



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा, अहमदाबाद 380009

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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-14/Commr./O&A/DRI/2013

DIN- 20250371MN0000515215

आदेश की तारीख/Date of Order : 10.03.2025

जारी करने की तारीख/Date of Issue : 10.03.2025

द्वारा पारित :-

शिव कुमार शर्मा, प्रधान आयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-70-2024-25 dtd.
10.03.2025** in the case of M/s. Reliance Industries Limited, Dahej & others.

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

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute”.
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. DRI/AZU/INQ-21/2010 dated 08.04.2013 issued by the Additional Director General, DRI, Ahmedabad to M/s Reliance Industries Limited & others and Hon'ble Tribunal order No. A/10954-10955/2022 dated 10.08.2022.

Brief facts of the case:

Information was received by the officers of the Directorate of Revenue Intelligence (hereinafter referred as DRI for the sake of brevity) that certain Duty Entitlement Pass Book (hereinafter referred as DEPB for the sake of brevity) / Vishesh Krishi and Gram Udyog Yojana (hereinafter referred as VKGUY for the sake of brevity) licences utilised by M/s. Hindalco Industries Limited, Dahej at Dahej port at the time of import for payment of customs duty are forged licences. The information indicated that the forged licences were being sold to M/s. Hindalco Industries Limited, Dahej by M/s. Padmavati Agencies Pvt Ltd, Ahmedabad – (PAPL) a broker and that the forged licences were being supplied to PAPL by Shri Piyush Viramgama of M/s. Bansi Overseas, 302, Somnath Centre, Rajkot.

2. In pursuance of above said information, necessary action was initiated by DRI, Ahmedabad and details of the Release Advices issued by Mangalore Customs for use at Dahej Port were obtained along-with a copy of the register maintained by Mangalore Customs in respect of the licences registered with them during 2008-2009 and 2009-2010.

3. Searches were conducted at the office premises of M/s. Bansi Overseas, Rajkot on 21/4/2010 under proper panchnama which resulted in recovery of various incriminating records, documents, computers, pen drives (external storage devices) etc. During the course of search at the office premises of M/s. Bansi Overseas, 302, Somnath Complex, Rajkot, Shri Piyush Viramgama, however, was not available. The search was carried out in the presence of Shri Bharatbhai Badarkiya, who was found occupying the said premises. The evidences recovered during the course of said premises, inter alia, contained one forged VKGUY licence, in original, bearing No. 0710059272/0/24/00 dated 21/8/2008 which appeared to be issued by the Director General of Foreign Trade (DGFT), Bangalore to M/s. General Commodities Private Limited, Bangalore for duty credit of Rs.43,87,551/-. The port of registration of the said licence was mentioned as Mangalore Sea. The said licence also contained endorsements purportedly made by the Superintendent of Customs, Mangalore. The search also resulted in recovery of a list of 85 VKGUY licences as well as one Release Advice (RA) purportedly issued by Mangalore Customs to Navlakhi Port. It was also gathered during the search that Shri Piyush Viramgama was having a new office in the name of M/s. Krish Overseas located at 302, Krish Business Planet, Panchnath Plot, Limbda Chowk, Street No.2, Rajkot.

4. Subsequently, searches were carried out in the office premises of M/s. Krish Overseas, 302, Krish Business Planet, Panchnath Plot, Limbda Chowk, Street No.2, Rajkot under panchnama dated 22/4/2010 as well as the residential premises of Shri Piyush Viramgama located at 'Ashiyana' Fulwadi Park, Rajkot under panchnama dated 22/4/2010. Shri Piyush Viramgama and his employee/associate Shri Vijay Gadhiya were not available during the course of the searches at the office premises of M/s. Bansi Overseas, Rajkot, M/s. Krish Overseas, Rajkot and the

residential premises of Shri Piyush Viramgama. The residential premises of Shri Vijay Gadhiya located at Vallabh Nivas, Behind Karadia Rajputwadi, Hilaben Lodhiya Quarters, Visveshwar Nagar, Sheri No.5, Mahudi Chokadi, Rajkot was attempted to be searched on 26/4/2010, however, as the same was found locked, the said premises was sealed under proper panchnama dated 26/4/2010. It was also gathered that M/s. Bansi Overseas was also having another office at 311, Somnath Complex, Rajkot. The said premises were searched under proper panchnama on 26/4/2010 and various incriminating evidences were recovered. The residential premises of Shri Vijay Gadhiya which was sealed under panchnama on 26/4/2010 was opened and searched under panchnama dated 27/4/2010 in the presence of independent panchas. In the course of the search various incriminating evidences viz. rubber stamp / round seal of the DGFT, Rajkot, round seal of Mangalore Customs, stamps of different banks were recovered. Also negatives for preparing rubber stamps of the firms whose licence were forged etc. were recovered.

5. The office premises of M/s.Vani Exports, 2, Clive Ghat Street, Suite No.7, 2nd Floor, Kolkata was searched by the officers of DRI, Kolkata on 29/4/2010 under proper panchnama and various documents and records were withdrawn for further investigation.

6. The office premises of M/s. Sunkkalp Creations Pvt Ltd, located at Sagarika Co-op Housing Society, Opp. Palm Grove, Juhu Tara Road, Mumbai was searched on 30/4/2010 under proper panchnama and various incriminating records were withdrawn for further investigation. In the course of the search it was found that the declared address was in fact a residential premise. In the course of the search at the office premises of M/s.Sunkkalp Creations Pvt Ltd, Mumbai (SCPL) none of the Directors, including Shri Kalpessh Daftary were available.

7. Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot appeared before the investigating officers and his statement was recorded on 11/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that M/s.Bansi Overseas was situated at 302, Somnath Complex, B/h S.T. stand, Opp.Samrat Hotel, Rajkot; that Shri Kalpessh Daftary was the proprietor of M/s.Bansi Overseas;
- that apart from him Shri Stenly and Shri Nilesh Makwana were also working in M/s.Bansi Overseas and that Shri Nilesh Makwana attended to miscellaneous work;
- that M/s.Bansi Overseas was engaged in trading of duty free transferable licences such as Duty Entitlement Pass Book (DEPB), Duty Free Replenishment Certificate (DFRC), etc. Export Promotion Capital Goods Scheme (EPCG), Advance Authorization Scheme, were also entertained by the firm;
- that Shri Kalpessh Daftary had closed his business in Rajkot in the year 2006 and shifted to Mumbai. In Mumbai Shri Kalpessh Daftary was doing the same business of trading in licence in the name of

M/s.Splendent Sun Overseas and in the name of M/s. Sunkkalp Creations Pvt. Ltd., Mumbai;

- that while he was working in M/s.Bansi Overseas, he got full knowledge regarding licensing work with DGFT and sale and purchase of Duty Free Transferable Licence such as DEPB, VKGUY, etc.;
- that he started a proprietary firm in the name of M/s.Krish Overseas at 302, Somnath Complex, Opp. Samrat Hotel, Rajkot, at the address where M/s.Bansi Overseas was functioning;
- that his firm M/s.Krish Overseas functioned at the above address for 2 years and thereafter in the year 2009 he shifted his firm's office at 302, Krish Business Planet, Panchnath Plot, Limbda Chowk, Rajkot;
- that apart from the above address he had another office of M/s.Krish Overseas at 311, Somnath Complex, Opp.Samrat Hotel, Rajkot;
- that at present a sign board of M/s.Vani Exports was placed at 302, Somnath Complex, Rajkot; that M/s.Krish Overseas was engaged in the trading of duty free transferable licences such as Duty Entitlement Pass Book (DEPB), Vishesh Krishi and Gram Udyog Yojana, etc., and DGFT licencing work of some licences, as well as, EPCG Scheme and Advance Licence;
- that his employees Shri Nilesh Makwana and Shri Vijay Gadhiya looked after the sales and purchase of licences and Shri Deepesh Viramgama, his brother, Shri Sameer Makwana and Shri Hardik Shah looked after the e-com application in respect of licences, that Shri Mayur Gadhiya looked after the bank work;
- that Shri Nilesh Makwana and Shri Vijay Gadhiya also looked after the work of collection of payment from Brokers and parties;
- that he looked after and searched new licence holders who intended to sell their licences and he also looked after DGFT work in respect of VKGUY licences;
- that he sold DEPB and VKGUY licences to the brokers namely M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad, M/s.Vrinda Agencies, Kolkata, M/s.Madhu Overseas Pvt. Ltd., Mumbai and M/s.Sunkkalp Creations Pvt. Ltd., Mumbai;
- that their major broker was M/s.Padmavati Agencies Pvt. Ltd., to whom they have sold 95% of their licences. They never sold any licence directly to the importer and they always sold licence to the brokers;
- that he contacted Shri Dharmesh Gathani or Shri Kalpessh Darji of M/s.Padmavati Agenices and in M/s.Madhu Overseas Pvt. Ltd., he contacted Shri Kunal Pandya and in M/s. Sankkalp Creations Pvt. Ltd., he contacted Shri Kalpessh Daftary;
- that he was shown the panchnama dated 21/4/2010 drawn at the premises of M/s.Krish Overseas at 302, Somnath Complex, Rajkot along with annexure A wherein some files were seized;
- that he was shown page No.66 to 83 of seized file No.6 seized from his office premises, the said documents from page 66 to 83 were all invoices issued by M/s.Shivangi Enterprise, 909, Centre Point, M.G. Road, Bangalore to M/s.Vani Exports, 2, Clive Ghat Street, Suit No.7, 2nd Floor, Kolkata : 700 001;

- that the invoices were for sale of licences the details of which were mentioned therein and that those invoices were prepared by him on the instructions of Shri Kalpessh Daftary and that the invoice were signed by him as Proprietor;
- that he does not know the actual owner of M/s.Shivangi Enterprises, Bangalore.
- that a firm in the same name of M/s.Shivangi Enterprises with Shri Vijay Gadhiya as Proprietor was opened in Rajkot;
- that he got printed the letter head of M/s.Shivangi Enterprises, Bangalore from M/s.Joystick Printers, Rajputpura Main Road, Rajkot;
- that he had also got printed stationery in the name of M/s.Vani Export, Kolkata, from the same printer;
- that he identified the photographs in Annexure A as Shri Kalpessh Daftary & Shri Bhavesh Kotak, in Annexure B as Shri Niyaz Ahmed owner of M/s Indiyana Shoes, Shri Deepesh Viramgama & Shri Chirag Mehta and in Annexure C as Shri Nilesh Makawana & Shri Vijay Gadhiya attached to his statement.

8. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 12/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that he was shown page No.46 to 50, 55 and 56 of the seized file No.6; that those documents were bank Real Time Gross Settlement (RTGS) fund transfer applications made by M/s.Shivangi Enterprise from HDFC Bank, Kalawad Road Branch, Rajkot A/c. No.03792000002927 to M/s.Indiyana Shoes, Kanpur;
- that at page No.47 was the RTGS application for transfer of funds in favour of Shri Ashok Kumar Gupta;
- that the money transferred to M/s.Indiyana Shoes, Kanpur, was in respect of the payment of forged licences purchased by him; that the said firm belonged to Shri Niyaz Ahmed;
- that he does not know Shri Ashok Kumar Gupta, however, on the directions of Shri Niyaz Ahmed he had transferred money in favour of Shri Ashok Kumar Gupta. The account number was given to him by Shri Niyaz Ahmed;
- that in the course of sale and purchase of licences one broker by name Shri Hiten introduced him to Shri Niyaz Ahmed of M/s.Indiyana Shoes, Kanpur; that he kept in touch with Shri Niyaz and developed good relations with him (Shri Niyaz);
- that Shri Niyaz got confidence in him and during one of their meetings told him that he (Shri Niyaz) could provide forged licences;
- that he was shown page No.7 of the said file No.6 which was an original customs purposes only VKGUY licence bearing No.0710059272/0/24/00 dated 21.8.2008 issued by DGFT, Bangalore to M/s.General Commodities Pvt. Ltd., 604, Queens Corner A, No.3, Queens Road, Bangalore, for duty credit of Rs.43,87,551/-; that the port of registration mentioned in the said licence was Mangalore Sea; that the document Sr.No. was 1A 585144;

- that after going through the reverse side of the said licence he stated that there were two endorsements by the Superintendent of Customs, Mangalore; that the said licence No. 0710059272/0/24/00 dated 21.8.2008 was not a genuine licence issued by the DGFT, Bangalore, but a forged licence, as that licence was provided to him by Shri Niyaz Ahmed;
- that the said licence had been forged using the details of the genuine licence issued by DGFT, Bangalore, to the same firm with the same licence number, file number, name of the licence holder, his IEC and for the same duty credit; that the signature of the issuing authority i.e., the Foreign Trade Development Officer (FTDO) in the said forged licence had been done by him; that the signature of the Superintendent of Customs, Mangalore, appearing on the obverse side of the said licence had been done by him;
- that the stationery of the licence duly printed was supplied to him by Shri Niyaz Ahmed; that the rubber stamps affixed on the said forged licences were got prepared by him locally;
- that he was shown page No.9, 12, 18, 21, 24 and 27 of the said file No.6; that those documents were all letter heads of various firms as detailed below:
 - (i) Page No.9 – Blank letter head of General Agents for Ignazia Messina & C. SDA Italy
 - (ii) Page No.12 – Blank letter head of CMA CGM
 - (iii) Page No.18 – Blank letter head of Maersk Line
 - (iv) Page No.21 – Blank letter head of Mediterranean Shipping Company
 - (v) Page No.24 – Bill/Debit Note of M/s.Shivangi Enterprise, Bangalore
 - (vi) Page No.27 – Blank letter head of M/s.MPG International, Kolkata
- that the letter heads mentioned at Sr.No. (i) to (iv) were got printed by him through computer printer in his office;
- that the letter head of M/s.MPG International, Kolkata and bill/debit note of M/s.Shivangi Enterprises, Bangalore, were got printed by him from M/s.Joystick Printers, Rajputpura Main Road, Rajkot;
- that the letter head of M/s.MPG International, Kolkata, were printed as per the direction of Shri Kalpessh Daftary and sent the same to him (Shri Kalpessh Daftary);
- that some letter heads were left in his office which were recovered by the officers of DRI during search; that those letter heads were printed for the purpose of issuing licence transfer application/letters and for use of billing in respect of sale of the licences by Shri Kalpessh Daftary who was actually controlling the sale/purchase of licences by M/s.MPG International;
- that one of his office staff named Shri Vijay Amrutlal Gadhiya was having a firm in the name of M/s. Shivangi Enterprise having address at Kishan Chamber, Shop No. 11, Atika Industrial Area, Rajkot, which was engaged in the job work of iron and steel turning, lathe, etc.; that the said firm became sick;

- that the letter head of the said firm was also recovered by the officers of DRI from his office premises and placed at page No.32 of the file No.6;
- that on the directions of Shri Kalpessh Daftary, he got printed the letter heads and Bill/Debit Note of M/s.Shivangi Enterprise, 909, Centre Point, M.G.Road, Bangalore; that the address 909, Centre Point, M.G.Road, Bangalore, was also provided by Shri Kalpessh Daftary in line with some other firm of Bangalore;
- that they were utilizing the bank account of M/s.Shivangi Enterprise, Rajkot, bearing account No: 03792000002927 with HDFC Bank Ltd., Kalawad Road Branch, Rajkot; to rotate the funds in respect of sale of forged licences;
- that Shri Vijay Gadhiya signed blank cheques of the said bank account of M/s.Shivangi Enterprise, Rajkot and were handed over to Shri Kalpessh Daftary; that one pre-signed blank cheque book of the said account was also retained by him;
- that the incoming and outgoing funds in the said account were controlled by Shri Kalpessh Daftary as per his (Shri Kalpessh Daftary) convenience and sometimes he also utilized funds from the said account;
- that many times as per the requirement of Shri Kalpessh Daftary cash was withdrawn from the said account and sent to him (Shri Kalpessh Daftary) through Angadia firm M/s.Dineshkumar Dashrathlal Angadia, Soni Bazaar, Rajkot;
- that the money was booked in the name of 'CHHOTU' Bombay; that Chhotu was the name of a trusted man of Shri Kalpessh Daftary;
- that he was were shown page No.3 and 4 of the said file No.6; that those pages contained the list of 85 forged VKGUY licence given to him by Shri Kalpessh Daftary for affixing rubber stamps and forging the signature of the FTDO, DGFT and of the Customs officers on the obverse side of the licences;
- that those 85 forged VKGUY licences were sold through M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad; that for affixing rubber stamps and forging the signatures on the forged licences, Shri Kalpessh Daftary had paid him Rs.1.75 Crores till date;
- that he was shown page No.1 of file No.6 which contained the impressions of the rubber stamps, which were recovered from his office premises situated at 302, Somnath Complex, Rajkot, under panchnama dated 21.4.2010 affixed on it; that those rubber stamps were got prepared by him from M/s.Khodiyar Stamp, Rajkot;
- that he was were shown page No.8 and 9 of the seized file No.7 withdrawn under panchnama from his office premises; that the said document was a Release Advice (RA) bearing No.1944 dated 6.3.2009 issued by Mangalore Custom House, in respect of VKGUY Licence No.0710063262 of M/s.General Commodities, Bangalore, for Rs.70,98,890/-; that he was not sure whether that RA was genuine or forged;
- that the stamp impressions on page 1 of file No.6 actually pertained to the period when M/s.Bansi Overseas was functioning at their office premises under the Proprietorship of Shri Kalpessh Daftary;

- that he had not used them in his business of M/s.Krish Overseas and was unable to explain the exact utilization of that rubber stamps;
- that he was shown a page bearing impression of various rubber stamps which were recovered from his office premises during the course of search;
- that those rubber stamps were prepared by Shri Vijay Amrutlal Gadhiya as per direction of Shri Kalpessh Daftary and himself; that those rubber stamps were prepared for the purpose of carrying out false/forged signature verification of the exporter on their licence transfer letters;
- that the signatures of the bank authorities were forged by Shri Kalpessh or himself;

9. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 13/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that he was shown an import Bill of Entry 232670 dated 17.9.2009 appearing on page No.232 of seized box file No.11 withdrawn under panchnama from his office premises situated at 302, Third Floor, Krish Business Planet, Rajkot;
- that vide the said Bill of Entry of M/s.Krish Computech (IEC No.2409003699) he had imported one Laser stamp Machine, Model HTC M-40 and Rubber Stamp Materials (Rubber parts for machine) under Air Way Bill No.58993020454 dated 13.9.2009 from Alantic (Hong Kong) Ltd., Shenzhen China; that the shipment was loaded from Hong Kong under the said Air Way Bill;
- that the said print machine was actually imported under the name of M/s.Krish Computech but was imported under his instructions;
- that during his visit to China in the month of July-August, 2009, he placed and confirmed the order with the overseas supplier. He had also paid the price of the machine at China;
- that since M/s.Krish Computech was having IEC and hence he decided to import the said item under the name of M/s.Krish Computech; The importer firm was actually a partnership firm between Shri Deepesh S. Viramgama, his younger brother and Shri Chirag Mehta at Rajkot;
- that neither Shri Chirag Mehta nor Shri Deepesh Viramgama were aware regarding the actual use of the imported machine; that the stamp making machine was imported to be used by him and Shri Vijay A.Gadhiya for making of various rubber stamps which were to be used for forging of various documents in the entire scheme of utilization of forged licences, unfortunately, the machine did not work and he was unable to use it as the operating manual of the machine was in Chinese language; that presently the machine was broken and destroyed in the month of April, 2010;
- that Shri Kalpessh Daftary was having an office at Dubai and that he did not know the address;
- that he was aware that one Shri Niyaz Ahmed of Kanpur, Uttar Pradesh was dealing in forged licences. He developed further

contact with Shri Niyaz Ahmed and came to know that he (Shri Niyaz Ahmed) was also having a company in the name of M/s. Indiyana Shoes and was manufacturing/trading in leather shoes;

- that he discussed the matter with Shri Kalpessh Daftary during December, 2007, who showed his interest in it; that Shri Kalpessh Daftary was also having some debts to be repaid and was in need of money;
- that during December, 2007 as asked by Shri Kalpessh Daftary, he arranged a meeting of Shri Niyaz Ahmed and Shri Kalpessh Daftary at Mumbai. They discussed regarding the business of forged licences and how they can do it;
- that after about five to six months Shri Kalpessh Daftary confirmed to him that he (Shri Kalpessh Daftary) had decided to do the business of utilization of forged licences and asked him to call Shri Niyaz Ahmed at Mumbai and accordingly he called Shri Niyaz Ahmed at Mumbai;
- that Shri Kalpessh Daftary, Shri Niyaz Ahmed and himself met at Mumbai again; that Shri Kalpessh Daftary gave a complete set of utilized VKGUY licence and its documents like VKGUY licence and annexure, transfer authorizations, list of shipping bills;
- that as per his memory the said set pertained to one of the coffee/cashew exporters of South India. He did not remember the name of the company;
- that as per his knowledge Shri Kalpessh Daftary was working as a consultant to the coffee/cashew exporters association of South India; that those exporters were facing a problem of inclusion of their exports under VKGUY Scheme; that initially their exports were not included; that Shri Kalpessh Daftary was having good rapport with DGFT, New Delhi and had taken the work of consultancy for the above association;
- that Shri Kalpessh Daftary was successful in the inclusion of the exports of coffee/cashew under VKGUY and all their original / genuine VKGUY licences were also handled by Shri Kalpessh Daftary; that Shri Kalpessh Daftary was having very good knowledge about the actual VKGUY licence utilized by the exporters of coffee/cashew of South India;
- that after getting the complete Xerox set of licence and other documents from Shri Kalpessh Daftary, Shri Niyaz Ahmed did the work of printing Forged licences;
- that after receiving the complete set of forged licences and its documents and RAs at Mumbai, Shri Kalpessh Daftary sent the same to him at Rajkot. He checked and found out the defects in the set of forged documents;
- that he did not remember to have found any defects in any of the set of forged documents and licences;
- that he used to affix the rubber stamps of the customs on the back side of the forged licences and forged the signatures of the customs officers;
- that thereafter the sets were properly arranged and packed and returned by him to Shri Kalpessh Daftary who sent them either to Vadodara or Bharuch as per the directions received from Shri Dharmesh Gathani of M/s. Padmavati Agencies Pvt. Ltd.;

- that you were aware that Shri Dharmeshbhai sent a special messenger to collect the said set of forged documents; that although he had never sent the documents himself, he was aware that Shri Kalpessh Daftary sent the documents cover through Maruti Courier or directly through the airlines operating between the places. The airlines were having a system of carrying parcels from one place to another and were received by the representative of the receiver personally. The above mode of transfer was the fastest as the documents reached the destination within 4 to 6 hours;
- that Shri Niyaz Ahmed informed him that he was finding it difficult to print the release advice in the desired format. Therefore, he prepared the release advice in his computer on the basis of actual release advices issued by Mangalore Customs;
- that after affixing the rubber stamp of the customs and forging the signatures he returned the same to Shri Kalpessh Daftary;
- that the DGFT round seal appearing on the forged licences were actually done by Shri Niyaz Ahmed at his (Shri Niyaz Ahmed) place and not by him;
- that he was not aware as to why Port of Mangalore was chosen in all the forged licences and release advices, as the port was chosen by Shri Kalpessh Daftary;
- that Shri Kalpessh Daftary was having some contact at Mangalore by the names Gangadhar and Ganesh; that he was not aware that the forged licences would be utilized at Dahej by Hindalco as this were decided by Shri Kalpessh Daftary;
- that usually ports with manual form of clearance system were suited for such type of utilization of forged licences;
- that M/s. Padmavati Agencies Pvt. Ltd., was supplying licences to Hindalco in bulk and all the clearances of Hindalco were done at Dahej Port which was a manual port (non-EDI);
- that since bulk of licences were used at Hindalco and some bogus licences might be mixed easily among the original licences; that Shri Kalpessh Daftary had utilized the forged licences only at Dahej for clearances made by Hindalco;
- that the negatives and butter paper images of the rubber stamps recovered by the officers from his office premises at Somnath Complex, Rajkot, were actually used to make rubber stamps by his employee Shri Vijay A. Gadhiya as per his instructions;
- that those rubber stamps were further utilized for forging the transfer letters of various parties and also forging the signature verifications by the bank officers; that the signatures of bank officials were usually not verified at any point;
- that the reply to the same was prepared by Shri Kalpessh Daftary and mailed/faxed to him; that after receiving the fax, he put the round seal of Custom House, Mangalore, on the same and re-faxed or mailed back to Shri Kalpessh Daftary after scanning the same;
- that thereafter Shri Kalpessh Daftary used to forge the signature of the Custom officer on the genuineness verification report and fax it to M/s.Padmavati;
- that the round seal of Custom House, Mangalore, was recovered from the premises of Shri Vijay Gadhiya;

- that the letters of confirmation of genuineness were received by fax only and the original copies were not moved to the Custom Houses at the point of utilization of the forged licences and forged RAs. Therefore, the signature on the letter of confirmation was also scanned by Shri Kalpessh Daftary from some document of customs and the scanned portion was affixed on the letter and the print out was faxed;
- that he received a commission amount of about Rupees sixty lakhs in his account of M/s.Krish Overseas from M/s. Sankalp Creations Pvt. Ltd. and remaining amounts were received by him in cash from the bank account of M/s.Shivangi Enterprise;
- that the signatures appearing on the debit notes of M/s.Shivangi Enterprise were all forged by him;
- that most of the signatures were forged by Shri Kalpessh Daftary and Shri Niyaz Ahmed and some signatures were also forged by him;
- that he was shown copies of VKGUY licences as detailed below:
 1. Licence No.5310006856 dated 11.11.2008 of M/s.Quilon Exports Enterprises, Kollam for Rs.62,73,737.00 showing port of registration as Tuticorin Sea and the release advice No.18402 dated 21.11.2008 for the same amount has been issued to IEC No. 0388066415 for INMDA1; that he was also shown another VKGUY licence with the same number, name of the party and amount, only the port of registration was shown in that licence as Mangalore Sea; that he was also shown the corresponding release advice No.1904 dated 19.2.2009 issued by Mangalore Customs in favour of IEC No.0388147237 at INDAH1; that the licence and release advice shown to him first was the original one and the licence and release advice shown to him later was a forged copy;
 2. Licence No.5310006880 dated 11.11.2008 of M/s.John's Cashew Company, Kollam, for Rs.56,81,619/- showing port of registration as Cochin Sea and the release advice No.11112 dated 20.11.2008 for the same amount had been issued to IEC No.0388066415 for INMDA1; that he was also shown another VKGUY licence with the same number, name of the party and amount; that only the port of registration was shown in that licence as Mangalore Sea; that he was also shown the corresponding release advice No.1865 dated 9.1.2009 issued by Mangalore Customs in favour of IEC 0388147237 at INDAH1; that the licence and release advice shown to him first was the original one and the licence and release advice shown to him later was a forged copy;
- that he confirmed and admitted that the list of licences found in page No.3 and 4 of file No.6 withdrawn from his office premises at M/s.Krish Overseas, 302, Somnath Complex, Rajkot, under panchnama were actually pertaining to the forged category of licences as identified by him above;
- that those licences were utilized at Dahej Custom House in the imports of M/s.Hindalco Industries Ltd., supplied to them by M/s.Padmavati Agencies Pvt. Ltd., who in turn had procured through Shri Kalpessh Daftary of Mumbai;

- that Shri Kalpessh Daftary had raised the bills/debit notes in respect of those sales through some firms like M/s.Vani Exports, Kolkata, M/s.Hindustan Continental Ltd., Kolkata, etc.;
- that since the licences were all forged the exemption under Notification No.41/2005-Cus. Dated 9.5.2005 was not available;
- that he was shown the statements dated 12.5.2010 and 13.5.2010 of Shri Vijay Gadhiya and after going through the same he confirmed the facts stated by Shri Vijay Gadhiya in the said statements were true and correct;

10. A statement of Shri Vijay Amrutlal Gadhiya, Proprietor of M/s. Shivangi Enterprises and employed as Supervisor in M/s. Krish Overseas was recorded on 12/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that he worked on lathe machine as a fitter after completing his studies; that he came to Rajkot and worked in M/s.Jyoti Enterprise as a fitter for seven years during which period he came into contact with Shri Piyush S. Viramgama and further developed his friendship;
- that he left the job and in the year 2006 started doing job work on lathe machine in the name and style of M/s. Shivangi Enterprise but closed down the said business as it was not running properly;
- that at the insistence of Shri Piyush Viramgama he joined in his (Shri Piyush Viramgama) firm M/s.Bansi Overseas, situated at 302, Somnath Complex, Behind S.T. Bus Stand, Rajkot;
- that in the said firm Shri Piyush was engaged in the work of purchase and sale of DEPB and VKGUY licences of DGFT;
- that he also started learning the same slowly and gradually. He was working as Supervisor in M/s.Krish Overseas;
- that he had a bank account No.03792000002927 of his firm M/s.Shivangi Enterprise with HDFC Bank, Kalawad Road, Rajkot, which was live;
- that Shri Piyush informed him that he (Shri Piyush Viramgama) wanted to use the said account of his firm for making financial transaction and accordingly he permitted and handed over the signed cheques to Shri Piyush and Shri Piyush used to spend money as per his requirement;
- that the money deposited in that account was generally/mostly from M/s.Vani Exports. The said amount deposited was sometime withdrawn in cash, as well as, by cheques as per the verbal instruction of Shri Piyush Viramgama;
- that the bank account of his firm was used for the transactions in M/s.Bansi Overseas and M/s.Krish Overseas. The amount deposited in that account was towards the licences of DEPB and VKGUY sold by Shri Piyush Viramgama;
- that the details of the cheques issued and withdrawal of cash from the said account and to whom given, could be explained only by Shri Piyush Viramgama;
- that he was shown the panchnama dated 26.4.2010 drawn at his residence. He was also shown the articles like Rubber Stamp,

negative of Rubber Stamp, Butter Paper Print, etc., seized from his residence under panchnama dated 26.4.2010;

- that the above referred stamps, negative and butter paper were kept at his residence as per the instructions of Shri Piyush Viramgama at the time when the office premises of M/s Krish Overseas was being shifted from Somnath Complex to Krish Business Planet;
- that he learnt the process of making of stamps after joining the firm of Shri Piyush Viramgama. He purchased the rubber stamp making machine on the instructions of Shri Piyush Viramgama and used to prepare the stamp on the said stamp making machine on his instructions;
- that Shri Piyush Viramgama used to give him the print of the required stamp on butter paper and he used to prepare the negative from butter paper with the help of the rubber stamp making machine;
- that the negative was cleaned by submerging it into Chemicals. The rubber chemical was processed on negative and heated for some time and cleaned with water. There after it was pasted on Plastic Pad to prepare rubber stamp;
- that those stamps were used by Shri Piyush Viramgama for preparing the forged documents. Shri Piyush Viramgama gave him money for purchasing the rubber stamp making machine and raw materials required for making stamps;
- that he was aware that Shri Piyush Viramgama and Shri Kalpessh were engaged in preparing and sale of forged/bogus license of DGFT. He was not aware about how those forged/bogus licenses were prepared by them.

