions from Shri Baldev Sakhreliya as I was in China,

In this regard I relied upon the following legal provision and case laws:

- **Legal Position:** Denials rebuttable by evidence; statements/CDRs suffice for linkage under Section 139 of Evidence Act (presumption of genuineness).
- **Case Laws:**
 - *Rajendra Kumar Damani* (2024, Calcutta HC): Mobile links via statements/CDRs establish involvement despite denials.

V. Absence of Mens Rea/Knowledge

I find the notice contention that he has no culpable mental state not tenable as the notice himself admitted in his statement recorded under Section 108 of the Customs Act, 1962 about 3-4% commission for funding; In this regard I relied upon the following legal provision and case laws:

- **Legal Position:** Section 112 of the Customs Act requires intent for abetment; inferred from acts/statements. No mens rea defense is not admissible if knowledge proven.
- **Case Laws:**
 - *Hindustan Steel Ltd. v. State of Orissa* (1978 (2) ELT J159 (SC)): Penalty for deliberate acts; here, funding/coordination shows intent.
 - *Akbar Badruddin Jiwani v. CC* (1990 (47) ELT 161 (SC)): Not absolute defense if evidence shows knowledge.

In view of the above I find that the contentions of the noticees are hollow, purfunctory and hold no water and accordingly not tenable. Further, the various case laws cited by the noticees in support of their claim are not squarely applicable in the instant case as the instant case is of fraud and smuggling of Gold for illegal benefits under Customs Act 1962 and Rules made thereunder.

54.18 I find that the importation of gold into India is highly regulated and bulk importation of gold item could only be effected by the nominated banks, agencies or business houses in the manner laid down by various DGFT regulations as well as the RBI circular or by the eligible passengers in the manner provided by the relevant regulations as the main object of the Customs Act is to prohibit smuggling of goods and sternly deal with the same as can be gathered/evident on a conjoint reading of Section 2(25), 11(2)(c), 111 and 112 of the Act.

54.19 Further, Section 11 of the Act, which principally dealing with the power to prohibit speaks of an absolute prohibition or import being subject to conditions that may be prescribed. It is thus manifest that a prohibition could be either in absolutist terms or subject to a regime of restriction or regulation. It is this theme which stands reiterated in Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992, (FTDR) which again speaks of a power

to prohibit, restrict or regulate. It becomes pertinent to bear in mind that in terms of the said provision, all orders whether prohibiting, restricting or regulating are deemed, by way of a legal fiction, to fall within the ambit of Section 11 of the Act. This in fact reaffirms that Section 2(33) would not only cover situations where an import may be prohibited but also those where the import of goods is either restricted or regulated. In terms of the plain language, an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". I find that in terms of the definition of 'prohibited goods' in Section 2(33) even prohibited goods could be imported or exported, subject to compliance with the terms and conditions as prescribed but if import is not done lawfully as per the procedure prescribed under the Customs Act or any other law for the time being in force, in that event the **said goods would fall under the definition of 'prohibited goods'**. The necessary corollary is that goods being imported if not subjected to check up at the customs on their arrival and are cleared without payment of customs duty are treated as 'smuggled goods'. As observed by the Madras High Court in *Malabar Diamond Gallery P Ltd. (supra)* " *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.*"

54.20 Also, the observations of the High Court of Gujarat in *Bhargavraj Rameshkumar Mehta Vs UOI - 2018 (361) ELT 260* has also enunciated the principle that, **"condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions."**

54.21 I find that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger's baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is "Restricted" and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016.

