

F. No. VIII/10-84/ DRI-AZU /O&A/HQ/2024-25
OIO No. 243/ADC/SRV/O&A/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

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

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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-84/ DRI-AZU /O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-84/ DRI-AZU /O&A/HQ/2024-25 Dated 04.06.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	243/ADC/SRV/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	28.01.2025
E	जारी करनेकी तारीख/ Date of Issue	:	28.01.2025
F	द्वारापारित/ Passed By	:	SHREE RAM VISHNOI, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	1) SHRI ALTAF SHAFI MOTIWALA, PROPRIETOR OF M/S. MOTIWALA ART JEWELLERS, SURAT AND RESIDENT OF 101, RIVERA HEIGHTS, GORAT ROAD, OPP. ALVI ROW HOUSE, RANDER, VELUK, SURAT-395005 2) SHRI GIRISHBHAI SHAH, PROPRIETOR OF M/S. SWAPNIL JEWELLERS, SURAT AND RESIDENT OF 87, DESAI FALIYU, VAV, TALUKA KAMREJ, SURAT 3) SHRI LOKESHKUMAR N. SONI, PROPRIETOR OF M/S. PARAS GOLD, VADODARA AND RESIDENT OF 6/A, LAXMI NAGAR SOCIETY, NEAR PARICHAY PARK, WAGHODIYA ROAD, VADODARA-390019 4) SHRI SHEEL ROHIT SHAH, PROPRIETOR OF M/S. ABHINANDAN BULLION, SURAT AND RESIDENT OF 602, PRAYAG FLATS, SAGAR SARITA SANGAM LANE, BEHIND SARGAM SHIPPING CENTER, PARLE POINT, UMRA, SURAT, GUJARAT- 395007 5) SHRI DIXITKUMAR RAJNIKANT SHAH, PROPRIETOR OF M/S. SIDDHI JEWELS, SURAT AND RESIDENT OF C-401, SSIMANDHAR CAMPUS, B/H WESTERN SOMCHINTAMANI, PAL ADAJAN, SURAT 6) SHRI JAYANTIBHAI SHAMBHUBHAI PATEL, C/O M/S. PATEL RAJESHKUMAR NARANBHAI & COMPANY, NAGARSHETH MARKET, SHOP NO. 19, RATANPOL, MARCHIPOL, AHMEDABAD, GUJARAT

			7) M/S. PATEL RAJESHKUMAR NARANBHAI & COMPANY , NAGARSHETH MARKET, SHOP NO. 19, RATANPOL, MARCHIPOL, AHMEDABAD, GUJARAT
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 %(अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE

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

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

3. Accordingly, the examination of the baggage of the passengers was done in separate rooms of the DRI, Ahmedabad office under respective Panchnamas dated 07.06.2023. During examination of the bags of one passenger, who identified himself as Shri Jayantibhai Shambhubhai Patel, the officers found that his bags contained various parcels. Shri Jayantibhai Shambhubhai Patel informed during the Panchnama proceedings that the goods were meant to be delivered to M/s Patel Rajeshkumar

Naranbhai & Company. The officers opened each and every parcel contained in the bags and prepared inventory of all the goods found during the examination of their baggage.

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

TABLE -A

Parcel No.	Sender name	To be delivered	Wt. written on Parcel	Value Written on Parcel	Item Found	Remarks
1	Aarambh Jewellers, Mandvi, Vadodara	Alok Samanta	-	-	Gold Bar (BGC), Marking 999.0	Piece of paper written as 30.800
2	Paras Gold, Baroda	Shri Dhruvbhai Soni, Ahmedabad	-	-	Gold Bars, Marking 999.0	15 Pieces, weight 127.150
12	Siddhi Jewels	Bhairav Gold, Mumbai	250	-	Gold Bar, Marking 999.0	Delivery No.93 dated 06/06/2023
13	Kamleshbhai, Surat	Chandreshbhai, Ahmedabad	500	-	Gold Bars, JBR, Marking 999.9	
14	Shyam Jeweller, Surat	Gujarat Bullian Ahmedabad	372	-	Gold Bars	
15	Vidhi Gold, Surat	GBR	100	-	Gold Bars	
21	Motiwala Art, Surat, 9825151066	Rushabh Jewellers, Ahmedabad, 9426469431	-	-	Gold Bar, Switzerland, 100 gm	Approx. 65 grams
23	Swapnil Jewellers, Surat 8200886325, 8469262870	Gujarat Bullian Ahmedabad, 9328214141	-	615000	Gold Bar, Switzerland, 100 gm	100 grams
28	Shyam Jewellers, Surat, Contact No.2427766	Gujarat Bullian, Ahmedabad	100	-	Gold Bar, Marking 999.0, 100 gm,	Paper bearing dated 06/06/2023, 100 grams
29	Hiren C Soni, Surat, 9825107064	Krunal Jewellers, Ahmedabad	-	50000	Gold Bars (02), DMD, 100 gm, Marking 999 fine gold	Approx. 149 grams
48	Abhinandan, Surat	Gujarat Bullian Ahmedabad	-	-	Gold Bar (3 pcs) & Cash Rs. 780/-	No Documents
53	Aarna, Surat	Ila Creation, Ahmedabad	-	320000	Gold Bar, SGBR, 50 grams, 999.0	Approx. wt-50 grams
54	Kiranbhai, Surat	Amitbhai Shah, Ahmedabad	-	182000	Gold pieces (04)	Approx. wt-29.550
58	Yasinbhai, Surat	Kazi Hasmatulla, Ahmedabad	-	-	Gold pieces (04), BRB, Marking 999.9	Approx. wt-100 grams
71	Motigold, Mumbai, No.23453112	Kurbanbhai, Ahmedabad	-	658000	Gold Bar (01) 100 gm Marking 999.0, Gold Chain, Gold pieces (03) 0.5 gm approx	No documents
83	Chintanbhai, Mumbai, 9004373580	V N Jewellers, Ahmedabad, 9601515245	-	-	Gold Bar (04 pieces)	Approx. wt-200 grams

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

5. On the reasonable belief that these goods as per **TABLE-A**, are liable for confiscation under the provisions of the Customs Act, 1962, the officers placed the said goods under detention for further investigation.

6. STATEMENT OF SHRI SUCHIT PATEL, PARTNER OF M/s. PATEL RAJESHKUMAR NARANBHAI & COMPANY RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 20.06.2023-

6.1 Shri Suchit Patel, Partner of M/s. Patel Rajeshkumar Naranbhai & Company voluntarily presented himself on 20.06.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his statement. His statement was thus recorded on 20.06.2023, wherein he stated that he is engaged in the business in the field of Aangadiya (Courier) and that they receive goods in the form of parcels at one location and deliver the same to the location as specified by the sender of the parcel. He stated that they pay GST@18% as per the CGST rules and regulations. Their firm, M/s Patel Rajeshkumar Naranbhai & Company – Aangadia's branch at Ahmedabad deals with outbound and inbound courier/forwarding services in respect of precious and valuable goods, documents, Gems and Jewellery. On being asked about the procedure of booking and dispatch of parcels, he stated that their company's pick up vehicles generally go to the customers' office to collect the goods in majority of cases. Further, in dealing of precious parcels, while collecting goods, the parcels are sealed by the sender of the parcel and they do not know the exact description of goods. They believe in the description of goods as mentioned on the parcel by the sender and collect freight on the basis of value declared by the sender of the parcel. On being asked about the documents of KYC collected from the sender and recipient he stated that in most of cases, they pick up the parcels from the office or business premises of the customer and also deliver the parcel at the address and details provided by the sender. He further stated that the details like name and contact number are provided by the sender of the parcel and almost in all cases same is mentioned on the parcel. On being asked, he further stated that they insisted to take copy of invoice or delivery challan from the senders of the parcel to which majority of the customers informs them that the same is attached inside the parcel or sometimes outside the parcel. Regarding verification of value of cargo while collection of goods, he stated that they receive goods on said to contain basis and act on the basis of invoice or the description provided by the customers. On being asked about procedure of delivery of the parcels, he stated that the parcels are delivered by them to the customers at their premises and sometimes in case of urgency, the customer collects the parcel from their branch. On being further asked about the type of goods they can transport in the parcels, he stated that any legitimate goods with proper invoice can be transported but they mainly accept parcels related to precious and valuable goods, documents, Gems and Jewellery. He was shown the Panchnama dated 07.06.2023, wherein the examination of parcels carried by their employee was detained. On perusal, he submitted following documents in respect of the gold detained vide Panchnama dated 07.06.2023 as given in Table-B below.

TABLE-B

S. No.	Item Description	Details of Sender	Documents submitted
1	Gold Bar (BGC), Marking 999.0	Aarambh Jewellers, Mandvi, Vadodara, 9106284212	Copy of invoice from M/s Aarambh Jeweller to Shri Samnta Alok Nepal.
2.	Gold Bars, Marking 999.0	Paras Gold, Baroda, 9722213078	Copy of invoice issued by M/s. VR Jewels to M/s Paras Gold
3.	Gold Bar, Marking 999.0	Siddhi Jewels,	Copy of invoice issued by M/s. Sidhi Jewels to M/s Bhairav Gold.
4.	Gold Bars, JBR, Marking 999.9	Kamleshbhai, Surat, 9426825206	Delivery Challan from M/s Jay Ambe Bullion to M/s Gujarat Bullion refinery
5.	Gold Bars	Shyam Jeweller, Surat, 02612427766	Delivery Challan from M/s Shyam Jewellers along with Purchase bill.
6.	Gold Bars	Vidhi Gold, Surat, 0261 2608766	Copy of invoice from M/s S.P.Shah Jewels to M/s Vidhi Gold along with letter from M/s Vidhi Gold.
7.	Gold Bar, Switzerland, 100 gm	Motiwala Art, Surat, 9825151066	Copy of invoice issued by M/s Motiwala art Jewellers to M/s Rishabh Jewels
8.	Gold Bar, Switzerland, 100 gm	Swapnil Jewellers, Surat 8200886325, 8469262870	Copy of invoice issued by M/s N R Jewellers to M/s Swapnil Jewellers along with receipt.
9.	Gold Bar, Marking 999.0, 100 gm,	Shyam Jewellers, Surat, Contact No.2427766	Copy of invoice issued by M/s Manibhadra Bullion to M/s Shyam Jewllers.
10.	Gold Bars (02), DMD, 100 gm, Marking 999 fine gold	Hiren C Soni, Surat, 9825107064	Copy of invoice issued by M/s Krunal Jewellers to M/s Chetna Jewellers along with invoice from M/s Shree Mahavir Jewellers to M/s Chetna Jewellers.
11.	Gold Bar (3 pcs) & Cash Rs. 780/-	Abhinandan, Surat, 9427545775	Copy of invoice issued by M/s Abhinandan Bullion to M/s Gujarat Bullion Refinery along with Delivery challan.
12	Gold Bar, SGBR, 50 grams, 999.0	Aarna, Vaishnavdevi life style, Surat	Copy of invoice issued by M/s Aarna Gold to M/s ILA Creation Pvt Ltd.
13	Gold pieces (04)	Kiranbhai, Surat, 9879674628	Copy of invoice issued by M/s Amog Gold to M/s Arihant Ornament.
14	Gold pieces (04), BRB, Marking 999.9,	Yasinbhai, Surat, 9879992487	Delivery Challan issued by M/s Bishandayal Jewellers to Shri Yasin Mondal.
15	Gold Bar (01) 100 gm Marking 999.0, Gold Chain, Gold pieces (03) 0.5 gm approx	Motigold, Mumbai, No.23453112	Copy of invoice issued by M/s Moti Gold to Korbanali Arsedali Shaikh along with invoice from M/s Augmont Enterprises Pvt Ltd to M/s Moti Gold.
16	Gold Bar (04 pieces)	Chintanbhai, Mumbai, 9004373580	Issue Voucher issued by M/s J V Bangles Pvt Ltd to M/s V N Jewellers.

6.2 On being asked as to what kind of goods can be transported by them, he stated that any legitimate goods with proper invoice can be transported but mainly they accept parcels related to precious and valuable goods, documents, Gems and Jewellery. He admitted that they cannot accept parcels related to foreign currency and foreign origin gold in bars or any other form, but sometimes the customer mis-declare the correct description and nature of the goods in the parcel.

VALUATION AND SEIZURE OF DETAINED GOODS-

7. Shri Kartikey Vasantraai Soni, Gold Assayer, examined the detained gold in presence of independent panchas and Shri Suchit Patel under panchnama dated

07.08.2023 drawn at DRI office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad. Shri Kartikey Vasantrai Soni, Gold Assayer certified the purity of Gold, weight, rate of gold vide his valuation report dated 28.08.2023. As per the valuation report, the details of the detained gold are as given in Table-C below:-

TABLE-C

S. No.	Sender name	To be delivered	Weight	Purity	Marking	Indian/Imported Marking	Rate Per Gram	Value
1	Motiwala Art, Surat	Rushabh Jewels, Ahmedabad	65.900	999.0	Argor Swisse	Imported	6050	398695
2	Swapnil Jewellers, Surat	Gujarat Bullian Ahmedabad	100.000	999.0	Argor Swisse	Imported	6050	605000
3	Paras Gold, Baroda	Shri Dhruvbhai Soni, Ahmedabad	49.900	999.0		Imported	6050	301895
4	Paras Gold, Baroda	Shri Dhruvbhai Soni, Ahmedabad	77.250	999.0		Indian	6050	467362.5
5	Abhinandan, Surat	Gujarat Bullion Ahmedabad	61.010	999.0	MMTC PAMP	Imported	6050	369110.5
6	Siddhi Jewels	Bhairav Gold, Mumbai	105.500	999.0	MMTC PAMP	Imported	6050	638275
7	Siddhi Jewels	Bhairav Gold, Mumbai	143.880	999.0	Aofy/MG	Indian	6050	870474
8	Aarambh Jewellers, Mandvi, Vadodara	Alok Samanta	30.800	999.0	BGC999	Indian	6050	186340
9	Kamleshbhai , Surat	Chandreshbhai, Ahmedabad	200.000	999.0	JBR	Indian	6050	1210000
10			200.000	999.0	JSBR	Indian	6050	1210000
11			100.000	999.0	GTB	Indian	6050	605000
12	Shyam Jeweller, Surat	Gujarat Bullian ahmedabad	100.000	999.0	Augmont	Indian	6050	605000
13	Shyam Jeweller, Surat	Gujarat Bullian ahmedabad	100.000	999.0	SR	Indian	6050	605000
14			100.000	999.0	GTB	Indian	6050	605000
15			72.000	999.0	MG	Indian	6050	435600
16	Vidhi Gold, Surat	GBR	100.000	999.0	DK	Indian	6050	605000
17	Shyam Jewellers, Surat, Contact No.2427766	Gujarat Bullian, Ahmedabad	100.000	999.0	S	Indian	6050	605000
18	Hiren C Soni, Surat, 9825107064	Krunal Jewellers, Ahmedabad	149.300	999.0	DMD/Jay Renuka Refinery	Indian	6050	903265
19	Aarna, Surat	Ila Creation, Ahmedabad	50.000	999.0	SGBR	Indian	6050	302500
20	Kiranbhai, Surat	Amitbhai Shah, Ahmedabad	29.550	999.0		Indian	6050	178777.5
21	Yasinbhai, Surat	Kazi Hasmatulla, Ahmedabad	100.000	999.0	GTB + BRB	Indian	6050	605000
22	Chintanbhai, Mumbai, 9004373580	V N Jewellers, Ahmedabad, 9601515245	200.000	999.0	No Marking	Indian	6050	1210000
23	Motigold, Mumbai, No.23453112	Kurbanbhai, Ahmedabad	100.000	999.0	Augmont	Indian	6050	605000
24			0.500	999.0		Indian	6050	3025
25			8.500	650.0	Jewellery	Indian	3950	33575

8. From the valuation report, it is determined that the detained gold as mentioned at Sr. No. 1,2,3,5 & 6 in the table above are of foreign origin. Further, the sender or the intended recipient of the gold could not produce the relevant documents pertaining to the import of the said gold. In view of the same, the detained goods, detailed as follows, were placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962.

(i) One cut piece of gold bar of foreign origin, weighing 65.90 grams in total, valued at Rs. 3,98,695/- (Three Lakhs Ninety Eight Thousand Six Hundred & Ninety Five Only) pertaining to M/s. Motiwala Art Jewellers placed under seizure vide Seizure Memo (DIN- 202310DDZ10000000E34) dated 25.10.2023.

(ii) One gold bar of foreign origin, weighing 100 grams in total, valued at Rs. 6,05,000/- (Six Lakhs Five Thousand Only) pertaining to M/s. Swapnil Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000061616C) dated 25.10.2023.

(iii) Gold pieces of foreign origin, weighing 49.90 grams in total, valued at Rs. 3,01,895/- (Three Lakhs One Thousand Eight Hundred Ninety Five Only) pertaining to M/s. Paras Gold placed under seizure vide Seizure Memo (DIN-202310DDZ10000945529) dated 25.10.2023.

(iv) Cut pieces of gold bar of foreign origin, weighing 61.01 grams in total, valued at Rs. 3,69,110/- (Three Lakhs Sixty-Nine Thousand One Hundred Ten Only) pertaining to M/s. Abhinandan Bullion placed under seizure vide Seizure Memo (DIN-202310DDZ10000666CD3) dated 25.10.2023.