11. A further statement of Shri Vijay Amrutlal Gadhiya, Proprietor of M/s. Shivangi Enterprises and employed as Supervisor in M/s.Krish Overseas was recorded on 13/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that the bank account in the name of M/s Shivangi Enterprise were used by Shri Piyush Viramgama in the transactions/depositing the amount received on sale of forged/bogus licenses;
- that mostly amount was received from M/s Vani Exports. The details of amount withdrawn and the purpose of the same and amount deposited in the said account could be explained only by Shri Piyush Viramgama as he was unaware of the said details. He handed over the signed Cheques to Shri Piyush Viramgama
- that he was shown page No. 66 to 83 of Miscellaneous File No. 6 withdrawn under panchnama dated 21-04-2010 drawn at 302, Somnath Complex, Rajkot.Those documents were invoices issued by M/s.Shivangi Enterprise to M/s Vani Exports for sale of forged Import licenses;
- that the signature on all the said invoices were not his signature and that Shri Piyush Viramgama signed all the said invoices;
- that he affixed/put rubber stamp on the obverse of forged licenses, the genuineness verification letter of Customs (Release Advise), Letter of Transfer of Licenses, as per the instructions of Shri Piyush Viramgama;

- that he had neither signed any of those forged documents in his name nor in the name of any other person and that the persons who have signed the said forged documents was best known to Shri Piyush Viramgama.

12. Shri Piyush Surendrabhai Viramgama was arrested on 13.5.2010 under the provisions of Section 104 of the Customs Act, 1962 and produced before the Magistrate (in-charge) of ACMM Court, Ahmedabad, on 13.5.2010, who remanded him to judicial custody for 7 days which was further extended. Being aggrieved by the action of DRI Shri Piyush Viramgama filed an affidavit dated 25/5/2010 seeking bail from the ACMM, Ahmedabad, which was opposed by DRI vide affidavit dated 07/06/2010. The Hon'ble ACMM vide order dtd.14/06/2010 rejected his bail application. Being aggrieved Shri Piyush Viramgama approached the Sessions Court, Ahmedabad, vide application dated 25/06/2010 seeking bail, which was also opposed by DRI vide affidavit dated 02/07/2010. As Shri Piyush Viramgama was in judicial custody for more than 60 days he had withdrawn his bail application and filed an application before the Hon'ble ACMM, Ahmedabad for granting default bail. The Hon'ble ACMM, Ahmedabad vide his order dtd.26/07/2010 granted bail subject to conditions.

13. Shri Vijay A Gadhiya was arrested by DRI under the provisions of Section 104 of the Customs Act, 1962, on 13.5.2010 and was produced before the Magistrate (in-charge) of ACMM Court, Ahmedabad, on 13.5.2010, who remanded him to judicial custody for 7 days which was further extended. Being aggrieved by the action of DRI Shri Vijay Gadhiya filed an affidavit dated 25/05/2010 seeking bail from the ACMM, Ahmedabad, which was opposed by DRI vide affidavit dated 07/06/2010. The Hon'ble ACMM vide order dtd.14/06/2010 rejected his bail application. Being aggrieved Shri Vijay Gadhiya approached the Sessions Court, Ahmedabad, vide application dated 25/06/2010 seeking bail, which was also opposed by DRI vide affidavit dated 02/07/2010. As Shri Vijay Gadhiya was in judicial custody for more than 60 days he had withdrawn his bail application and filed an application before the Hon'ble ACMM, Ahmedabad for granting default bail. The Hon'ble ACMM, Ahmedabad vide his order dtd.26/07/2010 granted bail subject to conditions.

14. The office premises of M/s. Hindustan Continental Ltd, Kolkata was searched by the officers of DRI, Kolkata on 13/5/2010 under proper panchnama and relevant records and documents were withdrawn for further investigation. The office premises of M/s.Hindustan Continental Ltd, Mumbai, was searched by the officers of DRI, Mumbai on 18/5/2010 under proper panchnama and various documents and records relevant to the investigations were withdrawn.

15. The evidences gathered in the course of the investigations and the statement of Shri Piyush Viramgama indicated that the licences were being forged by Shri Niyaz Ahmed of M/s. Indiyana Shoes, Kanpur. Therefore, the office and factory premises of M/s. Indiyana Shoes, Kanpur

was searched by the officers of DRI, Lucknow on 19/5/2010 under proper panchnama and various documents and records relevant to the investigations were withdrawn. In the course of the search the mobile phone (No.9453044860) of Shri Haseeb Ahmed, Marketing Manager of M/s. Indiyana Shoes was examined. In the Phonebook of the said mobile an entry in the name of 'Vir DEPB' with the numbers 9925034444, 990990344 and Fax number 0281-2228764 was found. On enquiry Shri Haseeb Ahmed explained that these numbers were saved by him on the instructions of Shri Niyaz Ahmed. Further, examination of the Message box of the said mobile phone revealed that there was entry wherein the bank accounts of Shri. Niyaz Ahmed bearing no. 01271460004598, HDFC Bank, Civil Lines, Kanpur, Smt. Qumar Jehan bearing No. 01271000252560, HDFC Bank, Civil Lines, Kanpur and the bank account of M/s. Indiyana Shoes bearing No.1007, Indian Overseas Bank, Sarvodaya Nagar, Kanpur were found. These details were written by Shri Haseeb Ahmed on a paper which was annexed to the panchnama dated 19/5/2010.

16. A statement of Shri Girish Ghelani, Proprietor of M/s. Vani Exports, Kolkata was recorded on 20/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he is the Proprietor of M/s Vani Exports, 2-Clive Ghat Street, Sagar Estate, Second Floor, Unit No-7, Kolkata-700001.
- that his firm was established in the year-1994-95 and it was a partnership firm in the beginning with his brother Shri.Kamlesh Ghelani as the other partner. Initially they had exported some consignments of leather garments and items in the beginning, however after incurring heavy losses they stopped exports and the partnership was also dissolved and the firm was made proprietorship firm with himself as the proprietor. Thereafter he started trading of transferable duty credit certificates like DEPB, VKGUY, DEEC, FMS, FPS etc. and is carrying on the same as on date.
- that the turnover of his company in the year-2007-08 was approximately Rs.65 Crores, in 2008-09 it was Rs.275 Crores and in the Year-2009-10 it was Rs.300 Crore.
- that he agreed with the facts contained in the Panchnama dated.29.04.2010 drawn at his office premises at Kolkata by the officers of DRI, Kolkata.
- that in his firm he is am engaged in the trading of transferable duty credit licences. Such transferable licences are all post export licences and are procured by them from various exporters who are willing to transfer the duty credits earned after the completion of the exports.
- that they do not get the licences transferred in their name. Only in some cases, when they do not have a ready buyer, they get them transferred in their name. Then on availability of the buyer they transfer the same in the name of the buyer. In cases where they do not get the licences transferred in their name, they transfer them directly from the exporter (transferor) to the importer (transferee).

- that the major exporters who are transferring the licences to them are – M/s Global Green Ltd., M/s. GTN Textiles Limited, M/s. Gopal Fisheries, M/s. Patspin India Limited, M/s. CLC Corporation, M/s. Maize Products, etc.
- that the major importers who are using the transferred licences in their imports are M/s Hindalco Industries Limited, M/s Apollo Tyres Limited, M/s MIRC Electronics Limited, M/s. Ineos ABS Limited, M/s Cuprum Agrovia Limited etc.
- that his firm is not supplying licences to M/s Hindalco directly, they are all supplied only through M/s Trident India (Ltd), Ahmedabad which is controlled by Shri. Jatin Parekh. That in general, the licences are supplied at 92% to 98% of the licence value.
- regarding the margin and amount of commission earned by his firm in the total trade, he states that the commission ranges from .05% to 0.20% on an average, since he does not have more capital to invest, he was unable to earn more profit. In this trade, the brokers/traders who are able to invest more are able to earn more.
- that since the year 2002-03, his firm was supplying licences to M/s Trident India (Ltd) as Sh. Jatin Parekh is closely known to him since long time. They were having a mutual understanding that, he would never supply licences directly to Hindalco and even if sometimes he sells directly, his sale Invoice is accompanied with a credit note and certificate mentioning that, the payment may be directly given to Trident.
- that in the year-2008 Shri. Paresh Parekh of M/s Sunkkalp Creations Pvt.Ltd came up with a proposal for supplying licences to M/s Hindalco. He denied the same. However, since Sh. Paresh Parekh is also his long time friend, he could not deny the offer and he agreed that he may transfer the licences in the name of some other broker and then that broker may transfer to Hindalco or any other company as the case may be.
- that Shri. Paresh Parekh was a partner of Shri. Jatin Parekh. In the year-2004, they separated and Shri. Jatin settled with M/s Trident India (Ltd) at Ahmedabad while Sh. Paresh Parekh went to Mumbai and started a firm in the name of M/s Sun-Splendent Overseas, from where he started trading of licences. In the year about 2006 he started a new firm under the name of M/s Sunkkalp Creations Pvt. Limited with one Shri. Kalpesh Daftary as one of the directors. From the same firm he continued trading of licences. He is having office and residence at Juhu, Mumbai.
- that he does not have any direct contact with M/s Padmavati Agencies Pvt.Ltd, Ahmedabad, he knew them through Shri. Paresh Parekh.
- that for issuing invoices showing sale of licences, he was being supplied with the purchase invoices by Shri Kalpesh Daftary.
- that the purchase invoices supplied to him by Shri Kalpesh Daftary were in the name of M/s. Shivangi Enterprises, Bangalore, M/s. New Planet Trading, Kolkata, M/s. Krish Overseas, Rajkot, M/s. Mac Alloys Ltd, Kolkata, M/s. Hindustan Continental Ltd, Kolkata, M/s. Sabari Quality Foods etc. That these firms are all traders of licences.

- that he does not know any of the above mentioned firms and nor has he met or talked to them at any time.
- regarding the total number of sale invoices issued by him on the instructions of Shri Kalpesh Daftary, he stated that he would have to check his records to state the same.
- that he may be allowed to examine his records which were seized by DRI, Kolkata and give the above details.

17. A further statement of Shri Girish Ghelani, Proprietor of M/s. Vani Exports, Kolkata was recorded on 21/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that on his request he has been given a backup of the Tally data contained in the computer withdrawn from his office and he was allowed to examine the said Tally data on a laptop computer brought by him.
- that the invoices were in the name of M/s. Shivangi Enterprises, Bangalore, M/s. Mac Alloy Private Limited, M/s. General Commodities, M/s.Indian Products Ltd, M/s.NKG Jayanti Coffee, M/s. New Planet Trading Co and M/s. Sunkkalp Creation Pvt Ltd.
- that the invoices were received by him at Kolkata by Courier. The invoices were received from M/s. Sunkkalp Creations Pvt Ltd, 7, Sagarika Co-op Society, Opp. Ramada Palm Grove, Juhu Tara Road, Mumbai mainly through M/s.Maruti Courier or M/s.Blue Dart.
- that as per the instructions of Shri Kalpesh Daftary, he had issued sales invoice to M/s. Vrinda Agencies Pvt Ltd, M/s.Priyank Traexim Pvt Ltd, M/s. S.B. International, M/s.Padmavati Agencies Pvt Ltd, M/s. Multi Mine Distributors Pvt Ltd, M/s.Batbro Impex Pvt Ltd.
- that the purchase rates and sales rates indicated in these invoices were as per the instructions of Shri Kalpesh Daftary and he had been given commission ranging from 0.10% to 0.25% of the licence value.
- regarding the physical movement of the licences, he stated that in respect of the licences for which invoices were issued by him on the instructions of Shri Kalpesh Daftary, none of the licences were physically received by him at Kolkata or elsewhere.
- that the payments in respect of the purchase invoices given by Shri Kalpesh Daftary was made by him from HDFC Bank Account No. 04692320000115. As regards the payments received for the sales invoices issued on the instructions of Shri Kalpesh Daftary, he stated that the same were also deposited in the above said bank account.
- that he was shown 17 pages contained in a file from page no. 5 to 21 and he finds that the same are blank Bill/Debit Note in the name of his firm.
- that none of these documents are of his firm, they are not genuine but duplicates bearing the exact details and in the same format of the Bill/Debit Note used by his firm. He has made an endorsement to this effect on page no.21 with his dated signature.

- that he was informed that the said file was withdrawn under panchnama dated 26.04.2010 from the premises of M/s. Bansi Overseas/Krish Overseas, 311, Somnath Complex, Rajkot.
- regarding his dealings with M/s Bansi Overseas he stated that M/s Bansi Overseas was introduced to him by Shri.Paresh Parekh around the year-2005-06.
- that during the period he had made consignment sale agreements with some companies like-Shiv Industries, Hanuman Industries, Dhaval Agri Products etc. These agreements were forwarded to Shri.Paresh Parekh who was having a firm in the name of M/s Sun Splendent Agencies, Mumbai. Subsequently they may have been forwarded to M/s Bansi Overseas, by Shri. Paresh Parekh.

18. A statement of Shri Surendra Kumar Kulhari, Director of M/s. Hindustan Continental Ltd, Mumbai was recorded on 26/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:-

- that he knows a person by the name Shri. Sashin Koradia (Mob.no.09892265500) at Mumbai who is a Sales Tax consultant by profession and he used to meet him since last 4 years.
- that he wanted to buy a good company as he had some spare money with him. He used to tell him (Shri Sashin Koradia) to arrange for some good company for him to buy, as he wanted to start business of real estate in his own company.
- that during January-2008 he (Shri Sashin Koradia) informed him that a company M/s Hindustan Continental Limited is for sale, the company was established in the year-1993 by Anil Patodia, Sunil Patodia with registered office at Jabalpur, Chhattisgarh and offices at Mumbai and Jaipur.It was also listed in the Bombay Stock Exchange. Subsequently the SEBI suspended the company and the owners wanted to dispose the company. They were having bank account with HDFC Bank, Chandivali Farm Road Branch, Powai, Mumbai. The offer seemed to be lucrative and he purchased the company for Rs. Fifteen Lakhs (Rs.15,00,000.00).
- that the payment was made to one Shri.Anil Kumar of Indore in cash. Upon purchasing and taking over the company four directors were formed – he, Sunil Kulhari, Sh. Latif Khan, Sh. Mukesh Tulshiyan and Sh. Anil Kumar.
- that none of the other directors invested/contributed in buying the company. He had paid the total amount of Rs.15,00,000.00 from his savings. Other three directors are inoperative directors and were included as per the requirement of the companies act, he is the sole operator of the company. The office address was also changed from F-71, Solaris, Opp- L&T Gate No. 6, Saki Vihar Road, Andheri (East), Mumbai to the present address A-01, Ground Floor, Kalyan Bhavan, Plot No.406, Andheri (East), Mumbai-400069.
- that the present office premises is actually an office space rented within the office of M/s S M Couriers. S.M Couriers is owned by his cousin Shri. Shravan Kumar Chaudhary and he has given him the space for free of cost. In return he helps him in public relation work as he is not good in the same. The Kolkata address is also a space in the office of M/s S M Couriers at Camac Street, Kolkata.

- The bank account with HDFC Bank was amended accordingly by including his name as the single operator. The account number is 14718630000034-Current account.
- that he is aware about the location of Shri Sashin Koradia's office which is situated at Chira Bazaar, Kalbadevi, Mumbai. He does not know the exact address. However, he could identify the office personally as he has been there.
- that he is not aware about his residence address or telephone number, he has only his (Shri Sashin Koradia) mobile number 09892265500. He had called him yesterday also and informed him that he was going to DRI, Ahmedabad.
- that during Sep-2008 Shri. Shashin Koradia informed him regarding an offer of raising some bills from his company and earning some commission against the same. He (Shri Sashin Koradia) offered a commission of 0.25% on the total turnover and informed that out of the 0.25% commission received by him, he has to give 0.05% to Sh. Sashinbhai and remaining 0.20% will remain with him.
- that he (Shri Sashin Koradia) informed him that in fact the person who is willing to use the name of his company (M/s Hindustan Continental Limited) is involved in the purchase and sale of custom incentive licences and is having a huge turnover and since he does not want to show the entire turnover in his own company, he wanted to use the name and bank account of his company.
- that Shri.Shashinbhai informed him that the name of the company is M/s Sunkkalp Creation Pvt. Ltd and the persons are Sh. Pareshbhai Parekh and Sh. Kalpeshhai Daftary. He further informed that they would not be misusing the company for some illegal work and it was only for the sake of turnover adjustment, he agreed to the proposal.
- that after this he handed over blank letter heads of his company and signed blank cheques of his bank account (current account No.14718630000034 of HDFC Bank, Chandivali Farm Road Branch, Chandivali, Mumbai). The entire cheque books were signed and handed over to them; that the blank letter heads and signed cheque books were kept available with the office of M/s Hindustan Continental Limited with his staff Mr. Vishal Wadkar (Mob.No.09324335179;09320365500). Vishal was actually an employee of Sh.Shashin Koradia and was visiting his office only part time for the billing and bank related work of Hindustan Continental Limited.
- that Vishal used to sign on the bills as authorized signatory and only the bank cheques were signed by him and handed over to Vishal.
- On being asked as to from where did Vishal receive the instructions for preparing the bills and making the payments, he stated that most of the time the instructions were received through e-mail or on mobile phone, but sometimes, one person by the name 'Chhotu' used to visit his office and meet Vishal for passing on instructions and handing over and taking over of bills and other documents.
- that the laptop computer used by Vishal was seized by the officers of DRI,MZU at the time of the search of the premises of M/s

Hindustan Continental Limited. Some files containing bills and other documents were also seized by DRI officers from his office.

- that only one bank account of Hindustan Continental Limited is used in the trading of custom incentive licences, i.e. current account No.14718630000034 with HDFC Bank, Chandivali Farm Road Branch, Chandivali, Mumbai.
- that in the entire period by lending the name of his company and bank account to Shri.Pareshbhai Parekh and Shri.Kalpesh Daftary, till date he may have received approximately Rs.50 lakhs, out of which he had given approximately Rs.10 Lakhs to Shri.Sashin Koradia.
- that the commission was received in cash which was handed over to Vishal by Chhotu and Vishal gave it to him. It was always in piecemeal payment.
- that M/s Priority Traders Private Limited, E-103, Trivedi Complex, Sheetal Nagar, Mira Road(East),Mumbai-401107 was also purchased by him in the year-2008 or early 2009.This company was also arranged by Shri.Shashin Koradia as it was seen that transactions in his company-M/s Hindustan Continental Limited was becoming very high, he (Shri Sashin Koradia) suggested that the transactions should be distributed in some other company also, and he arranged this company for him.
- that he appointed two of his persons as directors of the company and the bank accounts were also operated by them. The directors appointed by him are Shri. Shyam Sharma and Shri. Neeraj Kumar. The bank account of the company is current account no.14712320000537 with HDFC Bank Ltd., Chandivali Farm Road Branch, Chandivali, Mumbai-400072.
- that around the month of Feb-2009 (approx.) he had started the company and similarly handed over the blank letter heads and signed blank cheque books to Shri.Vishal Wadkar for utilizing them in the purchase and sale of licences as per the instructions of Shri Paresh Parekh and Shri Kalpesh Daftary.
- that the commission amount fixed for M/s Priority Traders Pvt.Ltd. was same i.e 0.25% total, out of which 0.05% was to be handed over to Shri Shashin Koradia.
- that the actual directors of M/s Priority Traders Pvt.Ltd. were not given any amount as they were not aware of the facts.
- that the premises of M/s Priority Traders Pvt. Ltd. at Mira Road, Mumbai was vacated about 8 months back and now the current address is Shop. No.8, Crystal Court, Near-Powai Police Station, Chandivali, Mumbai-400072.The said premises is a rented premises.
- that he was shown some more invoices issued in the name of M/s.Hindustan Continental Limited, the details of which are as under :-

Invoice No	Invoice Date	Issued to:	Amount (Rs.)
HCL/MUM/GE/SEP/023/200-10	30.09.2009	M/s Sunkalp Creations Pvt.Ltd, Mumbai	23654915.00

HCL/MUM/GE/SEP/022/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd, Mumbai	16488015.00
HCL/MUM/GE/SEP/021/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd, Mumbai	15098134.00
HCL/MUM/GE/SEP/020/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd, Mumbai	15177137.00
HCL/MUM/GE/SEP/019/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd, Mumbai	15774738.00

- that these invoices are appearing in file bearing No-16 at page nos-119 to 123 and is withdrawn under Panchnama dated.30.04.2010 from the premises of M/s Sunkkalp Creations Pvt.Ltd., Mumbai at 102 Sagarika Apartments, Opp.-Ramada Palm Grove, Juhu Tara Road, Mumbai.
- that looking to the type of the stationary he recognizes that, these are the bills raised by their company, however he cannot recognize the signature on the bills, however he thinks they are signed by Sh.Vishal Wadkar.
- that on going through the details of the Invoices, he understands that the invoices pertain to sale of licences to M/s Sunnkalp Creations Private Limited, Mumbai.
- that he is aware that the company is owned by Shri.Paresh Parekh and Shri Kalpesh Daftary. He had already stated that the invoices were issued by Sh.Vishal as per the instructions of Sh. Kalpesh Daftary and Sh.Paresh Parekh. He was not aware as to what was written on the Invoices.
- that he was am not aware about the DEPB/VKGUY licences and their significance in detail. He was informed by Sh.Shashin Koradia that these are export incentive licences and are freely saleable in the market and M/s Sunkkalp Creations Pvt.Ltd., Mumbai is one of the traders who are engaged in the purchase and sale of licences.
- that he was also informed that M/s Sunkkalp Creations Pvt.Ltd., Mumbai is having contract with many exporters of cashew and coffee from South India and they have made a contract with them for sale and purchase and re-sale of their licences. These licences are used for payment of custom duty.
- that he had never met Shri.Paresh Parekh or Shri Kalpesh Daftary. However, after the search at his premises by the officers of DRI, Mumbai on 18.05.2010, he came to know that some forged licences have been sold/ purchased in the name of their company and the matter is being investigated by DRI. Thereafter, he had contacted Shri.Shashin Koradia and they both went to meet Shri Paresh/Kalpesh at their residence located at 301, Third Floor, Shubhangan, 14-Swastik Society, JVPD Schem-2, Vile Parle (West), Mumbai, as he wanted to clarify the matter from them. However, neither Shri.Paresh nor Sh. Kalpesh were available in the house and the servant informed that he was not aware about them. He was also informed that Shri. Paresh's parents are staying there but not available at that moment.