54.22 Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible

foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the “eligible passenger” at the time of his arrival in India or imported by him within 15 days of his arrival in India. It has also been explained for purpose of the notifications, “eligible passengers” means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

54.23. Further, as per Notification no. 49/2015-2020 dated 05.01.2022 (FTP), gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is **restricted**. Further, I find that as per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage, jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger. Further, the Board has also issued instructions for compliance by “eligible passenger” and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

54.24. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has to be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee named Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya had brought the gold net weighing 6470.65 grams, in total, which is more than the prescribed limit. Further, none of them have declared the same before customs on their arrival which is an integral condition to import the gold and same had been admitted in their voluntary statement that they wanted to clear the gold clandestinely without payment of eligible custom duty. Since the conditions for import of gold as per the notification issued by DGFT and the restrictions imposed by RBI have been violated, the gold in question has to be treated as 'prohibited goods' under Section 2(33). Consequently, it would fall within the definition of 'smuggling' under Section 2(39) which will render such goods liable to confiscation under Section 111 of the Act.

54.25 It is a settled principle of law that voluntary statements recorded under Section 108 of the Customs Act are admissible in evidence and can form

the basis for establishing guilt, unless proved to be obtained under duress. The statements are consistent with the physical evidence (panchnama, seizure, valuation report, flight tickets, and WhatsApp communication). Hence, the confessional evidences are accepted as true and reliable. It is also relevant to note that the quantum of gold seized (6470.65 grams-net weight) and its mode of concealment indicate commercial-scale smuggling, not personal carriage. The accused persons' deliberate concealment in stitched clothing and footwear, the use of code names, and financial inducements conclusively demonstrate their conscious participation in a smuggling racket. Therefore, I find no merit in any plea of innocence, ignorance, or coercion.

54.26 From the above findings, I conclude that Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya, in connivance with other co-noticees, had knowingly acquired possession of and engaged in carrying, removing, keeping, concealing, and delivering smuggled gold into India. These activities were undertaken without the knowledge of the Customs Authorities, without proper declaration, and without payment of the applicable Customs duty, all for monetary gain. Accordingly, I find and hold that the noticees were actively involved in and systematically managed the smuggling of gold weighing 6470.65 grams (net weight) into India for their personal enrichment. I further find and hold that their acts of omission and commission have rendered the smuggled goods liable for confiscation under Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962.

54.27. I find that in the instant case, the gold recovered from the said passengers, kept undeclared and concealed, is prohibited in nature. I further rely upon the decision of the **Hon'ble Tribunal in Khemani Purshotam Mohandas v. CC, CSI Airport, Mumbai reported at 2017 (354) ELT 275 (Tri. Mumbai)**, wherein it was held that smuggled gold was rightly confiscated absolutely and redemption fine is discretionary. Similarly, the **Hon'ble CESTAT in CC (Airport), Chennai v. D. Valliammal reported at 2007 (218) ELT 643 (Tri. Chennai)** held that where passengers conceal gold in baggage/clothing and fail to declare, the same is liable to absolute confiscation. **The Hon'ble Supreme Court in Sheikh Mohd. Omer v. CC, Calcutta reported at 1970 (2) SCC 728: 1983 (13) ELT 1439 (SC)** also observed that any attempt to import goods contrary to statutory prohibition justifies absolute confiscation. Given the facts of the case and the rulings cited above, the smuggled gold, ingeniously concealed on the person of the passengers, falls within the definition of "prohibited goods" and is liable for absolute confiscation under the Customs Act, 1962.

54.28 The SCN also proposes penalty under Section 112(a) & (b) of the Customs Act, 1962 on all the six noticees. From the above discussion and findings, it is evidently established that the noticees deliberately engaged in activities such as carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold**, knowing or having reasons to believe that such goods were liable to confiscation under the Customs Act, 1962. I note that Section 112 of the Customs Act, 1962 prescribes penalties for improper importation of goods, etc. The relevant portion

is reproduced below for reference:

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, or*
- 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 :