(v) Cut pieces of gold bar of foreign origin, weighing 105.50 grams in total, valued at Rs. 6,38,375/- (Six Lakhs Thirty-Eight Thousand Three Hundred Seventy-Five Only) pertaining to M/s. Siddhi Jewels placed under seizure vide Seizure Memo (DIN-202310DDZ10000999CAD) dated 25.10.2023.

RELEASE OF THE INDIAN ORIGIN GOLD

9. M/s. Patel Rajeshkumar Naranbhai & Company submitted certain documents as detailed at para 6.1 above pertaining to their Indian origin gold detained under the Panchnama dated 07.06.2023. Accordingly, the representative of the said Aangadiya firm was called to the DRI office and the gold as mentioned in the table-B in the para 6.1 above, except the seized gold at Sr. Nos. 1,2,3,5 & 6 in the same table, was released to the Aangadiya firm. The proceedings thereof were recorded under Panchnama dated 07.12.2023 in the presence of the independent panchas. Thus, the seized gold, as detailed below in Table-D, was again sealed back and retained.

TABLE-D

SI. No.	Item Description	Details of Sender	Details of intendent recipient
1.	One cut piece of gold bar of foreign origin, weighing 65.90 grams	M/s. Motiwala Art Jewellers, Surat	M/s. Rushabh Jewels, Ahmedabad
2.	One gold bar of foreign origin, weighing 100 grams	M/s. Swapnil Jewellers, Surat	M/s. Gujarat Bullion, Ahmedabad
3.	Gold pieces of foreign origin, weighing 49.90 grams	M/s. Paras Gold, Vadodara	Shri Dhruvbhai Soni, Ahmedabad
4.	Cut pieces of gold bar of foreign origin, weighing 61.01 grams	M/s. Abhinandan Bullion, Surat	M/s. Gujarat Bullion, Ahmedabad
5.	Cut pieces of gold bar of foreign origin, weighing 105.50 grams	M/s. Siddhi Jewels, Surat	M/s. Bhairav Gold, Mumbai

INVESTIGATION W.R.T. 65.90 GRAMS OF FOREIGN ORIGIN GOLD

10. STATEMENT OF SHRI ALTAF SHAFI MOTIWALA, PROPRIETOR OF M/s. MOTIWALA ART JEWELLERS, SURAT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 05.02.2024-

10.1 Summons dated 29.01.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Motiwala Art Jewellers and accordingly, statement of Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers was recorded on 29.01.2024. On being asked about their work, he stated that they purchase readymade jewellery from traders based in Mumbai, Ahmedabad, Surat and Rajkot and sell them in retail to various customers. On being asked, he stated that on rare occasions, they also purchase gold or silver bars and get the jewellery made from outside workshops or artisans. On being asked about his work profile in his firm, he stated that he is handling all the day to day work, work related to sale and purchase of gold & silver Jewellery, accounts etc.

10.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Motiwala Art, Surat(Party from) & M/s. Rushabh Jewels (Party to) containing 65.9 grams of gold, was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

10.3 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein valuation report has mentioned that 65.9 grams gold is having foreign marking and is of foreign origin. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He admitted that the said gold cut piece sent by them is having Argor Swisse marking and is of foreign origin.

10.4 Shri Altaf Shafi Motiwala has further stated that the seized cut piece of gold bar having total weight of 65.90 grams of 999 purity is of foreign origin. Further, on being

asked about as to whether the said cut piece of gold bar was smuggled in India, he stated that they had purchased the said gold from a person aged about 48-50 years in Surat. The said person had come to Shri Altaf Shafi Motiwala in around Jan-Feb'2023 saying that he was in distress and that he needs to sell his gold to earn some money. Shri Altaf Shafi Motiwala stated that taking pity on his condition, he had purchased the gold from him and had paid him by cash. Shri Altaf Shafi Motiwala also stated that they had not made the entry of payment made in cash in their accounts to evade from tax authorities.

10.5 On being asked, Shri Altaf Shafi Motiwala stated that he had not verified the purity of gold and he had just purchased the said gold from that person based on trust. On being asked, he stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. On being asked, he stated that it is possible that the said person had smuggled the said gold through Mumbai or Surat Airport. Shri Altaf Shafi Motiwala further stated that the person offered him the gold on a cheaper rate, therefore he had purchased the gold based on its purity and rate.

10.6 Shri Altaf Shafi Motiwala also stated that he does not have any import documents for their seized gold piece of 65.90 grams as it was not provided by the person from whom they had purchased the said gold. On being asked as to why they did not seek any import documents from that person as he offered the gold on a cheaper rate, Shri Altaf Shafi Motiwala stated that they do not have any legal knowledge of the Customs Act or rules.

10.7 On being asked, Shri Altaf Shafi Motiwala stated that the said gold cut piece of gold bar of 65.90 grams was handed over by him to Aangadiya – M/s. Patel Rajeshkumar Naranbhai & Company on 06.06.2023 at his shop and it was meant to be delivered to M/s. Rushabh Jewels, Ahmedabad for making of a necklace.

11. STATEMENT OF SHRI RUSHABH VIMALKUMAR SHAH, PROPRIETOR OF M/s. RUSHABH JEWELS, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 05.02.2024-

11.1 Summons dated 29.01.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Rushabh Jewels, Ahmedabad, the intended recipient of the gold sent by M/s. Motiwala Art Jewellers, Surat and accordingly, statement of Shri Rushabh Vimalkumar Shah, Proprietor of M/s. Rushabh Jewels was recorded on 05.02.2024, wherein he, *interalia* stated that their firm is engaged in the wholesale and retail sale of gold jewellery. He stated that they purchase gold jewellery from various traders based in Ahmedabad, Mumbai & Surat. Further, they also purchase the raw gold in the form of bars and cut pieces in small quantity and get the jewellery made from the gold bars from outside workshops or artisans.

11.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Motiwala Art, Surat(Party from) & M/s. Rushabh Jewels (Party to) containing 65.9 grams of gold, was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

11.3 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein valuation report has mentioned that 65.9 grams gold is having foreign marking and is of foreign origin. In token of having it perused, he put his dated signature on the same. On perusal, he stated that it appeared that the 65.90 grams gold pertaining to M/s. Motiwala Art, Surat and mentioned as Parcel No. 21 is having Argor Swisse marking and is of foreign origin.

11.4 Shri Rushabh Vimalkumar Shah stated that the said gold, having total weight of 65.90 grams of 999 purity was meant to be sent to them by M/s. Motiwala Art Jewellers, Surat for making a gold necklace out of the same. On being asked about the origin of the said gold bar piece of 65.90 grams seized, Shri Rushabh stated that he is not aware of the origin of the said gold and whether the said gold was of foreign or Indian origin and it was also not informed to them by M/s. Motiwala Art Jewellers, Surat. Further, on being asked about as to whether the said gold was smuggled in India, he stated that he has no idea about that. He also stated that they have never been provided any import documents for the gold by M/s. Motiwala Art Jewellers.

11.5 On being asked about the ownership of the gold of 65.90 grams of gold of foreign origin, he stated that they do not own the gold of 65.90 grams and it lies with M/s. Motiwala Art Jewellers, Surat.

INVESTIGATION W.R.T. 100 GRAMS OF FOREIGN ORIGIN GOLD BAR

12. STATEMENT OF SHRI GIRISHBHAI SHAH, PROPRIETOR OF M/s. SWAPNIL JEWELLERS, SURAT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 13.12.2023-

12.1 Summons dated 13.12.2023 under Section 108 of Customs Act, 1962 was issued to M/s. Swapnil Jewellers, Surat and accordingly, statement of Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat was recorded on 13.12.2023. On being asked about their work, he stated that they are engaged in the retail sale of gold and silver jewellery. He stated that they also have a workshop in Surat city, where they make jewellery out of the gold bars. He stated that they purchase raw gold in the form of bars or cut pieces for job work and also the gold and silver jewellery from various traders based in Surat, Ahmedabad, Mumbai and Rajkot. He also stated that they give gold bars

to outside workshops like M/s. Gujarat Bullion, Ahmedabad for making nuggets of small sizes of the purchased gold bars and then these gold nuggets are made into jewellery items in their own workshop at Surat. On being asked about his work profile in his firm, he stated that he is handling all the day to day work, work related to sale and purchase of gold bars and gold & silver Jewellery, accounts etc.

12.2 On being asked regarding the purchase of gold bars, Shri Girishbhai Shah stated that they purchase the gold bars from only one dealer, viz. M/s. N.R. Jewellers, Surat. He further stated that M/s. N.R. Jewellers deals only in foreign origin gold bars and all the gold bars purchased by them from M/s. N.R. Jewellers were of foreign origin.

12.3 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same.

12.4 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein it is mentioned that 100 grams gold pertaining to M/s. Swapnil Jewellers, Surat is of foreign origin. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same.

12.5 On being asked specifically about one no. of seized gold bar having total weight of 100 grams of 999 purity, he stated that the said Gold bar, having total weight of 100 grams of 999 purity is of foreign origin and the same was purchased by them from M/s N.R.Jewellers, Surat. Further, on being asked about as to whether the said gold bar was smuggled in India, he stated that he has no idea about that and that they merely purchase the gold bars from M/s. N.R.Jewellers based on their reputation and their professional relationship with them. He also stated that they have never been provided any import documents for the gold bars by M/s. N.R.Jewellers.

12.6 On being asked, Shri Girishbhai stated that they had purchased the gold bar on 06.06.2023 and had made payment of Rs. 6,15,000/- on the same day in the account of M/s. N.R.Jewellers, Surat. Shri Girishbhai submitted a copy of the invoice no. 1047 dated 06.06.2023 issued by M/s. N. R. Jewellers for the said purchase. The said invoice mentions the sale of gold bar of 100 grams bearing no. AL342488 by M/s. N.R.Jewellers to M/s. Swapnil Jewellers.

12.7 On being asked, Shri Girishbhai stated that they had given order to M/s. Gujarat Bullion, Ahmedabad for making nuggets of various sizes out of the gold bar of 100 grams and for the same purpose, they had handed over the said gold bar of 100 grams to M/s. Rajeshkumar Naranbhai & Company for delivery to M/s. Gujarat Bullion in the evening of 06.06.2023.

12.8 On being asked about the Import documents for the import of the said foreign origin gold bar of 100 gms, Shri Girishbhai stated that they were not supplied any Import documents for the import of the said foreign origin gold bar of 100 gms by the supplier M/s N.R.Jewellers, Surat.

13. STATEMENT OF SHRI JIGNESH NARENDRA ADESHRA, PARTNER OF M/s. N.R. JEWELLERS, SURAT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 15.02.2024

13.1 As per the statement of Shri Girishbhai Shah recorded on 13.12.2023, the foreign origin gold seized by DRI in respect of them had been purchased by them from M/s. N.R.Jewellers, Surat. In view of the same, Summons dated 09.02.2024 under Section 108 of Customs Act, 1962 were issued to M/s. N.R. Jewellers, Surat to tender statements and submit details of import of gold or purchase of foreign origin gold during the relevant period. Shri Jignesh Narendra Adeshra, Partner of M/s. N.R. Jewellers accordingly appeared for tendering his statement on 15.02.2024.

13.2 During the statement, Shri Jignesh Narendrabhai Adeshra, on being asked about his work profile in his firm, stated that he is handling all the day to day work, work related to sale and purchase, accounts etc.

13.3 On being asked to specifically peruse the fact in the statement dated 13.12.2023 where Shri Girishbhai Shah says that the gold of 100 grams of the gold detained by DRI under Panchnama dated 07.06.2023 was sold to him by M/s. N.R. Jewellers, Surat, Shri Jignesh Narendrabhai Adeshra stated that they had sold a gold bar of 100 grams of foreign origin to M/s. Swapnil Jewellers, Surat on 06.06.2023.

13.4 On being asked about the invoice dated 06.06.2023 issued by M/s. N.R. Jewellers in the name of M/s. Swapnil Jewellers for the sale of 100 grams gold bar, Shri Jignesh stated that the said invoice is genuine and it was indeed issued by M/s. N.R.Jewellers to M/s. Swapnil Jewellers for the gold purchased by them. Shri Jignesh stated that the said invoice was issued by them specifically for the sale of 100 grams gold bar of 999 purity and bearing the Serial No. AL342488. Shri Jignesh stated that if the detained gold bar of 100 grams pertaining to M/s. Swapnil Jewellers is indeed the same gold bar that is mentioned in their invoice dated 06.06.2023, the gold bar must be having the Serial No. AL342488 etched on it. Shri Jignesh stated that if the gold bar detained is not having the serial no. AL342488, then the said gold bar would be different from the gold bar sold by them to M/s. Swapnil Jewellers and might have purchased by him from somewhere else.

14. STATEMENT OF SHRI GIRISHBHAI SHAH, PROPRIETOR OF M/s. SWAPNIL JEWELLERS, SURAT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 14.03.2024-

14.1. In view of the submission made by Shri Jignesh Narendrabhai Adeshra of M/s. N.R. Jewellers as stated above, Summons dated 07.03.2024 under Section 108 of

Customs Act, 1962 was again issued to M/s. Swapnil Jewellers and accordingly statement of Shri Girishbhai Shah, proprietor of M/s. Swapnil Jewellers was recorded on 14.03.2024, wherein, among other things, he was shown the statement dated 15.02.2024 of Shri Jignesh Narendrabhai Adeshra of M/s. N.R. Jewellers.

14.2 On being asked, Shri Girishbhai Shah stated that he agrees that M/s. N.R. Jewellers, Surat had supplied them the gold bar with serial number AL342488 and the same is mentioned on the invoice also which is issued by M/s. N. R. Jewellers, Surat.

14.3 On being once again asked about seized gold bar having total weight of 100 grams of 999 purity, Shri Girishbhai stated that the said gold bar is of foreign origin and they do not remember exactly from whom they had purchased this gold bar, however, it is possible that the same may be purchased from some retailer as sometimes they purchase gold from retailers on the basis of rates, availability and requirement.

14.4 On being asked, Shri Girishbhai stated that he had not verified the purity of gold and he had just purchased the said gold from the person based on rates. On being asked, he also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. On being asked, Shri Girishbhai stated that it is possible that the said person had smuggled or brought in the said gold through Surat Airport from abroad as the gold bar is of foreign origin. Shri Girishbhai further stated that such person offered them the gold on a cheaper rate, therefore they purchased the gold based on its purity and rates.

14.5 Shri Girishbhai also stated that he does not have any import documents for their seized gold piece of 100 grams as it was not provided by the person from whom they had purchased the said gold.

14.6 Also, statement of the karta of M/s. Gujarat Bullion, the intended recipient of the gold sent by M/s. Swapnil Jewellers, Surat was recorded on 15.02.2024 in which he denied the ownership of the gold sent by M/s. Swapnil Jewellers. The statement of the M/s. Gujarat Bullion is briefed in the succeeding para no. 20.

INVESTIGATION W.R.T. 49.90 GRAMS OF FOREIGN ORIGIN GOLD

15. STATEMENT OF SHRI LOKESHKUMAR N. SONI, PROPRIETOR OF M/s. PARAS GOLD, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 05.02.2024.

15.1 Summons dated 29.01.2024 under Section 108 of Customs Act, 1962 was issued M/s. Paras Gold, Vadodara and accordingly, statement of Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara was recorded on 05.02.2024. On being asked about their work, he stated that they provide artisan work of jewellery making for customers, as per the designs provided by them. On being asked, Shri Lokeshkumar stated that they do not have workshop of their own and they get the jewellery made from

outside workshops for different retail and wholesale traders. He stated that they take gold from their customers in raw form and deliver jewellery as per the designs provided by them of equivalent weight. He stated that in this process, they usually get their commission cut of 1% of the invoice value of the gold.

15.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Paras Gold (Party from) & Shri Dhruvbhai Soni, Ahmedabad (Party to) containing 49.9 grams of gold, was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

15.3 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein valuation report has mentioned that 49.9 grams gold is having foreign marking and is of foreign origin. In token of having it perused, he put his dated signature on the same. On perusal, he admitted that it appeared that the gold cut piece sent by them is of having Imported Marking marking and is of foreign origin.

15.4 On being asked specifically about the seized cut piece of gold bar having total weight of 49.90 grams of 999 purity, Shri Lokeshkumar admitted that the said cut piece of gold bar is of foreign origin. Further, on being asked about the source of the said gold, he stated that they usually get a lot of orders from customers for making jewellery and they usually dispatch their jewellery within 04-05 days. On account of the same, it is difficult to determine at any point of time as to where and from whom he had taken the said gold of foreign origin of 49.90 grams.

15.5 Shri Lokeshkumar also stated that he does not have any import documents for their seized gold piece of 49.90 grams as it was not provided by the person from whom they had purchased the said gold. Further, on being asked about as to whether the said gold was smuggled in India, he stated that they purchase gold from various persons who sell gold in retail. Shri Lokeshkumar stated that it might be possible that such persons had brought in the said gold from Mumbai or Surat Airport.

15.6 On being asked, Shri Lokeshkumar stated that the said gold of 49.90 grams was handed over by him to Aangadiya – M/s. Patel Rajeshkumar Naranbhai & Company in the evening of 06.06.2023 at their shop and it was meant to be delivered to Shri Dhruvbhai Soni in Ahmedabad for making of jewellery items.