19. A statement of Shri Vishal Vyas, Employee of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 28/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that one of his friend Ms. Zinita Patel who works at M/s. Sun Soul Luxy Fashion, which belongs to M/s.Sunkkalp Creation Pvt Ltd informed him of an opening at M/s.Sunkkalp Creation Pvt Ltd. On 24/11/2008, he was interviewed by Shri Kalpesh Daftary and Mrs. Sangeeta Parekh, Directors of the said firm and they offered him a job in a clerical capacity. He agreed to their offer and joined M/s. Sunkkalp Creation Pvt Ltd from 1/12/2008. He was paid salary of Rs.10000/- per month.
- that apart from the above mentioned Directors, Shri Paresh Parekh, the husband of Mrs Sangeeta Parekh is also the Director of the said firm.
- that SCPL is mainly engaged in the trading of various export incentive licences viz. DEPB, VKGUY, DFIA etc. They are also having a dealership of E-Bikes of M/s. Paradise Auto Electric Works, a showroom of luxury items, clothing's etc. in the name of M/s.Sun Soul Luxy Fashion as well as another shop in the name of M/s. Skinjam which is engaged in lamination of mobile phones, laptops etc.
- that he was assigned to the licence trading business of SCPL and he looked after the receipt and scrutiny of the licences purchased by them, co-ordinating with the buyers and sellers of the licences, preparing debit notes/invoices, follow-up with the buyers and sellers regarding payments, assisting the other staff members in preparation of cheques, delivery of the licences to the buyers, follow-up with the concerned parties for Telegraphic Release Advice (TRA), getting genuineness confirmation from the customs etc.
- that SCPL purchases licences from exporters directly as well as other brokers in the market. The licences are received by them from the sellers either by messenger or by courier. On receipt of the licences the same are checked by him or Shri Kalpesh Daftary.
- that the documents received by them consists of 1) Transfer Letter of the original Licence holder, 2) licence forwarding letter issued by the DGFT, 3) Original Licence bearing endorsement of the Customs at the port of registration, 4) list of shipping bills pertaining to the licence and one exporter copy of TRA and one TRA in sealed cover, issued by the Customs at the port of registration and the bill/invoice of the seller of the licence.
- that thereafter, on the instructions of Shri Kalpesh Daftary, the above documents are forwarded to their buyer along with their invoice/debit note.
- that the licence documents are sent to the buyers by Courier. For delivery within Mumbai they use the services of M/s.Vichare Courier Pvt Ltd and for outstation delivery they send the documents through M/s. Maruti Courier Services, Nr Vile Parle Station, Mumbai. The documents are delivered to the Courier company either by Shri Sarjerao P Mojar (alias Chottu) or by Shri Ganesh S. Dike.

- that after the licences are forwarded to the buyers, they contact them at the time of requirement of genuineness confirmation of the TRA.
- that the buyers forward to them a copy of the Customs letter requesting for confirmation of genuineness. The letter is received by them by Fax or a scanned copy is received by email. They then forward the same to their agents at the port of registration and the agent on receipt forwards a copy of the Customs letter confirming the genuineness of the TRA. This letter is sent to them by their agents by fax or a scanned copy by email.
- that the fax number of SCPL is 022-26121841. The scanned copy is received at email ID info@sunkkalp.com or lic@sunkkalp.com and the same is also forwarded from these email IDs.
- that agents who arrange the genuineness confirmation from the Customs at the port of registration are 1) M/s.Smarz Services at Chennai, Tuticorin and Vizag, 2) M/s.Ganesh Shipping at Mangalore, 3) M/s. Jai Ambe Logistics at JNPT, 4) Shri Jaysukh Vaghela at Pipavav, 5) Shri Prashant Chowta at Bangalore.
- that their suppliers of licences are M/s.Sabari Quality Foods, M/s.Smarz Services, M/s. Padmavati Agencies Pvt Ltd, M/s.Vani Exports, M/s.Krish Overseas. They also buy directly from Exporters viz. M/s.General Commodities, M/s. Allanasons, M/s. NKG Jayanti Coffee, M/s. Al Kabeer Exports, M/s.Aspinwall Coffee, M/s.Ecom Gill Coffee Pvt Ltd, etc.
- that their major buyers of licences are M/s.Padmavati Agencies Pvt Ltd, Ahmedabad, M/s. Reliance Industries Ltd, M/s.Hindalco Industries Ltd, M/s. Ispat Industries Ltd, M/s.S.C.Doshi & Company, M/s.Vani Exports, M/s.S.J.Impex, M/s.MPG International, M/s. Sun Exports etc.
- that the buyers and sellers with whom he mostly interacts and their phone numbers are as under :-

Name of the firm	Name of the contact person	Phone Number
M/s.Padmavati Agencies Pvt Ltd	Shri Kalpesh Darji	079-66127777
Shri Krish Overseas	Shri Nilesh Makwana	0281-2228759
M/s.Vani Exports	Shri Girish Gheelani	033-30225927
M/s.Sabari Quality Foods	Shri Murli/ Shri Ranjit	0474-2746601
M/s.General Commodities	Shri Ramanji	08030705716
M/s.Allanasons	Shri Jasani/Shri Prasad	022-22811000
M/s.S.C.Doshi	Shri Ganesh	022-32442304

- regarding their purchases and sales of licences with M/s.Hindustan Continental Ltd, M/s. New Planet Trading Pvt Ltd, M/s. Ostwal Trading, M/s.Accurate Multi Trade Pvt Ltd, M/s.R.R. Impex, M/s. Priority Traders Pvt Ltd, M/s.Punjab Chemical & Crop Protection Ltd, he stated that these firms are used only for billing purposes to save on VAT and other taxes.
- that he does not know about the owners or the contact persons of these firms. The billing in the names of these firms are all arranged for them by Shri Shashin Koradia, a Chartered Accountant and

Advocate. He does not know his office address as he had never been there. He had met him on some occasions at our office.

- that he had spoken to him on his office number 022-22086575, 022-22089453, 022-31039974, 022-28915569, 022-30954272. His Mobile Number is 9322679711. He also sometime speaks to his employee Shri Vishal Wadkar.
- that the bills/debit notes are sent by Shri Shashinbhai through M/s.Vichare Courier. The billing instructions for the bills raised in the name of these companies are given by Shri.Kalpesh Daftary. He instructed them as to how the bills were to be prepared and what the rates to be mentioned on the bills were. As per the instructions he either e-mailed the details or send the details through their peon Shri.Chhotu to Shri.Sashinbhai or any place he instructs.
- that he was shown some copies of letters for confirmation of genuineness verification in issued in the name of Deputy Commissioner of Customs, Custom Division, Dahej and the details appearing on the header of the print out confirms that the faxes have been made from their office fax no-022-226121841.
- that he cannot recollect to whom the same were faxed as the number of the receiving fax is not visible, however he stated that as per practice if the said licences and RA's are to be utilized by Hindalco they must have been faxed to M/s Padmavati Agencies Pvt. Ltd., Ahmedabad.
- regarding the physical movement of the DEPB/VKGUY etc licences and their documents like the RA's, transfer letters etc. in case of the licences supplied to M/s Hindalco, Dahej, he stated that, mostly the licences received from M/s Sabari Quality Foods, Sabari Millenium Impex, M/s Shyam International, M/s Sabari Switchgear etc were physically received at their office at Mumbai and then they are forwarded to M/s Padmavati Agencies P.Ltd.,Ahmedabad either through courier or fast track service.
- that, M/s Ganesh Shipping is working as a CHA at Mangalore and is looking after the custom clearances of M/s General Commodities and its group companies based at Bangalore/Mangalore. One Shri.Gangadhar Shetty having mobile number 09845085089 is the contact person for the same. They are contacting him for genuineness verification of the TRA's issued from Mangalore/Bangalore.
- that none of their Directors i.e. Shri Kalpesh Daftary, Shri Paresh Parekh or Mrs. Sangeeta Parekh have come to the office since about the 12th of April. He has not been able to contact them telephonically as none of their mobile phone numbers known to him are reachable and he does not know their present whereabouts.
- that in their absence no work of purchase or sale of licence is being undertaken and presently they are having no work in their office.
- that in the absence of the Directors, the office is being looked after by Ms. Alena Khambatta, Manager of their company. The salary for the last month was paid to them directly to their personal bank accounts and the instruction to the company's bank was issued by Ms. Alena Khambatta.

20. The office premises of Shri Sashin Koradia situated at Block No-1, Second Floor, Ismail Building, 33-Pathakwadi, Lohar Chawl, Mumbai-400002 was searched on 02/06/2010 under proper panchnama and documents and records relevant to the investigations were withdrawn. In the course of the panchnama Shri Koradia was asked regarding his role in the trading of export incentive licences to which Shri Koradia informed that he acted as an agent for providing companies/firms to the licence traders viz. M/s. Sunkkalp Creations Pvt Ltd, Mumbai and M/s.Padmavati Agencies Pvt Ltd, Ahmedabad. He had provided the following companies to these licence traders:-

Sr.No.	Name of the Company
1	M/s.Hindustan Continental Ltd, Mumbai
2	M/s.Priority Traders Pvt Ltd, Mumbai
3	M/s.Accurate Multitech Pvt Ltd, Mumbai
4	M/s.New Planet Trading Co Pvt Ltd, Mumbai
5	M/s.Ostwal Trading Pvt Ltd, Mumbai
6	M/s.R.R.Impex, Kolkata
7	M/s.Twilight Litaka Pharma Ltd, Mumbai
8	M/s.Fast Stone Trading Pvt Ltd, Mumbai
9	M/s.Punjab Crop & Chemicals Ltd, Mumbai.

21. A statement of Shri Sashin Jayantilal Koradia, was recorded on 02/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that alongwith his job as a sales tax practitioner he also took up sales tax consultancy work for many companies and firms and thereafter he had also started filing of Income Tax returns on behalf of his clients. He has many friends working as chartered accountants and cost accountants and they are providing him clients for his sales tax consultancy work also.
- regarding his involvement in the trading of export incentive licences he states that he has as an agent, assisted some traders of export incentive licences by providing some firms/companies for using them for billing purpose. The names of the all the companies provided by him in the panchnama are correct.
- that as per his knowledge these transferable licences are issued by the DGFT department falling under Ministry of Commerce and after exporting the required export quantity of products the licence holders transfer the amount of credit earned to various other parties in the open market. The traders of licences then get hold of these transferable licences and sell them to other parties who are using the duty credit in the transferred licences for payment of Custom duty at the time of importation. By this way, the importing companies are not required to pay up the required import duty in cash and the duty is debited from the licences. That these licences are sold in the market at discount of 3% to 4% on the duty credit.
- On being asked as to how he got into the business of trading of licences he stated that, in the course of his sales tax consultancy work he came in touch with one Shri. Pareshbhai Parekh in the year-2004, who was running the business of trading of export

incentive licences from his office at Andheri (East), Near.Chakala and the office was under the name of Trident Creations and his partner was his brother Shri.Jatibhai Parekh who used to stay in Ahmedabad. Thereafter he remained in touch with him as they are also from Gujarat and he had also attended some of their family functions.

- that during the year 2007-2008 Shri.Pareshbhai called him and arranged a meeting at his office at Ground Floor, Sagarika Complex, Juhu Tara Road, Juhu and the name of the office was Sunkkalp Creations Private Limited. During the meeting one Shri.Kalpesh Daftary was also there who was introduced to him by Shri.Pareshbhai as his partner. They informed him that they require some firms/companies for rotating their transactions. They informed him that they had made some agreements with some cashew and coffee traders of south India and they are going to trade in large number of licences. In order to keep their turnover within limit they wish to raise the bills through different companies.
- that they offered him a total commission of 25 paise per hundred on the turnover of the bills and agreed with the proposal as he was knowing some companies who were willing to lend their names for money.
- that thereafter he contacted Mr. Surendra Kulhari of Mumbai who was having a company by the name Hindustan Continental Limited. This company was delisted and suspended by SEBI and the company was bought by Shri.Surendra Kulhari for Rs.15 lakhs.
- that he proposed to Shri.Kulhari for lending the name of his company for billing purpose for trading of licences by M/s Sunkkalp Creations Private Limited and offered him a commission of 20 paise on the turnover and also informed him that remaining 5 paisa will be his commission, Shri. Kulhari agreed to the same.
- that he also offered that his staff member Shri.Vishal Wadkar will be doing the accounting and clerical work in respect of raising of bills and Shri Kulhari agreed to pay up Shri.Vishal for his work also.
- that after this as per the instructions of Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt.Ltd., he asked Shri Kulhari to give him some signed blank letter heads of his company M/s Hindustan Continental Limited and signed blank cheques of the bank account of Hindustan Continental Limited to me.
- that Shri Kulhari agreed and gave him the signed blank letter heads and signed blank cheques and he handed over these to Shri.Kalpesh Daftary.
- that gradually he arranged another company by the name M/s Priority Trading Pvt.Ltd which was floated by Shri.Surendra Kulhari as per his insistence as Shri.Kalpesh bhai wanted another firm.
- that thereafter he arranged five firms/companies through one of his friend Shri.Pravin Jain having mobile number – 09322655953 and having office at 626-Panchratna Building,6th Floor, Near Charni Road Railway Station, Opera House, Mumbai. The other companies managed by him are Accurate Multi trade Pvt. Limited., Ostwal Trading Co., Pvt. Limited, New Planet Trading Company Pvt. Ltd., R R Impex, Kolkata, Fast Stone Trading Company Pvt.Ltd.

- that he was not aware about the actual owners/directors of the companies as he have got them through Shri. Pravin Jain who is a consultant by profession.
- that one Shri. Girish Jain, Chartered Accountant having mobile number 09870050877 had arranged the firm M/s Twilight Litaka Pvt.Ltd., Mumbai.
- regarding M/s Punjab Crop and Chemicals Ltd., Mumbai he stated that one Shri.Vipul Joshi is the director of the company and his mobile number is 09820048297 having address at Oberoi Gardens, Fifth Floor, New Link Road, Andheri(west), Mumbai. In a particular year they had low turnover and so they has done the work of false billing of these licences in order to show increased turnover. This is a company listed in the BSE.
- that till date he had received about Rs.Thirty five lakhs commission and some more is yet to be received.

22. A statement of Shri Vishal Jagannath Wadkar, Employee of Shri Sashin Koradia was recorded on 03/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that in August-2007 he joined the office of Shri. Shashin Koradia, his present employer and he has been working with him since then. He is being paid a monthly salary of Rs. 8500.00 and he have been working part time with two other companies M/s. Hindustan Continental Limited and M/s Sunkkalp Creations Private Limited and was paid approximately Rs.2500.00 per month from each company. That his email id was wadkar_vs@yahoo.co.in.
- that M/s Hindustan Continental Limited is managed by Shri.Surendra Kumar Kulhari and M/s Sunkkalp Creations Pvt.Ltd is managed by Shri. Kalpesh Daftary. That apart from him, Ms. Bindi Vora and Shri Yogesh work at M/s.Hindustan Continental Ltd.
- that at the office of Shri.Shashin Koradia he was handling the work related to accounts, maintaining accounts in the Tally software as he is able to handle the accounts in the Tally format and he also handled works related to share markets investments done by Shri. Shashin Koradia. Shri.Shashin Koradia is also having a company in the name of M/s. Someshwara Multiprojects Pvt. Limited.
- that in the office of Shri Shashin Koradia there are total of three staff members Shri.Paresh Prajapati, Shri.Anil Pashte and himself. Shri.Paresh is looking after the work of going to the banks for depositing and withdrawals and other work of a peon. Shri. Anil is also doing similar work apart from attending the phone calls.
- that while working with Shri.Shashin Koradia he was requested by Shri.Shashinbhai to use his e-mail id for sending and receiving e-mails to and from the customers. He was sending mails related to sales-tax and income tax consultancy work and works related to new company started by him.
- that during the year-2008 he was informed by Shri.Shashinbhai that their firm has taken up some licence related work and he has

to handle the work related to sale and purchase of licences and transfer of these licences from one company to another.

- On being asked regarding the details of licences, he states that as per his knowledge these licences are used for export and import related work and he has never seen such licence. He was also informed by Shri. Shashinbhai that these licences are sold in the market and transferred from one party to another. He does not know anything more regarding licences.
- that during the month of August-2008, Shri.Shashinbhai informed him that he has to handle the sale and purchase work of the licences as per the directions of Shri.Kalpeshbhai Daftary. He also informed him that Shri. Kalpeshbhai Daftary will be sending e-mails to him vide which he will be giving the directions as to how the bills are required to be made.
- that thereafter he started receiving e-mails from Shri. Kalpesh Daftary from his e-mail info@sunkkalp.com . As per the directions received over the e-mails he started issuing invoices or sending mails to various parties.
- that after being satisfied with his work and maintenance of accounts in the Tally software, Shri.Kalpeshbhai informed him that he was in need of one accountant for managing his accounts and whether he would be able to work for him, at this he agreed to work for him only on Sundays.
- that on the first Sunday he went to the office of Kalpeshbhai Daftary and found that the name of the office written as M/s Sunkkalp Creations Private Limited and the address was 7, Sagarika Co-operative Housing Society, Ground Floor, Juhu Tara Road, Juhu, Vile Parle(west), Mumbai.
- that he started the work of accounting at his office during the same month on part time basis and was visiting every Sunday at 1000 hours and Shri. Kalpesh and one peon Shri.Chhotu or Shri.Ganesh were present at the office. Shri. Kalpesh Daftary used to give him directions about what work is required to be done and how, and remaining he used to do with his knowledge of accounting.
- that the accounts of the firms for whom billing work is undertaken by M/s.Shashin Koradia & Co are maintained in the computer at the office of the firm situated at 2nd Floor, Ismail Building, No.33, Pathakwadi, Lohar Chawl, Mumbai.
- that the accounts of M/s.Sunkkalp Creations Pvt Ltd, was maintained at their office situated at Juhu Tara Road. The accounts of M/s.Hindustan Continental Ltd, was being maintained by him on the laptop at their office, which he came to know has been seized by the officers of DRI, Mumbai.
- regarding the invoices issued by M/s Hindustan Continental Limited and the signatures on the said Invoices, he stated that the Invoices of M/s Hindustan Continental Limited were actually prepared as per the instructions received from Shri.Kalpesh Daftary on his e-mail and then they were printed at the printer installed in the office of M/s Hindustan Continental Limited and the signatures were done by one Ms.Bindi Vora. Sometimes the Invoices were printed either by Ms.Bindi or him but always signed by Ms.Bindi Vora.

- that he was shown print out of e-mail dated 01.04.2010 from his account to info@sunkkalp.com alongwith a pdf file "sunk.pdf". The details pertain to a Ledger Account of M/s Sunkkalp Creation as per the books of M/s. Hindustan Continental Limited. The details mentioned against the entries "Purchase Register" actually pertains to the bills issued by M/s Hindustan Continental Limited to Sunkkalp and the details mentioned against the entries "Bank" was actually derived from the books of accounts of M/s. Hindustan Continental Limited by Shri.Yogesh of M/s Hindustan and then forwarded to him. Finally, he had completed the account and mailed to Shri. Kalpesh Daftary of Sunkkalp.
- that he once again confirms that all the transactions were actually planned by Shri.Kalpesh Daftary but executed by him on paper.

23. A statement of Shri Vishal Jagannath Wadkar, Employee of Shri Sashin Koradia was recorded on 04/06/2010 **under** Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was shown statement dated 26/05/2010 of Shri Surendra Kumar Kulhari, Director of M/s Hindustan Continental Ltd., That the fact stated by Shri Surendra Kumar Kulhari at last para of page 3 of his statement that 'Vishal used to sign on the bills of M/s Hindustan Continental Ltd., as authorized signatory' is not true. Ms. Bindi V. Vora used to sign on the bills of M/s Hindustan Continental Ltd., as authorized signatory and Ms. Shilpa R. Jadhav used to sign on the bills of M/s Priority Traders P. Ltd., as authorized signatory.
- that the accounts of M/s Hindustan Continental Ltd., and M/s Priority Traders P. Ltd., are maintained by one Shri Yogesh Kumar Palsaina, CA, having mobile no. 09324562306.
- that he accesses his email account wadkar_vs@yahoo.co.in from a computer installed in the DRI office, Ahmedabad and after going through the emails contained in the 'in box', printouts of some mails have been taken.
- that he explains in details regarding following printout as under:

(1). He was shown print out of e-mail dated 12/04/2010 from his account, which he had received from Shri Kalpeshbhai of Sunkkalp Creation P.Ltd., through e.mail "ho"<ho@sunkkalp.com>. That vide email dtd.12/4/2010, he had received scanned copy of receipt of deposit of cheque no.394604 of Rs. 25,00,000/- in account of M/s Adhunik Corp. Ltd., by M/s Vani Exports. This cheque had been deposited by Shri Kalpeshbahi in HDFC Bank, Branch Rajkot.

(2). He was shown print out of e-mail dated 7/04/2010 from his account, which he had received from Shri Vishal Vyas of Sunkkalp Creation P.Ltd., through e.mail<lic@sunkkalp.com>. That vide email dtd.7/4/2010, Shri Vishal Vyas had sent scanned copy of HDCF Bank's cheque no. 394602 of Rs.51,00,000/- issued by M/s Vani Exports in favour of M/s Adhunik Corp. Ltd.

(3). He was shown print out of e-mail dated 6/04/2010 from his account, which he had received from Shri Abhijit Arondekar of M/s Twilight Litaka Pharma Ltd., Mumbai, through e.mail<abhijit_tmpl@rediffmail.com>. That vide email dtd.7/4/2010, Shri Abhijit had sent details of loan cheques issued by Twilight Litaka Pharma Ltd to M/s Hindustan Continental Ltd.

(6) He was shown e-mail dated 09.06.2009 received from lic@sunkkalp.com alongwith a pdf file, received from Shri.Vishal Vyas of SCPL,Mumbai on going through the same he confirms that the enclosure is a tax invoice of Shivangi to Punjab Chemicals and he had forwarded the same to Punjab Chemicals.

(7) He was shown e-mail dated 05.10.2009 received from info@sunkkalp.com , i.e alongwith a pdf file, received from Shri.Kalpesh Daftary of SCPL,Mumbai on going through the same, he confirms that the enclosure contains the bank account details of M/s Hardware Trading Corporation and the same was forwarded by him to Shri.Mahesh Vora of M/s Hardware Trading and the same was forwarded to him with verbal instructions to RTGS some amount to the said account. He does not remember the exact amount right now.

(8) He was shown e-mail dated 01.06.2009 received from lic@sunkkalp.com alongwith a pdf file, received from Shri.Vishal Vyas of SCPL, Mumbai on going through the same he confirmed that the enclosures are tax invoices of Shivangi to Punjab Chemicals and he had have forwarded the same to Punjab Chemicals.

(9) He was shown e-mail dated 29.05.2009 received from lic@sunkkalp.com alongwith a pdf file, received from Shri.Vishal Vyas of SCPL, Mumbai on going through the same he confirmed that the enclosure is an excel sheet showing the details of sale of licences from Shivangi to Punjab and he had forwarded them to Ms. Manisha of Punjab and the company is controlled by one Shri.Vipul Joshi.

(10) He was shown e-mail dated 08.07.2009 received from ho@sunkkalp.com alongwith two pdf files, received from Ms.Khambatta of SCPL,Mumbai on going through the same he confirmed that the enclosures are details of documents they had demanded for opening of bank account of M/s Accurate He also states that the said company is controlled by Shri. Pintoobhai of Mumbai who is having office at Opera House, Mumbai and also controlling New Planet and Ostwal Trading and these companies are also used by Shri.Kalpesh Daftary for rotation of the licences.

(11) He was shown e-mail dated 11.06.2008 received from info@sunkkalp.com, received from Shri.Kalpesh Daftary of SCPL,Mumbai and on going through the same he stated that this was the first e-mail received in his mail account from Kalpesh Daftary as he started using his e-mail account as per the instructions of Shri. Sashinbhai Koradia. From that day onwards his e-mail account was used by them for sending and

receiving different instructions regarding the trading of licences.

24. The Computers, Hard disks, Laptops, Pen Drives etc withdrawn from the premises of M/s.Krish Overseas, Rajkot, M/s.Indiyana Shoes, Kanpur, M/s.Bansi Overseas, Rajkot, the residential premises of Shri Piyush Viramagama were forwarded to the Directorate of Forensic Science, Gandhinagar, vide letters dated 08/06/2010, for retrieval of the data contained therein.

25. A statement of Shri Deepesh Viramgama, brother of Shri Piyush Viramgama was recorded on 08/06/2010 was recorded under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- That after completing his education he joined M/s Bansi Overseas at Rajkot in the year-2006 as office assistant. M/s Bansi Overseas was under the proprietorship of Shri. Kalpesh Daftary and his elder brother Shri. Piyush Viramgama was also working there.
- that he had joined the firm as per the insistence of his brother. The said firm was engaged in the business of trading / brokerage of export incentive licences like DEPB, VKGUY, DFIA etc. Along-with the same the firm was also providing consultancy services to the exporters and importers in matters related to Director General of Foreign Trade (DGFT).
- that after the said firm was closed his elder brother-Shri.Piyush started a new firm in the name of Krish Overseas and he joined him in the said firm. In the firm he was handling the work related to liasioning with DGFT and other office work.
- that he is the proprietor of M/s Krish Exim and the firm was also started for trading/brokerage of export incentive licences as Bansi Overseas and M/s Krish Overseas.
- that in the year 2009 at the insistence of his brother Shri.Piyush Viramgama, he started a partnership firm in the name of M/s Krish Computech wherein Shri.Chirag Mehta of Rajkot was the other partner.The office of M/s Krish Exim is mentioned as his residential address and the office of M/s Krish Computech is 301-City Plaza,Dr.Yagnik Road,Rajkot.Actually the said premises is being used by Shri.Chirag Mehta for carrying out his business of sale, purchase and repair of computers, computer spares and accessories. M/s Krish Computech is also having import export code (IEC)-2409003699.
- that he is an employee of M/s Krish Overseas having office at 302-Krish Business Centre, Third Floor, Panchnaad Plot, Near-Panchnaath Mandir, Rajkot. This firm is under the proprietorship of his eldest brother-Shri.Piyush Viramgama and in the said firm they are doing the trading/brokerage of export incentive transferable licences and consultancy work for many firms.
- that some major exporters who are their clients are M/s Jay Refractories, M/s Dhaval Agri Products, M/s Paradise Pottery Works, M/s Atlas Exports, M/s Sagar International.

- that after joining M/s Bansi Overseas in July-2006 he started work as computer operator and was paid a monthly salary of Rs.3000.00 per month. During that period M/s Bansi Overseas was having its office at 302-Somnath Commercial Centre, Behind-S.T. Bus Stand, Rajkot. As part of his job he was entering data of the exporters in the DGFT portal of the DGFT website. During that period, the applications were filed by M/s Bansi Overseas on behalf of the exporters. After entering the details in the website, the applications were manually filed in the DGFT office at Rajkot. He was entering the data in the website and his brother Piyush was doing the work of taking the applications to the DGFT office and getting them approved after following the required procedure of DGFT.
- that during that period apart from Piyush and himself, Shri.Nilesh Makwana was also working at Bansi Overseas. During October-2007 Shri.Kalpesh Daftary left Rajkot and went to Mumbai. In Mumbai he created a firm in the name and style of M/s Sunkkalp Creations Pvt. Limited at Mumbai. He, Shri Paresh Parekh and Smt Sangeeta Parekh wife of Shri Paresh Parekh are the directors of the said firm.
- that after this, his eldest brother Shri.Piyush Viramgama started a new firm in the name of M/s Krish Overseas and a new premises at 311-Somnath Commercial Centre, Behind-S.T.Bus Stand, Rajkot. The said firm was also engaged in sale and purchase of dutyfree transferrable licences. He joined the said firm to help his brother and look after the work of taking the applications to the DGFT office and getting them approved after following the required procedure of DGFT. Later on the following persons joined M/s Krish Overseas.
 - i. Shri. Nilesh Makwana
 - ii. Shri Hardik Shah
 - iii. Shri. Vijay Gadhiya
 - iv. Shri Mayur Gadhiya
 - v. Shri. Sammer Makwana
 - vi. Shri.Sameer Sevak,
- that Shri. Nilesh Makwana and Shri. Vijay Gadhiya assisted his brother Shri Piyush in sale and purchase of licences and also to locate new licence holders who intend to sell their licences. Shri. Mayur Gadhia was looking after the bank work and payment collection work.
- that as licence brokers/traders they are facilitating the exporters obtain these facilities from DGFT based on our rapport with the DGFT. He is handling the work of taking the files of exporters to the DGFT and getting them approved after the proper procedure. He was handling these works since last two years.
- that he was shown import Bill of Entry No.232670, dated.17.09.2009 of Air Cargo Complex, Sahar, Mumbai. On going through the same he noted that the said bill of entry pertains to the import of Laser Stamp Machine, Model-STC H40 from China by M/s Krish Computech,301-City Plaza, Yagnik Road, Rajkot. He is the partner of this company M/s Krish Computech.