54.28.1 I find that Shri Baldev Mansukhbhai Sakhreliya had played a vital role in the smuggling of gold in paste form as he made the offer to Shri Umesh Rameshbhai Bhikadiya to arrange consenting carriers having Passport and offered to bear all expenses of the hotel, flight and food of the passengers, give them a commission as well in return for carrying/smuggling gold into India on their return. He had insisted that Shri Umesh Rameshbhai Bhikadiya introduced him as "Parth Sharma" to the people concerned with the smuggling racket. In spite of knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962, Shri Baldev Mansukhbhai Sakhreliya aided and abetted in smuggling of gold in paste form through Surat International Airport by concealing his original name, as revealed from the statement of Shri Umesh Rameshbhai Bhikadiya and Shri Shreyash Dineshbhai Chalodiya. Further, Shri Baldev Mansukhbhai Sakhreliya is also a noticee in a Show Cause Notice issued vide F.No. VIII/10-34-O&A-ADC-CRV-2022-23 dated 14.10.2022, related to M/s CRV Jewles, Surat, case booked by DRI, Regional Unit, Surat itself in the year 2022 which also involved smuggling of gold via Surat International Airport. Further he stated that in February-2023 their plan of smuggling gold could not be executed for non arrangement of the gold in paste form. Thus, it is evident that Shri Baldev Mansukhbhai Sakhreliya was having culpable mental state and the act of omission and commission made on his part for the aiding and abetting in smuggling of gold which are liable for confiscation under Section 111(d), 111(i) and 111(j) have rendered himself liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962. **As he is having culpable mental state and habitual offender, I hold the levy of penalty of Rs.**

4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value) is apt as per Section 112 of the Customs Act 1962. As per the wordings of the provision of Section 112 of the Customs Act, 1962, I hold that the penalty at higher side which is equal to the value of the subject goods is to be invoked in subject matter.

54.28.2 Shri Fenil Rajeshbhai Mavani had played a vital role in the smuggling gold in paste form through Surat International Airport as he agreed and accepted the offer to smuggle gold into India in lieu of an all expense paid trip to UAE and a commission. Together, he and Shri Nirav Ramnikbhai Davariya smuggled 7158 Grams of Gold Paste through Surat International Airport while being aware that bringing gold from foreign countries without declaring before Customs Airport authorities is an offence under Customs Act, 1962. He accepted that no declaration was filed before the Customs authorities. The gold paste was recovered from his possession (underwear, shoes and pocket of Jeans). He and his friend Shri Nirav Ramnikbhai Davariya were to get extra Rs 15000 each on giving gold to Shri Umesh Rameshbhai Bhikadiya in Surat. He and his friend Shri Nirav Ramnikbhai Davariya were well aware about the Customs Act and procedures as they were informed by the person sent by Shri Parth Sharma (Shri Baldev Sakhreliya) that Gold in paste form was packed in pouches of different sizes and 03 pouches of gold in paste form was already stitched inside underwear and that he and his friend should be able to hide the pouches of gold paste in Shoes and pocket of Jeans as a chemical had been mixed with Gold and as a result of it, gold paste would not be detected by the metal detector or DMFD gate and they should be able to clear immigration security at airport easily. Thus, it is evident that Shri Fenil Rajeshbhai Mavani indulged in carrying, removing, transporting and keeping the smuggled gold while knowing that the goods were smuggled goods and liable for confiscation under the Customs Act, 1962 and thereby has rendered himself liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962. **As he is the carrier of smuggled gold, I hold the levy of penalty of Rs. 2,24,24,241/- (Rupees Two Crore Twenty Four Lakh Twenty Four Thousand Two Hundred and Forty One only) (market value) is apt as per Section 112 of the Customs Act 1962. As per the wordings of the provision of Section 112 of the Customs Act, 1962, I hold that the penalty at higher side which is equal to the value of the subject goods recovered and extracted from his possession is to be invoked in subject matter.**