16. STATEMENT OF SHRI DHRUVBHAII SONI, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 09.02.2024-

16.1 Summons dated 09.02.2024 under Section 108 of Customs Act, 1962 was issued to Shri Dhruvbhai Soni and accordingly, statement of Shri Dhruvbhai Soni was recorded on 09.02.2024. On being asked about his work, Shri Dhruvbhai Soni stated that he provides artisan work of jewellery making as per the designs provided by the customers.

16.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Paras Gold(Party from) & Shri Dhruvbhai Soni, Ahmedabad(Party to) containing 49.9 grams of gold, was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

16.3 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein valuation report has mentioned that 49.9 grams gold is having foreign marking and is of foreign origin. In token of having it perused, he put his dated signature on the same. On perusal, he noticed that 49.90 grams gold pertaining to M/s. Paras Gold, Baroda is having Imported Marking marking and is of foreign origin.

16.4 On being asked specifically about the seized gold, Shri Dhruvbhai stated that the said gold bar/piece of 49.90 grams was meant to be sent to them by M/s. Paras Gold for making different jewellery items. On being asked, Shri Dhruvbhai stated that Shri Lokeshkumar N. Soni of M/s. Paras Gold, Vadodara had handed over the said gold to M/s. Patel Rajeshkumar Naranbhai & Company on 06.06.2023 for delivery to him.

16.5 On being asked about the origin of the said gold of 49.90 grams that is seized by DRI, he stated that he is not aware of the origin of the said gold and whether the said gold is of foreign or Indian origin and it was also not informed to them by M/s. Paras Gold. Further, on being asked about as to whether the said gold was smuggled in India, Shri Dhruvbhai stated that he has no idea about that. Shri Dhruvbhai also stated that he has never been provided any import documents for the gold by M/s. Paras Gold.

16.6 On being asked about the payment in this whole transaction, he stated that he had not received any advance payment from M/s. Paras Gold for the desired jobwork; and that they have not made any payment to M/s. Paras Gold for their seized gold. Further, it is stated that M/s. Paras Gold had not issued any delivery challan for the said gold and they also had not issued any invoice to them.

16.7 On being asked about the ownership of the gold of 49.90 grams of gold of foreign origin pertaining to M/s. Paras Gold, Vadodara, he stated that he does not own the said gold and the ownership lies with M/s. Paras Gold, Vadodara.

INVESTIGATION W.R.T. 61.01 GRAMS OF FOREIGN ORIGIN GOLD**17. STATEMENT OF SHRI SHEEL ROHIT SHAH, PROPRIETOR OF M/s. ABHINANDAN BULLION, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 04.01.2024-**

17.1 Summons dated 04.01.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Abhinandan Bullion, Surat and accordingly, statement of Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion was recorded on 04.01.2024. On being asked, he stated that their firm is a Bullion Merchant i.e. engaged in the purchase and sale of gold and silver. Shri Sheel stated that they purchase raw gold/silver in the form of bars or cut pieces from various traders based in Surat, Ahmedabad and Mumbai. He stated that they also give gold bars and cut pieces for job work to outside workshops like M/s. Gujarat Bullion, Ahmedabad for making Ginni/Coins of small sizes of various grams like 1, 2, 5, 10, 20 & 50 Grams. He stated that M/s. Gujarat Bullion, Ahmedabad puts its stamp/markings on these coins as per their demand. The stamp of the refinery makes gold coin more credible so that it can be further sold. On being asked about his work profile in his firm, he stated that he is handling all the day to day work including all work related to sale and purchase of gold/silver.

17.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Abhinandan Bullion(Party from) containing 3 pieces of gold bars was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

17.3 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein valuation report has mentioned that 61.010 grams gold pertaining to M/s. Abhinandan Bullion, Surat and mentioned as Parcel No. 48 is having marking- MMTC PAMP and is of foreign origin. In token of having it perused, and in agreement with the contents of the same, he put his dated signature on the same.

17.4 On being asked specifically about seized gold having total weight of 61.010 grams of 999 purity, he stated that the said Gold having total weight of 61.010 grams of 999 purity is of foreign origin and the same was purchased by them from M/s. Shree Ganesh Spot, Surat. Further, on being asked about as to whether the said gold was smuggled in India, he stated that he has no idea about that and that they merely purchase the gold from M/s. Shree Ganesh Spot based on their reputation and their professional relationship with them. He also stated that they have never been provided any import documents for the gold by M/s. Shree Ganesh Spot.

17.5 On being asked the verification of foreign origin gold purchased from M/s. Shree Ganesh Spot, Surat, Shri Sheel stated that they verify the foreign origin gold by verifying the logo of foreign company and Bar Code Serial Number. He further stated that in the invoice, they mention Gold bar (999/995) under the description of goods along with the Serial Number of the gold bar and do not mention the origin of the gold Bar, whether Indian or foreign.

17.6 On being asked about the mode of payment for the purchase of Gold, Shri Sheel stated that they usually make payment by RTGS on the same day of purchase. He stated that in this case, they had purchased the 50 Grams gold bar on 05.06.2023 and had made payment of Rs. 3,07,200/- on the same day in the account of M/s Shree Ganesh Spot, Surat. Shri Sheel also submitted a copy of the invoice dated 05.06.2023 issued by M/s. Shree Ganesh Spot, Surat for the said purchase. He further stated that the remaining quantity of gold, i.e. 11.01 grams was in their stock.

17.7 On being asked, Shri Sheel Shah stated that they had given order to M/s. Gujarat Bullion, Ahmedabad for making nuggets of various sizes out of the gold of 61.010 grams and for the same purpose, he had handed over the said gold of 61.010 grams to M/s. Rajeshkumar Naranbhai & Company for delivery to M/s. Gujarat Bullion in the evening of 06.06.2023.

17.8 On being asked about the Import documents for the import of the said foreign origin gold of 61.010 gms, Shri Sheel Shah stated that they have not been supplied any Import documents for the import of the said foreign origin gold of 61.010 gms by the supplier M/s Shree Ganesh Spot, Surat.

18. STATEMENT OF SHRI LALIT SHANKARLAL JAIN, PARTNER OF M/s. SHREE GANESH SPOT, SURAT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 04.03.2024

18.1 As per the statement of Shri Sheel Rohit Shah of M/s. Abhinandan Bullion recorded on 04.01.2024, the foreign origin gold seized by DRI in respect of them had been purchased by them from M/s. Shree Ganesh Sot, Surat. In view of the same, Summons dated 20.02.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Shree Ganesh Spot to tender statement and submit details of import of gold or purchase of foreign origin gold during the relevant period. Shri Lalit Shankarlal Jain, Proprietor of M/s. Shree Ganesh Spot accordingly appeared for tendering of statement on 04.03.2024.

18.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Abhinandan Bullion was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

18.3 He was also shown the statement dated 04.01.2024 of Shri Sheel Rohit Shah of M/s. Abhinandan Bullion, Surat wherein they have stated that they (M/s. Abhinandan Bullion, Surat) had purchased the Foreign origin gold weighing 50 grams from them (M/s. M/s. Shree Ganesh Spot).

18.4 On being asked regarding the foreign origin gold in respect of M/s. Abhinandan Bullion, Surat, Shri Lalit Shankarlal Jain stated that they had sold 50 Gms of gold vide invoice No 138/2023-24 dated 05.06.2023 to M/s. Abhinandan Bullion, Surat from the gold purchased by them from M/s. Augmont Enterprises Pvt Ltd., Surat. Shri Lalit Shankarlal Jain further stated that as the detained gold bar is having MMTC PAMP marking, the said gold was not supplied by them to M/s. Abhinandan Bullion, Surat. He further stated that they had sold Imported gold having Swiss Valcumbi marking to M/s. Abhinandan Bullion which is different from the detained Gold. Shri Lalit Shankarlal Jain also stated that they have no connection with the sale or purchase of gold having marking of MMTC PAMP.

19. STATEMENT OF SHRI SHEEL ROHIT SHAH, PROPRIETOR OF M/s. ABHINANDAN BULLION, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 14.03.2024-

19.1 In view of the submission made by Shri Lalit Shankarlal Jain of M/s. Shree Ganesh Spot as stated above, Summons dated 07.03.2024 under Section 108 of Customs Act, 1962 was again issued to M/s. Abhinandan Bullion and accordingly statement of Shri Sheel Rohit Shah, proprietor of M/s. Abhinandan Bullion was recorded on 14.03.2024, wherein, among other things, he was shown the statement dated 04.03.2024 of Shri Lalit Shankarlal Jain of M/s. Shree Ganesh Spot.

19.2 On being asked, Shri Sheel Rohit Shah stated that he agrees that M/s. Shree Ganesh Spot, Surat had supplied them Swiss Valcumbi marking gold of 50 Grams and not of MMTC PAMP marking gold.

19.3 On being once again asked about seized gold bar having total weight of 61.010 grams of 999 purity, Shri Sheel Rohit Shah stated that the said Gold, having total weight of 61.010 grams of 999 purity is of foreign origin and the same may be purchased from retailer as sometimes they purchase gold from retailers on the basis of rates and availability.

19.4 On being asked, Shri Sheel Rohit Shah stated that he had not verified the purity of gold and he had just purchased the said gold from that person based on rates. On being asked, he also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. On being asked, Shri Sheel Rohit Shah stated that it is possible that the said person had smuggled the said gold through Surat Airport. He further stated that the person offered him the gold on a cheaper rate, therefore, Shri Sheel Rohit Shah purchased the gold based on its purity and rate.

19.5 He also stated that he does not have any import documents for the seized gold piece of 61.010 grams as it was not provided by the person from whom they had purchased the said gold.

20. STATEMENT OF SHRI VANRAJSINH RATUBHA ZALA, KARTA OF M/s. GUJARAT BULLION HUF, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 09.02.2024-

20.1 Summons dated 29.01.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Gujarat Bullion HUF, Ahmedabad, the intended recipient of the gold sent by M/s. Swapnil Jewellers, Surat and M/s. Abhinandan Bullion, Surat and accordingly, statement of Shri Vanrajsinh Ratubha Zala, Karta of M/s. Gujarat Bullion HUF was recorded on 09.02.2024, wherein he, interalia, stated that their firm only deal in making nuggets from gold bars/pieces/jewellery for different retailers based in Gujarat. On being asked about my work profile in my firm, I state that I am handling all the day to day work, work related to dealing with the customers, accounts etc.

20.2 On being asked specifically about the seized gold, i.e. (i) gold having total weight of 100 grams of 999 purity and (ii) gold having total weight of 61.01 grams of 999 purity, Shri Vanrajsinh Ratubha Zala stated that the said gold bar/pieces were meant to be sent to them by M/s. Swapnil Jewellers, Surat and M/s. Abhinandan Bullion, Surat for making gold nuggets out of the same.

20.3 On being asked, he stated that Shri Vanrajsinh Ratubha Zala stated that he has never seen the said gold or parcels of 100 grams of gold and 61.01 grams of sent by M/s. Swapnil Jewellers and M/s. Abhinandan Bullion respectively, which were detained by DRI under Panchnama dated 07.06.2023.

20.4 On being asked about the origin of the said gold bar/pieces of 100 grams and 61.01 grams respectively that are seized by DRI, Shri Vanrajsinh Ratubha Zala stated that he is not aware of the origin of the said gold and whether the said gold bar/pieces were of foreign or Indian origin and it was also not informed to them by either M/s. Swapnil Jewellers or M/s. Abhinandan Bullion. Further, on being asked about as to whether the said gold bar/pieces were smuggled in India, Shri Vanrajsinh Ratubha Zala stated that he has no idea about that. He also stated that they have never been provided any import documents for the gold by either M/s. Swapnil Jewellers or M/s. Abhinandan Bullion.

20.5 On being asked about the ownership of the gold of 100 grams of gold of foreign origin pertaining to M/s. Swapnil Jewellers, Surat and 61.01 grams of gold pertaining to M/s. Abhinandan Bullion, Surat, Shri Vanrajsinh Ratubha Zala stated that they do not own the said gold and the ownership lies with M/s. Swapnil Jewellers and M/s. Abhinandan Bullion respectively.

INVESTIGATION W.R.T. 105.50 GRAMS OF FOREIGN ORIGIN GOLD

21. STATEMENT OF SHRI DIXITKUMAR RAJNIKANT SHAH, PROPRIETOR OF M/s. SIDDHI JEWELS, SURAT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 06.02.2024-

21.1 Summons dated 29.01.2024 under Section 108 of Customs Act, 1962 was issued M/s. Siddhi Jewels, Surat and accordingly, statement of Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat was recorded on 06.02.2024. On being asked about their work, he stated that their firm is engaged in the wholesale of the gold jewellery. He stated that they get their gold jewellery made from M/s. Bhairav Gold, Mumbai. On being asked about his work profile in his firm, Shri Dixitkumar Rajnikant Shah stated that he is handling all the day to day work, work related to sale and purchase of gold jewellery, accounts etc.

21.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Siddhi Jewels, Surat (Party From) to M.s. Bhairav Gold (Party to) containing 105.50 grams of gold was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

21.3 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein valuation report has mentioned that 105.50 grams gold cut pieces is having marking- MMTC PAMP and is of foreign origin. In token of having it perused, and in agreement with the contents of the same, he put his dated signature on the same.

21.4 On being asked specifically about the seized cut piece of gold bar having total weight of 105.50 grams of 999 purity, Shri Dixitkumar Rajnikant Shah stated that the said cut pieces of gold bar are of foreign origin. Further, on being asked about as to whether the said cut pieces of gold bar were smuggled in India, he stated that they had purchased the said gold from an unregistered person. The unregistered person visited their shop, expressing the desire to sell the gold in question. Due to the nature of their business, where they engage in the purchase and sale of precious metals, they considered the offer for the acquisition of the gold. His decision to purchase the imported gold was primarily influenced by the less price offered as compared to market rate by the unregistered person. On being asked, Shri Dixitkumar Rajnikant Shah stated that he had not verified the purity of gold and he had just purchased the said gold from that person based on trust.

21.5 On being asked, Shri Dixitkumar Rajnikant Shah stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity.

On being asked, he stated that it is possible that the said person had smuggled the said gold through Surat Airport. Shri Dixitkumar Rajnikant Shah further stated that the person offered him the gold on a cheaper rate, therefore, he purchased the gold based on its purity and rate.

21.6 On being asked, Shri Dixitkumar Rajnikant Shah stated that they have also purchased gold from various persons who sell gold and jewellery in retail by means of payment by cash. Further, he stated that it might be possible that they had brought in the said gold from Surat Airport.

21.7 Shri Dixitkumar Rajnikant Shah also state that he does not have any import documents for their seized gold of 105.50 grams as it was not provided by the person from whom they had purchased the said gold. On being asked as to why they did not seek any import documents from the concerned person, he stated that he was aware that the said gold pieces were of foreign origin on the basis of marking on the gold pieces but they did not seek any import documents they do not have any legal knowledge of the Customs Act or rules.

21.8 On being asked, Shri Dixitkumar Rajnikant Shah stated that the said gold cut pieces of gold bars of 105.50 grams was handed over by him through Aangadiya – M/s. Patel Rajeshkumar Naranbhai & Company on 06.06.2023 at their office in Surat and they were meant to be delivered to M/s. Bhairav Gold, Mumbai for making of a necklace. Shri Dixitkumar Rajnikant Shah also stated that their parcel was meant to be delivered to Mumbai address of M/s. Bhairav Gold, but due to mistake by Aangadiya employees, the parcel instead of transit to Mumbai was taken to Ahmedabad by them.

22. STATEMENT OF SHRI DILIP CHANDALIA, PARTNER OF M/S. BHAIRAV GOLD, MUMBAI RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 05.03.2024-

22.1 Summons dated 29.01.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Bhairav Gold, Mumbai and accordingly, statement of Shri Dilip Chandalia was recorded on 05.03.2024. On being asked about their work, Shri Dilip Chandalia stated that firm is engaged in the wholesale of the gold jewellery. On being asked about my work profile in my firm, I state that I am handling all the day to day work, work related to sale and purchase of gold jewellery, accounts etc.

22.2 He was shown panchnama dated 07.06.2023 along with its Annexures drawn at Office of DRI, Ahmedabad wherein the examination of parcel carried by employee of M/s. Rajeshkumar Naranbhai & company is recorded. In token of having it perused and in agreement with the contents thereof, he put his dated signature on the same. He further stated that vide Annexure- B attached to the said panchnama dated 07.06.2023, parcel belonging to M/s. Siddhi Jewels, Surat (Party From) to M.s. Bhairav Gold (Party

to) containing 105.50 grams of gold was detained under reasonable belief that these are liable for confiscation under provision of Customs Act, 1962.

22.3 He was also shown panchnama dated 07.08.2023 wherein Govt. Approved Valuer, Shri Kartikey V. Soni had carried out the valuation of the detained parcel and valuation report dated 28.08.2023, wherein valuation report has mentioned that 105.50 grams gold cut pieces is having marking- MMTC PAMP and is of foreign origin. In token of having it perused, and in agreement with the contents of the same, he put his dated signature on the same.