- that he is not aware as to who has imported this and for what this was imported; may be his brother Shri.Piyush or his partner Shri.Chirag Mehta may be aware of the same.
- that he uses a personal computer in the office as well as a Lenovo make laptop computer. The Lenovo Laptop used by him was seized by from his residence premises on 22/4/2010.
- that he accesses his e-mail d_dipeshexim@hotmail.com from one of the PC's installed at DRI office at Ahmedabad and opens the 'inbox' and 'sent' mail and in the course of the examination of the mails, printouts of certain mails found relevant have been taken. The printouts of the emails are numbered from 1 to 36.
- that the email dtd.30/8/2008 at page no.1 to 4 has been received by him from his brother Shri Piyush Viramgama and by the said email he had forwarded a scanned copy of a page containing the details "To. THE DY/ASST. COMMISSIONER OF CUSTOMS MAGDALA CUSTOMS SURAT". The said scanned page also contained the round seal (rubber stamp) of Mangalore Custom House.
- that the emails at page no. 5 to 33 are emails sent by him to his brother Shri Piyush Viramgama at his email ID piyushexim@hotmail.com . By three emails dtd.26/9/2008 and one email dtd.3.10.2008 softcopies (MS Word and MS Excel files) of the annexure to VKGUY licences and the forwarding letters of the DGFT, Bangalore in respect of VKGUY licence no.0710058005 dt. 19.6.2008, 0710057530 dtd.22.5.2008, 0710057639 dtd. 29.5.2008 and 0710057493 dt.19.6.2008 have been forwarded. He does not presently remember anything about these documents. However, he confirmed that the same have been sent by him from his email ID.

26. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 11/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he produces the ledger account of M/s.Sunkkalp Creations Pvt Ltd, Mumbai maintained by them under the code name of 'ZOO'. The said ledger account running into 64 pages is for the period from 1.4.2008 to 31.3.2010.
- that he was shown a email dtd.1/4/2010 of Shri Vishal Wadkar sent to Shri Kalpessh Daftary of M/s.Sunkkalp Creations Pvt Ltd, Mumbai at his email ID info@sunkkalp.com. By the said email the ledger account of M/s.Sunkkalp Creations Pvt Ltd in the books of accounts of M/s.Hindustan Continental Ltd, Kolkata was forwarded to Shri Kalpesh Daftary. The said ledger account is in respect of the transactions undertaken by M/s.Hindustan Continental Ltd on behalf and on the instructions of Shri Kalpesh Daftary of M/s.Sunkkalp Creations Pvt Ltd.
- that all the transactions contained in the said ledger account pertains to the purchase and sale of export incentive licences by M/s. Hindustan Continental Ltd on behalf of M/s.Sunkkalp Creations Pvt Ltd, Mumbai.

- that the transactions of purchase and sale of licences are shown and booked from the Kolkata branch office of M/s.Hindustan Continental Ltd for the purpose of saving on VAT. On being asked, VAT of 4% is exempted in West Bengal on sales of Licences accordingly only CST @ 2% is required to be paid. Therefore, there is a net benefit of 2% and hence the billings are done on the Kolkata address.
- that the entries mentioned as 'By Purchase Register' are in respect of the export incentive licences shown as purchased by M/s.Hindustan Continental Ltd. The entries mentioned as 'To Sales Register' are in respect of the export incentive licences shown as sold by M/s. Hindustan Continental Ltd.
- that the entries dtd.22/5/2009, 28/5/2009 and 29/5/2009 are in respect of the licences shown to be purchased by M/s. Hindustan Continental Ltd from M/s. Sunkalp Creations Pvt Ltd.
- that the entries dtd.30/9/2009 are in respect of the licences shown to be sold by M/s.Hindustan Continental Ltd to M/s. Global Exim.

27. A statement of Smt Bindi Vinay Vora, Employee of M/s.Hindustan Continental Ltd, Mumbai was recorded on 11/06/2010 under Section 108 of the Customs Act, 1962 wherein she stated inter alia:

- that she joined M/s Hindustan Continental Limited during October-2008 as part time clerk and was paid a starting salary of Rs.3500.00 and finally was receiving a salary of Rs.5000.00. She was working from 1200 hrs to 1600 hrs in the office at A-02, Kalyan Bhavan, Plot No-406, Tally Galli, Andheri (East), Mumbai.
- that in the office of Hindustan Continental Limited there was one personal computer on which she was working and one laptop computer(acer) which was being used by Shri. Yogesh Palsania. She was accessing the e-mails from the personal computer installed in the office. Her e-mail i.d is v_bindi@yahoo.com which was used for receiving and sending correspondences related to the business of M/s Hindustan Continental Limited. Shri.Vishal Wadkar and others used to send her e-mails and she was also forwarding certain mails to different persons as per the directions received.
- that their company was also having an address at Kolkata which was actually being used only for billing purpose and they did not have any staff at Kolkata as the works related to Kolkata branch was also handled from this office at Mumbai.
- that she continued to work at M/s Hindustan Continental Limited till March-2010 and as a part of her job she was preparing sale Invoices, signing the sale Invoices, sending e-mails to various persons and filing of purchase bills. She was working as per the directions of Shri.Surendra Kumar Kulhari who was the director and main person of the company.
- that M/s Hindustan Continental Limited was engaged in raising bills for sale/purchase of DEPB/VKGUY licences. She was instructed by Shri. Surendra Kulhari to prepare the sale bills and other documents as per the instructions received from the office of

Shri. Sashin Koradia who was having his office at Kalbadevi, Mumbai.

- that all instructions were received through e-mail and the mails in relation to directions for preparation of Invoices/bills were received from the e-mail account wadkar_vs@yahoo.co.in and the said account was used by Shri.Vishal Wadkar an employee of Shri.Sashin Koradia.
- That she had never received any original copy of DEPB/VKGUY licence or any related document at the office of M/s Hindustan Continental Limited.
- that the major parties from whom the purchase bills were received are - M/s Sunkkalp Creations Private Limited, Mumbai; M/s Padmavati Agencies Pvt. Ltd., Ahmedabad; M/s Vani Exports, Kolkata; M/s Sabari Quality Foods, etc.
- that the sales bills were also raised in the name of similar firms or sometimes in the name of other firms/companies also. The bills were all prepared as per the instructions received from Shri.Vishal Wadkar through e-mails.
- that she was signing the bills on behalf of M/s Hindustan Continental Limited as authorized signatory however, sometimes when she was not available for signature the bills were also signed from the office of Shri.Sashin Koradia as they were having the letter heads of their company and the details for preparation of the invoices.
- that as per her knowledge the licences are sold from one trader to another and then to the third and then to the fourth trader and so on, but the actual licences are not being physically moved to so many traders. Actually, the licence is physically sent from the first seller to the last buyer/ultimate user of the licence. She is aware that these licences are utilized for payment of customs duty at the port during import of some goods.
- that regarding the other staff members of M/s Hindustan Continental Limited, Mumbai she states that one Mr. Yogesh Palsania was handling the accounts and tally software of the company. The office was actually a rented premise from the premises of M/s S.M Couriers, Mumbai.
- that she was shown the sale bills of M/s Hindustan Continental Limited, Mumbai and she recognizes the same and also recognizes her signature and affirms the same. She also identifies some of the Invoices which were actually not signed by her and mentions the same on the Invoice.
- that she was shown nine bills of M/s Hindustan Continental Limited, Mumbai bearing the above invoice numbers, she identifies the said bills and confirm that the bills have been issued on the letter heads of M/s Hindustan Continental Limited and the details on the bills like Invoice number, amount and name of the buyer are same as shown in the identical invoices listed in the above table, however she confirmed that, the date of issue of the invoices are different in the actual invoices found among the files of M/s Hindustan Continental Limited, Mumbai withdrawn by DRI Mumbai vide Panchnama dated 18.05.2010.

- that on being asked to identify the signature appearing on the Sale Invoice No. HCL/101/2008-09 dated.27.11.2008, she states that the signature appears to be that of Ms. Shilpa R Jadhav who is working with M/s Priority Traders Pvt.Ltd.
- that on being asked she accesses my e-mail account v_bindi@yahoo.com from a computer installed in DRI office Ahmedabad and opens her mailboxes i.e inbox, sentmailbox etc. That the password for this e-mail i.d was also given to Shri.Yogesh Palsania and Ms.Shilpa R Jadhav also.
- that after accessing the same she take the print outs of the following e-mails and explain as under :
 - a) that e-mail dated 02.02.2010 is sent from her email id to Kavita Parmar-kavita_parmar@rediffmail.com alongwith one xl file. She states that the details actually contain the list of companies to which Shri.Surendra Kulhari is associated. These xl sheets are prepared from the data/details provided to her by Shri.Kulhari. Then the xl sheet was forwarded to Ms. Kavita Parmar on her e-mail id as shown above.
 - b) that e-mail dated 05.12.2008 is from her e-mail id to Shri.Kamalji Poddar-samank2010@yahoo.com who is a family friend of Shri.Surendra Kulhari and very close to him and also visits the office of Hindustan Continental Limited often. The details are prepared and forwarded by her as per the instruction of Shri.Surendra Kulhari.The details are for sale bills for period 21.11.2008 to 05.12.2008 and some purchase bills details also.
 - c) that e-mail dated 10.09.2008 is from Reena-reena.momentum@gmail.com to her e-mail id. That Reena is an employee of a firm by the name Momentum at Kandivali, Mumbai and is looking after the web designing on behalf of various companies/firms. The sheet contains passwords sent by Reena to her to be given to Shri.Surendra Kulhari.These passwords are required to access the websites.
 - d) that e-mail dated.08.01.2010 was received from someshwara ltd-someshwaramultiproject@yahoo.co.in to her e-mail id. The mail contains three sheets as attachments and she is not able to recollect as to why the same was sent to her as she does not have any letter head of Choice International, the same may be explained by Shri.Surendra Kulhari.
 - e) that e-mail dated.23.10.2009 is from someshwara ltd-someshwaramultiproject@yahoo.co.in to her e-mail id. The attachment is the Purchase register and sales register of Hindustan Continental Limited and Priority Traders Pvt.Ltd for the period 01.07.2009 to 30.09.2009 all in tally format. After receiving the details she verifies them with the actual bill files available with them.
 - f) that e-mail dated.24.09.2009 was received from Ms. Shilpa Jadhav-hishilpa_jadhav@yahoo.in The details contain names, addresses and person details of different companies and are sent by Shilpa R Jadhav.
 - g) that e-mail dated.20.11.2009 was received from one Bikram Mohanty-bkmbkmsrm@yahoo.co.in. The details in the

enclosed sheet contain tally data of Day Book of M/s Sakambhari Enterprises from 14.11.2009 to 24.11.2009. The data was forwarded to her to be given to Shri.Kulhari.

h) that e-mail dated.18.05.2009 was received from one suraj - surajjha_83@rediffmail.com.The details are received from one person of M/s Sunkkalp or Mr.Sashin Koradia and the details are required to be sent on Invoices of M/s Hindustan Continental Limited.

28. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 12/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown the ledger account of M/s.Sunkkalp Creations Pvt Ltd (M/s SCPL), Mumbai maintained by them under the code name of 'ZOO', which he had produced during his statement dated 11.06.2010.
- that M/s SCPL is engaged in trading of export incentive licences. Many a times to show lesser profit in their accounts they show sale and purchase of these licences in the name of various others firms viz. M/s New Planet Trading Co. P. Ltd., M/s Hardware Trading Corporation, M/s Ostwal Trading Pvt. Ltd. etc.
- that Shri Kalpesh Daftary of M/s SCPL requested them to arrange for billings for which he would be paying them commission/service charge of 6% of the profit element of such transaction. Accordingly, he had arranged for billings in the name of different firms some of which are as stated above.
- that except for M/s Punjab Crop Protection P. Ltd., the other firms were arranged by him through his friends Shri Pravin Jain alias Pintoo, Shri Girish Jain, and Shri Kamal Poddar. Shri Girish Jain and Shri Kamal Poddar are all Chartered Accountants by profession.
- that in the said ledger account maintained in the code name of 'ZOO" various other words have been used which are codes for persons or firms. He explained the same as under :-

- 1) Zoo – this is the code name for M/s.Sunkkalp Creations Pvt Ltd and is derived from their office location i.e. Juhu.
- 2) Babloo – this is the code name for the firms of Shri Pravin Jain. Babloo is the pet name of the younger brother of Shri Pravin Jain. The entries under this name pertain to the transactions undertaken in the name of the firms of Shri Pravin Jain.
- 3) HGM – this is the code name for Shri Hasmukh Gulabchand Mehta who is my friend and also a sales tax consultant. The entries under this name indicate that either billings or funds have been provided from the accounts managed by Shri Hasmukh Mehta.
- 4) SC – this is the code for Service Charges.
- 5) ATM – this is the code for Cash Transactions.
- 6) Supat – this is the code name for M/s.Hindustan Continental Ltd. and the entries under this name pertain

to the transactions undertaken in the name of the said firm.

- that as and when required Shri Kalpesh Daftary would send them the details and ask them to raise purchase invoices of the licences either from the original licence holders or from other licence traders. Accordingly, he would arrange for the purchase invoices in the name of the firms as mentioned above. As per the directions of Shri Kalpesh Daftary he would also arrange for preparation of sales invoices.
- that he explains the billing transaction by way of an illustration. M/s.New Planet Trading would on the instructions of Shri Kalpesh Daftary purchase licences from M/s. General Commodities at 75% of the licence value and would raise a sale invoice in the name of M/s.Ostwal Trading Pvt Ltd. at 80% of the licence value, who would in turn raise a sales invoice in the name of M/s. Hindustan Continental Ltd at 85% of the licence value. M/s.Hindustan Continental Ltd would in turn raise a sales invoice in the name of the firm instructed by Shri Kalpesh Daftary at 90% of the licence value. By the above routing of purchase and sales, the sale value of the licence is raised by each firm and accordingly the profit is split among the firms. However, this splitting of the profit is only on paper and these firms are not the beneficiaries. The difference between the actual purchase value of the licence and the actual final sale value of the licence goes to only M/s. Sunkkalp Creations Pvt Ltd. He gets only commission/service charge @ 6% of the profit and this is split by him with the firms involved in the transaction.
- that some times the amount involved in the above mentioned purchase and sale of licence is transferred to M/s. SCPL by cheque or Real Time Gross Settlement (RTGS) but many times the amount is paid to M/s.SCPL in cash.
- that the firms used in these transactions raise the cash and which he arranges to be paid to Shri Kalpesh Daftary, Shri Paresh Parekh or to any other person of M/s. SCPL. There have also been instances where the cash has been delivered to other persons on the instructions of Shri Kalpesh Daftary or Shri Paresh Parekh.
- that he listed out the instances, detailed in the said account, where the amount arising out of the purchase and sale of licences has been paid to M/s.SCPL in cash and the same is as per Annexure attached to his statement.

30. A further statement of Shri Surendra Kulhari, Director of M/s. Hindustan Continental Ltd, Mumbai was recorded on 12/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was shown the statements of Smt.Bindi V Vora dated.11.06.2010 and Ms. Shilpa R Jadhav dated.11.06.2010 and agreed with the facts stated therein.
- that Smt.Bindi V Vora is his employee in M/s Hindustan Continental Limited and Ms. Shilpa R Jadhav is his employee in M/s Priority Traders Pvt.Ltd.

- that he was shown his previous statement dated 26.05.2010 and requests for rectifying some facts stated in his statement dated.26.05.2010. He confirmed that he is holding stakes in many companies. Hindustan Continental Limited is one of them and he is one of the active directors of the said company. His signature is also approved in the bank account of the company. Regarding trading of licences through M/s Hindustan Continental Limited.
- that he confirms that the offer was given to him by Shri. Sashin Koradia and since he wanted to have some turnover in the company, he accepted the offer. However, he also confirms that in M/s Hindustan Continental Limited and M/s Priority Traders Pvt.Ltd., they have raised bills for trading of licences only, they have never been involved in the physical movement of the licences. To re-confirm the facts he reiterates that they have never received any licences or its associated documents at our office.
- that the bills were being raised by their staff members as per the directions received via e-mails from Shri.Vishal Wadkar an employee of Shri.Sashin Koradia. All the instructions were received from the e-mail of Shri.Vishal Wadkar's at the e-mail of his employee Smt. Bindi V Vora.
- that the sale Invoices were prepared by Smt.Vora and also signed by her. In some cases the sale invoices/bills are also signed by his other employee Ms. Shilpa R Jadhav.
- that the bills raised by M/s Priority Traders Pvt.Ltd. the bills/sale invoices were signed by Ms. Shilpa R Jadhav.
- that one of his staff members Shri.Yogesh Palsania was actually maintaining the accounts and he would produce him before the investigation in case his presence is required.
- that in Hindustan Continental Limited, they have used the e-mail account of Smt.Bindi V Vora for receiving the e-mails and the directions for preparing the sale invoices.
- that he was shown his statement dated.26.05.2010 and the Sale Invoices of Hindustan Continental Limited, Kolkata shown to him during that statement.
- that these bills were raised by his company M/s Hindustan Continental Limited as per the instructions received from the office of Shri.Kalpesh Daftary through the e-mails of Shri.Vishal Wadkar to Smt.Bindi V Vora.
- that the signatures appearing on these Invoices appear to be that of Smt.Bindi V Vora, however as stated in her statement, some signatures may have been done by some other person as authorized signatory.
- that they have never seen the details mentioned in the purchase or sale Invoices. All work are done as per the directions of Shri. Kalpesh Daftary of M/s Sunkkalp Creations Pvt. Limited, Mumbai.

30. The original documents pertaining to the licences utilized by M/s.Reliance Industries Ltd at Dahej port were called for from the Customs Division, Surat vide Letter No.DRI/AZU/INQ-03/2010 dtd.14/06/2010 M/s.Reliance Industries Ltd, Dahej vide their letter No. RIL/Hazira/Customs/VKUY-DEPB TRA/2010-11 dtd. 29/6/2010

addressed to the Superintendent of Customs, Dahej submitted the original licences and TRAs utilized by them at Dahej port. The Superintendent of Customs, Dahej vide letter No. CH/DJ/92/10-11 dtd. 5/7/2010 forwarded the original licences and TRAs used by M/s. Reliance Industries Ltd at Dahej.

31. A further statement of Shri Vishal Vyas, Employee of M/s. Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 25/6/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that the e-mail accounts being used by him are : lic@sunkkalp.com; ho@sunkkalp.com ; vishal_vyas@yahoo.com; vishal_vyas@live.com; the first two e-mails are pertaining to his office,i.e M/s Sunkkalp Creations Private Limited . The e-mail lic@sunkkalp.com is being used by him or any other staff in his absence and the e-mail ho@sunkkalp.com is majorly being used by Ms.Alean Khambhatta of their office and sometimes he also uses the same. Another e-mail info@sunkkalp.com is used and controlled by Shri.Kalpesh N Daftary.
- that since April-15, 2010 since all their directors are not visiting the office since April-15,2010 they do not have any work in the office. The work of purchase/sale of licences are actually controlled by their director Shri.Kalpesh N Daftary and since he is not coming to the office, they are not doing any purchase/sale of licences.
- that one Shri Vishal Wadkar was a part time accountant who was visiting their office only on Sundays. As per his knowledge he is an employee of Sh. Sashin J Koradia of Mumbai. He is working for their company even before he had joined i.e before Nov-2008. Shri.Vishal Wadkar is specially looking after the work of accounting in Tally software.
- that he is not efficient in working with the said software. One of their staff members Smt.Mamta Shah is also doing the work of accounting with Tally software. Shri.Vishal Wadkar was looking after some specific accounting work as per the directions of their director Shri.Kalpesh N Daftary.
- that Shri.Vishal Wadkar was having e-mail wadkar_vs@yahoo.co.in and he was sending mails to him as well as receiving e-mails from him using the said account. All mails related to the parties connected to Shri.Sashin Koradia were actually sent to the mail account wadkar_vs@yahoo.co.in, this was done as per the instructions of Shri.Kalpesh N Daftary.
- that in the said e-mails they were sending the details for making debit notes/invoices; details of the purchase and sale prices to be finalised on the debit notes, details of payments to be recovered from the parties, details of payments to be made to parties etc.
- that the names of the parties details related to whom they sent emails to the mail account wadkar_vs@yahoo.co.in are- M/s Hindustan Continental Limited, Mumbai/Kolkata; M/s R.R Impex,Kolkata; M/s Adhunik Corporation, Kolkata; Punjab Crop Care Protection Limited, Kolkata; New Planet Trading Pvt.Ltd.,Kolkata; Ostwal Trading Pvt.Ltd., Kolkata; M/s Accurate

Multi Trade Pvt.Ltd.,Mumbai; M/s Priority Traders Pvt.Limited; Mumbai.

- that on being asked regarding the concerned persons of these firms/companies, he stated that he had never met any person of these companies and was informed that all are through Sashin Koradia of Mumbai.
- that regarding the similar mails sent to some other mail accounts, he stated that, they were sending similar details related to M/s Vani Exports, Kolkata; M/s Merill Impex Pvt.Ltd, Kolkata; M/s Mac Alloy Pvt.Ltd; Kolkata to one Shri Girish Ghelani of Kolkata but the details were sent through fax and not through e-mail.
- that similar details in respect of M/s Krish Overseas, Rajkot; M/s Shivangi Enterprise, Rajkot were forwarded to the e-mail account info@krishoverseas.com. The debit notes/Invoices of M/s Shivangi Enterprise, Rajkot were forwarded to M/s Vani Exports, Kolkata through Maruti Courier Service. All the above activities were carried out as per the instructions of Shri.Kalpesh Daftary.
- that he was shown e-mail dated 07.04.2010 obtained from the inbox of wadkar_vs@yahoo.co.in showing the details forwarded to the said e-mail account from his e-mail and he confirmed that the said e-mail was sent by him and it contained the scanned copy of cheque for Rs.51,00,000.00 from M/s Vani Exports to M/s Adhunik Corporation Ltd.
- that he was shown print out of e-mail dated 15.02.2010 from the inbox of Shri.Vishal Wadkar containing an attachment of an excel sheet. The mail was sent by him to Vishal Wadkar for being given to Sashin Koradia. The excel sheet contains details of VKGUY licences of M/s Allanasons Ltd, Mumbai.
- that all VKGUY licences related to Meat Exports by Allanasons Ltd., Mumbai or any of its group companies were received by their company at a discount of 15% as per some agreement. These licences were received either in the name of M/s Padmavati Agencies Pvt. Ltd or M/s Sunkkalp Creations Pvt.Ltd from Allanasons.
- that these licences were sold either to M/s Hindalco Industries Limited, Dahej or to M/s Reliance Industries Limited, Hazira or Magdalla. Sales to Hindalco were through M/s Padmavati Agencies Pvt.Ltd and to Reliance were through Shri.Bhavesh Doshi of M/s S.C Doshi & Sons,Nagdevi,Mumbai.
- that these licences were finally sold at about 97% or 97.5%. Usually Sunkkalp Creations Pvt.Ltd. was raising the bills at a margin of 10 paise to 20 paise and the remaining margin between 85.20% to 97.50% was adjusted by Shri. Sashin Koradia by rotating the purchase and sale of the licence among different companies.
- that for arranging this rotation of the licences the list of licences and their values are forwarded to Shri.Sashin Koradia through the e-mail of Vishal Wadkar.
- that he was shown e-mail dated 08.03.2010 from his mail account to Vishal Wadkar, this shows the details of pending c-forms to be obtained from different parties.
- that he was shown the e-mail dated.16.03.2010 from his mail account to Vishal Wadkar alongwith scanned copies of three Tax

Invoices of M/s Sunkkalp Creations Private Limited. These sale Invoices bearing No. SCPL/VKGUY/09-10/138A dated 05.03.2010; SCPL/VKGUY/09-10/138B dated 05.03.2010 and SCPL/VKGUY/09-10/138C dated 05.03.2010 shows sale of 09 WKGUY licences from Sunkkalp to M/s Accurate Multitrade Pvt.Ltd, Mumbai as listed below:

Licence No	Date	Exporter Name	Duty Credit (Rs.)	Rate	Sale Amount (Rs.)
2410027452	16.02.10	Rajan Sea Foods	2187757.00	50%	1093878.50
0810086657	19.02.10	Kan Foods	4346658.00	50%	2173329.00
2410027451	16.02.10	Salet Sea Foods	3175878.00	50%	1587939.00
0310505134	03.02.09	Allanasons Ltd	7183467.00	50%	3591733.50
0310505146	03.02.09	Allanasons Ltd	8983026.00	50%	4491513.00
0310504360	29.01.09	Allanasons Ltd	2924826.00	50%	1462413.00
0310509915	02.03.09	Allanasons Ltd	3111232.00	50%	1555616.00
0310504353	29.01.09	Allanasons Ltd	3281782.00	50%	1640891.00
0310477042	02.07.08	Allanasons Ltd	1001152.00	50%	500576.00

- that he noted that the sale in all the said invoices is shown at 50% for each licence and the e-mail shows instructions to Vishal Wadkar to make further Sale Invoices for these licences to M/s Vani Exports, Kolkata @ 98.94% (including CST 2%).
- that on being further asked to explain as to why the scanned copy of sale invoices are showing the sale at 50%, he stated that he does not know exactly as to why the sale was made at such low value, as the sale invoices are prepared as per the instructions of Shri. Kalpesh Daftary.
- that on being further asked to co-relate the sale invoices with the purchase invoices, he noticed that out Purchase Invoice No-LT1-123 dated 18.06.2009 and LT1-94 dated 18.09.2009 of M/s Allanasons Ltd., Mumbai from seized File No.16 seized from the office premises of M/s Sunkkalp Creations Pvt.Ltd. by DRI under Panchnama dated 30.04.2010, vide which the purchase of the following licences are available:

Licence No	Date	Exporter Name	Purchase Inv.No. & Date	Purchase Rate	Sale Amount (Rs.)
0310505134	03.02.09	Allanasons Ltd	LT1-123 dated 18.06.2009	98.85%	3591733.50
0310505146	03.02.09	Allanasons Ltd	LT1-123 dated 18.06.2009	98.85%	4491513.00
0310504360	29.01.09	Allanasons Ltd	LT1-94 dated 18.09.2009	101.25%	1462413.00
0310509915	02.03.09	Allanasons Ltd	LT1-94 dated 18.09.2009	101.25%	1555616.00
0310504353	29.01.09	Allanasons Ltd	LT1-94 dated 18.09.2009	101.25%	1640891.00
0310477042	02.07.08	Allanasons Ltd	LT1-123 dated 18.06.2009	98.85%	500576.00

- that out of these six licences, three have been sold earlier to M/s Padmavati Agencies Pvt.Ltd, Kolkata and three to M/s Sun Export Pvt.Ltd, Mumbai vide the sale Invoices which he has traced out from the seized File No. 16 seized from the office premises of M/s Sunkkalp Creations Pvt.Ltd. by DRI under Panchnama dated 30.04.2010, the details of earlier sales are as under:

Licence No	Date	Exporter Name	Sale Inv.No. & Date	Sale Rate	Sale Amount (Rs.)
0310505134	03.02.09	Allanasons Ltd	SCPL/VKGUY/09-10/038;dtd.26.06.09	94.61%	6796123.24
0310505146	03.02.09	Allanasons Ltd	SCPL/VKGUY/09-10/038;dtd.26.06.09	94.61%	8498647.20
0310477042	02.07.08	Allanasons Ltd	SCPL/VKGUY/09-10/038;dtd.26.06.09	94.61%	947168.32
0310504360	29.01.09	Allanasons Ltd	SCPL/VKGUY/09-10/070;dtd.26.09.09	97.36%	2847486.87
0310509915	02.03.09	Allanasons Ltd	SCPL/VKGUY/09-10/070;dtd.26.09.09	97.36%	3028963.87
0310504353	29.01.09	Allanasons Ltd	SCPL/VKGUY/09-10/070;dtd.26.09.09	97.36%	3195004.14

- that on being asked how the sale of same six licences have been shown for the second time in the records, he stated that he is not aware as to why the same was done, as the same was done as per the instructions of our director Shri Kalpesh Daftary. The Signatures appearing on the above two Sale Invoices of Sunkkalp Creations Pvt.Ltd bearing Nos. SCPL/VKGUY/09-10/038; dtd.26.06.09 and SCPL/VKGUY/09-10/070; dtd.26.09.09 as authorized signatory of the company are his.
- that similar type of re-sale/second sale of licences are done in previous occasions also.
- that on being asked to find out the details of such re-sale of Invoices from among the records seized by DRI from the office premises of M/s Sunkkalp Creations Pvt.Ltd. under Panchnama dated 30.04.2010 he prepared a co-related sheet data sheet showing the First Purchase, First Sale, Second Purchase and Second Sale of the same VKGUY/DEPB Licences from the records as available in Box File No-16 from among the files withdrawn from the office of Sunkkalp Creations Pvt.Ltd., under Panchnama dated 30.04.2010. The print out of the co-related sheet in MS-Excel format is enclosed alongwith this statement and marked as Annexure-A.