54.28.3 Shri Nirav Ramnikbhai Davariya, had played a vital role in the smuggling of gold in paste form through Surat International Airport as he agreed and accepted the offer to smuggle gold into India in lieu of an all expense paid trip to UAE and a commission. Together, he and Shri Fenil Rajeshbhai Mavani smuggled 7158 Grams of Gold Paste through Surat International Airport, while being aware that bringing gold from foreign countries without

declaring before Customs Airport authorities is an offence under Customs Act, 1962. He accepted that no declaration was filed before the Customs authorities regarding the gold paste. The gold paste was recovered from his possession (underwear, shoes and pocket of Jeans). He and his friend Shri Fenil Rajeshbhai Mavani were to get extra Rs 15000 each on giving gold to Shri Umesh Rameshbhai Bhikadiya in Surat. He and his friend Shri Fenil Rajeshbhai Mavani were well aware about the Customs Act and procedures as they were informed by the person sent by Shri Parth Sharma (Shri Baldev Sakhreliya) that Gold in paste form was packed in pouches of different sizes and 03 pouches of gold in paste form was already stitched inside underwear and that he and his friend should be able to hide the pouches of gold paste in Shoes and pocket of Jeans as a chemical had been mixed with Gold and as a result of it, gold paste would not be detected by the metal detector or DMFD gate and they should be able to clear immigration security at airport easily. Further he accepted that in February-2023 he has visited Dubai to execute a plan of smuggling of gold which could not be executed as at that time a case has been booked at Surat International Airport. Thus, it is evident that Shri Nirav Ramnikbhai Davariya was having culpable mental state and indulged in carrying, removing, transporting and keeping the smuggled gold while knowing that the goods were smuggled goods and liable for confiscation under the Customs Act, 1962 and thereby has rendered himself liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962. **As he is the carrier of smuggled gold, I hold the levy of penalty of Rs. 2,22,23,244/- (Rupees Two Crore Twenty Two Lakh Twenty Three Thousand Two Hundred and Forty Four only) (market value) is apt as per Section 112 of the Customs Act 1962. As per the wordings of the provision of Section 112 of the Customs Act, 1962, I hold that the penalty at higher side which is equal to the value of the subject goods recovered and extracted from his possession is to be invoked in subject matter.**

54.28.4 Shri Sawan Shantilal Rakholiya had played a vital role in the smuggling of gold in paste form as he accepted the lucrative offer given by Shri Umesh Rameshbhai Bhikadiya to arrange the consenting carriers (Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani) who have passport and who agree to travel to UAE and carry/smuggle Gold for him from there on their return to India. In return, Shri Umesh Rameshbhai Bhikadiya would give him Rs.10000/- for each person and bear all expenses related to Flight Tickets, Hotel Stay, Food etc and give a commission to the carrier too. Shri Sawan Shantilal Rakholiya arranged the passengers to smuggle gold into India in spite of knowing that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962. Further he accepted that in February-2023 he has visited Dubai to execute a plan of smuggling of gold which could not be executed as at that time a case has been booked at Surat International Airport. Thus, it is evident that Shri Sawan Shantilal Rakholiya was having culpable mental state and personally indulged in aiding and abetting for smuggling of Gold Paste through Surat International Airport, thereby rendering himself liable for penalty

under Section 112 (a) & (b) of the Customs Act, 1962. **As he aided and abetted in smuggling of the said gold by various ways as discussed above, I hold the levy of penalty of Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value) is apt as per Section 112 of the Customs Act 1962. As per the wordings of the provision of Section 112 of the Customs Act, 1962, I hold that the penalty at higher side which is equal to the value of the subject goods is to be invoked in subject matter.**

54.28.5 Shri Umesh Rameshbhai Bhikadiya had played a vital role in the smuggling gold in paste form as he accepted the lucrative offer given by Shri Baldev Mansukhbhai Sukhrelia alias Parth Sharma of getting money in return for arranging the persons/carriers (Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani) who have passport and who consent to travel to UAE for an expense paid trip and in lieu bring/carry/smuggle gold for him from there. For arranging such passengers, Shri Baldev Mansukhbhai Sukhrelia would give Rs.25000/- for each consenting person. Umesh Rameshbhai Bhikadiya arranged the passengers to smuggle the gold in spite of having knowledge that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962. He passed on the offer given to him by Baldev Sakhrelia to Shri Sawan Shantilal Rakholiya who in turn arranged the carriers - Shri Nirav Ramnikbhai Davariya and Shri Fenil Rajeshbhai Mavani to smuggle the gold. He was also involved in the delivery of the smuggled goods/gold to the concerned person. Thus, Shri Umesh Rameshbhai Bhikadiya indulged himself in carrying, removing, transporting and keeping the smuggled gold while knowing that the goods were smuggled goods and liable for confiscation under the Customs Act, 1962. Thus, he has rendered himself liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962. **As he aided and abetted in smuggling of the said gold by various ways as discussed above, I hold the levy of penalty of Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value) is apt as per Section 112 of the Customs Act 1962. As per the wordings of the provision of Section 112 of the Customs Act, 1962, I hold that the penalty at higher side which is equal to the value of the subject goods is to be invoked in subject matter.**