22.4 On being asked specifically about the seized cut piece of gold bar having total weight of 105.50 grams of 999 purity, Shri Dilip Chandalia stated that the said gold having total weight of 105.50 grams was sent by M/s. Siddhi Jewels in exchange of the gold jewellery sold by them to M/s. Siddhi Jewels. He stated that it is a normal practise in their business that sometimes the payments for the jewellery are settled by their customers in gold of equivalent value.

22.5 On being asked Shri Dilip Chandalia stated that he has never seen the said gold of 105.50 grams of gold sent by M/s. Bhairav Gold, Mumbai which was detained by DRI under Panchnama dated 07.06.2023.

22.6 On being asked about the origin of the said gold bar/pieces of 105.50 grams that is seized by DRI, Shri Dilip Chandalia stated that he is not aware of the origin of the said gold and whether the said gold is of foreign or Indian origin and it was also not informed to them by M/s. Siddhi Jewels. Further, on being asked about as to whether the said gold was smuggled in India, he stated that he has no idea about that. He also stated that he has never been provided any import documents for the gold by M/s. Siddhi Jewels.

22.7 On being asked about the payment in this whole transaction, Shri Dilip Chandalia stated that he has not made any payment to M/s. Siddhi Jewels for their gold seized by the DRI, Ahmedabad. On being asked about the ownership of the gold of 105.50 grams of gold of foreign origin pertaining to M/s. Siddhi Jewels, Surat, Shri Dilip Chandalia stated that he does not own the said gold and the ownership lies with M/s. Siddhi Jewels, Surat.

23. It appeared that the burden of proof in case of 'Gold' in terms of Section 123(1) of Customs Act, 1962 that they are not smuggled goods shall be laid respectively on:

- (i) M/s. Motiwala Art Jewellers, Surat
- (ii) M/s. Swapnil Jewellers, Surat
- (iii) M/s. Paras Gold, Vadodara
- (iv) M/s. Abhinandan Bullion, Surat
- (v) M/s. Siddhi Jewels, Surat

Further, the concerned persons of these firms accepted in their respective statements recorded u/s 108 of Customs Act, 1962 that they did not possess any documents relating to genuine/ legitimate import of these gold bars or Cut pieces of gold bar.

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

25. LEGAL PROVISIONS:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.”

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

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

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

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

“In this Act, unless the context otherwise requires,

...

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

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

...

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

...

(22) “goods” includes-

- 1. vessels, aircrafts and vehicles;*

2. stores;
3. baggage;
4. currency and negotiable instruments; and
5. any other kind of movable property;

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

...

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

...

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

...

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

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

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

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

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

m) Section 77 of the Customs Act 1962:

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

n) Section 110 of Customs Act, 1962:

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

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

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

.....

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

.....

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

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

.....

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

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

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

Any person,-

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

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

shall be liable, -

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

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

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

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

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

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

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

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

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

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

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

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

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

-

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

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

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

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

- t)** As per Customs Baggage Declaration Regulations, 2013, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.
- u)** Customs Notification No. 50 /2017 –Customs dated 30.06.2017, as amended, issued by the Central Government; and RBI Circular No. 25 dated 14.08.2013 [RBI/2013-14/187, AP (DIR Series)] permit the import of gold into India by eligible passenger/specified entities, subject to certain conditions.
- v)** In terms of the Circular No. 34/2013-Cus. issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT which are as follows:
 - a)** *Metals and Minerals Trading Corporation Limited (MMTC);*
 - b)** *Handicraft and Handloom Export Corporation (HHEC);*
 - c)** *State Trading Corporation (STC);*
 - d)** *Project and Equipment Corporation of India Ltd. (PEC);*
 - e)** *STC Ltd.;*
 - f)** *MSTC Ltd.;*
 - g)** *Diamond India Ltd. (DIL);*
 - h)** *Gems and Jewellery Export Promotion Council (G & J EPC);*
 - i)** *A star Trading House or a Premier Trading House under Paragraph 3.10.2 of the Foreign Trade Policy and*
 - j)** *Any other authorized by Reserve Bank of India (RBI).*

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

25.2 A combined reading of the above mentioned legal provisions under the Foreign Trade (Development and Regulation) Act, 1992 and the Customs Act, 1962, read with the notification and orders issued there under, it appeared that certain conditions have been imposed on the import of gold into India as a baggage by a passenger, in as much as, only passengers complying with certain conditions such as he/she should be of

Indian origin or an Indian passport holder with minimum six months of stay abroad etc. can only import gold in any form and the same has to be declared to the Customs at the time of their arrival and applicable duty has to be paid in foreign currency. These conditions are nothing but restrictions imposed on the import of gold or gold jewellery through passenger baggage. The Hon’ble Supreme Court of India in the case of ***SHEIKH MOHD. OMER VS. COLLECTOR OF CUSTOMS, CALCUTTA, REPORTED IN 1983 (13) ELT 1439***, clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import is to an extent, a prohibition. Hence, the restriction imposed on import of gold through passenger baggage is to an extent, a prohibition.

SUMMARY OF THE INVESTIGATION:

- 26.** From the investigation conducted it appeared that:
- a) During the search of the baggage of the passengers intercepted outside Kalupur Railway Station on 07.06.2023, one passenger working for Aangadiya firm - M/s. Patel Rajeshkumar Naranbhai & Company was found in possession of certain amount of foreign origin gold. The said gold was subsequently detained on the reasonable belief that the same are liable for confiscation under the provisions of the Customs Act, 1962.
 - b) As per the labels present on the parcels of the gold detained on 07.06.2023 and documents submitted by Shri Suchit Patel, Partner of M/s. Patel Rajeshkumar Naranbhai & Company during his statement dated 20.06.2023, it was held that the senders and the intended recipients of the detained foreign origin gold are as given in Table-E below:

TABLE -E

SI. No.	Item Description	Details of Sender	Details of intentent recipient
1.	One cut piece of gold bar of foreign origin, weighing 65.90 grams	M/s. Motiwala Art Jewellers, Surat	M/s. Rushabh Jewels, Ahmedabad
2.	One gold bar of foreign origin, weighing 100 grams	M/s. Swapnil Jewellers, Surat	M/s. Gujarat Bullion, Ahmedabad
3.	Gold pieces of foreign origin, weighing 49.90 grams	M/s. Paras Gold, Vadodara	Shri Dhruvbhai Soni, Ahmedabad
4.	Cut pieces of gold bar of foreign origin, weighing 61.01 grams	M/s. Abhinandan Bullion, Surat	M/s. Gujarat Bullion, Ahmedabad
5.	Cut pieces of gold bar of foreign origin, weighing 105.50 grams	M/s. Siddhi Jewels, Surat	M/s. Bhairav Gold, Mumbai

- c) Shri Kartikey Vasantray Soni, Gold Assayer, examined the said gold in presence of independent panchas and the Aangadiya person and certified the purity of Gold, weight, rate of gold vide his valuation report dated 28.08.2023 ascertained that the said gold bars/ cut pieces of gold bar as mentioned above are of foreign origin and their fair market value are as given in Table-F below:

TABLE- F

Sr.No.	Sender of the gold	Intended recipient	Weight of the gold in grams	Marking on the gold	Fair Market Value of the gold (in Rs.)
1	M/s. Motiwala Art, Surat	M/s. Rushabh Jewellers, Ahmedabad	65.9	Argor Swisse	398695
2	Swapnil Jewellers, Surat	M/s. Gujarat Bullion Ahmedabad	100	Argor Swisse	605000
3	Paras Gold, Baroda	Shri Dhruvbhai Soni, Ahmedabad	49.9	-	301895
4	Abhinandan, Surat	Gujarat Bullion Ahmedabad	61.01	MMTC PAMP	369111
5	Siddhi Jewels	Bhairav Gold, Mumbai	105.5	MMTC PAMP	638275
Total weight and market value			382.31		23,12,976

d) The said foreign origin gold as mentioned above appear to be smuggled goods as the concerned parties could not produce any import related documents pertaining to the said gold or any legitimate document w.r.t. purchase of said gold. Therefore, the said gold pertaining to (i) M/s. Motiwala Art Jewellers, Surat, (ii) M/s. Swapnil Jewellers, Surat, (iii) M/s. Paras Gold, Vadodara, (iv) M/s. Abhinandan Bullion, Surat and (v)M/s. Siddhi Jewels, Surat were placed under seizure vide Seizure Memos dated 25.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the same were liable to confiscation under the provisions of Customs Act,1962.

e) Statement of Shri Altaf Shafi Motiwala, proprietor of M/s. Motiwala Art Jewellers, Surat was recorded u/s 108 of the Customs Act, 1962 in which he admitted that he had purchased the said cut piece of gold bar of 65.90 grams from an unknown person who had come to his shop to sell the gold. Shri Altaf Shafi Motiwala also stated that he does not have any import documents for their seized gold piece of 65.90 grams as it was not provided by the person from whom they had purchased the said gold. He also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. On being asked, he stated that it is possible that the said person had smuggled the said gold through Mumbai or Surat Airport. Shri Altaf Shafi Motiwala further stated that the person offered him the gold on a cheaper rate, therefore he had purchased the gold based on its purity and rate.

f) Statement of Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat was recorded u/s 108 of the Customs Act, 1962 in which he stated that the said gold bar of 100 grams is of foreign origin and they do not remember exactly from whom they had purchased this gold bar, however, it is possible that the same may be purchased

from some retailer as sometimes they purchase gold from retailers on the basis of rates, availability and requirement. He also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. Shri Girishbhai stated that it is possible that the said person had smuggled or brought in the said gold through Surat Airport from abroad as the gold bar is of foreign origin. Shri Girishbhai further stated that such person offered them the gold on a cheaper rate, therefore they purchased the gold based on its purity and rates. Shri Girishbhai also stated that he does not have any import documents for their seized gold piece of 100 grams as it was not provided by the person from whom they had purchased the said gold.

g) Statement of Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara was recorded u/s 108 of the Customs Act, 1962 in which he stated that they usually get a lot of orders from customers for making jewellery and on account of the same, it is difficult to determine at any point of time as to where and from whom he had taken the said gold of foreign origin of 49.90 grams. ShriLokeshkumar also stated that he does not have any import documents for their seized gold piece of 49.90 grams as it was not provided by the person from whom they had purchased the said gold. Further, on being asked about as to whether the said gold was smuggled in India, he stated that they purchase gold from various persons who sell gold in retail. Shri Lokeshkumar stated that it might be possible that such persons had brought in the said gold from Mumbai or Surat Airport.

h) Statement of Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat was recorded u/s 108 of the Customs Act, 1962 in which he stated that the said Gold, having total weight of 61.010 grams of 999 purity is of foreign origin and the same may be purchased from retailer as sometimes they purchase gold from retailers on the basis of rates and availability. Shri Sheel Rohit Shah stated that he had not verified the purity of gold and he had just purchased the said gold from that person based on rates. He also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. Shri Sheel Rohit Shah stated that it is possible that the said person had smuggled the said gold through Surat Airport.

i) Statement of Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat was recorded u/s 108 of the Customs Act, 1962 in which he stated that they had purchased the said gold of 105.50 grams from an unregistered person and his decision to purchase the imported gold was primarily influenced by the less price offered as compared to market rate by the unregistered person. On being asked, Shri Dixitkumar Rajnikant Shah stated that he had not verified the purity of gold and he had just purchased the said gold from that person based on trust. He also stated that he does not have import documents pertaining to the said gold as it was no provided by the person from whom he had purchased the said gold and it is also possible that the said person had smuggled the said gold through Airport.

j) Statements of the intended recipients of the gold, i.e. (i) Shri Rushabh Vimalkumar Shah of M/s. Rushabh Jewels (intended recipient for the gold sent by M/s. Motiwala Art Jewellers), (ii) Shri Vanrajsinh Ratubha Zala of M/s. Gujarat Bullion (intended recipient for the gold sent by M/s. Swapnil Jewellers and M/s. Abhinandan Bullion), (iii) Shri Dhruvbhai Soni (intended recipient for the gold sent by M/s. Paras Gold) and (iv) Shri Dilip Chandalia of M/s. Bhairav Gold (intended recipient for the gold sent by M/s. Siddhi Jewels) were recorded u/s 108 of the Customs Act, 1962 during which they stated that they do not have any import documents pertaining to the said gold and they were not aware if the said gold was smuggled. Further, they denied ownership of the respective gold.

k) From the above, it thus appeared that the said foreign origin gold, i.e. (i) One cut piece of gold bar of foreign origin, weighing 65.90 grams of M/s. Motiwala Art Jewellers, Surat, (ii) One gold bar of foreign origin, weighing 100 grams of M/s. Swapnil Jewellers, Surat, (iii) Gold pieces of foreign origin, weighing 49.90 grams of M/s. Paras Gold, Vadodara, (iv) Cut pieces of gold bar of foreign origin, weighing 61.01 grams of M/s. Abhinandan Bullion, Surat and (v) Cut pieces of gold bar of foreign origin, weighing 105.50 grams of M/s. Siddhi Jewels, Surat are smuggled goods in terms of Section 2(39) of Customs Act, 1962.

l) The burden of proving that the Gold seized from the Aangadiya- M/s. Patel Rajeshkumar Naranbhai & Company under Panchnama dated 07.06.2023 are not smuggled goods, lies on (i) M/s. Motiwala Art Jewellers, Surat, (ii) M/s. Paras Gold, Vadodara, (iii) M/s. Swapnil Jewellers, Surat, (iv) M/s. Abhinandan Bullion, Surat and (v) M/s. Siddhi Jewels, Surat respectively. It appeared that during the investigation, all of them have failed to provide proof that the said foreign origin gold, are not smuggled goods. Thus, it appeared that the said foreign origin gold weighing 382.31 grams in total valued at Rs. 23,12,976/- (Twenty Three Lakhs Twelve Thousand Nine Hundred Seventy Six only) are liable for confiscation under the provisions of Section 111 (d), (j), (l) & (m) of Customs Act, 1962.

27. Thereafter, the Show Cause Notice was issued vide F. No. VIII/10-84/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 to - (1) Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers, Surat; (2) Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat; (3) Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara; (4) Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat; (5) Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat and (6) Shri Jayantibhai Shambhubhai Patel and (7) M/s. Patel Rajeshkumar Naranbhai & Company by the Additional Commissioner of Customs, Ahmedabad to show cause as to why:-

a) Absolute Confiscation should not be made of the 500 grams of foreign origin gold bars, under Section 111(d), 111(j), 111(l) & 111(m) of Customs Act, 1962 i.e. for

- i.** One cut piece of gold bar of foreign origin, weighing 65.90 grams in total, valued at Rs. 3,98,695/- (Three Lakhs Ninety Eight Thousand Six Hundred & Ninety Five Only) pertaining to M/s. Motiwala Art Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ10000000E34) dated 25.10.2023. (RUD-6)
- ii.** One gold bar of foreign origin, weighing 100 grams in total, valued at Rs. 6,05,000/- (Six Lakhs Five Thousand Only) pertaining to M/s. Swapnil Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000061616C) dated 25.10.2023. (RUD-7)
- iii.** Gold pieces of foreign origin, weighing 49.90 grams in total, valued at Rs. 3,01,895/- (Three Lakhs One Thousand Eight Hundred Ninety Five Only) pertaining to M/s. Paras Gold placed under seizure vide Seizure Memo (DIN-202310DDZ10000945529) dated 25.10.2023. (RUD-8)
- iv.** Cut pieces of gold bar of foreign origin, weighing 61.01 grams in total, valued at Rs. 3,69,110/- (Three Lakhs Sixty-Nine Thousand One Hundred Ten Only) pertaining to M/s. Abhinandan Bullion placed under seizure vide Seizure Memo (DIN-202310DDZ10000666CD3) dated 25.10.2023. (RUD-9)
- v.** Cut pieces of gold bar of foreign origin, weighing 105.50 grams in total, valued at Rs. 6,38,375/- (Six Lakhs Thirty-Eight Thousand Three Hundred Seventy-Five Only) pertaining to M/s. Siddhi Jewels placed under seizure vide Seizure Memo (DIN-202310DDZ10000999CAD) dated 25.10.2023. (RUD-10);

b) Penalty should not be imposed on under Section 112(a), 112(b) & 117 of the Customs Act, 1962:-

- i.** Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers w.r.t. seizure of One cut piece of gold bar of foreign origin, weighing 65.90 grams in total, valued at Rs. 3,98,695/- (Three Lakhs Ninety Eight Thousand Six Hundred & Ninety Five Only) pertaining to M/s. Motiwala Art Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ10000000E34) dated 25.10.2023;
- ii.** Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, w.r.t. seizure of One gold bar of foreign origin, weighing 100 grams in total, valued at Rs. 6,05,000/- (Six Lakhs Five

Thousand Only) pertaining to M/s. Swapnil Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000061616C) dated 25.10.2023;

- iii.** Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, w.r.t. seizure of Gold pieces of foreign origin, weighing 49.90 grams in total, valued at Rs. 3,01,895/- (Three Lakhs One Thousand Eight Hundred Ninety Five Only) pertaining to M/s. Paras Gold placed under seizure vide Seizure Memo (DIN-202310DDZ10000945529) dated 25.10.2023;
- iv.** Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, w.r.t. seizure of Cut pieces of gold bar of foreign origin, weighing 61.01 grams in total, valued at Rs. 3,69,110/- (Three Lakhs Sixty-Nine Thousand One Hundred Ten Only) pertaining to M/s. Abhinandan Bullion placed under seizure vide Seizure Memo (DIN-202310DDZ10000666CD3) dated 25.10.2023;
- v.** Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat w.r.t. seizure of Cut pieces of gold bar of foreign origin, weighing 105.50 grams in total, valued at Rs. 6,38,375/- (Six Lakhs Thirty-Eight Thousand Three Hundred Seventy-Five Only) pertaining to M/s. Siddhi Jewels placed under seizure vide Seizure Memo (DIN-202310DDZ10000999CAD) dated 25.10.2023;
- vi.** Shri Jayantibhai Shambhubhai Patel, Employee of M/s. Patel Rajeshkumar Naranbhai & Company, Nagarsheth market, Shop no. 19, Ratanpol, marchipol, Ahmedabad, Gujarat w.r.t. seizure of parcels weighing 65.90 grams, 100 grams, 49.90 grams, 61.01 grams and 105.50 grams as seized under seizure memos dated 25.10.2023;
- vii.** M/s. Patel Rajeshkumar Naranbhai & Company, Nagarsheth market, Shop no. 19, Ratanpol, marchipol, Ahmedabad, Gujarat w.r.t. seizure of parcels weighing 65.90 grams, 100 grams, 49.90 grams, 61.01 grams and 105.50 grams as seized under seizure memos dated 25.10.2023.