32. Shri Piyush Viramgama had in his statement dtd.12/05/2010 informed that he had transferred money to the account of one Shri Ashok Gupta on the instructions of Shri Niyaz Ahmed of M/s.Indiyana Shoes. Therefore, the account opening form and account details of the bank account of Shri Ashok Gupta were called for from Union Bank of India, Kanpur and the same were received vide letter No. BM:Misc:2010 dtd.25/6/2010.

33. A further statement of Shri Vishal Vyas, Employee of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 26/6/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that on being asked to explain the sheet prepared and submitted by him the other day which contained details of 31 licences, he stated that the same pertains to the purchase of licences from M/s. Allanasons, Mumbai and subsequent sale to various firms viz. M/s. Padmavati Agencies Pvt Ltd, M/s. Suresh C. Doshi, M/s. Hardware Trading Corporation, M/s. Sun Exports and M/s. Vani Exports. These very licences were sold also by M/s. Hindustan Continental to their firm M/s. Sunkkalp Creation Pvt Ltd (SCPL) from where they were subsequently sold to M/s. Punjab Chemical & Crop Protection Ltd.
- that he was shown a email dtd.28/5/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That on the instructions of Shri Kalpesh Daftary he had forwarded details of 06 licences purchased by SCPL from M/s. Allanasons, Mumbai and had asked Shri Vishal Wadkar to prepare Debit Notes showing purchase of these licences in the name of M/s. Accurate Multitrade Pvt Ltd and M/s. Priority Traders Pvt Ltd.
- that he was shown another email dtd.28/5/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That on the instructions of Shri Kalpesh Daftary he had forwarded details of 06 licences and had asked Shri Vishal Wadkar to prepare Debit Notes (invoices) in the name of M/s. Hindustan Continental Ltd for sale of these licences to M/s. Hindalco Industries Ltd, Dahej.
- that he was shown an email dtd.29/5/2009 sent by him me to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. He had forwarded details of an invoice of SCPL showing sale of 02 licences to M/s. Hindustan Continental Ltd, Mumbai.
- that he was shown an email dtd.09/6/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That on the instructions of Shri Kalpesh Daftary he had asked Shri Wadkar to prepare debit note showing sale of licence No.0310508275 dtd.19/2/2009 from M/s. Accurate Multitrade Pvt Ltd to SCPL.
- that he was shown an email dtd.10/10/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That as instructed by Shri Kalpesh Daftary he had forwarded details a list of 31 licences to Shri Wadkar and had asked him to prepare sale invoices in the name of M/s. Hindustan Continental Ltd and M/s. Punjab Chemical and Crop Protection Ltd.
- that by email dtd.3/2/2009 sent by him to Shri Vishal Wadkar he had forwarded a list of 60 licences for preparing debit notes in the name of M/s. Hindustan Continental Ltd to M/s. Reliance Industries Ltd.
- that by email dtd.31/1/2009, he had forwarded details of 8 licences to Shri Vishal Wadkar for preparing debit notes in the name of M/s. Hindustan Continental Ltd to M/s. Reliance Industries Ltd.
- that by email dtd.5/12/2008 he had asked Shri Wadkar to prepare debit notes showing sale of 41 licences from in the name of M/s.

Hindustan Continental Ltd to M/s. MPG International. These licences were ultimately sold to M/s. Reliance Industries Ltd.

- that by email dtd.2/3/2009, he had asked Shri Wadkar to prepare debit notes showing sale of 15 licences from M/s.Hindustan Continental Ltd to M/s.MPG International and debit notes showing sale of 29 licences from M/s.Hindustan Continental Ltd to M/s.Bally Exports.
- that by email dtd.9/2/2009 he had asked Shri Wadkar to prepare debit notes showing sale of 03 licences from M/s. Hindustan Continental Ltd to M/s. Reliance Industries Ltd.
- that by email dtd.8/4/2010 he had forwarded to Shri Wadkar the bank account statement in respect of account no.04692320000115 of M/s.Vani Exports, Kolkata.

34. It was informed by Customs Dahej that the verification of genuineness of the Release Advices, purportedly issued by Customs, Mangalore, was called for from Mangalore Customs vide their letters of different dates. Therefore, Mangalore Customs was requested vide letter dated 28/6/2010 to confirm receipt of the letters from Customs, Dahej and also forward copies of the letters replying to the Dahej Customs.

35. Customs Mangalore informed vide letter No.S-01/05/2010 IMP dtd. 06/07/2010 that only one fax letter No.CH/DJ/32/2008-09 dtd.10/09/2009 in respect of RA No.1665 dtd.28/8/2008 was received from Dahej Customs. It was further informed that as no such TRA (Telegraphic Release Advice) was issued under the said licence to Dahej Customs, a reply was sent vide their fax letter No.S-01/02/2008 IMP dtd.12/9/2008 informing that the said licence No., RA No., duty credit etc. were not relevant to Release Advice No.1665 dtd.28/8/2008 issued by them. It was also informed that no other reference of Custom house, Dahej was received by them. The Superintendent Customs, Dahej vide letter No.CH/DJ/92/10-11 dtd.05/07/2010 forwarded the original documents viz. Licences, Release Advices etc., used by M/s. Reliance Industries Ltd at Dahej port.

36. M/s. Allanasons Ltd, Mumbai vide their letter No. ASL/186/2010 dtd.06/07/2010 submitted details of the licences sold/transferred by them to various parties during 2008-2009 and 2009-2010. M/s. Allanasons Ltd, Mumbai vide their letter No. ASL/187/2010 dtd.08/07/2010 submitted a revised list showing details of the licences sold/transferred by them to various parties during 2008-2009 and 2009-2010. Similarly, M/s. Frigorifico Allana Ltd, Mumbai vide their letter No.FAL/199/2010 dtd.12/07/2010 submitted details of the licences sold/transferred by them to various parties during 2008-2009 and 2009-2010.

37. A statement of Shri Bhavesh Doshi, Authorised Signatory of M/s.Suresh C.Doshi, Mumbai was recorded on 06/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- He is the authorized signatory of M/s. Suresh C.Doshi which is a Proprietary firm of his father Shri Suresh C. Doshi.
- The said firm is engaged in trading of licences issued by the DGFT. His father is aged about 70 years and therefore, he is not very active since about the last 10 years and he is looking after the business.
- He has his own Proprietary firm in the name of M/s.B.S.B International which is registered at his residential address but is functioning from Barar House, 4th Floor, 237/39, Abdul Raheman Street, Mumbai 03 which is also the office address of M/s.Suresh C.Doshi.
- In addition to the above two firms, he also dealt with in licences on brokerage basis in the name of M/s.Bijal S.Doshi HUF wherein his younger brother Shri Bijal S.Doshi is the Karta.
- He also dealt with licences on brokerage basis in the name of M/s.Sahyog Impex which is a partnership firm with himself and his father as partners.
- His father is in the business of trading of licences since the last 40 years. The trading of licences involves purchasing the transferrable licences from the exporters who are issued the licences by the DGFT. Thereafter these licences are sold either in the market to other traders or directly to the firm which use the licence for debiting duty at the time of import.
- Depending upon the market conditions, the licences are available for purchase from the exporter either at a discount or at a premium.
- In the case of direct purchase of licence from the exporter and its subsequent sale to the user, they normally have a profit margin of about 0.25% and in some cases it is about 1% of the value of the licence.
- In addition to the purchase and sale of licences, they are also engaged in dealing with licences on brokerage basis. There are some importers to whom they supply licences. Therefore, the other brokers in market approach them for supplying the licence to the importers. In these cases, the licence is supplied to the importers under the invoice of the broker and they issue a brokerage invoice to the importers.
- Where there is no difference in the supplier's (broker) and buyer's rate, the brokerage is paid to them by the supplier (broker) of the licence. The brokerage earned by them in these cases is about 0.15% to 0.10% of the value of the licence.
- They mainly purchase licences from M/s.Sonal Garments, Mumbai, M/s. Burlington Exports, Mumbai, M/s. Fashion Garments, Mumbai, M/s. Westcoast Industries Ltd etc. They also buy licences from M/s.S.R. International, Mumbai of Shri Kamal Deora, M/s.Sun Exports, Mumbai of Shri B.P. Choudhary, M/s.Punit International, Mumbai of Shri Mohan Goenka, M/s.Trident India Ltd, Ahmedabad of Shri Jatin Parekh, M/s.Global Exim, Mumbai of Shri Pankaj Vora etc.
- They mainly supply licences to M/s. Reliance Industries Ltd, M/s.E.I.Dupont, M/s.SKf India Ltd etc.
- He produced the documents called under the summons issued to him. He also produced a worksheet, containing pages No.1 to 10, showing the details of the licences procured by them through Shri

Kalpessh Daftary and Shri Paresh Parekh of M/s. Sunkkalp Creations Pvt Ltd, Mumbai and which were transferred to M/s. Reliance Industries Ltd. The documents submitted by are 1) purchase and sale invoice of licences, 2) Invoice of the supplier of licence raised to M/s. Reliance Industries Ltd and their corresponding brokerage invoices.

- Around July, 2008 Shri Manoj Guru of M/s. Reliance Industries Ltd, Mumbai had called him over phone and informed that they would be requiring transferable licences and asked him whether he could supply them the licences. He had in turn discussed the matter with Shri B.P.Choudhary of M/s.Sun Exports, Mumbai. Shri Choudhary agreed to supply licences to M/s. Reliance Industries Ltd through him on brokerage basis.
- The licences supplied by Shri Choudhary were sold to M/s. Reliance Industries Ltd through M/s.MPG International, Kolkata and M/s.Bally Exports, Kolkata as M/s. Reliance Industries Ltd wanted a non-VAT invoice. The supply of licences to M/s. Reliance Industries Ltd was started sometime during August, 2008.
- The worksheet produced by him contains the details of the 417 licences supplied by him to M/s. Reliance Industries Ltd during the period from August, 2008 to March, 2010. These licences were mostly procured by them through M/s. Sun Exports of Shri B.P. Choudhary.
- These licences were originally purchased by M/s.Sunkkalp Creations Pvt Ltd, Mumbai of Shri Kalpessh Daftary and Shri Paresh Parekh from the exporters. The licences were then offered for sale by Shri Kalpessh Daftary to Shri B.P. Choudhary. Thereafter Shri Choudhary offered the same to him for supply to M/s. Reliance Industries Ltd on brokerage basis.
- The invoices for sale of these 417 licences were issued by M/s.MPG International, Kolkata, M/s.Bally Exports, Kolkata, M/s.Padmavati Agencies Pvt Ltd, Kolkata, M/s.Vani Export, Kolkata and M/s.Hindustan Continental Ltd, Kolkata. The invoices were arranged from these Kolkata based firms as M/s.Reliance Industries Ltd wanted non-VAT invoices and there is no VAT leviable in West Bengal on sale of licences.
- the invoice of M/s. Bally Exports and M/s.MPG International showing sale of licences to M/s.Reliance Industries Ltd were arranged and provided by Shri Choudhary of M/s.Sun Exports. The invoices of M/s.Padmavati Agencies Pvt Ltd, Kolkata, M/s.Vani Export, Kolkata and M/s.Hindustan Continental Ltd, Kolkata showing sale of licences to M/s.Reliance Industries Ltd were arranged and provided by Shri Kalpessh Daftary.
- The payment in respect of these licences was made by M/s. Reliance Industries Ltd directly to the firm who had issued the sales invoice. The payment was being made by RTGS fund transfer. For instance if the sales invoice was issued by M/s.Vani Exports, they would be receiving the payment from M/s. Reliance Industries Ltd. M/s.Vani Exports would then make payment to the firm from whom they had purchased the licence. In this manner the payment was finally made to M/s. Sunkkalp Creations Pvt Ltd.

- For supply of these licences to M/s. Reliance Industries Ltd, the brokerage invoices were issued in the name of M/s.B.S.B International, M/s.Suresh C.Doshi, M/s.Bijal S.Doshi HUF and M/s. Sahyog Impex.
- In respect of these 417 licences he was paid brokerage of about 0.05% to 0.15% of the value of the licence. The brokerage was paid to me by M/s. Reliance Industries Ltd.
- Sometime during November, 2009 Shri Kalpessh Daftary had approached him directly and asked him to supply licences directly to M/s. Reliance Industries Ltd and upon his agreeing to the same he provided him with invoices of M/s.Hindustan Continental Ltd, M/s.Vani Exports, M/s.Padmavati Agencies Pvt Ltd showing sales to M/s. Reliance Industries Ltd.
- In the case of about 70 licences, though Shri Kalpessh Daftary had promised to pay him brokerage, he has till date not paid him any amount towards his brokerage.
- Regarding the physical movement of the licences, he stated that Shri Kalpessh Dafatary mostly sent the licences to M/s.Sun Exports at their Nariman Point office and some times, the licences were delivered at Parel to my employee or to the employee of M/s.Sun Exports.
- The licences were delivered by Shri Chotu, employee of Shri Kalpessh Daftary. The documents delivered to them consisted of the following :- 1) Licence Transfer letter of the original licence holder, 2) Licence forwarding letter of the DGFT, 3) Original Customs Purposes Licence issued by the DGFT, 4) List of shipping bills in respect of which the licence is issued by DGFT, 5) Original Release Advice (RA) meant for Importer, issued by the Customs at the port of Registration, 6) Sealed cover containing Original Release Advice meant for Customs.
- These documents were delivered by them to Shri Manoj Guru or Shri Santosh Rane of M/s. Reliance Industries Ltd at Shriram Mill Compound, Lower Parel, Mumbai.
- For confirmation of genuineness of the RA, M/s. Reliance Industries Ltd send them the Customs letter by Fax and he in turn used it to Fax it M/s.Sun Exports who used to fax the same to M/s.Sunkkalp Creations Pvt Ltd,.
- All the Customs letters of confirmation of genuineness of RA from the port of registration were received by them from Shri Kalpessh Daftary of M/s.Sunkkalp Creations Pvt Ltd. through M/s.Sun Exports.
- Where the licences were directly given to him by Shri Kalpessh Daftary, the Customs letter was faxed by him to M/s.Sunkkalp Creations Pvt Ltd. and they used to send him the Customs letters of confirmation of genuineness of RA from the port of registration. He used to fax the same to M/s.Reliance Industries Ltd at their Parel office.

38. From the details of the licences sold/transferred submitted by M/s.Allanasons Ltd, Mumbai vide their letter No. ASL/186/2010 dtd.06/07/2010 and letter No. ASL/187/2010 dtd.08/07/2010 it was

seen that the 13 licences used by M/s.RIL at Dahej were shown to be registered at JNPT. Therefore, vide letter No.DRI/AZU/INQ-03/2010 dtd.10/07/2010 the Commissioner of Customs (Imports), JNCH, Nhava Sheva was requested to forward the details of the said 13 licences registered with them as also the details of the RAs issued in respect of these 13 licences. Similarly, vide letter No.DRI/AZU/INQ-03/2010 dtd.12/07/2010 the Commissioner of Customs (Exports), JNCH, Nhava Sheva was requested to forward the details of the said 13 licences registered with them as also the details of the RAs issued in respect of these 13 licences.

39. A statement of Shri Badri Prasad Choudhory, Managing Director of M/s Sun Exports Pvt. Limited, Mumbai was recorded on 12/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- He is the Managing Director of M/s Sun Exports Pvt. Limited 41/42, Atlanta, Nariman Point, Mumbai. The company was established in the year-1973.
- His firm is engaged in the trading and brokerage of transferable duty credit licences. Such transferable licences are all post export licences and are procured by them from various exporters who are willing to transfer the duty credits issued to them by the DGFT after the completion of the exports. They also procure the transferable licences from other traders in the market.
- The licences sold by them are sometimes transferred in the name of their firm and thereafter upon its sale to the end user they re-transfer the same in the name of the end user.
- The major exporters from whom they buy the licences are M/s Sutlej Textile Mills, M/s.Welspun Ltd, M/s.Bajaj Auto Limited, M/s.Bharat Forge Ltd etc.
- The other brokers/traders from whom they mainly buy licences are Shri Ashok Verma, M/s.Upaj International of Shri Dilip Salarka, Shri Prem Tikka, M/s.S.R.International of Shri Kamal Deora, M/s. Elite Trading of Shri Hemant Mehta, M/s.Suresh C. Doshi, M/s. Sahyog Impex, M/s.Bijal Doshi HUF and M/s. BSB International all of Shri Suresh Doshi and Shri Bhavest Doshi, M/s.Sunkkalp Creations Pvt Ltd of Shri Paresh Parekh and Shri Kalpesh Daftary.
- The major importers to whom they are selling the transferrable licences are M/s C.J. Shah & Company, M/s. Laxmi Organics etc.
- They also sell licences to other licence traders M/s.S.J.Impex, M/s.S.R. International, M/s.Suresh C.Doshi, M/s. Sahyog Impex, M/s.Bijal Doshi HUF, M/s. BSB International etc.
- At times they raise direct sales bills and most of the times they raise their brokerage bills on the other licence traders to whom the licences are sold.
- They have sold licences on brokerage basis to M/s. Hindalco Industries Limited and M/s.Reliance Industries Limited these firms. However, they have not directly billed licences to these two companies. They have arranged licences for M/s.Hindalco Industries Ltd and M/s. Reliance Industries Ltd where the sales

invoices have been raised by other traders viz. M/s.MPG International, M/s.Bally Exports etc.

- In some cases sales invoices of licence trading firms M/s.Vani Exports, M/s.Padmavati Agencies, M/s. Hindustan Continental Ltd etc. were arranged by the trader who originally sold the licences i.e. M/s.Sunkkalp Creations Pvt Ltd.
- They have also arranged sales of licences to M/s. Hindalco Industries Ltd and M/s.Reliance Industries Ltd through the firms of Shri Bhavesh Doshi and Shri Suresh S. Doshi namely M/s.Suresh C.Doshi, M/s. Sahyog Impex, M/s.Bijal Doshi HUF, M/s. BSB International etc. In these cases also, the sales invoices have been raised by M/s.MPG International, M/s.Bally Exports.
- The sales invoices of M/s.Vani Exports, M/s.Padmavati Agencies, M/s. Hindustan Continental Ltd etc. were arranged by M/s.Sunkkalp Creations Pvt Ltd.
- He produces one file containing the details of the licences procured by them from M/s. Sunkkalp Creation Pvt Ltd along with the invoices of the said firm. The file also contains copies of some of the Release Advices issued in respect of these licences available with them.
- Sometime during early 2008 Shri Paresh Parekh had come to his office with Shri Kalpesh Daftary. He knew Shri Paresh Parekh since long as he had dealings with him when he was with M/s.Trident India Ltd. However, he was meeting Shri Kalpesh Daftary on that day for the first time.
- During the meeting Shri Paresh Parekh and Shri Kalpesh Daftary offered to supply licences to him for sale on brokerage basis and he agreed to their proposal. Thereafter, they started supplying licences to him from about May-June, 2008.
- Regarding the details of licences procured from M/s.Sunkkalp Creations Pvt Ltd and supplied to M/s.Reliance Industries Limited and other end user through the firms of Shri Bhavesh Doshi on brokerage basis, he stated that he would have to check his records and requested for time.

40. The Commissioner of Customs (Imports), JNCH, Nhava Sheva vide letter No. S/5-Misc-85/10-11/Licence dtd.13/7/2010 forwarded the details in respect of the 13 licences registered with them along with the details of the Release Advices issued. From the details forwarded by Customs, JNCH it was seen that Release Advice in respect of 11 licences were issued to M/s.E.I.Dupont India Pvt Ltd, Mumbai, while Release Advice in respect of 01 licence was issued to M/s. Lupin Limited, Mumbai and Release Advice in respect of another licence was issued to M/s/Honda Siel Cars India Limited. Therefore, M/s.E.I.Dupont India Pvt Ltd, Mumbai, M/s.Lupin Limited, Mumbai and M/s/Honda Siel Cars India Limited were, vide letters No.DRI/AZU/INV-21/2010 dtd. 21/07/2010 called upon to submit the original licences and the related documents.

41. Shri Kalpesh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai appeared before the investigating officer on

14/07/2010 and his statement was recorded under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he started a firm in the name of M/s.Vishal Movers with his wife and other two ladies as Partners and was doing the work of assisting the Exporters/Importers in customs clearance work through Kandla Port and also doing consultancy in making application and obtaining IEC code for various parties;
- that he learnt various procedures of DGFT and in the year 2003 he started a Proprietorship firm in the name of M/s.Bansi Overseas at 302, Somnath Commercial Complex, B/h ST Bus Stand, Rajkot and started trading/brokerage of transferable import licence;
- that his employees were Shri Nilesh Makwana, Shri Piyush Surendra Viramgama and Shri Deepesh Surendra Viramgama;
- that Shri Piyush Viramgama and Shri Deepesh Viramgama were doing the work of making application with the DGFT for obtaining the licences and IECs;
- that apart from running the firm M/s.Bansi Overseas as a Proprietor, he was also assisting Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad, in the work of conversion of free shipping bill into advance licence/DEPB/DFRC/Drawback Shipping Bills and conversion of shipping bills from one export promotion scheme to another;
- that he was looking after the work of conversion of shipping bills pertaining to exports made from CFS, Mulund, Mumbai Custom House, Bombay port and Custom House, Nhava Sheva;
- that in the course of his business he came into contact with Shri Paresh Parekh at Mumbai;
- that in the year 2006, he shifted to Mumbai and started a firm in the name of M/s. Sunkkalp Creation Pvt. Ltd., at Mumbai along with Shri Paresh Parekh. Apart from himself, Shri Paresh Parekh, Smt.Sangeeta Parekh wife of Shri Paresh Parekh and their son Shri Eshan Parekh were the other Directors of the firm;
- that he came to know about the DRI enquiry through Shri Dharmesh Gathani on 15/16th of April, 2010 and also through Shri Prashant of M/s.Ganesh Shipping Agency, Mangalore around 20th of April, 2010;
- that he had rented a flat at 201, Juhu Princess Apartment, Juhu Tara Road, Mumbai for the last one year which was next to their office of M/s.Sunkkalp Creation Pvt. Ltd. and all the three Directors were staying there along with their children;
- that he had instructed his staff to tell that the Directors had gone to Turkey whenever there was an enquiry from any Govt. authorities.
- that his staff regularly reported the day-to-day activities at the flat where they were residing;
- that he was involved in the forgery of DEPB/VKGUY licences utilized in the import made by M/s.Hindalco Industries Ltd., Dahej;
- that during August, 2008, his employee Shri Piyush Viramgama in M/s.Bansi Overseas at Rajkot, informed him that one Shri Niyaz Ahmed at Kanpur was an expert in printing of forged licence and could supply such forged licence;

- that Shri Piyush also informed that those licences could be used at ports as genuine licence as the custom release advice could also be printed and the custom letter of genuineness verification could also be done easily;
- that he had Shri Piyush at Mumbai and after discussion he decided that those licences could be utilized only at non-EDI ports;
- that M/s.Hindalco Industries Ltd., was a major user of such transferable licences and were using those licences at Dahej port which was a non-EDI port;
- that he asked Shri Piyush Viramgama to supply a set of forged licences using the photocopies of the licences that were sold by him and which were already utilized;
- that those licences were forged at Kanpur and he instructed to change the port of registration in the forged licences to Mangalore Sea Port as he could manage the details of release advices issued from Mangalore Port;
- that the transfer letter in respect of those forged licences were forged by Shri Niyaz Ahmed at Kanpur and sent through Shri Piyush Viramgama;
- that all the documents which were issued by DGFT i.e., Licence, Licence forwarding letter, shipping bill list, etc., were forged by Shri Niyaz Ahmed in the first lot;
- that thereafter only the licences were printed by Shri Niyaz Ahmed at Kanpur and the remaining documents such as release advice, forwarding letters, bank authorizations were forged by Shri Piyush Viramgama;
- that Shri Piyush Viramgama forged the rubber stamps and signatures of the officers of DGFT on the licence, rubber stamps and signatures on the licence forwarding letters, licence transfer letter and release advices were also forged by Shri Piyush Viramgama;
- that the DGFT round seal appearing on the forged licences were done by Shri Niyaz Ahmed at Kanpur;
- that the forged licences were sold under the invoices of M/s.Shivangi Enterprise, Bangalore, however actually the invoices were printed at Rajkot by Shri Piyush Viramgama and the bank account of M/s.Shivangi Enterprise, Rajkot of Shri Vijay Gadhiya was used to receive and make payments;
- that the amount were also transferred to other bank accounts in the firms such as M/s.Ostwal Trading, M/s.Sabari Millenium, etc.;
- that Shri Piyush Viramgama forged the Mangalore Customs letter of verification and faxed it back to him at M/s.Sunkkalp Creation office;
- that one time the letter was faxed by Dahej Customs to Mangalore Customs and when he came to know about it, Shri Piyush Viramgama went to Mangalore and managed to get the letter withdrawn by saying that it was sent by mistake to Mangalore port instead of some other port;
- that Shri Prashant an employee of M/s.Ganesh Shipping Agency, Mangalore, was informing the details of the release advices issued by Mangalore Custom House during certain period;