54.28.6 Shri Vishal Dhirubhai Gabani had played a vital role in the smuggling gold in gold paste through Surat International Airport as he is engaged in buying Gold from UAE and smuggle the same into India without declaring the same before the Customs Authorities and selling smuggled Gold in India on a commission of 3-4% of the amount invested/provided by him for purchase of gold in Dubai. He accepted the offer of Shri Baldev Manshukbhai Sakhereliya and arranged around 2,75,000 Dirhams in UAE in April-23 to buy the gold for Shri Baldev Manshukbhai Sakhereliya. He was well aware about the

fact that bringing gold from foreign countries without declaring before Customs Airport authorities and dealing with such goods is an offence under Customs Act, 1962. Thus, it is evident that Shri Vishal Dhirubhai Gabani has indulged himself in aiding, abetting and consciously concerned himself with smuggling of Gold in Paste form through Surat International Airport, thereby rendering himself liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962. **As he aided and abetted in smuggling of the said gold by funding the syndicate for commission to buy gold in UAE, I hold the levy of penalty of Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value) is apt as per Section 112 of the Customs Act 1962. As per the wordings of the provision of Section 112 of the Customs Act, 1962, I hold that the penalty at higher side which is equal to the value of the subject goods is to be invoked in subject matter.**

54.28.7 Accordingly, I find that a syndicate of all the six noticees have co-ordinated and played their part in the execution of smuggling of gold into India in contravention of the provisions of Customs Act, 1962 and allied acts, and rendered the said seized gold liable for confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act and thus have rendered themselves liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. I hold the same.

54.29 In view of the detailed discussions, findings, evidence on record, and judicial precedents relied upon, I pass the following order:

:ORDER:

(i) I order absolute confiscation of foreign origin Gold weighing 6470.65 grams (99.9 purity/24K) recovered from 7158 grams Gold paste seized by SOG, Police, Surat, totally valued at Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value) recovered from Shri Fenil Rajeshbhai Mavani and Shri Nirav Ramnikbhai Davariya under the provisions of Section 111(d), 111(i) and 111(j) of the Customs Act, 1962.

(ii) I order absolute confiscation of Empty Box-C containing the packaging material recovered from Shri Fenil Rajeshbhai Mavani and Box-D containing the packaging material recovered from Shri Nirav Ramnikbhai Davariya, used for concealment of gold paste, under the provisions of Section 119 of the Customs Act, 1962.

(ii) I impose a penalty of **Rs. 2,24,24,241/- (Rupees Two Crore Twenty Four Lakh Twenty Four Thousand Two Hundred and Forty One only) (market value)** on Shri Fenil Rajeshbhai Mavani under Section 112 (a) & (b) of the Customs Act, 1962 as discussed at para 54.28.2 herein above.

(iii) I impose a penalty of **Rs. 2,22,23,244/- (Rupees Two Crore Twenty Two Lakh Twenty Three Thousand Two Hundred and Forty Four only)**

(market value) on Shri Nirav Ramnikbhai Davariya under Section 112(a) & (b) of the Customs Act, 1962 as discussed at para 54.28.3 herein above.

(iv) I impose a penalty of **Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value)** on Shri Sawan Shantilal Rakholiya under Section 112 (a) & (b) of the Customs Act, 1962 as discussed at para 54.28.4 herein above.