28. WRITTEN SUBMISSIONS:-

28.1 In response to the show cause notice, Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion submitted a reply vide their letter dated 25.07.2024 as under:-

- i. The Noticee reject all the allegations casted upon him under the said SCN.
- ii. The noticee is in the business of trading and dealing in the business of Gold since long and trading jewellery interstate through registered GST dealers.
- iii. Inspite of providing all the licit documents to the investigating officers, the Gold was not released.
- iv. There is no foreign marking on the seized Gold.
- v. The burden of proof under section 123 has been discharged by the noticee and the statements of the noticee are exculpatory in nature.
- vi. The second statement dated 14.03.2024 is being retracted as the noticee has never given such statement.
- vii. The noticee has purchased the same gold from M/s. Ganesh Spot vide invoice no. 138 dated 05.06.2023 and issued a gold bar of 50 gm as against the same. As proof of purchase, the noticee stated that the original gold was sold by M/s. Kundan Care Products Ltd. and he has purchased the same from M/s. Ganesh Spot and also provided chain of bills and the remaining quantity of Gold 11.01 are with their stock.
- viii. The noticee submitted in the case all the consignments was seized as per panchnama dated 07.06.2023 and from there some of the consignments were released by the officers of DRI before the SCN on the pretexts that the said consigners had produce documents therefore the said gold was released to other such consigners. In the SCN all such documents of other consigners are not supplied in the SCN to show how such reasonable belief has been satisfied by the officers of DRI before the release of the gold of other such consignors. The case of the noticee was also on the same footing like others consignor.
- ix. The noticee submitted that all such satisfaction are subjective and without giving proper reasoning and on record orders with SCN of other consigners which were released to other consigners. The noticee has been made a scapegoat in the case inspite giving all legal and proper documents in the case the gold was not released to them.
- x. The noticee had also provided all such documents of these finers but the gold 61.10 grams was not released.
- xi. The gold was assayed by Shri Kartikey Soni valuation report dated on 28.08.2023.
- xii. In connection to prove the seizure is illegal and to prove the gold has no foreign marking, they relied on panchnama dated 07.06.2023 drawn by officers of DRI wherein annexure A is part of said panchnama showing the list of consignments seized in the panchnama of various persons. As per the said Annexure A M/s Patel Rajeshkumar Naranbhai & Company had transported the Parcel No.48 (sr. 5) which belongs to the noticee wherein sender name is Abhinandan Bullion to Gujarat Bullion. In the said Table A in the columns has been alleged that there are foreign marking on the 61.01grams of gold. They requested to purse the said table it will show that the said Table A is silent on the point foreign country marking or makes.
- xiii. However, the valuation report mentions about MMTC PAMP marking. The officers of DRI have not made efforts for taking any forensic reports of the said gold piece.
- xiv. The present seizure of gold is done in domestic area of India and not in any international borders of India. The consignments had arrived Ahmedabad Railway

Station not from any international destination. The officers of DRI has failed to establish from where border of India such gold has been smuggled in to India and such burden is not discharged. Therefore the gold weighing 61.01 grams kept in the parcel weighing 61.01gm is not liable for confiscation.

xv. The noticee submitted that there is no assay report of any Govt. mint to support the allegations or expert opinions in the SCN .

xvi. It is alleged that no documents have been provided by the noticee to prove the legal import of the same which is required as per Section 123 of the Customs Act 1962 and based upon the assayers report and in the absence of any proper explanation or proper licit documents regarding the possession of the foreign marked gold by the owner of the gold as required under Section 123 of the Customs Act 1962, therefore the foreign marked gold 61.01 grams to appears to have been smuggled one and as such liable for confiscation under Section 111 of the Customs Act 1962.

xvii. The noticee is a local jeweller and has nothing to do with any imports. The noticee is merely trader and manufacturing gold in India for which no licence or permission is required under the Customs Act 1962. The gold is being imported in India through the banks and authorised agency and which is being traded all over India.

xviii. The seizure itself is bad in law and the same be released unconditionally forthwith.

xix. The noticee submitted that his capital is stuck due to seizure since 07.06.2023 and requested that the impugned gold pieces of 61.01grams may kindly be released unconditionally as SCN given after 6 months

xx. They requested for drop the proceedings and penal provisions.

28.2 Shri Rohan Thakkar, CA submitted written submission on behalf of M/s. Patel Rajeshkumar Naranbhai & Co on 27.11.2024 as under:-

1. The Noticee reject all the allegations casted upon him under the said SCN. In the present case, the Noticee is into the business of the Angadiya, and he has not imported the goods, rather he was transporting the goods, from one place to another place. Further Noticee is also in possession of the legitimate invoice of goods transported by him.

2. From the statements given by the partner of the Noticee and also the supplier of the goods and recipients of the goods, it is nowhere going to established that the Noticee was aware that the goods are that transported are smuggled goods, hence, it is spick and span that the noticee has no idea that the Gold Bars, which has been detained by the DRI officer, are Foreign origins and the same are smuggled goods. Further, they receive the goods in the packed seal hence, they are not in position to check whether the Gold bars that has been transported by the Noticee are the Foreign Origin or not. Noticee is simply doing the business of the transport of the goods which he has been asked to it, he has no authority to check the legality of the goods, Noticee has to rely on the documents given by the supplier and information provided by the Supplier. It is the supplier who has to check the goods and the onus remain on the supplier only.

3. The department has stated that the burden of the proof lies on the suppliers of the goods that the goods which are being detained are not smuggled goods. As stated

above the Noticee is not in the position to verify the goods which are being transported are smuggled goods. Additionally, it is submitted that the goods which has been carried by the Noticee have the proper legitimate documents issued from the Suppliers. Hence, the Noticee has to rely on the invoices issued by the suppliers. Noticee has no jurisdiction neither he has authority to unearth that from where the supplier has procured the impugned Goods.

4. The Noticee is not only carrying the goods which department has believed to be the foreign goods, they are also transporting other goods like Ornaments, jewellery, Indian origin Bars, etc. which has the legitimate documents and the same has also been verified by the DRI officer, if the Noticee has the illicit intention then they will be transporting only goods of the smuggled goods and the Noticee is into the business since 2002 and he is genuinely doing his business. Which clearly indicates that the noticee was completely unaware about the origin of the impugned Goods.

5. The noticee is not aware of the fact the goods that are being transported by noticee is the foreign origin gold. They believed that it is a gold which they are transporting in the business of courier in the normal course of business.

6. The opening para of the Section 123(1) which clearly states that; "Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods". The words "in the reasonable belief" means the person who is in the possession of the goods is knowing that the goods which he is possessing are the smuggled goods. In the present case the goods which has been transported are smuggled or not that has been not known to the Noticee this can also be established from the Statements given by the supplier recipients and the Noticee. Hence, burden of casting onus in terms of section 123 of the Customs Act, should not be casted on the Noticee, rather it is encumbrance of the suppliers.

7. section 111, means that if any person who do or fail to do any act or encourage someone to do or omits to do the things with respect to import of the Goods which render the goods liable to confiscation under section 111 of the Customs Act, 1962. Section 111 of the Act, stipulates about the improper import of the Goods, In the present case the Noticee is not importing the goods neither he is directly or indirectly involved in the import of the goods. The disputed goods in which the Noticee dealing was given produce before him after the import of the goods, further, as stated earlier paras the noticee absolutely unaware of that the goods are seized are detained goods. Therefore, the Section 112(a) cannot be invoked on the Noticee. He relied upon the pronouncement in the case of MSA Shipping Pvt. Ltd v. CC.

8. Noticee was not aware that the gold which was being transported are foreign origin. The noticee herein case acted in the bona fide manner, completing his duty, what he had paid for, he was not aware that the disputed goods are smuggled Goods. Further, appellant is not directly or indirectly involved with suppliers. For attracting the penalty under section conscious knowledge of an offender who is concerned in carrying or removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any offending goods which he knows or has reason to believe that the same is liable to confiscation under Section 111 to be liable to penalty. When a person does not know or has a reason to believe

that the goods are liable for confiscation under section 111, penalty under section 112 will not apply. He relied upon:

- i. *Js. Oberoi Versus Commissioner Of Customs, Chandigarh (2014) 308 ELT 526 = (2014) 12 TMI 985 (Tri-Delhi).*
- ii. *M/S. Panjra Road Carriers, M/S. Gill Randhawa Roadlines, M/S. Akal Transport Company, M/S. Dd Khosla Transport Pvt. Limited, M/S. Arisudana Industries Limited And M/S. Karam Freight Movers Versus Commissioner Of Customs, Ludhiana (2017) 10 TMI 1264 (Tri- Chandigarh).*
- iii. *Akbar Badrudin Jiwani vs Collector of Customs 1990 AIR 1579, 1990 SCR (1) 369*
- iv. *CC v. Amin Chandrakant 2010 (258) E.L.T 36 (Guj)*
- v. *Sonam International v. CC, 2012 (279) E.L.T. 572 (Tri. - Del.)*
- vi. *Peico Electronics & Electricals Ltd v. CC*
- vii. *CC v. Pawan Kumar Gupta*

9. The above adjudication clearly portrays that noticee could not be penalized under section 112 (a) and (b) of the act, 1962 as he was merely doing his duty in the capacity of 'Courier'. Further, it is also to be noted that the Noticee has no knowledge that the goods has been carrying by him was foreign origin and/ or smuggled goods, that has not been disclosed by the suppliers as well as the recipients of the goods, he has relied on the documents and statement produced by the Suppliers which the Noticee do in the normal course of the business, Further, the Noticee has not gained any pecuniary benefits neither he has any intention to gain, single penny from the disputed goods except otherwise the service charge for the service which he supposed to provide in the due course of the business. the '*mens rea*' is not established in the present case, hence section 112 should not be pressed against the noticee,

10. in the present case the noticee is mere a Angadiya service provider and there is no personal gain involved. He also relied on the case of Aramex India Pvt Ltd v. CC.

11. Under Rule 26 of the erstwhile Rule 26 of the Central Excise Rules, 2002, the word 'transportation' is there, which is not so in the Customs Act, 1962. In the present case, what the noticee has done is the transportation of goods based on the documents that has been sent by the sender and not aware of the fact that they are foreign origin gold. Employees only followed the instructions of the employers /superiors. Hence, personal penalty on them is not sustainable. Since the wordings of both the provisions are more or less '*pari materia*', hence, the pronouncements referred under the said law is also relied upon as under:-

- i. *Gujarat Borosil v CCE (2007) 217 ELT 367 (CESTAT)*
- ii. *Suren International Limited v CC 2006 (203) ELT 597 (CESTAT)*
- iii. *Rammaica (India) Limited v. CCE 2006 (198) ELT 379 (CESTAT)*
- iv. *O P Agarwal v CC (2005) 185 ELT 387 (CESTAT)*
- v. *Vinod Kumar v. CCE (2006) 199 ELT 705 (CESTAT)*
- vi. *Carpenter Classic Exim v CC (2006) 200 ELT 593 (CESTAT)*
- vii. *Farwood Industries v. CCE (2005) 185 ELT 401 (CESTAT)*
- viii. *Subhash Gupta v. CCE (2007) 10 STT 411 (CESTAT)*

ix. Commissioner of Central Excise Versus M/s. Goodwill Electricals 2010 - TMI - 202550 - BOMBAY HIGH COURT

x. Cipla Coated Steel v. CCE 1999 (113) ELT (490) (CEGAT)

xi. M Hariraju v. CCE1998 (100) ELT (203) (CEGAT);

xii. Jalmadhu corporation v. CCE 1999 (114) ELT 883 (CEGAT);

xiii. Bindu S Mehta v. CCE2000 (121) ELT 281 (CEGAT);

xiv. A K Tantia v. CCE 2003(158)ELT 638 (CESTAT SMB);

xv. Bellary steel v. CCE 2003(157) ELT 324(CESTAT);

xvi. Poonam Sparkv v. CCE 2004(164) ELT (282) (CESTAT)

xvii. HMTD Engineering v. CC 2000(122) ELT 749(CEGAT)

xviii.SM Zschimmer & Scharwz v. CCE 2000 (126) ELT 729(CEGAT);

xix. CCE v. New Tobacco Co. 2001(134) ELT 176 (CEGAT);

xx. Concorde Overseas v. CCE 2003 (156) ELT 287 (CESTAT);

xxi. Nusli Davar v. CCE 2003 (156) ELT 1022 (CEGAT);

xxii. L P Desai v. UOI 2004 (165) ELT (151) (Del HC);

xxiii. Standard Pencils v. CCE 2006 (197) ELT 346 (CESTAT);

xxiv. P V Malhotra v. CCE 2006 (194) ELT 89 (CESTAT);

xxv. Hindustan Lever v. CCE(2007) 210 ELT 60 (CESTAT SMB)

xxvi. Caltron Instruments v. CCE 2004 (165) ELT 174 (CESTAT)

xxvii. Dayaram Agarwal v. CCE(2007) 218 ELT 33 (CESTAT)

xxviii. applied electronics v. CCE 2001(130) ELT 500=40RLT 409 (CEGAT)

xxix. Arebee Star Maritime Agencies v. CCE 2004 (173) ELT 185 (CESTAT)

xxx. Shrikant Processors v. CCE2006 (203) ELT 98 (CESTAT SMB)

xxxi. Chowbey Sugandhit v. CCE 2001 (131) ELT 222 (CEGAT)

xxxii. Metro Appliances v. CCE(2001) 137 ELT 554 (CEGAT);

xxxiii. Laurel Organics v. CCE 2002(140) ELT 151 (CEGAT);

xxxiv. Mewar Bottling v. CCE 2002(140) ELT 237 (CEGAT);

xxxv. Keshav Kumar Tharad v. CCE 2003 (156) ELT 211 (CESTAT SMB);

xxxvi. Nirmal metal fabricators v. CCE (2004) 169 ELT 168 (CESTAT SMB);

xxxvii. Mettaco Engineering v. CC2005 (182) ELT 210 (CESTAT);

xxxviii. S K & Co. v. CCE 2006 (203) ELT 137 (CESTAT).

12. Though the foreign goods is not allowed to be dealt generally in India, however, in India, foreign Origin goods are available and dealt in by the persons having specific approvals. Under Chapter 4 of the Foreign Trade Policy, 2023, the importer is authorized to import the gold of foreign origin for export purpose. What the noticee has done is the transportation of gold, that to, without its knowledge that it is foreign origin. He relied upon pronouncement delivered by Hon Karnataka High Court in the case of CIT v. M/S Ssa's EmeraLd. Meadows (2015) 11 TMI 1620 (Kar HC).

13. The noticee neither has the knowledge of the goods being carried is smuggled Goods nor he has transgressed the in provisions of the Customs Act, 1962 as he was not involved in the importation of the disputed goods. The Noticee was only doing transportation of the goods in the normal course of his business. The Noticee has not imported the disputed goods nor he has any illicit intention to remove the

goods. As the Noticee has not violated any of the provisions of the Customs Act, 1962, hence, the penalty under section 117 is not be tenable.

28.3 Shri Rohan Thakkar, CA submitted written submission on behalf of Shri Jayantibhai Shambhubhai Patel on 27.11.2024 similar to reply as given in Para 28.2 above.

29. PERSONAL HEARINGS:-

29.1 Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers, appeared in the matter of Show Cause Notice F. No. VIII/10-83/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024, for personal hearing on 14.11.2024 and submitted that he did not agree with the allegation in the Show Cause Notice. He purchased Gold from a customer and sent this Gold Bar to his Kaarigar for making ornament for selling in his shop. He is not aware about the foreign origin of Gold. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice. He did not present any bill/invoice for purchase of the Gold.

29.2 Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara appeared for personal hearing on 14.11.2024 and submitted that they did not agree with the allegation in the Show Cause Notice. They are just a job worker and got this Gold Bar from their client and sent that to the Kaarigar Shri Dhruv Bhai Soni for making ornament for the client. He is not aware about the foreign origin of Gold. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice.