- that Shri Piyush Viramgama was very good in forging signatures and hence managed to forge the signature of the custom officers on the reverse of the licence, on the release advices, on the transfer letters and rubber stamp of the banks;
- that sometimes with his consent Shri Piyush Viramgama had forged his signature on the bank cheques for urgent withdrawals;
- that Shri Piyush Viramgama was an expert in documentation related to DGFT and Customs; that Shri Niyaz Ahmed told him that the stationery for printing those licences were actually received by him (Shri Niyaz Ahmed) from the Central Licensing Authority (CLA) at Delhi and one Shri Chander, who was a suspended employee of CLA, was supplying the same to him (Shri Niyaz Ahmed);
- that the forged documents were sent to Shri Piyush Viramgama at Rajkot from Shri Niyaz Ahmed at Kanpur through courier;
- that Shri Piyush Viramgama was forging the signatures and attaching the remaining documents like transfer letters of the exporters with forged signatures and forged signatures of the bank officials showing attestation of the signatures, forged list of the shipping bills attached with the licences and forwarding those documents as complete set to him at the office address of M/s.Sunkkalp Creations Pvt. Ltd., Mumbai, through courier or sometimes delivered them personally at Mumbai;
- that Shri Niyaz Ahmed had sent about 5 licences during December, 2009 through Air from Kanpur and the same was collected by Shri Piyush Viramgama at Mumbai Airport;
- that Shri Piyush Viramgama had stayed in a hotel at Mumbai and forged the rubber stamps and signatures on those licences which were delivered to him at his office;
- that the confirmation of the genuineness of all those forged licences were actually printed and faxed by Shri Piyush from Rajkot to his office M/s. Sunkkalp Creations Pvt. Ltd., Mumbai;
- that he raised debit notes for about 65% to 70% of the licence value for all those forged licences;

42. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 15/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was shown the print outs of various e-mails sent by his employee to various firms on his instructions;
- that he was shown a file submitted by Superintendent of Customs, Dahej, containing letters of confirmation of genuineness received from Mangalore Custom House. He confirmed that all those letters were forged documents which were printed by Shri Piyush on the basis of the genuine verification letters received from Mangalore Custom House;
- that the round seal of Mangalore Custom House was forged by Shri Piyush at Rajkot;
- that he came into contact with one person Shri Sashin Jayantilal Koradia Mumbai, whose was providing the names of many companies for adjustment of turnover;

- that Shri Sashin controlled the accounting of sale and purchase in those firms. The forged licences were routed through the firms of Shri Sashin for distribution of profit margin. Some of those firms were M/s.Accurate Multitrade Pvt. Ltd., M/s.R.J.Impex, M/s.New Planet Trading M/s.Hindustan Continental Ltd., M/s.Ostwal Trading Pvt. Ltd., M/s.Punjab Chemicals and Crop Protection Ltd., M/s.Priority Traders Pvt. Ltd., M/s.Adhunik Corporation;
- that he had never met any of the owners/partners/directors of the firms/companies of the above companies. The sales and purchases in the name of the above companies were only on paper;
- that in order to keep track of the distribution of profit on books copies of such genuine licences and connected documents were kept with them on the basis of which Shri Piyush gave those copies to Shri Niyaz for printing of the forged licences;
- that in order to keep track of the sale and profit earned you kept photocopies of the genuine licences and connected documents which were again used for printing forged licences by Shri Niyaz;
- that similar project of inclusion of meat and meat products under VKGUY was handled by him and in the similar modus operandi as above, he earned a profit margin of 30%;
- that the other Directors of his company viz.Shri Paresh Parekh, Smt.Sangita Parekh and Shri Eshan Parekh were not aware of the transactions of forged licences;
- that as he was in deep financial trouble and to overcome that he indulged into transactions of such forged licences as suggested by Shri Piyush;
- that the profit on such forged licences were shared at the rate of 20% to Shri Niyaz, 20% to Shri Piyush and 50% to him as the licences were sold at 90% of the original value;
- that the money received from sale of such forged licences was transferred to the bank account of M/s.Shivangi Enterprises from the companies of Shri Sashin to the extent of 40% which was the share of Shri Piyush and Shri Niyaz; that the balance to the extent of 40% of the original value was partly received in cash from the companies of Shri Sashin and some part was transferred to M/s.Sunkkalp Creations Pvt. Ltd., by the firms of Shri Sashin;
- that 10% of the licence was retained by Shri Sashin for arranging payments;
- that he agreed to the facts stated by Shri Piyush in his statement. But he differed with the statement of Shri Piyush to the extent that initially in the case of the first lot of 22 licences, Shri Niyaz prepared the entire set of forged licences and its connected documents and sent to Shri Piyush who forged the signatures and endorsement on the reverse of licences and printed the transfer letters and forged the signature as also the bank seal and signature;
- that after completing the set Shri Piyush sent to Mumbai either by Courier or delivered the same personally;
- that in the case of the other lots Shri Niyaz printed the forged licence and sent the same to Shri Piyush who completed the other documents including the printing of RAs;

- that he disagreed in page 8 para 2 of the statement of Shri Piyush dated 13.5.2010. All the signatures were forged by Shri Piyush only and not him;
- that he also differed with the statement dated 13.5.2010 of Shri Piyush at para 4 of page 7. Shri Piyush prepared the verification of genuineness, forged the signatures, affixed the round seal of Mangalore Customs and faxed to him which was in turn faxed to others;
- that for the above acts of forging Shri Piyush received 20% of the licence value;
- that he was shown the statement of Shri Vijay Gadhiya and he agreed with the facts stated therein.

43. A further statement of Shri Kalpesh Navinchandra Daftary, Director of M/s.Sunkalp Creations Pvt Ltd, Mumbai was recorded on 16/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was shown VKGUY licences and related documents of M/s.Allanasons Ltd. and utilized by M/s. Reliance Industries Ltd., at Dahej port. Those licences were forged licences sold by him to M/s. Reliance Industries Ltd., by routing them through other firms - Shri Bhavesh Doshi of M/s.S.C.Doshi & Sons, Mumbai;
- that the money received from those forged licences were also shared in the same ratio to Shri Piyush and Shri Niyaz as in the case of forged licences sold to M/s.Hindalco;
- that Shri Piyush and Shri Niyaz were fully aware as they were actively involved in the forging of signatures and printing of forged licences and received money for the same;
- that the genuine set of VKGUY licences pertaining to the export of meat and meat products exported by M/s.Allanasons Ltd. and their group companies were sold by him through M/s.Sun Exports Pvt. Ltd., Mumbai;
- that he was shown eight sets of DEPB Post export licences and their attached documents of M/s.Allanasons Ltd., Mumbai recovered from Dahej Customs;
- that those licences were apart from the list of 85 licences shown to him in his previous statement;
- that he confirms those licences were forged licences sold by him to M/s.Hindalco Industries Ltd.;
- that the letter of verification of genuineness from Mangalore Customs were actually printed by Shri Piyush who forged the signature and round seal of Mangalore Customs;
- that he was shown an e-mail dated 10.11.09 sent by him from his mail id to Shri Vishal Wadkar his employee;
- that he received an e-mail from Shri Bashir Jasani of M/s.Allanasons Ltd., which contained the details of 18 licences which was forwarded to Shri Bhavesh Doshi;
- that out of the 18 licences, 13 licences were sold by him to M/s. Reliance Industries Ltd. That those licences were sold under the invoices of M/s. Hindustan Continental Ltd., through broker Shri Bhavesh Doshi;

- that those were forged licences as he had sold the genuine licence to M/s.Sun Export, Mumbai who in turn sold it to M/s.Trident India Ltd., and M/s.S.R. International, Mumbai;
- that the port of registration of the genuine licence was JNPT, however, in the forged licence the port of registration was changed to Mangalore Sea Port;
- that he got the above forged licences printed by Shri Niyaz Ahmed through Shri Piyush Viramgama. The method of forging was similar to the 85 VKGUY forged licences;
- that he was shown the panchnama dated 27.6.2010 drawn at the residential premises of Shri Vijay Amrutlal Gadhiya at Rajkot;
- that he was shown the impression of the seal and seal making items recovered from the said premises;
- that he confirmed the round seal recovered from the premises was the same round seal of 'Mangalore Custom House', used on the forged letters of confirmation of genuineness prepared by Shri Piyush which was used for custom purposes.

44. Shri Kalpessh Navinchandra Daftary was arrested by DRI on 16/07/2010 under the provisions of Section 104 of the Customs Act, 1962 and produced before the Additional Chief Metropolitan Magistrate, Ahmedabad (ACMM). Since Shri Daftary was required for further investigations, remand of 2 days was sought from the Hon 'ble ACMM remanded him to DRI custody till 19/07/2010.

45. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 17/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- stated that he had earned a total amount of Rs.46 Crores from the sales of forged licences on the basis of the duty credit figure on the licences and release advices;
- that he was shown the list of 13 VKGUY licences of M/s.Allanasons Ltd., sold to M/s. Reliance Industries Ltd., and the duty credit wrongly availed by M/s.Reliance Industries Ltd., came to Rs.6,95,54,068/-;
- that he was shown e-mails showing RTGS details of many companies/firms forwarded to Vishal Wadkar for making debit notes. Those RTGS through the banks were made for making debit/credit entries for rotation of the export incentive licences;
- that he had raised two bills for six DEPB licences on different firms/companies. The first bill was a factual bill for sale of genuine licences and the second set of bills were actually bogus bills made to adjust the profit margin.

46. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 18/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter-alia :

- that the letters for verification of genuineness of TRA was issued from Dahej Customs and given to respective vendors for confirmation;
- that he the forwarded the same to Shri Piyush who prepared the forged confirmation letters shown to be issued from Mangalore Customs and after forging the signatures and affixing the forged round seals, which were recovered from the residence of Shri Vijay Gadhiya under panchnama, the same were received from Shri Piyush at his office at Mumbai;
- that he was shown a letter of the Superintendent of Customs, Dahej addressed to the Assistant Commissioner of Customs, Mangalore for confirmation of TRA against VKGUY licence;
- that it related to the first RA of the set of forged licences used by him in the entire scheme of forgery;
- that he was also shown a letter issued by the Superintendent of Customs, Mangalore in reply confirming that no such TRA was issued from Mangalore. The letter might not have reached Dahej;
- that the forged verification of genuineness in respect of the above TRA was prepared by Shri Piyush and faxed to M/s.Padmavati Agencies through him, which was used for debit of the said TRA at Dahej;
- that he was shown page 7 of file No.6 seized under panchanama dated 21.4.2010 from the premises at 302, Somnath Commercial Complex, Rajkot;
- that the document is an original copy of forged VKGUY licence and complete set of connected documents in the name of M/s. General Commodities Ltd. with the forged round seal of DGFT and forged endorsements;
- that those documents were forged licence prepared by Shri Niyaz and one such forged licence of same number was sold by them to M/s.Hindalco and utilized at Dahej port which appeared in the list of 85 forged licences shown to him;
- that he was shown the ledger account of M/s.Sunkkalp Creation Pvt. Ltd., Mumbai, for the period 1.4.2008 to 31.3.2010 maintained by Shri Sashin;
- that the said ledger account pertained to the billing and transactions arranged through the firms of Shri Sashin Koradia for M/s.Sunkkalp Creation Pvt. Ltd.;
- that all the cash transactions shown in the ledger account amount to approximately Rs.60 Crores;
- that out of the above Rs.60 Crores, Rs.40 Crores pertained to the sale of forged licences to M/s.Hindalco Industries and M/s.Reliance Industries Ltd.;
- that out of that Rs.40 Crores, Rs.28 Crores was your profit from the sale of forged licences and Rs.10 Crores was paid to Shri Piyush Viramgama and Rs. 2 Crores was paid to Shri Niyaz as instructed by Shri Piyush;
- that the amount of Rs.40 Crores was cashed by Shri Sashinbhai from the various firms in whose names the billings for sale and purchase of forged licences were arranged. The remaining amount of Rs.20 Crores pertained to the sale of genuine licences;

- that he used the cash generated to pay off the loans and interest taken by him from various persons;
- that he used Rs.90 lakhs for purchase of shares of M/s.Siddhant Estate Pvt. Ltd., and Rs.3.10 Crores was transferred to M/s.Sonbar Developers and Investment Pvt. Ltd., in which he was a Director;
- that he confirms the duty benefit availed by M/s.Hindalco Industries Ltd., amounted to Rs.48,93,29,033/- involving utilization of 93 forged VKGUY/DEPB licences and by M/s.Reliance Industries Ltd., amounted to Rs.6,95,54,068/- involving utilization of 13 forged VKGUY licences.

47. A further statement of Shri Kalpesh Navinchandra Daftary, Director of M/s.Sunkalp Creations Pvt Ltd, Mumbai was recorded on 19/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia confirmed that the facts stated by him in his earlier statements were true and correct.

48. A statement of Shri Rajesh Rameshchandra Sajani, Retired Superintendent of Central Excise & Customs and Director of M/s.Kshitij Marine Services Pvt Ltd, Surat was recorded on 20/07/2010 and 27/08/2012 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that presently he is working as a director of M/s Kshitij Marine Services Pvt. Limited having office at O-2, Madhulika Apartments, Bhatar Road, Surat and the Managing Director of the company is Shri.Praveen Dixit.
- that he was a Central Government employee and took voluntary retirement as Superintendent of Central Excise and Customs from the department of Central Excise & Customs under Ministry of Finance, Department of Revenue on 24.07.2009.
- that his last posting as Superintendent of Customs and Central Excise was at Dahej Customs House, Dahej under Surat Custom Division where he worked from 21.11.2007 to 23.07.2009.
- that during the period of his posting at Dahej Custom House the major importers were M/s Reliance Industries Limited, M/s Petronet LNG Limited, M/s Hindalco Industries Limited, Dahej and M/s BASF Limited who were contributing the major share of the total revenue of the Port. Major exporters were M/s Reliance Industries Limited and M/s Indian Oil Corporation.
- that M/s Hindalco Industries Limited and M/s Reliance Industries Limited were utilizing various transferable import licences like DEPB/VKUY/VKGUY/FMS/FPS etc. issued by DGFT for debiting the import duties at the time of imports.
- that M/s Hindalco was using about 5000 transferable licences of various types in a year and the duty foregone figure after debiting these licences would have been approx. Rs.1000 to 1500 Crores per annum by utilizing these licences.
- that similarly M/s Reliance Industries Limited were utilizing about 3000-4000 transferable licences of various types and the duty

foregone figures by utilizing these licences would have been approx. Rs.800-900 Crore.

- that the Custom Office at Dahej is actually situated in the building of M/s Reliance Industries Limited at Room No.35 in the first floor and all infrastructure facilities for the office is supplied by M/s Reliance Industries limited.
- that the fax No.02641-281610 installed at Dahej Customs is also supplied by the custodians M/s Reliance Industries Limited.
- that during his tenure with the Dahej Customs the internet facility at Dahej was given by M/s Reliance Industries Limited and only limited internet sites were accessible from the said facility as most of the sites were blocked by Reliance Industries Limited in all their internet lines.
- that regarding fax facility on telephone no.02642-282610 he states that the fax machine installed with this number was not functional for a major period during his tenure at Dahej, during that period the fax facility of M/s Reliance Industries Limited was used by them at Customs for receiving and making faxes related to confirmation of genuineness of the Release Advices received by them.
- that regarding the procedure adopted at Dahej Port for debiting of import duty from the duty free transferable licences and Release Advices, he states that during his tenure at Dahej Port duty free transferable licences were utilized for debiting of import duty by M/s Hindalco Industries Limited and M/s Reliance Industries Limited.
- that the documents were filed prior to the arrival of the vessel with the permission of the jurisdictional Assistant Commissioner as per procedural requirement, in some cases when the documents were filed after arrival of the vessel the permission of the AC was not required.
- that these documents were verified for its correctness and the duty leviability and quantum was assessed in the bill of entry. Then the licences which were registered at Dahej Port, were taken up and the genuineness of these licences were verified from the website of DGFT by using the internet facility of Reliance Industries Limited.
- that regarding the procedure adopted for confirmation of genuineness of the release advices utilized at Dahej by Hindalco from the port of issuance of the release advices, he stated that normally during his tenure at Dahej as Superintendent of Customs, after receiving the original release advices before debit, they were preparing letters for confirmation of genuineness addressed to the Assistant Commissioner of the port from where the RA's were issued.
- that these letters for confirmation of genuineness were faxed to the concerned Custom House using the fax/telefax machine installed at Dahej Customs bearing No.02641-282610 and in case the fax/telephone line was out of order, the same was also handed over to M/s Hindalco Industries Limited for faxing them to the RA issuing Customs House.
- that in some cases the faxes were also sent using the fax machine installed at the office of the Assistant Commissioner of Customs, Custom Division, Surat having No.0261- 2478741.

- that the genuineness verification was done only on fax and the hard copy was not sent by post again.
- that the confirmation of genuineness of the release advices were received by them at Customs from M/s Hindalco or sometimes they were received at their office fax machines also.
- that on being asked as to whether any letter of non-confirmation was received for any Release Advice, he stated that during his entire tenure at Dahej Customs he had never seen any letter of non-confirmation of any release advice because they maintained a procedure that only after receiving the confirmation of genuineness in respect of the Release Advice from the port of issuance the RA's and the Licences were debited at Dahej.
- that regarding the procedure for verification of genuineness in respect of the dutyfree transferable licences utilized by M/s Reliance Industries Limited at Dahej he states that same procedure as described above for Hindalco was adopted for the licences utilized by RIL also.
- that in case of the request for verification of genuineness of the TRA's presented by M/s RIL at Dahej the requests were either faxed from Dahej or handed over to the representative of CHA-M/s Nationwide Shipping Services namely Shri.Abdul and/or Shri.Mukhtar and /or Shri.Vinod. Similarly, the confirmation of genuineness from the port of issuance was also received through the importer or their representative.
- that he was shown the print out of the Call details for the period 14.10.2008 to 31.03.2010 (contained in page numbers 01 to 111) in respect of telephone/fax no.02641-282610 received from the BSNL department.
- that on being asked to confirm regarding the incoming and outgoing faxes to/from Mangalore Customs having numbers-0824-2407100; 0824-2408147; 0824-2406057; 0824-2400437, he stated that he has read the details of incoming and outgoing calls to/from the said telephone number and confirms that during the period of the print out no outgoing calls are shown to Mangalore Custom House where the forged licences were shown to be registered and the forged Release Advices were shown to be issued in favour of M/s Hindalco Industries Limited for being utilized at Dahej.
- that there is only 3 or 4 incoming calls from Mangalore Custom House. The faxes for confirmation of genuineness were actually not made from the fax number 02641-282610.
- that he was shown some letters purportedly issued by Mangalore Customs confirming the genuineness of the RAs. On being asked how these letters were received at Dahej Customs. In all cases the confirmation of genuineness letters were submitted back to customs at Dahej by the importer or their CHA.
- that he was being informed that these letters of Mangalore Customs were infact not issued by Mangalore Customs and that the same are forged documents and on being asked, he stated that they received them from either from M/s.Kshitij Marine or M/s.Hindalco Industries and these letters of confirmation appeared to be in the same format as that of Mangalore Customs and therefore, the same were assumed to be genuine.

- that regarding the FAX headers appearing at the top of the said letters and on being asked whether the headers appearing in the above letters of confirmation of genuineness were noticed by him while allowing utilization of the TRAs mentioned in the letters, he stated that he does not remember presently whether he had noticed the headers.

49. A statement of Shri Rakesh Bainle, Superintendent of Central Excise & Customs, Surat -I was recorded on 23/07/2010 and 27/08/2012 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he is working as a Superintendent of Central Excise & Customs in Surat -I Commissionerate and is presently posted at Central Excise, Range-II, Division-V, Surat-I. From February, 2008 to February, 2009 he was posted at Dahej Custom House, Dahej.
- that Custom House Dahej is manned by two Superintendents and four Inspectors. During his posting at Custom House Dahej the other Superintendent was Shri R.R. Sajnani who has since retired from the department.
- that the Inspectors working in Custom House Dahej during his tenure were Shri K. Venkateshan, Shri Ajay Agarwal, Shri C.S. Malviya, Shri T. Venkatraman, Shri Rakesh Jain and Shri Nilesh Handure. All these Inspectors were not posted at the same time.
- that during the period of his posting at Dahej Custom House the major importers were M/s Reliance Industries Limited, M/s Petronet LNG Limited, M/s Hindalco Industries Limited, Dahej and M/s BASF Limited.
- that there was no distribution of work whereby the officers were allocated particular firms. The work was being done commonly by all the officers.
- that M/s Hindalco Industries Limited and M/s Reliance Industries Limited were utilizing various transferable import licences like DEPB/VKUY/VKGUY/FMS/FPS etc. for debiting the import duties at the time of imports. M/s Hindalco was using about more about 4000 to 5000 licences of various types in a year. Similarly, M/s Reliance Industries Limited were utilizing about 3000-4000 licences of various types.
- that in addition to their own licences, M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd were also using licences of other exporters purchased by them. For such licences M/s. Hindalco Industries and M/s. Reliance Industries produced transfer letters from the original licence holders or the traders from whom the licences were purchased by them.
- that in these cases, alongwith the original licence they also submitted the Release Advices issued in their favour by the Customs at the Port of Registration.
- that the Custom Office at Dahej is situated in the building of M/s Reliance Industries Limited (previously Indian Petrochemical Corporation Limited) at Room No.35 in the first floor and all infrastructure facilities for the office is provided by M/s Reliance Industries limited.

- that M/s.Reliance Industries Ltd has provided the phone and fax facilities to the Customs at Dahej. The phone provided to them was having No.02641-282610 and the same was used as telefax. During his tenure at the Dahej Customs internet facility at Dahej was given by M/s Reliance Industries Limited however, only limited internet sites were accessible.
- that the fax machine installed no.02642-282610 was not functional most of the time during his tenure at Dahej. Even when the fax was functioning the receipts were not legible.
- that regarding the procedure adopted at Dahej Port for debiting of import duty from the dutyfree transferable licences and Release Advices, he states that during his tenure at Dahej Port duty free transferable licences were utilized for debiting of import duty by M/s Hindalco Industries Limited and M/s Reliance Industries Limited.
- that these documents were verified for its correctness and the duty leviability and quantum was assessed in the bill of entry. Then the licences which were registered at Dahej Port, were taken up and the genuineness of these licences were verified from the website of DGFT by using the internet facility of Reliance Industries Limited.
- regarding the procedure adopted for confirmation of genuineness of the release advices received by Hindalco from the port of issuance of the release advices and utilized at Dahej, he stated that normally during his tenure at Dahej as Superintendent of Customs, after receiving the original release advices before debit, they were preparing letters for confirmation of genuineness addressed to the Assistant Commissioner of the port from where the RA's were issued.
- that on some occasions the fax was also sent using the fax machine installed at the office of the Assistant Commissioner of Customs, Custom Division, Surat having No.0261- 2478741.
- that the genuineness verification was done by fax and the request for verification of genuineness and no copy of the letters were sent by post.
- that regarding the receipt of the letters confirming genuineness of the RA, he states that the confirmation of genuineness of the release advices were received by them at Customs on the fax machine installed at Dahej Customs if it was functional or from M/s. Kshitij Marine Services Pvt Ltd or M/s Hindalco.
- that during his tenure at Dahej Customs no letter was received from the Custom House denying issuance of the RA.
- that he was photocopy of page numbers 7.188 and 7.189 of the CBEC's Custom Manual regarding Telegraphic Release Advices and he stated that even in the said procedure prescribed by the CBEC, no procedure for confirmation of genuineness of the RA has been prescribed. But they have adopted the procedure for confirmation of genuineness of the RA followed by most of the Custom formations i.e. by faxing a letter to the RA issuing custom house.
- that there is no instruction or standing order issued by Ahmedabad Customs Commissionerate. That Dahej Custom House is a non-EDI location and does not have proper infrastructure facilities like Internet connection etc. As stated above even the fax machine is

non functional many a times. The telephone and faxes being provided by M/s Reliance Industries Limited are also repaired by them and are not under their direct control.

- that on being further asked regarding the procedure for verification of genuineness in respect of the duty free transferable licences utilized by M/s Reliance Industries Limited at Dahej he stated that same procedure as described above for Hindalco was adopted for the licences utilized by RIL also.
- that in case of the request for verification of genuineness of the TRA's presented by M/s RIL at Dahej the requests were handed over to the representative of CHA-M/s Nationwide Shipping Services namely Shri.Abdul or Shri.Mukhtar or Shri.Vinod. Similarly, the confirmation of genuineness from the port of issuance was also received by them through the importer or their representative.
- that he was shown the print out of the Call details for the period 14.10.2008 to 31.09.2009 (contained in page numbers 01 to 111) in respect of telephone/fax no.02641-282610 received from the BSNL department. That having gone through the said call detail, he finds that there are no outgoing calls to Mangalore Custom House having numbers-0824-2407100; 0824-2408147; 0824-2406057; 0824-2400437. There are only 08 incoming calls from Mangalore Custom House during February, 2009 to August, 2009.
- that he was shown some letters of request for confirmation of genuineness sent from Dahej Customs either under his signature or that of other Superintendents. These letters are addressed to Mangalore Customs requesting verification of the genuineness of the RA's issued by them.
- that he was also being shown some letters purportedly issued by Mangalore Customs confirming the genuineness of the RAs. On being asked how these letters were received at Dahej Customs, he states that in all cases the Customs letters confirming genuineness of the RA were received by them from the importer or their CHA. He is not able to recollect exactly but he believes these letters were given to them by either M/s.Hindalco Industries Ltd or by their representative i.e. M/s.Kshitij Marine Services Pvt Ltd.
- that he was informed that these letters of Mangalore Customs were infact not issued by Mangalore Customs and that the same are forged documents and on being asked, he stated that these letters were received by them from either from M/s.Kshitij Marine or M/s.Hindalco Industries and these letters of confirmation was in the same format as that of Mangalore Customs and also had the round seal (rubber stamp) of Mangalore Customs, therefore, they thought the same to be genuine and accordingly allowed utilization of the RA issued in respect of the concerned licences.
- that regarding the FAX headers appearing at the top of the said letters and on being asked whether the headers appearing in the above letters of confirmation of genuineness were noticed by him while allowing utilization of the TRAs mentioned in the letters, he stated that he does not remember presently whether he had noticed the headers. However, as stated by him in his earlier statement the letters to the Customs for verification of genuineness of the RAs were handed over to M/s.Hindalco Industries Ltd as the FAX

installed in Dahej Custom House was non-functional most of the time.