(v) I impose a penalty of **Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value)** on Shri Umesh Rameshbhai Bhikadiya under Section 112(a) & (b) of the Customs Act, 1962 as discussed at para 54.28.5 herein above.

(vi) I impose a penalty of **Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value)** on Shri Vishal Dhirubhai Gabani, under Section 112(a) & (b) of the Customs Act, 1962 as discussed at para 54.28.6 herein above.

(vii) I impose a penalty of **Rs. 4,46,47,485/- (Rupees Four Crore Forty Six Lakh Forty Seven Thousand Four Hundred and Eighty five only) (market value)** on Shri Baldev Mansukhbhai Sakhreliya, under Section 112(a) & (b) of the Customs Act, 1962 as discussed at para 54.28.1 herein above.

55. Accordingly, the Show Cause Notice **F.No. VIII/26-11/AIU/CUS/2024-25 dated 22.05.2024** stands disposed of.

56. This order is passed without prejudice to any other action, proceedings, demand or liability that may be initiated against the Noticees under the Customs Act, 1962, or any other law for the time being in force, including action for past instances of smuggling, recovery of duty, interest, or penalties as may be warranted.

(Lokesh Damor)
Additional Commissioner
Customs, Surat

F. No. GEN/ADJ/ADC/1216/2025-DIV-SRT-CUS-COMMRTE-AHMEDABAD
Dated: 06.11.2025

DIN : 20251171MN0000713641

BY RPAD/E-mail/ notice board/ Speed Post/ other legally permissible mode
To (Noticees)

1. **Shri Fenil Rajeshbhai Mavani**, residing at Flat No 201, Building No D-1, Shlok Residency, Utran, Surat (e-mail id: fenilmavani1195@gmail.com)
2. **Shri Nirav Ramnikbhai Davariya**, residing at Flat No D-302, Gokuldham Society, Abraham Road, Mota Varachha, Surat (e-mail id: davariyanirav@gmail.com)
3. **Shri Sawan Shantilal Rakholiya**, residing at Flat No 204, Building No J, Shripad Avenue, Yogi Chowk, Sarthana, Surat (e-mail id: sawanrakholiya123@gmail.com)
4. **Shri Umesh Rameshbhai Bhikadiya**, residing at Flat No 802, Ravi Building, Rajhans Swapna, Near Sarthana Jakatnaka, Sarthana, Surat (e-mail id: umeshbhikadiya@gmail.com)
5. **Shri Vishal Dhirubhai Gabani**, residing at House No 71, Shreeji Society, Near Dabholi Circle, Singanpore, Surat (email id: vishal.gabani23@gmail.com)
6. **Shri Baldev Mansukhbhai Sakhreliya**, residing at A-103, Kaveri Habitat, V T Nagar Road, Sarthana, Surat (e-mail id: baldevsakhreliya69@gmail.com)

Copy to:-

1. The Principal Commissioner, Customs, Ahmedabad.
2. The Pr. Additional Director General, DRI, Ahmedabad Zonal Unit, Unit No. 15, Magnet Corporate Park, Off. Sola Over Bridge, Thaltej, Ahmedabad - 380054 (DIGIT ID of the case is D-002-300523-38).
3. The Additional Director General, Central Economic Intelligence Bureau, 6th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001 for kind information please.
4. The Deputy Director, DRI, Regional Unit Surat, 2nd Floor, Avalon Building, Above Indian Bank, B/h S. D. Jain School, Piplod-Vesu, Piplod, Surat-395007.
5. The Deputy Commissioner, Customs Division, Surat.
6. The Deputy Commissioner, HQ RRA Section, Customs Ahmedabad Commissionerate, Ahmedabad.
7. The Assistant Commissioner, HQ TAR Section, Customs Ahmedabad Commissionerate, Ahmedabad
8. The System in-charge, Customs (HQ), Ahmedabad, for uploading on the official website <http://www.ahmedabadcustoms.gov.in>
9. Guard File.