29.3 Ms. Ishita Shailesh Brahmbhatt, Advocate, on behalf of Shri. Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat appeared for personal hearing on 14.11.2024 and reiterated the written submission presented by them on 25.07.2024 and submitted that they do not agree with the allegation on their client in the Show Cause Notice. She requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice. She also submitted a copy of judgment order no. 10409-10410/2024 dated 15.02.2024 in their favour.

29.4 Shri Rohan Thakkar, CA attended personal hearings on behalf of M/s. Patel Rajeshkumar Naranbhai & Company and Shri Jayantibhai Shambhubhai Patel, on 29.11.2024, through Video-conferencing. Shri Rohan Thakkar reiterated the written submissions and requested to drop the proceedings initiated in the SCN.

29.5 Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat, appeared for personal hearing on 10.01.2025 and submitted that they do not agree with the allegation in the Show Cause Notice. They purchased Gold from an unregistered customer and sent this Gold Bar to Gujarat Bullion for making ornaments etc. His client is not aware about the foreign origin of Gold. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice. He did not present any bill/invoice for purchase of the Gold.

29.6 Shri Brij P. Shah, CA of Shri Dixitkumar Rajnikant Shah, Proprietor of M/S. Siddhi Jewels, appeared for personal hearing on 10.01.2025 and submitted that they do not agree with the allegation in the Show Cause Notice. His client purchased Gold from an unregistered customer and sent this Gold Bar to the buyer in Mumbai for sell and the gold bar came to Ahmedabad by mistake of Aangadia. His client is not aware about the foreign origin of Gold. He requested to drop the proceedings initiated in the SCN against them and provisions for penalties in the Show Cause Notice. He did not present any bill/invoice for purchase of the Gold.

30. DISCUSSION AND FINDINGS:-

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

30.2 I find that while acting upon specific intelligence, the officers of DRI intercepted 15 passengers outside Kalupur Railway Station, Ahmedabad at around 04:50 hrs. on 07.06.2023. During the examination of the baggage of the passengers at the office of DRI, Ahmedabad Zonal Unit (“AZU”), bags of one passenger, Shri Jayantibhai Shambhubhai Patel, an employee working for Aangadiya firm- of M/s. Patel Rajeshkumar Naranbhai & Company (“the aangadia firm”), the officers found that certain parcels were containing gold which appeared to be of foreign origin. A detailed investigation was conducted and it revealed the following details:-

Sr.No.	Sender of the gold	Intended recipient	Weight of the gold in grams	Foreign Marking on the gold	Fair Market Value of the gold (in Rs.)
1	M/s. Motiwala Art, Surat	M/s. Rushabh Jewellers, Ahmedabad	65.9	ARGOR SWISSE	398695
2	Swapnil Jewellers, Surat	M/s. Gujarat Bullion Ahmedabad	100	ARGOR SWISSE	605000
3	Paras Gold, Baroda	Shri Dhruvbhai Soni, Ahmedabad	49.9	-	301895
4	Abhinandan, Surat	Gujarat Bullion Ahmedabad	61.01	MMTC PAMP	369111
5	Siddhi Jewels	Bhairav Gold, Mumbai	105.5	MMTC PAMP	638275
Total weight and market value			382.31		23,12,976

Shri Kartikey Vasantray Soni, Gold Assayer, examined and certified that said gold bars are of foreign origin and their fair value as per market rate are given as above. The said Gold bars were placed under seizure vide Seizure Memos dated 25.10.2023 under the provisions of Section 110 of Customs Act, 1962. Statements of all noticees and others were recorded u/s 108 of the Customs Act, 1962 and the aforesaid show cause notice was issued proposing confiscation of said gold bars under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 and penalties on all the noticees

under Section 112(a), 112(b) & 117 of the Customs Act, 1962. Thus, I find that the issue before me to decide as to:

- a. Whether the seized gold bars are of foreign origin and were smuggled into India and the same are liable for confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962?
- b. Whether the noticees are liable for penalties under Section 112(a), 112(b) & 117 of the Customs Act, 1962.

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

ONE CUT PIECE OF GOLD BAR, WEIGHING 65.90 GRAMS PERTAINING TO M/S. MOTIWALA ART JEWELLERS

30.3.1 I find that 01 cu piece of gold bar having total weight 65.90 grams recovered from the employee of M/s. Patel Rajeshkumar Naranbhai & Company have markings as '**ARGOR SWISSE**'. I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** as quoted under:-

"34. The scope of Section 123 of the Customs Act, 1962 was discussed by the Supreme Court in Union of India & Ors. v. Rajendra Prabhu & Anr., (2001) 4 SCC 472 = 2001 (129) E.L.T. 286 (S.C.). It was held that where the authorities on the basis of materials on record, which may be sufficient in the circumstances of the case came to conclusion that gold biscuits have been in possession of the respondents were liable for confiscation and respondents committed offence under Section 112, even without taking option of presumption under Section 123, the Department could have directed confiscation as the burden in such case falls upon the person from whose possession such gold biscuits of foreign markings were seized. In this case the Supreme Court held that the High Court could not have interfered with the findings of the authorities on the ground that the Department had failed to discharge initial burden of proving that the goods were smuggled.

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

purchased. Shri Faiyaz Ahmad tried to retract his statement that he had not purchased the gold recorded, on 10-8-1994, which was not accepted by the Adjudicating Officer. Shri Zaki Ishrati, however, did not retract his statement.”

In above case law, Hon’ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statements of Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers and Shri Suchit Patel, Partner of M/s. Patel Rajeshkumar Naranbhai & Company, I find that no evidence of valid import of the said Gold Bar was produced before the departmental officers.

30.3.2 I further find from the statement of noticee i.e. Shri Altaf Shafi Motiwala given under Section 108 of the Customs Act, 1962 on 05.02.2024 that:-

examined gold bars were sent by him to the valuer. I peruse the report of Shri Kartikey Vasantray Soni vide dated 28.08.2023 and also put a dated signature on the same in the token of being seen. I further state that after perusal of the said report, I admit that the gold cut piece sent by us is having Argor Swisse marking and is of foreign origin.

On being asked specifically about the seized cut piece of gold bar having total weight of 65.90 grams of 999 purity, I state that the said cut piece of gold bar, having total weight of 65.90 grams of 999 purity is of foreign origin. Further, on being asked about as to whether the said cut piece of gold bar was smuggled in India, I state that we had purchased the said gold from a person aged about 48-50 years in Surat. The said person had come to me in around Jan-Feb’2023 saying that he was in distress and that he needs to sell his gold to earn some money. I state that taking pity on his condition, I had purchased the gold from him and had paid him by cash. I also state that we had not made the entry of payment made in cash in our accounts to evade from tax authorities.

to our shop for sale of gold in small quantity. On being asked, I state that it is possible that the said person had smuggled the said gold through Mumbai or Surat Airport. I further state that the person offered me the gold on a cheaper rate therefore I purchased the gold based on its purity and rate.

On being asked about the Import dockets for the import of the said foreign origin cut piece of gold bar of 65.90 gms, I state that as stated earlier, I do not have import documents for the said gold. I state that I will try to find out the identity of the person and I will try to seek the documents from him. I undertake to submit the import documents of the said foreign origin gold of 65.90 gms once received from the supplier.

I find that in his statement, Shri Altaf Shafi Motiwala admitted that the said Gold Bar is of the foreign origin and he did not have any import document in respect of it.

30.3.3 I further find that the Gold Bars was further examined by Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer (“Assayer”), in presence of independent panchas and Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company under panchnama dated 07.08.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 28.08.2023. I find that the assayer in his valuation report clearly mentioned that the bars are of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported**

at 2022 (381) E.L.T. 509 (Tri. - All.) wherein the Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking, as quoted under:-

*"29. So far, the appeal of Revenue against Mr. Sanjay Soni is concerned, I find that admittedly it is a case of town seizure. Out of the 5 gold bars and 1 cut piece seized from Mr. Sanjay Soni, there is foreign marking - 'rand refinery' only on one gold bar. There is no such foreign marking admittedly on the other pieces recovered and seized. Thus, I hold that in absence of any evidence brought on record as to the allegation of smuggling, the provisions of Section 123 of the Act are not attracted in the case of other 4 pieces and the cut piece of the gold bar seized. I hold Section 123 is attracted only in the case of one gold bar having foreign marking, as the person - Mr. Sanjay Soni from whom the foreign marked gold was recovered, have not been able to explain the licit source and have also stated that this gold may have arisen by way of smuggling into India through Bangladesh. Accordingly, modifying the order of Commissioner (Appeals), **I uphold the absolute confiscation with respect to one piece of gold having the marking 'rand refinery' weighing 998.600 gram valued at Rs. 31,95,520/-, as per the valuation report.**"*

In view of the above, I held that the said Gold Bar, bearing foreign marking '**ARGOR SWISSE**' and being examined by the Government approved Assayer/Valuer, are of the foreign origin based on the Valuation Report dated 28.08.2023.

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

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

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

30.3.5 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case a cut piece of Gold Bar of 65.90 gms having markings foreign marking '**ARGOR SWISSE**' were found in the possession of employee of Aangadia firm M/s. Patel Rajeshkumar Naranbhai & Company. The sender of the said gold bar is Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bars is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar.

30.3.6 I find that in consequence of the provisions of Section 123, that noticee was owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee were found owning the gold, the form in which gold was being carried namely Gold bars, all these circumstances establish beyond a shadow of doubt that the noticees i.e. Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers was possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observed by the Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. VS. ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF REVENUE INTELLIGENCE, CHENNAI - 2016 (341) E.L.T. 65 (MAD.):**-

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

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

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

search, seizure, confiscation and penalties. Act also provides for detection, prevention and punishment for evasion of duty.”

In view of above, I hold that the said Gold Bar has been smuggled into India.

ONE GOLD BAR, WEIGHING 100 GRAMS PERTAINING TO M/S. SWAPNIL JEWELLERS

30.3.8 I find that 01 gold bar having weight 100 grams recovered from the employees of M/s. Patel Rajeshkumar Naranbhai & Company have markings ‘**ARGOR SWISSE**’. I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMMR. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** para supra, where, Hon’ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statement of Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company, I find that no evidence of valid import of the said Gold Bars was produced before the departmental officers.

30.3.9 I further find from the statement of Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers given under Section 108 of the Customs Act, 1962 on 13.12.2023 that:-

also put a dated signature on the same in the token of being seen. In the said valuation report, it is clearly mentioned that the 100 grams gold pertaining to M/s. Swapnil Jewellers, Surat and mentioned as Parcel No. 23 is having marking Argor Swisse and is of foreign origin. I agree with the valuation report dated 28.08.2023 by Shri Kartikey Vasantry Soni, Govt. approved valuer.

On being asked about the Import dockets for the import of the said foreign origin gold bar of 100 gms, I state that we have not been supplied any Import dockets for the import of the said foreign origin gold bar of 100 gms by the supplier M/s N.R.Jewellers, Surat. I will seek the documents from the supplier and undertake to submit the same, once received from the supplier M/s N.R.Jewellers, Surat. I further state that at present, I am unable to submit the documents related to import of the said gold bar and it is unlikely that M/s N.R.Jewellers, Surat will provide us the documents related with import.

However, in his second statement dated 14.03.2024, he stated that:

Now on being once again asked about seized gold bar having total weight of 100 grams of 999 purity I state that the said Gold bar, having total weight of 100 grams of 999 purity is of foreign origin and we are not remembering exactly from whom we have purchased this gold bar. However, it may be possible that the same may be purchased from some retailer as sometimes we purchase gold from retailers on the basis of rates, availability and requirement.

On being asked, I state that I had not verified the purity of gold and I had just purchased the said gold from the person based on rates. On being asked, I also state that I am not aware of the name or identity of the said person from whom I had purchased the said gold as sometimes such type of persons come to our shop for sale of gold in small quantity. On being asked, I state that it is possible that the said person had smuggled or brought in the said gold through Surat Airport from abroad as the gold bar is of foreign origin. I further state that such person offered us the gold on a cheaper rate therefore we purchased the gold based on its purity and rates.

On being asked, I state that I had not verified the purity of gold and I had just purchased the said gold from the person based on rates.

I also state that I do not have any import documents for our seized gold piece of 100 grams as it was not provided by the person from whom we had purchased the said gold. On being asked as to why we did not seek any import documents from that person as he offered me the gold on a cheaper rate, I state that we do not have any legal knowledge of the Customs Act or rules.

I find that in his statements, Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers admitted that the said Gold Bars are of foreign origin and he did not have any import document in respect of it.

30.3.10 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer ("Assayer"), in presence of independent panchas and Shri Suchit Patel under panchnama dated 07.08.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 28.08.2023. I find that the assayer in his valuation report clearly mentioned that the bar are of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar, bearing foreign marking "**ARGOR SWISSE**" and being examined by the Government approved Assayer or Valuer, are of the foreign origin based on the Valuation Report dated 28.08.2023.

30.3.11 I find that import of gold is restricted under Foreign Trade (Development and Regulation) Act, 1992 except by authorised banks and nationalised agencies. In terms of the Circular No. 34/2013-Cus issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT (supra). Hence, the import of gold by any other persons/agencies other than the above, is prohibited as mentioned in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion.

30.3.12 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of 01 Gold Bar of 100 gms having markings "**ARGOR SWISSE**" were found in the possession of employees of Aangadia firm M/s. Patel Rajeshkumar Naranbhai & Company. The sender of the said gold bar is M/s. Swapnil Jewellers, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bar is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar. In his statement dated 14.03.2024, Shri Girish Shah stated that:

F. No. VIII/10-84/ DRI-AZU /O&A/HQ/2024-25
OIO No. 243/ADC/SRV/O&A/2024-25

On being asked, I state that in past, we have also purchased gold from various persons who sell gold and jewellery in retail by means of payment by cash. Further I state that it might be possible that they had brought in the said gold from Surat Airport.

30.3.13 I find that in consequence of the provisions of Section 123, that noticee were owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee were found owning the gold, the form in which gold was being carried namely Gold bars, all these circumstances establish beyond a shadow of doubt that the noticee M/s. Swapnil Jewellers were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in ***MALABAR DIAMOND GALLERY P. LTD. (supra)***, *"If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited."*

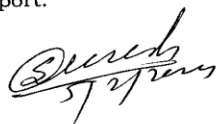
30.3.14 In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the Gold Bar has been smuggled into India. I find in present case, the Gold Bars were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold Bars by the Government approved Assayer. I also find that the noticees could not provide any evidence of legal purchase of the said Gold Bars.

GOLD PIECES, WEIGHING 49.90 GRAMS PERTAINING TO M/S. PARAS GOLD

30.3.15 I find that Gold pieces having weight 49.90 grams were recovered from the employees of M/s. Patel Rajeshkumar Naranbhai & Company have purity 999.0 I further find from the statement of Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold given under Section 108 of the Customs Act, 1962 on 05.02.2024 that:-

On being asked specifically about the seized cut piece of gold bar having total weight of 49.90 grams of 999 purity, I state that the said cut piece of gold bar, having total weight of 49.90 grams of 999 purity is of foreign origin. Further, on being asked about the source of the said gold, I state that we usually get a lot of orders from customers for making jewellery and we usually dispatch their jewellery within 04-05 days. On account of the same, it is difficult to determine at any point of time as to where and from whom I had taken the said gold of foreign origin of 49.90 grams. However, I am submitting herewith my accounts' ledger from 01.04.2023 to 30.06.2023.

I also state that I do not have any import documents for our seized gold piece of 49.90 grams as it was not provided by the person from whom we had purchased the said gold. I also state that we have never been provided any import documents for the gold bars by any of the suppliers. On being asked as to why we do not seek any import documents from the suppliers, I state that we do not have any legal knowledge of the Customs Act or rules, so we have never sought any import documents from the suppliers. Further, on being asked about as to whether the said gold was smuggled in India, I state that we purchase gold from various persons who sell gold in retail. I state that it might be possible that they had brought in the said gold from Mumbai or Surat Airport.



I find that in his statement, Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold admitted that the said Gold Bars are of foreign origin and he did not have any import document in respect of it. In the present case, also from the statement of Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company, I find that no evidence of valid import of the said Gold pieces was produced before the departmental officers.

30.3.16 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer ("Assayer"), in presence of independent panchas and Shri Suchit Patel under panchnama dated 07.08.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 28.08.2023. I find that the assayer in his valuation report clearly mentioned that the bar are of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar being examined by the Government approved Assayer or Valuer, are of the foreign origin based on the Valuation Report dated 28.08.2023.

30.3.17 I find that import of gold is restricted under Foreign Trade (Development and Regulation) Act, 1992 except by authorised banks and nationalised agencies. In terms of the Circular No. 34/2013-Cus issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT (supra). Hence, the import of gold by any other persons/agencies other than the above, is prohibited as mentioned in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion.

30.3.18 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of Gold Pieces of 49.90 gms. were found in the possession of employees of Aangadia firm M/s. Patel Rajeshkumar Naranbhai & Company. The sender of the said gold bar is M/s. Paras Gold, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar. In his statement dated 05.02.2024, Shri Lokeshkumar N. Soni stated that:

On being asked about the Import dockets for the import of the said foreign origin gold of 49.90 gms, I state that as stated earlier, I do not have import documents for the said gold. I state that I will try to find out the supplier of the said gold and I will try to seek the import documents from them. I undertake to submit the import documents of the said foreign origin gold of 49.90 gms once received from the supplier.