50. A further statement of Shri Bhavesh Doshi, Authorised Signatory of M/s. Suresh C. Doshi, Mumbai was recorded on 26/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- Regarding the licences of M/s. Allanasons Ltd, M/s. Indagro Foods Ltd and M/s. Frigorifico Allana Ltd sold by them to M/s. Reliance Industries Ltd on brokerage basis and where the sales invoices were issued by M/s. Hindustan Continental Ltd, Kolkata, he identified the invoices from among the documents submitted by him and stated that the details of the invoices and the licences are :-

S.No.	Invoice No. & Date	Name of Buyer	Licence No. & Date	Licence Amount
1	HCL/048/2009-10 dtd.11.11.2009	M/s.Reliance Industries Ltd., Dahej	0310523566 dtd.11.06.209	5130380
2	HCL/049/2009-10 dtd.11.11.2009	-do-	0310518177 dtd.04.05.2009	5247824
3	HCL/058/2009-10 dtd.11.11.2009	-do-	0310522738 dtd.05.06.2009	5173856
4	HCL/041/2009-10 dtd.11.11.2009	-do-	0310526777 dtd.02.07.2009	4470235
5	HCL/042/2009-10 dtd.11.11.2009	-do-	0310523564 dtd.11.06.2009	4003373
6	HCL/043/2009-10 dtd.11.11.2009	-do-	0310528212 dtd.10.07.2009	6590018
7	HCL/044/2009-10 dtd.11.11.2009	-do-	0310529284 dtd.16.07.2009	5626358
8	HCL/045/2009-10 dtd.11.11.2009	-do-	0310528689 dtd.13.07.2009	4776335
9	HCL/046/2009-10 dtd.11.11.2009	-do-	0310523562 dtd.11.06.2009	5753032
10	HCL/047/2009-10 dtd.11.11.2009	-do-	0310531532 dtd.30.07.2009	6005453
11	HCL/055/2009-10 dtd.11.11.2009	-do-	0310521936 dtd.29.05.2009	4426478
12	HCL/056/2009-10 dtd.11.11.2009	-do-	0310522743 dtd.05.06.2009	7778161
13	HCL/057/2009-10 dtd.11.11.2009	-do-	0310512901 dtd.24.03.2009	4572385

- As stated by him earlier in his statement dtd.06.07.2010 Shri Kalpessh Daftary had during November, 2009 approached him with an offer to sell licences directly rather than through M/s. Sun Exports of Shri B.P. Choudhary and he had agreed to the same.
- Shri Kalpessh Daftary had promised to pay him commission and therefore, he had supplied about 70 licences to M/s.Reliance Industries Ltd for which he had not raised any commission invoice on M/s.Reliance Industries Ltd.
- Despite promising to pay him commission, Shri Daftary has till date not paid him any commission in respect of these 70 licences.
- 13 licences mentioned above are among the 70 licences which were supplied directly to him by Shri Kalpessh Daftary.

- The invoices of M/s. Hindustan Continental Ltd, Kolkata showing sale of the 13 licences to M/s. Reliance Industries Ltd, Dahej were provided by Shri Kalpessh Daftary.
- These 13 licences were supplied by him to M/s. Reliance Industries Ltd, Dahej in terms of their purchase order No. XB3/7209193 dtd.07.11.2009, he produced a copy of the purchase order confirmation issued by M/s. Reliance Industries Ltd.
- Though the said purchase order mentioned 18 licences of M/s. Allanasons Ltd, M/s. Indagro Foods Ltd valued at Rs.10,17,35,232/-, he had supplied them 13 licences of M/s. Allanasons Ltd, M/s. Indagro Foods Ltd and M/s. Frigorifico Allana Ltd. totally valued at Rs.6,95,53,888/-, 02 licences of M/s. Star Agro Marine Exports Pvt Ltd valued at Rs.73,22,404/- and 02 licences of M/s. NKG Jayanti Coffee Pvt Ltd. valued at Rs.92,30,089/-. The total value of these 17 licences is Rs.8,61,06,381/-.
- He agreed that this is less than the licence value as per the above said purchase order dtd.07.11.2009 issued by M/s. Reliance Industries Ltd.
- On being specifically asked whether any licence of M/s. Allanasons Ltd, M/s. Indagro Foods Ltd and M/s. Frigorifico Allana Ltd supplied by him to M/s. Reliance Industries Ltd. were rejected and returned by them, he stated that no licence supplied by him under the said purchase order were rejected or returned by M/s. Reliance Industries Ltd.
- He was shown an email dtd.07.11.2009 sent to him at his email ID scdoshi@vsnl.com by Shri Kalpessh Daftary from his email ID info@sunkkalp.com. Shri Kalpessh Daftary had by the said email forwarded to him an email dtd.07/11/2009 of Shri Bashir Jasani from email ID bfjasani@allana.com. The said email of Shri Bashir Jasani contains details of 18 licences of M/s. Allanasons Ltd, M/s. Indagro Foods Ltd and M/s. Frigorifico Allana Ltd. The total value of these 18 licences is Rs.10,17,35,232/-.
- It is true that the value of the 18 licences as per the said email is exactly the same as that of the purchase order dtd.07.11.2009 issued by M/s. Reliance Industries Ltd.
- On being again asked whether these 18 licences were supplied by him to M/s. Reliance Industries Ltd and whether 05 licences were returned back by M/s. Reliance Industries Ltd, he reiterated that no licences were rejected or returned by M/s. Reliance Industries Ltd.
- He was shown the statement of Shri B.P. Chaudhary of M/s. Sun Export, Mumbai recorded on 12/07/2010
- He has gone through the details of the licences purchased from Shri Kalpessh Daftary of M/s. Sunkkalp Creations Pvt Ltd by Shri Chaudhary.
- He was informed that these details were submitted by Shri Chaudhary in the course of his statement. On going through the details submitted by Shri Chaudhary, he noted that the above mentioned 13 licences have also been purchased by Shri Chaudhary from Shri Kalpessh Daftary.

- He was not able to state anything in this regard, he however, agreed that the same licence have also been sold to M/s.Reliance Industries Ltd by him.
- He was shown a letter dtd.08/07/2010 of M/s. Allanasons Ltd, letter dtd.12/07/2010 of M/s.Indagro Foods Ltd and letter dtd.12/07/2010 of M/s.Frigorifico Allana Ltd, forwarding details of the licences issued to them and which were sold by them to various firm.
- He went through the details of the licences and found that the 13 licences mentioned above are contained in the said letters, the details of which are as below :-

Sr. No.	Name of the licence holder	Licence No. & Date	Licence Amount	Port of Registration	Name of Buyer
1	M/s.Allanasons Ltd, Mumbai	0310531532 dtd.30.07.2009	6005453	JNPT	M/s.Sunkkalp Creations Pvt Ltd
2	-do-	0310528689 dtd.13.07.2009	4776335	JNPT	-do-
3	-do-	0310523562 dtd.11.06.2009	5753032	JNPT	-do-
4	-do-	0310523564 dtd.11.06.2009	4003373	JNPT	-do-
5	-do-	0310523566 dtd.11.06.2009	5130380	JNPT	-do-
6	-do-	0310526777 dtd.02.07.2009	4470235	JNPT	-do-
7	-do-	0310528212 dtd.10.07.2009	6590018	JNPT	-do-
8	M/s.Indagro Foods Ltd	0310512901 dtd.24.03.2009	4572385	JNPT	-do-
9	-do-	0310522738 dtd.05.06.2009	5173856	JNPT	-do-
10	-do-	0310522743 dtd.05.06.2009	7778161	JNPT	-do-
11	-do-	0310518177 dtd.04.05.2009	5247824	JNPT	-do-
12	-do-	0310529284 dtd.16.07.2009	5626358	JNPT	-do-
13	M/s.Frigorifico Allana Ltd.	0310521936 dtd.29.05.2009	4426478	JNPT	-do-

- As per the original licence holders i.e. M/s. Allanasons Ltd, M/s.Indagro Foods Ltd and M/s.Frigorifico Allana Ltd the port of registration in respect of the 13 licences is JNPT, however, the same 13 licences purchased by them from Shri Kalpessh Daftary of M/s.Sunkkalp Creations Pvt Ltd and sold to M/s.Reliance Industries Ltd, Dahej shows the port of registration as Mangalore Sea.
- He was shown letter no. S/5-Misc-85/10-11/Licence dtd.13.07.2010 of the Commissioner of Customs (Import), Nhava Sheva, JNCH. As per Customs, JNCH of the 13 licences mentioned above, 12 are registered at JNCH while 01 licence has been shown to be not registered.
- On being asked to state specifically, in the light of the above documents shown to him, whether the 13 licences purchased by him from M/s.Sunkkalp Creations Pvt Ltd of Shri Kalpessh Daftary

are genuine, he stated that the said licences are not genuine but forged licences.

- To the best of his knowledge M/s.Rliance Industries Ltd are not aware that the 13 licences purchased by them through him are forged licences, he shall however, inform M/s.Rliance Industries Ltd immediately and intimate regarding the same.
- Sometime during May, 2010 M/s.Rliance Industries Ltd had informed him that DRI had called for original documents of about 74 licences sold to them by him for use at Magdalla Port.
- He does not have the details and documents with him at present. He however, agreed to submit the details of the said 74 licences along with copies of his purchase and sale invoices.

51. A statement of Shri Badri Prasad Choudhory, Managing Director of M/s Sun Exports Pvt. Limited, Mumbai was recorded on 26/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- He submitted the details contained in four pages in respect of licences purchased by his company from/through M/s Sunkkalp Creation Pvt. Ltd, Mumbai till date. As per the said details they have purchased 72 DEPB/VKGUY licences from/through M/s Sunkkalp Creation Pvt. Ltd, Mumbai and three licences from M/s Padmavati Agencies P. Ltd., Ahmedabad.
- In relation to the purchase of these 72 DEPB/VKGUY licences from M/s Sunkkalp Creation Pvt. Ltd, Mumbai, he had discussed the matter either with Shri Paresh Parekh or Shri Kalpesh Daftary.
- On being asked regarding purchase and sale of VKUY/VKGUY licence nos.310526777 dtd. 02.07.09, 310523564 dtd.11.06.09, 310528212 dtd.10.07.09, 310529284 dtd.16.07.09, 310528689 dtd.13.07.09, 310523562 dtd. 11.06.09, 310531532 dtd.10.11.09, 310521936 dtd.29.05.09, 310522743 dtd.05.06.09, 310512901 dtd. 24.03.09, 310518177 dtd. 04.05.09, 310522738 dtd. 05.06.09 and 310523566 dtd. 11.06.09, which are also figuring in the details submitted by him, he stated that they have purchased these licences from M/s Sunkkalp Creation Pvt. Ltd., Mumbai, some licences @ 97.12% and some are 97.36% of the original value. Details of purchase are as under :

Sl. No.	Licence No.	Date	Name of the Lic. Holder	Duty Amount of Licence (in Rs.)	Debit Note No. / Invoice No.& date	Amount / value of purchase
1	310526777	02.07.09	Allanasons Limited	4470235	SCPL/VKGUY/09-10/079 dtd.09.10.09	4352031.71
2	310523564	11.06.09	Allanasons Limited	4003373	SCPL/VKGUY/09-10/079 dtd.09.10.09	3897514.61
3	310528212	10.07.09	Allanasons Limited	6590018	SCPL/VKGUY/09-10/079 dtd.09.10.09	6415762.77
4	310529284	16.07.09	Indagro Foods Ltd.	5626358	SCPL/VKGUY/09-10/079 dtd.09.10.09	5477584.15
5	310528689	13.07.09	Allanasons Limited	4776335	SCPL/VKGUY/09-10/079 dtd.09.10.09	4650037.72

6	310523562	11.06.09	Allanasons Limited	5753032	SCPL/VKGUY/09-10/079 dtd.09.10.09	5600908.60
7	310531532	10.11.09	Allanasons Limited	6005453	SCPL/VKGUY/09-10/079 dtd.09.10.09	5846655.01
8	310521936	29.05.09	Frigorifico Allana Limited	4426478	SCPL/VKGUY/09-10/065 dtd.11.09.09	4298790.93
9	310522743	05.06.09	Indagro Foods Ltd.	7778161	SCPL/VKGUY/09-10/065 dtd.11.09.09	7553790.61
10	310512901	24.03.09	Indagro Foods Ltd.	4638435	SCPL/VKGUY/09-10/065 dtd.11.09.09	4504633.78
11	310518177	04.05.09	Indagro Foods Ltd.	5247824	SCPL/VKGUY/09-10/067 dtd.17.09.09	5096444.22
12	310522738	05.06.09	Indagro Foods Ltd.	5173856	SCPL/VKGUY/09-10/065 dtd.11.09.09	5024609.92
13	310523566	11.06.09	Allanasons Limited	5130380	SCPL/VKGUY/09-10/079 dtd.09.10.09	4994720.95

- They have sold all these licences to M/s Trident (India) Limited, Mumbai except one licence no. 0310518177 dtd. 04.05.09, which is figuring at sr.no. 11 of above table and which was sold to M/s S.R. International, Mumbai. They have sold these licences @ 10 to 20 paisa commission, details of sale are as under:

Sl. No.	Licence No.	Date	Name of the Lic. Holder	Duty Amount of Licence (in Rs.)	Debit Note No. / Invoice No. & date	Amount / value of sale
1	310526777	02.07.09	Allanasons Limited	4470235	182/2009-10 dtd. 09.10.09	4354180.82
2	310523564	11.06.09	Allanasons Limited	4003373	182/2009-10 dtd. 09.10.09	3899439.27
3	310528212	10.07.09	Allanasons Limited	6590018	182/2009-10 dtd. 09.10.09	6418930.99
4	310529284	16.07.09	Indagro Foods Ltd.	5626358	182/2009-10 dtd. 09.10.09	5480289.09
5	310528689	13.07.09	Allanasons Limited	4776335	182/2009-10 dtd. 09.10.09	4652333.99
6	310523562	11.06.09	Allanasons Limited	5753032	182/2009-10 dtd. 09.10.09	5603674.43
7	310531532	10.11.09	Allanasons Limited	6005453	182/2009-10 dtd. 09.10.09	5849542.20
8	310521936	29.05.09	Frigorifico Allana Limited	4426478	152/2009-10 dtd. 11.09.09	4303047.36
9	310522743	05.06.09	Indagro Foods Ltd.	7778161	152/2009-10 dtd. 11.09.09	7561269.97
10	310512901	24.03.09	Indagro Foods Ltd.	4638435	151/2009-10 dtd. 11.09.09	4509094.00
11	310518177	04.05.09	Indagro Foods Ltd.	5247824	158/2009-10 dtd. 17.09.09	5101490.45
12	310522738	05.06.09	Indagro Foods Ltd.	5173856	152/2009-10 dtd. 11.09.09	5029585.01
13	310523566	11.06.09	Allanasons Limited	5130380	182/2009-10 dtd. 09.10.09	4997187.44

- On being asked regarding the details of the actual utilization of these licences, he stated that he is not aware as to who has actually utilized the licences.

- The payments for the purchase of these licences have been made by them through bank in form of cheque or RTGS to M/s Sunkkalp Creation P. Ltd. Similarly, payments in respect of sale of these licences have been received by them through bank in form of cheque or RTGS from M/s Trident (India) Ltd., and M/s S.R. International.
- He would submit the copies of purchase and sale ledger account alongwith original copies of purchase and sale debit notes / invoices within two days time in respect of above said licences.
- That during the entire transaction of above licences done by them during the period 2009-10 the original licence, original annexure and original transfer letter of the above mentioned DEPB/VKGUY licences were physically handed over to the person of M/s Trident India Limited at Mumbai. They have provided the billing and received commission for the sale of these licences.
- On being asked the details of licences and their utility he stated that he is having the knowledge that these licences are obtained by the exporters from DGFT on the basis of their export performances and after transferring them to other parties they are utilized for debiting of Customs duty at the time of import by the importer/transferor.
- On being asked regarding any financial transactions with Shri.Kalpessh Daftary or M/s Sunkkalp Creations Pvt.Limited, he stated that during the year 2008-09 as per the request of Shri.Kalpessh he had arranged for funding of a loan of Rs.1.50 Crore to Shri Kalpessh Daftary, Director of M/s Sunkkalp Creation Pvt. Ltd., Mumbai and the same was also repaid by him with interest and as per his memory the amount was returned parts in cash.
- That M/s Bally Exports Pvt.Limited and M/s MPG International are owned and managed by his cousin Shri.Vishnu Dhandhanian and his son Shri.Arpit Dhandhanian. They are also engaged in the trading/brokerage of transferable export incentive licences and are having offices at Kolkata.

52. A statement of Shri Jatin Parekh, Director of M/s.Trident (India) Ltd, Ahmedabad was recorded on 28/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that :

- He is one of the Director of M/s Trident (India) Ltd., Ahmedabad. The other Directors are his father Shri Gulabrai Parekh and Shri Jitendra R. Mehta. His father Shri Gulabrai Parekh and Shri Jitendra R. Mehta are sleeping directors of the company as entire business of the firm is looked after by him.
- His firm was established in the year 1995 and was having four director namely, his father Shri Gulabrai Parekh, himself, his brother Shri Paresh Parekh and Shri Jitendra R. Mehta. In the year 2004 his brother Shri Paresh Parekh split with the business and started his own firm in the name of M/s Splendent Sun Overseas at Mumbai and thereafter M/s Sunkkalp Creation P. Ltd., Mumbai.
- In his firm he is engaged in the trading of transferable duty credit licences. Such transferable licences are all post export licences and

are procured by them from various exporters who are willing to transfer the duty credits earned after the completion of the exports.

- They do not get the licences transferred in their name. Only in some cases, when they do not have a ready buyer they get them transferred in their name. Then on availability of the buyer they transfer the same in the name of the buyer. In cases where they do not get the licences transferred in their name, they transfer them directly from the exporter (transferor) to the importer (transferee).
- The major exporters who are transferring the licences to them / from whom they are purchasing the licences are M/s Arvind Mills, Ashima Mills, Jitendra Exports etc.
- The major importers who are using the transferred licences in their imports are M/s Hindalco Industries Limited, M/s Apollo Tyres Limited, M/s MIRC Electronics Limited, Lupin Laboratory, M/s E.I. Dupont India Pvt. Ltd. etc. In general, the licences are supplied at 93% to 98% of the licence value.
- Regarding the margin and amount of profit earned by his firm in the total trade, he stated that the profit ranges from 40 paisa to 75 paisa on an average,
- On being asked regarding purchase and sale of VKUY/VKGUY licence nos.310526777 dtd. 02.07.09, 310523564 dtd.11.06.09, 310528212 dtd.10.07.09, 310529284 dtd.16.07.09, 310528689 dtd.13.07.09, 310523562 dtd. 11.06.09, 310531532 dtd.10.11.09, 310521936 dtd.29.05.09, 310522743 dtd.05.06.09, 310512901 dtd. 24.03.09, 310529950 dtd. 22.07.09, 310522738 dtd. 05.06.09 and 310523566 dtd. 11.06.09, which are also figuring in the details submitted by him, he stated that they have purchased these licences from M/s Sun Exports Pvt. Ltd., Mumbai. Details of purchase are as under :

Sl. No.	Licence No.	Date	Name of the Lic. Holder	Duty Amount of Licence (in Rs.)	Debit Note No. / Invoice No.& date	Amount value / of Purchase
1	310526777	02.07.09	Allanasons Limited	4470235	182/2009-10 dtd. 09.10.09	4354180.82
2	310523564	11.06.09	Allanasons Limited	4003373	182/2009-10 dtd. 09.10.09	3899439.27
3	310528212	10.07.09	Allanasons Limited	6590018	182/2009-10 dtd. 09.10.09	6418930.99
4	310529284	16.07.09	Indagro Foods Ltd.	5626358	182/2009-10 dtd. 09.10.09	5480289.09
5	310528689	13.07.09	Allanasons Limited	4776335	182/2009-10 dtd. 09.10.09	4652333.99
6	310523562	11.06.09	Allanasons Limited	5753032	182/2009-10 dtd. 09.10.09	5603674.43
7	310531532	10.11.09	Allanasons Limited	6005453	182/2009-10 dtd. 09.10.09	5849542.20
8	310521936	29.05.09	Frigorifico Allana Limited	4426478	152/2009-10 dtd. 11.09.09	4303047.36
9	310522743	05.06.09	Indagro Foods Ltd.	7778161	152/2009-10 dtd. 11.09.09	7561269.97
10	310512901	24.03.09	Indagro Foods Ltd.	4638435	151/2009-10 dtd. 11.09.09	4509094.00
11	310529950	22.07.09	Allanasons Limited	4444308	182/2009-10 dtd. 09.10.09	4328926.92

12	310522738	05.06.09	Indagro Foods Ltd.	5173856	152/2009-10 dtd. 11.09.09	5029585.01
13	310523566	11.06.09	Allanasons Limited	5130380	182/2009-10 dtd. 09.10.09	4997187.44

- They have sold all these licences to M/s E.I. Dupont Pvt. Ltd., Mumbai except one licence no. 0310523562 dtd. 11.06.09, which is figuring at sr.no. 6 of above table and which was sold to M/s Vani Exports, Kolkata. The details of sale are as under:

Sl. No.	Licence No.	Date	Name of the Lic. Holder	Duty Amount of Licence (in Rs.)	Debit Note No. / Invoice No.& date	Amount / value of Sale
1	310526777	02.07.09	Allanasons Limited	4470235	106 dtd. 16.10.09	4371374.03
2	310523564	11.06.09	Allanasons Limited	4003373	114 dtd. 24.10.09	3910987.47
3	310528212	10.07.09	Allanasons Limited	6590018	110 dtd. 24.10.09	6437940.66
4	310529284	16.07.09	Indagro Foods Ltd.	5626358	119 dtd. 14.11.09	5491109.00
5	310528689	13.07.09	Allanasons Limited	4776335	110 dtd. 24.10.09	4666111.88
6	310523562	11.06.09	Allanasons Limited	5753032	116 dtd. 27.10.09	5716370.52
7	310531532	10.11.09	Allanasons Limited	6005453	111 dtd. 24.10.09	5866865.62
8	310521936	29.05.09	Frigorifico Allana Limited	4426478	089 dtd. 12.09.09	4326456.62
9	310522743	05.06.09	Indagro Foods Ltd.	7778161	089 dtd. 12.09.09	7602404.47
10	310512901	24.03.09	Indagro Foods Ltd.	4638435	90 dtd. 12.09.09	4533624.20
11	310529950	22.07.09	Allanasons Limited	4444308	113 dtd. 24.10.09	4341747.05
12	310522738	05.06.09	Indagro Foods Ltd.	5173856	090 dtd. 12.09.09	5056946.75
13	310523566	11.06.09	Allanasons Limited	5130380	112 dtd. 24.10.09	5011986.62

- All the details such as purchase, sale and payment etc., have already been submitted by him vide letter 13.07.2010.
- All the above said licences are actually utilized by M/s E.I. Dupont Pvt. Ltd., Mumbai except licence no. 0310523562 dtd. 11.06.09. He is not aware as to who has actually utilized the licence no. 0310523562 dtd. 11.06.09.
- The payments for the purchase of these licences have been made by them through bank in form of cheque or RTGS to M/s Sun Exports Pvt. Ltd., Mumbai. Similarly, payments in respect of sale of these licences have been received by them through bank in form of cheque or RTGS from M/s E.I. Dupont Pvt. Ltd., Mumbai and M/s Vani Export, Kolkata.
- He would submit the copies of purchase and sale ledger account within two days time in respect of above said licences.

- Their sale and purchase invoices / debit note were recovered by the officers of DRI during course of search of his office premises under panchnama dated 10.05.2010.
- During the entire transaction of above licences done by them in the period 2009-10 the original licence, original annexure and original transfer letter of the above mentioned VKUY/VKGUY licences were physically handed over to the CHA of M/s E.I. Dupont Pvt. Ltd., Mumbai as per their instruction. They have provided the billing and received commission for the sale of these licences.
- He is having the knowledge that these licences are obtained by the exporters from DGFT on the basis of their export performances and after transferring them to other parties they are utilized for debiting of Customs duty at the time of import by the importer/transferree.

53. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 05/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that on being asked regarding his role in the entire scheme of purchase and sale of forged transferable licences organized by Shri Kalpessh Daftary, he stated that Shri Kalpessh Daftary was known to him since the year-2008.
- that as he was providing the services of managing the accounts of various companies and also adjustments of their profits in their books of accounts as per their directions, Kalpesshbhai Daftary asked him to provide some companies for rotation of transferable licences and on consultation with the proprietors/partners/directors of the companies he provided some companies for billing purpose only.
- that he had charged service charges for the same and also given a part of it to the proprietors/partners/directors.
- that neither he nor any of the owners of the companies/firms provided by him have ever seen any transferable duty free licence physically. They were not aware as to which licences were genuine and which were forged.
- that on being asked as to whether they had ever tried to know the authenticity of the licences they were trading in, he stated that since these companies were providing services of billing only, they had neither seen the licences nor have they even taken physical delivery and therefore, they never verified whether these licences were genuine or otherwise.
- that even he had never checked any licence physically as his job was to provide billing facility by rotating the profits and losses in various companies as stated by him earlier. He never knew from where the licences are originating and where they were finally utilized. He was rotating the billings as per the instructions of Shri. Kalpesh Daftary.
- that he was once again shown the account statement – “ZOO Account” submitted by him in his statement dated 11.06.2010, and on being asked to list out all the cash transactions mentioned as

'ATM' in the said 'ZOO' account, he requested to allow him one days time for the same.

54. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 06/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that as per his statement dated 05.08.2010 he has segregated the cash transactions shown as 'ATM' from the account maintained in the code name 'ZOO' submitted by him vide his statement dated 11.06.2010. The cash transactions segregated by him are detailed in the annexure to his statement.
- that these cash transactions totally amount to Rs.62,25,31,660/-. Out of this an amount of Rs.60,63,16,660/- was paid to different persons as instructed by Shri Kalpessh Daftary of M/s.Sunkkalp Creations Pvt Ltd.
- that in many cases, the cash has been paid to Shri Chotu, the employee of Shri Daftary and he was not aware as to what was done with the same.
- that the cash payments were also made to the other persons whose identity he is not aware of and neither is he aware of the purpose for the payment. The cash payments were made on the instructions of Shri Daftary.
- that the cash amounts were generated through the billings for trading of licences in the names of the firms, arranged by him. He explained by way of an example :

Shri Kalpessh Daftary gives them an invoice of Shivangi Enterprise for licences originally valued at Rs.100/-. As per the invoice of Shivangi Enterprise the licences are sold to Punjab Chemical and Crop Protection Ltd (PCCPL) at Rs.42. On the instructions of Shri Kalpessh Daftary M/s.PCCPL in turn sells the licences at Rs.92 to M/s.Vani Exports. M/s. Vani Exports would make payment of Rs.92 to M/s.PCCPL either by cheque or RTGS and M/s.PCCPL would retain the profit of Rs.50 and return Rs.42 to M/s.Shivangi Enterprise either by RTGS or by cheque. The profit of Rs.50 is then converted to cash and paid to Shri Kalpessh Daftary.