30.3.19 I find that in consequence of the provisions of Section 123, that noticee were owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee were found owning the gold, the form in which gold was being carried namely Gold pieces, all these circumstances establish beyond a shadow of doubt that the noticee M/s. Paras Gold were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. (supra)**, *"If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited."*

30.3.20 In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the Gold pieces have been smuggled into India. I find in present case, the Gold were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold by the Government approved Assayer. I also find that the noticees could not provide any evidence of legal purchase of the said Gold.

CUT PIECES OF GOLD, WEIGHING 61.01 GRAMS PERTAINING TO M/S. ABHINANDAN BULLION

30.3.21 I find that Cut pieces of Gold having weight 61.01 grams were recovered from the employees of M/s. Patel Rajeshkumar Naranbhai & Company have markings **MMTC PAMP**. I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** para supra, where, Hon'ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statement of Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company, I find that no evidence of valid import of the said Gold was produced before the departmental officers. I further find from the statement of Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion given under Section 108 of the Customs Act, 1962 on 04.01.2024 that:-

On being asked specifically about seized gold bar having total weight of 61.010 grams of 999 purity I state that the said Gold bar, having total weight of 61.010 grams of 999 purity is of foreign origin and the same was purchased by us from M/s. Shree Ganesh Spot, Surat. Further, on being asked about as to whether the said gold bar was smuggled in India, I state that I have no idea about that and that we merely purchase the gold bars from M/s. Shree Ganesh Spot

M/s. Abhinandan Bullion has contended that the Gold has no foreign markings, however, In his statement dated 14.03.2024, Shri Sheel Rohit Shah admitted that:

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marking was not supplied by them to M/s. Abhinandan Bullion, Surat. He further stated that they have sold us Imported gold having Swiss Valcumbi marking which is different from the detained Gold. I perused the fact and state that I agree that they have supplied us Swiss Valcumbi marking gold of 50 Grams and not of MMTC PAMP marking gold.

Now on being once again asked about seized gold bar having total weight of 61.010 grams of 999 purity I state that the said Gold bar, having total weight of 61.010 grams of 999 purity is of foreign origin and the same may be purchased from retailer as sometimes we purchase gold from retailers on the basis of rates and availability.

I find that in his statement, Shri Sheel Rohit Shah admitted that the said Gold Bars are of foreign origin and he did not have any import document in respect of it. In the present case, also from the statement of Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company, I find that no evidence of valid import of the said Gold pieces was produced before the departmental officers.

30.3.22 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer ("Assayer"), in presence of independent panchas and Shri Suchit Patel under panchnama dated 07.08.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 28.08.2023. I find that the assayer in his valuation report clearly mentioned that the bar are of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar being examined by the Government approved Assayer or Valuer, are of the foreign origin based on the Valuation Report dated 28.08.2023.

30.3.23 I find that import of gold is restricted under Foreign Trade (Development and Regulation) Act, 1992 except by authorised banks and nationalised agencies. In terms of the Circular No. 34/2013-Cus issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT (supra). Hence, the import of gold by any other persons/agencies other than the above, is prohibited as mentioned in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion.

30.3.24 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of Gold Pieces of 61.01 gms were found in the possession of employees of Aangadia firm M/s. Patel Rajeshkumar Naranbhai & Company. The sender of the said gold bar is M/s. Abhinandan Bullion, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee

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under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar. In his statement dated 14.03.2024, Shri Sheel Rohit Shah stated that:

On being asked, I state that in past, we have also purchased gold from various persons who sell gold and jewellery in retail by means of payment by cash. Further I state that it might be possible that they had brought in the said gold from Surat Airport.

I also state that I do not have any import documents for our seized gold piece of 61.010 grams as it was not provided by the person from whom we had purchased the said gold. On being asked as to why we did not seek any import documents from that person as he offered me the gold on a cheaper rate, I state that we do not have any legal knowledge of the Customs Act or rules.



Sheel Rohit Shah
DL 14/3/2024

30.3.25 I find that in consequence of the provisions of Section 123, that noticee were owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee were found owning the gold, the form in which gold was being carried namely Gold pieces, all these circumstances establish beyond a shadow of doubt that the noticee M/s. Paras Gold were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. (supra)**, *"If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited."*

30.3.26 In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the Gold pieces have been smuggled into India. I find in present case, the Gold were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold by the Government approved Assayer. I also find that the noticees could not provide any evidence of legal purchase of the said Gold.

CUT PIECES OF GOLD, WEIGHING 105.50 GRAMS PERTAINING TO M/S. SIDDHI JEWELS

30.3.27 I find that Cut pieces of Gold having weight 105.50 grams were recovered from the employees of M/s. Patel Rajeshkumar Naranbhai & Company have markings **MMTC PAMP**. I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMMR. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** para supra, where, Hon'ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statement of Shri Suchit Patel, Partner, M/s.

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Patel Rajeshkumar Naranbhai & Company, I find that no evidence of valid import of the said Gold was produced before the departmental officers. I further find from the statement of Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels given under Section 108 of the Customs Act, 1962 on 06.02.2024 that:-

signature on the same in the token of being seen. I further state that after perusal of the said report, I admit that the gold cut pieces sent by us are having MMTC PAMP marking and are of foreign origin.

On being asked specifically about the seized cut piece of gold bar having total weight of 105.50 grams of 999 purity, I state that the said cut pieces of gold bar, having total weight of 105.50 grams of 999 purity are of foreign origin. Further, on being asked about as to whether the said cut pieces of gold bar were smuggled in India, I state that we had purchased the said gold from an unregistered person. The unregistered person visited our shop, expressing the desire to sell the gold in question. Due to the nature of our business, where we engage in the purchase and sale of precious metals, we considered the offer for the acquisition of the gold. My decision to purchase the imported gold was primarily influenced by the less price offered as compared to market rate by the unregistered person. On being asked, I state that I had not verified the purity of gold and I had just purchased the said gold from that person based on trust.

On being asked, I state that I am not aware of the name or identity of the said person from whom I had purchased the said gold as sometimes such type of persons come to our shop for sale of gold in small quantity. On being asked, I state that it is possible that the said person had smuggled the said gold through Surat Airport. I further state that the person offered me the gold on a cheaper rate therefore I purchased the gold based on its purity and rate.

I find that in his statement, Shri Dixitkumar Rajnikant Shah admitted that the said Gold Bars are of foreign origin and he did not have any import document in respect of it. In the present case, also from the statement of Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company, I find that no evidence of valid import of the said Gold pieces was produced before the departmental officers.

30.3.28 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer ("Assayer"), in presence of independent panchas and Shri Suchit Patel under panchnama dated 07.08.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 28.08.2023. I find that the assayer in his valuation report clearly mentioned that the bar are of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar being examined by the Government approved Assayer or Valuer, are of the foreign origin based on the Valuation Report dated 28.08.2023.

30.3.29 I find that import of gold is restricted under Foreign Trade (Development and Regulation) Act, 1992 except by authorised banks and nationalised agencies. In terms of the Circular No. 34/2013-Cus issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT (supra). Hence, the import of gold by any other persons/agencies other than the above,

is prohibited as mentioned in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion.

30.3.30 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of Gold Pieces of 105.50 gms were found in the possession of employees of Aangadia firm M/s. Patel Rajeshkumar Naranbhai & Company. The sender of the said gold bar is M/s. Siddhi Jewels, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar. In his statement dated 06.02.2024, Shri Dixitkumar Rajnikant Shah stated that:

I also state that I do not have any import documents for our seized gold of 105.50 grams as it was not provided by the person from whom we had purchased the said gold. On being asked as to why we did not seek any import documents from the concerned person, I state that I was aware that the said gold pieces were of foreign origin on the basis of marking on the gold pieces but we did not seek any import documents as we do not have any legal knowledge of the Customs Act or rules.

On being asked about the Import dockets for the import of the said foreign origin cut pieces of gold bars of 105.50 grams, I state that as stated earlier, I do not have import documents for the said gold. I state that I will try to find out the identity of the person and I will try to seek the documents from them. I undertake to submit the import documents of the said foreign origin gold of 105.50 grams once received from the supplier.

30.3.31 I find that in consequence of the provisions of Section 123, that noticee were owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee were found owning the gold, the form in which gold was being carried namely Gold pieces, all these circumstances establish beyond a shadow of doubt that the noticee M/s. Paras Gold were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. (supra)**, *"If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited."*

30.3.32 In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the Gold pieces have been smuggled into India. I find in present case, the Gold were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold by the

Government approved Assayer. I also find that the noticees could not provide any evidence of legal purchase of the said Gold.

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

30.4.1 I find that that the Show Cause Notice proposed absolute confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 of below said Gold in Table-X:-

Table-X

Sr. No.	Description of the Gold	Pertaining to	Weight of the gold in grams	Fair Market Value of the gold (in Rs.)
1	One Cut Bar	M/s. Motiwala Art, Surat	65.9	398695
2	One Gold Bar	Swapnil Jewellers, Surat	100	605000
3	Cut pieces of Gold	Paras Gold, Baroda	49.9	301895
4	Cut pieces of Gold	Abhinandan, Surat	61.01	369111
5	Cut pieces of Gold	Siddhi Jewels	105.5	638275
Total weight and market value			382.31	23,12,976

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

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

-
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
-
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*
-

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

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

30.4.3 From the discussion in foregoing paras, I find that said Gold recovered from Shri Jayantibhai Shambhubhai Patel, employee working for Aangadiya firm- M/s. Rajeshkumar Naranbhai & Company, were seized vide Seizure Memos dated 25.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the said gold bar were smuggled into India with an intention to evade payment of Customs duty. From the Valuation Report and admissions of the noticees, it was found that the same were of foreign origin and had been brought into India without any valid import documents which made them smuggled Gold as defined under Section 2(39) of the Customs Act, 1962.

30.4.4 I also find that the noticees did not controvert the facts detailed in the Panchnama during the course of recording their statements recorded under section 108 of the Customs Act, 1962 except that they stated that they are not aware of the Customs Laws and Rules. since ignorance of law is no excuse as held by **HON'BLE HIGH COURT OF CALCUTTA IN THE CASE OF PROVASH KUMAR DEY V. INSPECTOR OF CENTRAL EXCISE AND OTHERS REPORTED AT 1987 (31) E.L.T. 13 (CAL.)**, therefore, I find that therefore statement of the noticees may be taken as evidence. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passengers/owner of the Aangadia Firm. The said smuggling of Gold thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

30.4.5 I find that as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized or the person who was taking the ownership of the said Gold bars. In the present case, neither of Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers, Shri Girish bhai Shah, Proprietor of M/s. Swapnil Jewellers, Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Shri. Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion and Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels has discharged his burden.

30.4.6 From the facts discussed above, it is evident that said gold mentioned in Tabele-X above are liable for confiscation, under the provisions of Sections 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By owning the said gold without valid import documents made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

30.4.7 I find that as per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the Gold Bars were smuggled into India. In view of the above discussions, I hold that the said gold bars are liable for absolute confiscation. I rely on the case decided by the Hon'ble High Court of Madras in respect of **MALABAR DIAMOND GALLERY PVT LTD**, where the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

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

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

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

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

30.4.9 Given the facts of the present case before me and the judgments and rulings cited above, I hold the said gold bars given below placed under seizure would be liable to absolute confiscation under Section 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962:

Sr. No.	Description of the Gold	Pertaining to	Weight of the gold in grams	Fair Market Value of the gold (in Rs.)
1	One Cut Bar	M/s. Motiwala Art, Surat	65.9	398695
2	One Gold Bar	Swapnil Jewellers, Surat	100	605000
3	Cut pieces of Gold	Paras Gold, Baroda	49.9	301895
4	Cut pieces of Gold	Abhinandan, Surat	61.01	369111
5	Cut pieces of Gold	Siddhi Jewels	105.5	638275
Total weight and market value			382.31	23,12,976

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

SHRI ALTAF SHAFI MOTIWALA, PROPRIETOR OF M/S. MOTIWALA ART JEWELLERS, SURAT:

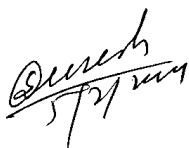
30.5.1 I find that the statement dated 29.01.2024 of Shri Altaf Shafi Motiwala, proprietor of M/s. Motiwala Art Jewellers, Surat was recorded u/s 108 of the Customs Act, 1962 in which he admitted that he had purchased the said cut piece of gold bar of 65.90 grams from an unknown person who had come to his shop to sell the gold. Shri

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Altaf Shafi Motiwala also stated that he did not have any import documents for their seized gold piece of 65.90 grams as it was not provided by the person from whom they had purchased the said gold. He also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. On being asked, he stated that it is possible that the said person had smuggled the said gold through Mumbai or Surat Airport. Shri Altaf Shafi Motiwala further stated that the person offered him the gold on a cheaper rate, therefore he had purchased the gold based on its purity and rate. He had handed over the said cut gold bar of 65.90 grams to employee of M/s. Rajeshkumar Naranbhai & Company for delivery to M/s. Rushabh Jewels for making a necklace on 06.06.2023.

30.5.2 I find Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that:

On being asked, I state that in past, we have also purchased gold from various persons who sell gold and jewellery in retail by means of payment by cash. Further I state that it might be possible that they had brought in the said gold from Mumbai or Surat Airport.



શ્રી. અલ્તાફ મોતિવાલા
5/2/2024

From the above, it is evident that he admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold. I find that Shri Altaf Shafi Motiwala, proprietor of M/s. Motiwala Art Jewellers, Surat have knowingly concerned himself in purchase of foreign origin gold bars of 65.90 grams and (being beneficial owner of the said gold) were not able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on Shri Altaf Shafi Motiwala, proprietor of M/s. Motiwala Art Jewellers, Surat to establish that the said gold bars are not smuggled goods, which they failed to provide.

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

acquiring possession of the smuggled gold which are liable for confiscation, has rendered him liable for penalty under Section 112 of the Customs Act, 1962.

30.5.4 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, wherein the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given. I would also like to refer to the judgment in the case of **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]** wherein it was held as under:

“Evidence - Statement - Retraction of - Confessional statement under Section 108 of Customs Act, 1962 - Proceedings under Section 108 ibid is a judicial proceeding and if any retraction of confession to be made, to be made before same authority who originally recorded the statement - Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take away the evidentiary value of original statement.”

23.5.5 I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee no. 1 as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal, 1999 (110) E.L.T. 324 (S.C.)*
- *Percy Rustam Ji Basta v. State of Maharashtra, 1983 (13) E.L.T. 1443 (S.C.),*
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors. - 2000 (120) E.L.T. 280 (S.C.) and*
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa - 2001 (134) E.L.T. 3 (S.C.)*

I find that once there is an admission by the noticee himself nothing further is required to be proved to the contrary. The Apex Court in **SURJEET SINGH CHHABRA V. UNION OF INDIA - 1997 (89) E.L.T. 646 (SC)** held that confession made by the appellant binds him. Reliance is placed on **COMMISSIONER OF C. EX., MADRAS V. M/S. SYSTEMS AND COMPONENTS PVT. LTD. - 2004 (165) E.L.T. 136 (S.C.)** where it has been held that it is a basic and settled law that what has been admitted need not be proved.

30.5.6 I find further that Shri Altaf Shafi Motiwala, proprietor of M/s. Motiwala Art Jewellers, Surat is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

SHRI GIRISHBHAI SHAH, PROPRIETOR OF M/S. SWAPNIL JEWELLERS, SURAT:

30.5.7 I find that the Statements dated 13.12.2023 and 14.03.2024 of Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat were recorded u/s 108 of the Customs Act, 1962 in which he stated that the said gold bar of 100 grams is of foreign origin and they do not remember exactly from whom they had purchased this gold bar, however, it is possible that the same may be purchased from some retailer as sometimes they purchase gold from retailers on the basis of rates, availability and requirement. He also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. Shri Girishbhai stated that it is possible that the said person had smuggled or brought in the said gold through Surat Airport from abroad as the gold bar is of foreign origin. Shri Girishbhai further stated that such person offered them the gold on a cheaper rate, therefore they purchased the gold based on its purity and rates. Shri Girishbhai also stated that he does not have any import documents for their seized gold piece of 100 grams as it was not provided by the person from whom they had purchased the said gold. I find that he handed over the said Gold Bar to the Aangadia Firm M/s. Rajeshkumar Naranabhai & Company to deliver to M/s. Gujarat Bullion for making nuggets of various sizes.

30.5.8 I find Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that:

On being asked, I state that in past, we have also purchased gold from various persons who sell gold and jewellery in retail by means of payment by cash. Further I state that it might be possible that they had brought in the said gold from Surat Airport.

From the above, it is evident that he admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold. I find that Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat have knowingly concerned himself in purchase of foreign origin gold bar of 100 grams and (being beneficial owner of the said gold) were not able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat to establish that the said gold bars are not smuggled goods, which they failed to provide.

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

30.5.10 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee no. 1 as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal*, 1999 (110) E.L.T. 324 (S.C.)
- *Percy Rustam Ji Basta v. State of Maharashtra*, 1983 (13) E.L.T. 1443 (S.C.),
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors.* - 2000 (120) E.L.T. 280 (S.C.) and
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa* - 2001 (134) E.L.T. 3 (S.C).
- *Surjeet Singh Chhabra V. Union Of India* - 1997 (89) E.L.T. 646 (Sc)
- *Commissioner of C. Ex., Madras V. M/S. Systems And Components Pvt. Ltd.* - 2004 (165) E.L.T. 136 (S.C.)

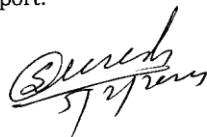
30.5.11 I find further that Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

SHRI LOKESHKUMAR N. SONI, PROPRIETOR OF M/S. PARAS GOLD, VADODARA:

30.5.12 I find that the Statement dated 05.02.2024 of Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara was recorded u/s 108 of the Customs Act, 1962 in which he stated that they usually get a lot of orders from customers for making jewellery and on account of the same, it is difficult to determine at any point of time as to where and from whom he had taken the said gold of foreign origin of 49.90 grams. ShriLokeshkumar also stated that he does not have any import documents for their seized gold piece of 49.90 grams as it was not provided by the person from whom they had purchased the said gold. Further, on being asked about as to whether the said gold was smuggled in India, he stated that they purchase gold from various persons who sell gold in retail. Shri Lokeshkumar stated that it might be possible that such persons had brought in the said gold from Mumbai or Surat Airport. I find that he handed over the said Gold to the Aangadia Firm M/s. Rajeshkumar Naranabhai & Company to deliver to Shri Dhruvbhai Soni for making jewellery.

30.5.13 I find Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that:

never sought any import documents from the suppliers. Further, on being asked about as to whether the said gold was smuggled in India, I state that we purchase gold from various persons who sell gold in retail. I state that it might be possible that they had brought in the said gold from Mumbai or Surat Airport.



From the above, it is evident that he admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold. I find that Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara have knowingly concerned himself in purchase of foreign origin gold of 49.90 grams and (being beneficial owner of the said gold) were not able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara to establish that the said gold bars are not smuggled goods, which they failed to provide.

30.5.14 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara had knowingly indulged/concerned himself in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who **acquires possession of** or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to

confiscation under section 111, will be liable for penalty under Section 112. I find that that Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara is culpable and the act of omission and commission made on his part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, has rendered him liable for penalty under Section 112 of the Customs Act, 1962.

30.5.15 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee no. 1 as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal*, 1999 (110) E.L.T. 324 (S.C.)
- *Percy Rustam Ji Basta v. State of Maharashtra*, 1983 (13) E.L.T. 1443 (S.C.),
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors.* - 2000 (120) E.L.T. 280 (S.C.) and
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa* - 2001 (134) E.L.T. 3 (S.C).
- *Surjeet Singh Chhabra V. Union Of India* - 1997 (89) E.L.T. 646 (Sc)
- *Commissioner of C. Ex., Madras V. M/S. Systems And Components Pvt. Ltd.* - 2004 (165) E.L.T. 136 (S.C.)

30.5.16 I find further that Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

SHRI LOKESHKUMAR N. SONI, PROPRIETOR OF M/S. PARAS GOLD, VADODARA:

30.5.17 I find that the Statements dated 04.01.2024 and 14.03.2024 of Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat was recorded u/s 108 of the Customs Act, 1962 in which he stated that the said Gold, having total weight of 61.010 grams of 999 purity is of foreign origin and the same may be purchased from retailer as sometimes they purchase gold from retailers on the basis of rates and availability. Shri Sheel Rohit Shah stated that he had not verified the purity of gold and he had just

purchased the said gold from that person based on rates. He also stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. Shri Sheel Rohit Shah stated that it is possible that the said person had smuggled the said gold through Surat Airport. I find that he handed over the said Gold to the Aangadia Firm M/s. Rajeshkumar Naranabhai & Company to deliver to M/s. Gujarat Bullion for putting stamp as per their requirements.

30.5.18 I find Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that:

On being asked, I state that in past, we have also purchased gold from various persons who sell gold and jewellery in retail by means of payment by cash. Further I state that it might be possible that they had brought in the said gold from Surat Airport.

From the above, it is evident that he admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold. I find that Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat have knowingly concerned himself in purchase of foreign origin gold of 61.010 grams and (being beneficial owner of the said gold) were not able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat to establish that the said gold bars are not smuggled goods, which they failed to provide.

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

30.5.20 I find that Shri Sheel Rohit Shah has retracted from his statement dated 14.03.2024 during his submissions that he had never voluntarily given such statement. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and

produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee no. 1 as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal*, 1999 (110) E.L.T. 324 (S.C.)
- *Percy Rustam Ji Basta v. State of Maharashtra*, 1983 (13) E.L.T. 1443 (S.C.),
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors.* - 2000 (120) E.L.T. 280 (S.C.) and
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa* - 2001 (134) E.L.T. 3 (S.C).
- *Surjeet Singh Chhabra V. Union Of India* - 1997 (89) E.L.T. 646 (Sc)
- *Commissioner of C. Ex., Madras V. M/S. Systems And Components Pvt. Ltd.* - 2004 (165) E.L.T. 136 (S.C.)

30.5.21 I find further that Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

SHRI DIXITKUMAR RAJNIKANT SHAH, PROPRIETOR OF M/S. SIDDHI JEWELS, SURAT:

30.5.22 I find that the Statement dated 06.02.2024 of Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat was recorded u/s 108 of the Customs Act, 1962 in which he stated that they had purchased the said gold of 105.50 grams from an unregistered person and his decision to purchase the imported gold was primarily influenced by the less price offered as compared to market rate by the unregistered person. On being asked, Shri Dixitkumar Rajnikant Shah stated that he had not verified the purity of gold and he had just purchased the said gold from that person based on trust. He also stated that he does not have import documents pertaining to the said gold as it was not provided by the person from whom he had purchased the said gold and it is also possible that the said person had smuggled the said gold through Airport. I find that he handed over the said Gold to the Aangadia Firm M/s. Rajeshkumar Naranabhai & Company to deliver to M/s. Bhairav Gold for making a necklace.

30.5.23 I find Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that:

On being asked, I state that we have also purchased gold from various persons who sell gold and jewellery in retail by means of payment by cash. Further I state that it might be possible that they had brought in the said gold from Surat Airport.

From the above, it is evident that he admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold. I find that Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat have knowingly concerned himself in purchase of foreign origin gold of 49.90 grams and (being beneficial owner of the said gold) were not able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat to establish that the said gold bars are not smuggled goods, which they failed to provide.

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

30.5.25 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee no. 1 as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal*, 1999 (110) E.L.T. 324 (S.C.)
- *Percy Rustam Ji Basta v. State of Maharashtra*, 1983 (13) E.L.T. 1443 (S.C.),
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors.* - 2000 (120) E.L.T. 280 (S.C.) and
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- *Surjeet Singh Chhabra V. Union Of India* - 1997 (89) E.L.T. 646 (Sc)
- *Commissioner of C. Ex., Madras V. M/S. Systems And Components Pvt. Ltd.* - 2004 (165) E.L.T. 136 (S.C.)

30.5.26 I find further that Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

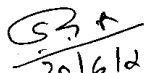
M/S. PATEL RAJESHKUMAR NARANBHAI & COMPANY

30.5.27 I find that in present case, employee namely Shri Jayantibhai Shambhubhai Patel of M/s Patel Rajeshkumar Naranbhai & Company ("Aangadia Firm") were intercepted by the officers of DRI in the 'Pick up' area outside the Kalupur Railway Station, Ahmedabad and on the examination of the baggage of the said employee, the officers of DRI found that certain parcels containing gold which appeared to be of foreign origin. I find that the employee of the Aangadia Firm could not produce any documents showing legitimate import of the said goods and these goods appeared to be of the nature of smuggled goods. I find from the statement of Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company recorded under section 108 of the Customs Act, 1962 on 20.06.2023, that M/s. Patel Rajeshkumar Naranbhai & Company is specialized in courier services of Precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. and the said parcels were carried by their employee Shri Jayantibhai Shambhubhai Patel for delivery to concerned recipients. Further, as discussed in foregoing paras, the seized Gold were found to be smuggled Gold and found to be liable for confiscation under Section 111 of the Customs Act, 1962.

30.5.28 I find that M/s. Patel Rajeshkumar Naranbhai & Company had concerned themselves into smuggling of Gold as they had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I find that Shri Suchit Patel, Partner, M/s. Patel Rajeshkumar Naranbhai & Company admitted in his statement dated 20.06.2023 that they cannot accept the parcels containing foreign origin gold for transport. The quoted texted is reproduced below:-

F. No. VIII/10-84/ DRI-AZU /O&A/HQ/2024-25
OIO No. 243/ADC/SRV/O&A/2024-25

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

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30.5.29 I find from the statement of Shri Suchit Patel that they failed in their obligation to report the possession of foreign origin gold which are liable for confiscation under Section 111 of the Customs Act, to respective revenue authorities. I find that M/s. Patel Rajeshkumar Naranbhai & Company has submitted that they are not in position to check whether the Gold bars that has been transported by the Noticee are the Foreign Origin or not. However, I find that noticee had a clear duty to check the accompanying documents for goods being transported/carrying. By indulging themselves in such acts of omission and commission, i.e. *“any way concerned in **carrying**, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,”* M/s. Patel Rajeshkumar Naranbhai & Company rendered them liable for penal action under Section 112(b) of the Customs Act, 1962.

30.5.30 M/s. Patel Rajeshkumar Naranbhai & Company also submitted that they were transporting the goods and no penal provision for transportation is provided in provisions of Section 112 of the Customs Act unlike Rule 26 of the Central Excise Rules, 2002. In this regard, I find that the words ‘transport’ and ‘carriage’ are interchangeably used in legal terms and there is clear provisions for ‘carrying’ or ‘in any other manner dealing’ with the goods which are liable for confiscation, and I reject their contentions.

30.5.31 I also find that M/s. Patel Rajeshkumar Naranbhai & Company are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act by not reporting to the concerned authorities about the smuggled gold.

SHRI JAYANTIBHAI SHAMBHUBHAI PATEL:

30.5.32 I find that Shri Jayantibhai Shambhubhai Patel had concerned himself into smuggling of Gold as he had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I also find that Shri Jayantibhai Shambhubhai Patel was well aware of their company’s work as well as nature of his own job. He had to deal with delivery of precious and valuable goods, documents, jewellery, diamonds, cash etc. He was supposed to know the documents required with each type of goods mentioned above and the laws and rules governing their possession, carrying, selling, purchasing etc., ignorance of law

is no excuse. I find that merely acting upon the directions of his employer M/s. Patel Rajeshkumar Naranbhai & Company, was not expected from him however while receiving the parcels containing smuggled Gold, he should have checked the documents of legal purchase/import of the said smuggled Gold.

30.5.33 I further find that Shri Jayantibhai Shambhubhai Patel had concerned himself in carrying of the smuggled goods i.e. said Gold Bars which they know or have reasons to believe were liable to confiscation under Section 111 of Custom Act, 1962 and rendered himself liable for penal action under Section 112(b) of the Customs Act, 1962.

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

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

ORDER

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

M/S. MOTIWALA ART JEWELLERS, SURAT:

- a) I order absolute confiscation of One cut piece of gold bar, weighing 65.90 grams in total, valued at **Rs. 3,98,695/- (Three Lakhs Ninety Eight Thousand Six Hundred & Ninety Five Only)** pertaining to M/s. Motiwala Art Jewellers, Surat placed under seizure vide Seizure Memo (DIN-202310DDZ10000000E34) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- b) I impose a penalty of **Rs. 75,000/- (Rupees Seventy Five Thousand Only)** on Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers, Surat under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- c) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on Shri Altaf Shafi Motiwala, Proprietor of M/s. Motiwala Art Jewellers, Surat under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;

M/S. SWAPNIL JEWELLERS, SURAT:

- d) I order absolute confiscation of One gold bar of foreign origin, weighing 100 grams in total, valued at **Rs. 6,05,000/- (Six Lakhs Five Thousand Only)** pertaining to M/s. Swapnil Jewellers, Surat placed under seizure vide Seizure

Memo (DIN-202310DDZ1000061616C) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- e) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- f) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on Shri Girishbhai Shah, Proprietor of M/s. Swapnil Jewellers, Surat under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;

M/S. PARAS GOLD, VADODARA:

- g) I order absolute confiscation of Gold pieces of foreign origin, weighing 49.90 grams in total, valued at **Rs. 3,01,895/- (Three Lakhs One Thousand Eight Hundred Ninety Five Only)** pertaining to M/s. Paras Gold, Vadodara placed under seizure vide Seizure Memo (DIN-202310DDZ10000945529) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- h) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- i) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on Shri Lokeshkumar N. Soni, Proprietor of M/s. Paras Gold, Vadodara under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;

M/S. ABHINANDAN BULLION, SURAT:

- j) I order absolute confiscation of Cut pieces of gold bar of foreign origin, weighing 61.01 grams in total, valued at **Rs. 3,69,110/- (Three Lakhs Sixty-Nine Thousand One Hundred Ten Only)** pertaining to M/s. Abhinandan Bullion, Surat placed under seizure vide Seizure Memo (DIN-202310DDZ10000666CD3) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- k) I impose a penalty of **Rs. 75,000/- (Rupees Seventy Five Thousand Only)** on Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;

- l) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on Shri Sheel Rohit Shah, Proprietor of M/s. Abhinandan Bullion, Surat under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;

M/S. SIDDHI JEWELS, SURAT:

- m) I order absolute confiscation of Cut pieces of gold bar of foreign origin, weighing 105.50 grams in total, valued at **Rs. 6,38,375/- (Six Lakhs Thirty-Eight Thousand Three Hundred Seventy-Five Only)** pertaining to M/s. Siddhi Jewels, Surat placed under seizure vide Seizure Memo (DIN-202310DDZ10000999CAD) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- n) I impose a penalty of **Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand Only)** on Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- o) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on Shri Dixitkumar Rajnikant Shah, Proprietor of M/s. Siddhi Jewels, Surat under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;

M/S. PATEL RAJESHKUMAR NARANBHAI & COMPANY:

- p) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. Patel Rajeshkumar Naranbhai & Company under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- q) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on M/s. Patel Rajeshkumar Naranbhai & Company under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;

SHRI JAYANTIBHAI SHAMBHUBHAI PATEL:

- r) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on Shri Jayantibhai Shambhubhai Patel, Employee of M/s. Patel Rajeshkumar Naranbhai & Company, Nagarsheth market, Shop no. 19, Ratanpol, Marchipol, Ahmedabad under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- s) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Jayantibhai Shambhubhai Patel, Employee of M/s. Patel Rajeshkumar Naranbhai & Company, Nagarsheth market, Shop no. 19, Ratanpol,

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Marchipol, Ahmedabad under section 117 of the Customs Act, 1962 as discussed in foregoing Paras.

32. The Show-cause notice bearing no. VIII/10-84/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 is disposed of in terms of the para above.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

F. No. VIII/10-84/DRI-AZU/O&A/HQ/2024-25
DIN-20250171MN0000999D71

Dated: **28.01.2025**

BY SPEED POST:

To,

- 1) **SHRI ALTAF SHAFI MOTIWALA,**
PROPRIETOR OF M/S. MOTIWALA ART JEWELLERS,
SURAT AND RESIDENT OF 101, RIVERA HEIGHTS,
GORAT ROAD, OPP. ALVI ROW HOUSE, RANER,
VELUK, SURAT-395005
- 2) **SHRI GIRISHBHAI SHAH,**
PROPRIETOR OF M/S. SWAPNIL JEWELLERS,
SURAT AND RESIDENT OF 87, DESAI FALIYU,
VAV, TALUKA KAMREJ, SURAT
- 3) **SHRI LOKESHKUMAR N. SONI,**
PROPRIETOR OF M/S. PARAS GOLD,
VADODARA AND RESIDENT OF 6/A,
LAXMI NAGAR SOCIETY, NEAR PARICHAY PARK,
WAGHODIYA ROAD, VADODARA-390019
- 4) **SHRI SHEEL ROHIT SHAH,**
PROPRIETOR OF M/S. ABHINANDAN BULLION,
SURAT AND RESIDENT OF 602, PRAYAG FLATS,
SAGAR SARITA SANGAM LANE,
BEHIND SARGAM SHIPPING CENTER,
PARLE POINT, UMRA, SURAT, GUJARAT- 395007
- 5) **SHRI DIXITKUMAR RAJNIKANT SHAH,**
PROPRIETOR OF M/S. SIDDHI JEWELS,
SURAT AND RESIDENT OF C-401,
SSIMANDHAR CAMPUS, B/H WESTERN SOMCHINTAMANI,
PAL ADAJAN, SURAT
- 6) **SHRI JAYANTIBHAI SHAMBHUBHAI PATEL,**
C/O M/S. PATEL RAJESHKUMAR NARANBHAI & COMPANY,
NAGARSHETH MARKET, SHOP NO. 19,
RATANPOL, MARCHIPOL, AHMEDABAD, GUJARAT
- 7) **M/S. PATEL RAJESHKUMAR NARANBHAI & COMPANY,**
NAGARSHETH MARKET, SHOP NO. 19,
RATANPOL, MARCHIPOL, AHMEDABAD, GUJARAT

Copy to:

- 1) The Principal Commissioner of Customs, Ahmedabad Commissionerate, for information please.

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OIO No. 243/ADC/SRV/O&A/2024-25

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