- that on being asked as to how the cash amount was withdrawn and from bank account of which firm/company, he stated that the cash was never physically withdrawn from any bank account at one time. In fact the company which was earning the profit was returning the profit earned in the form of cash after deducting their commission.
- that how these cash was withdrawn by them is not known to him, however as a general practice in this trade the cash is taken from some person having cash and is in need of cheque. Then that person is given cheque and in lieu of the same he gives cash of equivalent amount.

55. A further statement of Shri Surendra Kumar Kulhari, Director of M/s. Hindustan Continental Ltd, Mumbai, was recorded on 06/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that on being asked regarding purchase and sale of licence no.310526777 dtd. 02.07.09, 310523564 dtd.11.06.09, 310528212 dtd.10.07.09, 310529284 dtd.16.07.09, 310528689 dtd. 13.07.09, 310523562 dtd.11.06.09, 31531532 dtd.10.11.09, 310518177 dtd.04.05.09, 310523566 dtd.11.06.09, 310521936 dtd.29.05.09, 310522743 dtd.05.06.09, 310512901 dtd. 24.03.09, and 310522738 dtd. 05.06.09, he verified the details from his purchase and sale records and confirmed that their company had purchased these licences from M/s Vani Exports, Kolkata under two Debit Notes/Sale Invoices @ Rs.55.00% and 42.13% of the actual value of the licences. The details of purchase are tabulated as under :

Sl. No.	Licence No.	Date	Name of the Lic. Holder	Duty Amount of Licence (in Rs.)	PURCHASE INVOICE NO.	INVOICE DATE	PURCHASE INVOICE AMOUNT (Rs.)
1	310526777	02.07.09	Allanasons Limited	4470235	VE/922/09 Purchased @ Rs.55.00%	05.11.09	2458629.25
2	310523564	11.06.09	Allanasons Limited	4003373	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2201855.15
3	310528212	10.07.09	Allanasons Limited	6590018	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3624509.90
4	310529284	16.07.09	Indagro Foods Ltd.,	5626358	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3094496.90
5	310528689	13.07.09	Allanasons Limited	4776335	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2626984.25
6	310523562	11.06.09	Allanasons Limited	5753032	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3164167.60
7	310531532	10.11.09	Allanasons Limited	6005453	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3302999.15
8	310521936	29.05.09	Frigorifico Allana Ltd.,	4426478	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	1864872.00
9	310522743	05.06.09	Indagro Foods Ltd.,	7778161	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	3276935.00
10	310512901	24.03.09	Indagro Foods Ltd.,	4572385	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	1926343.00
11	310518177	04.05.09	Indagro Foods Ltd.,	5247824	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2886303.20
12	310522738	05.06.09	Indagro Foods Ltd.,	5173856	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	2179742.00
13	310523566	11.06.09	Allanasons Limited	5130380	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2821709.00

- that they have sold all these licences to M/s Reliance Industries Ltd., Dahej @ Rs.98.00%. Details of sale are as under:

Sl. No.	Licence No.	Date	Name of the Lic. Holder	Duty Amount of Licence (in Rs.)	Invoice No.	Invoice Date	Sale Amount (Rs.)
1	310526777	02.07.09	Allanasons Limited	4470235	HCL041/2009-10 Purchased @ Rs.98.00%	11.11.09	4380830.00
2	310523564	11.06.09	Allanasons Limited	4003373	HCL042/2009-10 Purchased @ Rs.98.00%	11.11.09	3923306.00
3	310528212	10.07.09	Allanasons Limited	6590018	HCL043/2009-10 Purchased @ Rs.98.00%	11.11.09	6458218.00
4	310529284	16.07.09	Indagro Foods Ltd.,	5626538	HCL044/2009-10 Purchased @ Rs.98.00%	11.11.09	5513831.00
5	310528689	13.07.09	Allanasons Limited	4776335	HCL045/2009-10 Purchased @ Rs.98.00%	11.11.09	4680808.00
6	310523562	11.06.09	Allanasons Limited	5753032	HCL046/2009-10 Purchased @ Rs.98.00%	11.11.09	5637971.00
7	310531532	10.11.09	Allanasons Limited	6005453	HCL047/2009-10 Purchased @ Rs.98.00%	11.11.09	5885344.00
8	310521936	29.05.09	Frigorifico Allana Ltd.,	4426478	HCL051/2009-10 Purchased @ Rs.98.00%	11.11.09	4337948.00
9	310522743	05.06.09	Indagro Foods Ltd.,	7778161	HCL052/2009-10 Purchased @ Rs.98.00%	11.11.09	7622598.00
10	310512901	24.03.09	Indagro Foods Ltd.,	4572385	HCL053/2009-10 Purchased @ Rs.98.00%	11.11.09	4480937.00
11	310518177	04.05.09	Indagro Foods Ltd.,	5247824	HCL049/2009-10 Purchased @ Rs.98.00%	11.11.09	5142868.00
12	310522738	05.06.09	Indagro Foods Ltd.,	5173856	HCL054/2009-10 Purchased @ Rs.98.00%	11.11.09	5070379.00
13	310523566	11.06.09	Allanasons Limited	5130380	HCL048/2009-10 Purchased @ Rs.98.00%	11.11.09	5027772.00

- that he produced original copies of purchase invoices of M/s Vani Exports, Kolkata and Xerox copies of the sale invoices issued by them. He would submit purchase and sale ledger account in respect of above licences within two days time.
- that payments for the purchase sale of these licences have been made by them to M/s Vani Exports, Kolkata from their bank account with HDFC Bank, Branch, Chandivali, Mumbai bearing no. 14718630000034, similarly payment was received by them from M/s Reliance Industries Ltd., in their above said bank account. He agreed to confirm the payment details after checking the ledgers from his accountant and also agreed to submit a copy of the Purchase and Sales Ledger in respect of these licences.

- that as stated by him in his previous statements, during the entire transaction of licences done by them during the period 2008-09 and 2009-10 they have never received any DEPB/VKGUY licence physically at their office. They have provided the billing only and they have received commission for the same.
- that he is having the knowledge that the said licences are utilized for debiting of Customs duty at the time of import by the importer.
- that as stated by him, they we have done only billing of these licences and have never seen these licences physically. Since they have never received these licences physically, they have not ascertained the genuineness of these licences. However, he confirmed that trading of all these licences were done as per the instructions of Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt.Limited and the billings were arranged by Shri Sashin Koradia of Mumbai.
- that the Sale Invoices of M/s Hindustan Continental Limited were actually printed by Shri. Sashin Koradia or as per the instructions of Shri.Sashin Koradia at his office and the signatures were done by his employee Smt.Bindi V Vora.
- that he agreed to submit the details of all purchases from M/s Vani Exports during the Fin.year-2009-10 and also the payments made for these transactions.

56. M/s. Reliance Industries Ltd, Dahej vide letter No. Nil dtd. 09/08/2010 addressed to the Assistant Commissioner of Customs, Surat, copy endorsed to DRI, Ahmedabad informed that they had paid the Customs duty amounting to Rs.6,95,53,884/- along with interest amounting to Rs.69,85,878/- vide TR6 Challan No.199/2010-11 dtd. 09/08/2010. They forwarded copy of the TR6 challan. M/s.Reliance Industries Ltd stated that the duty and interest was paid under Section 28 (2B) of the Customs Act, 1962. The duty payment was made in respect of the 13 licences/TRAs found forged under investigation by DRI. M/s. Reliance Industries Ltd, Bharuch were informed vide letter dtd.16/09/2010 that the provisions of Section 28 (2B) of the Customs Act, 1962 are not applicable in the present case as the same is hit by Explanation (1) to sub-section (2B) of Section 28 of the Customs Act, 1962. They were also informed that the case is still under investigation and therefore, the payment of duty under the said Section 28 (2B) of the Customs Act, 1962 was premature. The Commissioner of Customs, Ahmedabad was also informed similarly vide letter dtd.06/09/2010. M/s.Reliance Industries Ltd, Bharuch vide their letter dtd.12/10/2010 reiterated their claim for payment of duty under Section 28 (2B) of the Customs Act, 1962.

57. A statement of Shri (now late) Paresh G. Parekh, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 13/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was having the business of sale and purchase of various transferable export incentive licences in the name of M/s Sunkkalp Creation Pvt. Ltd., Mumbai. M/s Sunkkalp Creation Pvt. Ltd.,

Mumbai is having four directors namely, (i). He (ii), Shri Kalpessh Daftary, (iii) his wife Smt. Sangitaa Parekh and (iv). Shri Eshan Parekh his son.

- that he started his business career with a firm M/s B Parekh and Co. in the year 1981 and the office was situated at Sai Bhavan, next to Round Building, Princess Street, Mumbai-400002. The firm was having two partners Mr. Jatin Parekh and himself and the firm was doing the trading and brokerage of export incentive transferable licences. Thereafter the firm was changed to M/s Trident and Shri. Jitubhai R Mehta joined the firm along with the existing two partners. Thereafter the firm was changed to M/s Trident India Pvt. Limited with all the three partners as the directors.
- that in the year-2003-04, he separated from the business and started a firm under his proprietorship as Splendent Sun Overseas and the office was at 204, Manek Smruti, above HDFC Bank, Nehru Road, Vile Parle (East), Mumbai.
- that during July-2006 Shri. Kalpesh Navinchandra Daftary joined the firm and the firm was changed to M/s Sunkkalp Creations Pvt. Limited with himself, his wife Smt. Sangita Paresh Parekh, Shri. Kalpesh N Daftary and his son Shri. Eshan P Parekh as the four directors.
- that in M/s Sunkkalp Creations Pvt. Limited, himself and Shri Kalpessh Daftary are the active Directors, while his wife Smt Sangitaa Parekh and Shri Eshan Parekh are sleeping Directors of the company.
- that his wife and Shri Eshan are not actually looking after the purchase and sale of export incentive licences.
- that from 2007, he developed some illness, since 2008 the whole business activities of M/s Sunkkalp Creation Pvt. Ltd., were controlled and managed by Shri Kalpessh Daftary as he was not able to concentrate on the business and Shri Daftary was having good knowledge of the trade and also experience.
- that in M/s Sunkkalp Creation Pvt. Ltd., they are engaged in the trading of DEPB/VKGUY/FMS/FPS/DFIA export incentive licences.
- that Shri. Kalpesh was having a firm under the name of M/s Bansi Overseas at Rajkot and he was also engaged in the business of trading and brokerage of transferable export incentive licences at Rajkot. During that period, they knew each other as they were in the same trade and also sometimes sold/purchased licences through his firm.
- that he was also associated with him previously in a work of conversion of shipping bills at JNPT Mumbai. During that period he (Shri Daftary) was visiting Mumbai frequently and was meeting him regularly.
- that Shri. Daftary was having some family problem and after that in the year-2006 he shifted to Mumbai after the death of his father and getting divorced from his wife. After coming to Mumbai he was also in need of some support to start a new business. As he was known to him and he was also managing his business alone he offered that he (Shri Daftary) may join him in my business and they can work together.

- that in 2006 they started M/s Sunkkalp Creations Pvt. Limited. In the said company his wife and son were also directors and Shri. Kalpesh was holding 40% of the shares and they three family members were holding the remaining 60%.
- that as stated by him, since his illness and his deteriorating health he was not able to attend office on regular basis and attend business deals. Thereafter from 2008 he allowed Shri.Kalpesh Daftary to handle the business of Sunkkalp Creations completely and he was doing quite good work. He (Daftary) also utilized his old acquaintances in getting more and more exporters to sell their licences through them and they earned good brokerage.
- that as a routine we were keeping copies of these licences and their connecting documents like the RA's, transfer letters etc as record.
- that since he was not able to put his signature properly in the bank cheques and other bank documents, the bank accounts of M/s Sunkkalp Creations Pvt. Limited were also controlled by Shri.Kalpesh Daftary and he and Smt.Sangitaa were signing the cheques on behalf of the company.
- that during 2009 February he was very much ill and was hospitalized for about two months and after that he was not attending office and neither looking after the works of the company and the entire work was controlled by Shri.Kalpesh Daftary.
- that regarding the utilization of forged DEPB/VKGUY licences at Dahej Port being investigated by DRI and the role of their company and Shri.Kalpesh Daftary in the forgery, he states that since he cannot speak, he heard regarding the same and searches of DRI at their office and residence premises, he was actually not aware as to why they were being targeted.
- that Shri.Daftary informed him that his name was being falsely implicated by some other person and he was actually not involved. Shri Daftary also told him that since they have raised some debit notes, they were being investigated by DRI.
- that he could not express his feelings so he was not taking much interest as he had full faith in Kalpesh Daftary and believed that he cannot be involved in such forgery case.
- that on being asked as to why they were not residing at their regular residence since April-2010 till July-2010, he states that since last one year they had taken a flat on rent in the adjoining building just next to their office premises. He was resting in the flat at day time.
- that about April-2010 Shri.Kalpesh told that they should go on vacation and then they went to some nearby place for vacation with children. Then they continued to stay in the said flat which they had rented as told by Kalpesh and he also told that it was good to avoid DRI and staying at their regular residence will be problem and they will be falsely implicated and harassed.

58. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 19/8/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :

- that he confirmed the facts stated in his earlier statements dtd.11/5/2010, 12/5/2010 and 13/5/2010;
- that in the first lot of the forged licences all the signatures appearing on the licences i.e. signatures of the FTDO of DGFT appearing on the front side and the signatures of the Customs officers on the reverse side were forged by Shri Niyaz Ahmed of Kanpur;
- that he and Kalpessh Navinchandra Daftary planned to have only partly printed copies of these forged licences and asked Shri Niyaz Ahmed to give blank stationery but Shri Niyaz did not agree to this;
- that he and Kalpessh Navinchandra Daftary decided that they would get only the details of the front side printed by him (Shri Niyaz Ahmed) and the remaining work would be done by him and Kalpessh Navinchandra Daftary;
- that in the remaining lots only the front side of the forged VKGUY/DEPB licence was printed by Shri Niyaz and given to him and Kalpessh Navinchandra Daftary and then the remaining part and the RA's were done by him;
- that the signatures of the FTDO of DGFT appearing on the front side of the forged licences was also forged by him in many cases;
- that regarding the signatures of the Customs officers on the reverse side of the forged licences, he stated that all the signatures were done by him and also the endorsements on the reverse side of the forged licences were done by him;
- that regarding the printing of the forged Release Advice for the forged VKGUY licences he states that in the initial lot the release advices were printed by Shri Niyaz Ahmed at Kanpur but in the subsequent lots the release advices were printed by him at Rajkot and also the signatures of the Superintendent of Customs and the Assistant Commissioner of Customs was also done by him using pens of different ink colours;
- that he remembered to have forged the signatures of the Dy./Asst. Commissioner of Mangalore Custom House using a green colour ink pen as Shri Kalpessh informed him that the Dy./AC, Mangalore Customs actually uses a green colour ink as was appearing in the genuine licences of the same number and were dealt by Shri Kalpessh Navinchandra Daftary;
- that regarding the forged transfer letters of various exporters attached with the forged licences, he confirmed that these transfer letters were also forged by him using the forged letter heads of these exporters and after forging the signatures;
- that he recollects that some of the used rubber stamps and their letter heads were also recovered by DRI from the premises located at 311, Somnath Commercial Complex, Near S.T. Bus Stand, Rajkot and he confirms that these forged rubber stamps were actually used for forging the stamps of the original licence holders on their forged transfer letters;
- that the signatures were also forged by him using the pens of different ink colours;
- that regarding the rubber stamps and signatures of the bank attestations appearing on the forged transfer letters he states that these forged rubber stamps were put using the rubber stamps

prepared by Shri Vijay Gadhiya and they were affixed on the transfer letters;

- that he recollects that some rubber stamps and their negatives and butter paper prototypes were recovered by DRI from the residence of Vijay Gadhiya at Rajkot and these rubber stamps were actually used for forging the stamps for bank attestation on the transfer letters;
- that regarding the signatures of the bank managers he stated that these signatures were also forged by him and in some cases by Shri Vijay Gadhiya;
- that regarding the signature of the Asstt. Commissioner of Customs, Custom House, Mangalore appearing on the forged letters of verification of genuineness received at Dahej Customs he stated that these forged letters were actually printed by him and the signature of the Asstt. Commissioner of Customs, Custom House, Mangalore appearing on these forged letters were also forged by him;
- that in the case of the last lots of forged licences, these forged licences were actually received at the office of Shri Kalpessh Navinchandra Daftary at Mumbai and the forging of the signature of the FTDO, the forged endorsements on the reverse side of the licences, the forged signatures of the Custom officers on the reverse side of the licence were all done by him in the presence of Shri Kalpessh Navinchandra Daftary at a hotel in Mumbai;
- that the corresponding forged release advices, the transfer letters, the list of shipping bills attached with the licence and the annexure of the forged licences were printed by him at Rajkot and taken to Mumbai and after attaching them together with each forged licence;
- that he had forged all the signatures of the FTDO, the Custom officers, the bank attesting officers, sitting at the hotel;
- that Shri Kalpessh Navinchandra Daftary was always with him during this time and he assisted him in showing the original signatures from the copies of the genuine licence and other genuine documents and he was forging the signatures after some practice;
- that regarding the forgery of the round seal of Mangalore Custom House, he stated that one original rubber stamp of DGFT Rajkot was forged by Shri Niyaz Ahmed and sent from Kanpur and then the Ashok emblem was cut out from the said round seal, this Ashok emblem was affixed in the middle of the round seal of Mangalore Customs fraudulently prepared by Shri Vijay Gadhiya;
- that since he was having the round seal of Mangalore Customs only, in all the forged licences he had shown the port of registration as Mangalore Sea;
- that all round seals of the DGFT office are made of brass and not rubber seal;
- that the genuine DEPB licences were actually sold by Shri Kalpessh Navinchandra Daftary and the forged licences were printed by Niyaz Ahmed on the basis of the copies of the genuine licences provided by him;
- that he confirmed that all the work of forgery was done as per the instructions and guidance of Shri Kalpessh Navinchandra Daftary

as he had the original copies of all the genuine licences and was having knowledge as to whom they were actually sold.

59. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 06/09/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia:

- that he produced bills containing pages from 1 to 17, of Shree Maruti Courier Service Pvt. Ltd., Rajkot, for the period from 01.03.2009 to 31.08.2009 except 01.05.2009 to 31.05.2009 in respect of documents / parcels sent from his firm M/s Krish Overseas, Rajkot to various persons / firms. The said bills contained date wise consignee name to whom documents/dak were sent.
- that he produced a list which contains details of 20 licences. As per his memory, out of these 20 licences, licences mentioned at sr.no. 1 to 9 and sr. no.17 to 20 of said list are forged licences and they have been utilized. However, at present he does not remember the name of final utilizer to whom the licences were sold, he would confirm the details of sale of the 13 forged licences and where they were utilized at a later date.
- that on being asked, regarding the remaining 07 licences of the list, he requested for some time to explain the details in respect of remaining other 7 licences.

60. Shri Piyush Viramgama had in his statements stated that he was introduced to Shri Niyaz Ahmed by one Shri Hiten Parekh. Therefore, a statement of Shri Hiten Parekh was recorded on 07/09/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he his brothers are Shri Jatin Parekh and Shri Paresh Parekh. Shri Jatin Parekh is having firm in the name of M/s Trident (India) Ltd., which is situated at Upper Floor 7-8, Satkar Building, Behind Lal Bungalow, C.G. Road, Ahmedabad, and is engaged in the trading of export incentive licences. Shri Paresh Parekh is also having business of trading of export incentive licences and he is running the said business under his firm M/s Sunkalp Creation P. Ltd., Mumbai.
- that initially his brothers Shri Jatin Parekh and Shri Paresh Parekh started their business of trading and brokerage of export incentive transferrable licences with a firm M/s B. Parekh & Company at Mumbai. Thereafter, the name of firm was changed to M/s Trident (India) Ltd. Later on they both separated their business and Shri Jatinbhai shifted to Ahmedabad and continued his business in name of firm as M/s Trident (India) Ltd. Shri Pareshbhai continued with his business in Mumbai, he does not remember name of his firm but at present he is running his business in the name of firm M/s Sunkalp Creation P. Ltd., Mumbai.
- that initially he was assisting his brothers in their business of trading and brokerage of export incentive transferable licences, when the name of firm was M/s B. Parekh & Company. Thereafter,

in the year 1982, he separated from them and shifted to Ahmedabad and obtained CHA licence from the Customs Department at Ahmedabad.

- that he opened a CHA firm in the name of M/s Ravi Air Cargo and started Customs clearance work at Air Cargo, Ahmedabad. However, he surrendered his CHA Licence No.1/82 and went back to Mumbai in the year-1987.
- that in Mumbai with the help of some friends he started work of assisting some CHA's in custom clearances at Air Cargo, Mumbai; Nhava Sheva Port etc. He also assisted many importers of Mumbai for making their customs clearances work. He did this work upto 2005.
- that after the year 2005 he practically retired from active life and was occasionally doing work of brokerage of export incentive licences to any party in Ahmedabad or Mumbai as some of his old importers were still contacting him for the same.
- that on being asked as to how he knew Shri Piyush Viramgama and Shri Niyaz Ahmed, he stated that during the year 2005 he had met one person by the name of Shri Haseeb at Mumbai. He was a representative of some leather exporters of Mumbai and was coming to Air Cargo Complex at Mumbai for some export related work. He informed him that basically he was from Kanpur and was working in Mumbai since long time.
- that after having met two to three times, he (Shri Haseeb) informed him that one of his close friends Shri.Niyaz Ahmed is based in Kanpur and is dealing in export incentive transferable licences. Subsequently he (Shri Haseeb) introduced him to Niyaz Ahmed at Mumbai when Niyaz had come there for some export related work and he remembers to have met him at Air Cargo Complex, Mumbai.
- that since he (Niyaz) was also in the licence trading business he (Niyaz) gave him his contact numbers and informed that in case any requirement of licence arises he could can contact him.
- that during the year-2005 he was in requirement of some export incentive licences to be sold to some importer at Ahmedabad. He contacted his brother Pareshbhai at Mumbai for the same and he informed him that Shri.Piyush Viramgama was dealing in trading and brokerage of transferable licences at Rajkot in the name of M/s Bansi Overseas.
- that Pareshbhai also told him that he could get licences from Piyush for sale in Ahmedabad and he contacted Piyush and got some licences from him and sold it to an importer at Ahmedabad. In this way he came to know about Piyush Viramgama. During the period he had also visited the office of Bansi Overseas at Rajkot.
- that during the year 2006 Shri.Niyaz informed him that he was having some licences of M/s LML Limited, Kanpur and he wanted to sell them in the market. He had informed him that since he was not in day to day touch with the licence trading market he (Shri Niyaz) may contact Shri.Piyush Viramgama of Rajkot for selling them. He introduced Piyush and Niyaz to each other. He does not have any idea whether they made the deal or not.
- that on being asked regarding the details of Niyaz Ahmed he stated that he is not aware about what he is doing, since after introducing

Niyaz to Piyush he never contacted them to know as to whether they are still in touch or otherwise.

- that he is not aware of the name of the firm under which Niyaz deals in licences. He does not know his address at Kanpur.
- that he had the mobile number of Niyaz but as he has not had any contact with him for many years, he does not presently remember the same. He does not remember the mobile number of Piyush Viramgama.
- that he was aware that Kalpesh Daftary of Rajkot had joined the business of Shri.Pareshbhai at Mumbai in the year-2006, however he met him only in Jan-2010 when he had gone to Mumbai to see Pareshbhai who was seriously ill at that time.

61. A statement of Shri Arvind Vithal Sonawane, Export Executive of M/s.Allanasons Ltd, Mumbai was recorded on 13/09/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he joined M/s Allanasons Limited in the year-2005 as Export Executive and since then he is working in the same position. He is reporting to Mr. Bashir Jasani, Manager, M/s Allanasons Limited and in his absence he is reporting to Mr.K.C Mehta or Mr.T.K. Gowrishankar both Directors of M/s Allanasons Limited.
- that his company M/s Allanasons Limited is engaged in the export of various agricultural processed food (frozen boneless buffalo meat, frozen fruit pulp, coffee, spices, chilled sheep/goat meat etc.).
- that exports are taking place majorly from Nhava Sheva, Mumbai, ICD Garhi Harsaru, ICD Dadri, ICD Loni, Ghaziabad, ICD Bangalore, Mangalore Sea Port, Delhi Air Cargo and Mumbai Air Cargo.
- that as a part of his job he is looking after the documentation work relating to the post export formalities like collecting the copies of Shipping Bills of his company from the respective ports of Export through the concerned Custom House Agents, collecting the bank realization certificates of the exports from the respective banks.
- that after collecting the documents these documents are forwarded to the specific officers of the company for filing applications with the DGFT offices for obtaining the export incentive licences.
- that they obtain various types of licences from DGFT like DEPB, VKGUY (previously known as VKUY), FMS (Focus Market Scheme). All these licences are freely transferable licences and transferred/sold to various importers through brokers/traders of licences.
- that their company is obtaining a specific type of VKGUY licence from DGFT, Delhi which is under actual user condition, now it can be transferred among to status holder.
- that he is aware that the transferable DEPB, VKGUY licences sold/ transferred by their company are utilized by various importers during the course of clearance of their imports in lieu of payment of Customs duty, i.e instead of making the payment of custom duty in cash the same amount of duty is debited from these licences/ the Release Advices issued from the concerned licences.

- that Release Advices are issued by the Customs authorities of the Port of registration of the DEPB/VKGUY licences in favour of the Customs at the port of utilization of these licences.
- that as routine practice they are obtaining the Release Advices from the concerned port of registration in favour of the importer as per their requests.
- that on being asked regarding the role of the various licence traders/brokers of the licences being transferred/sold by them, he stated that after obtaining the licences from DGFT they inform these brokers/traders for getting suitable customers for these licences as they are not able to find customers by themselves. Then the broker/trader informs them regarding the customer and they are preparing transfer letters in the name of the importer.
- that the Transfer letters of M/s Allanasons Limited are being signed by the authorized signatory Shri.M Parekh.
- that further details regarding the sale of transferable licences by their company may be given in details by Shri.Prasad Vasant Kane of their company.
- that he was shown print out of e-mail dated 25.02.2010 shown as sent from his e-mail account avsonawane@allana.com to info@sunkkalp.com and lic@sunkkalp.com regarding RA Confirmation.
- that on further reading the print out, he noticed that it shows that the message is shown to have been received from Mohammed S Saleem/Saheebabad/India/Allana. The attachment of the said mail is a ms-word document in the form of letter C.No.S-01/02/2009 IMP(Pt-II) dated 25.02.2010 issued by the Superintendent of Customs(Appg-I), NCH, Mangalore from the office of the Commissioner of Customs, New Custom House, Penambur, Mangalore and is also bearing the Round Seal of Mangalore Custom House.
- that the details of the letter shows the Confirmation of the above mentioned RA's being issued from Mangalore Custom House and the letter is addressed to the Superintendent of Customs, Custom House, Dahej.
- that on going through the details of the licence numbers, he stated that he is unable to comment as to whom these licences were actually sold to by their company.
- that he requested that he be allowed to access his e-mail from the computer and check the exact e-mail he had received and sent on that day as he was not able to recall the exact mail received on the said date.
- that after checking the incoming and outgoing mails in the Inbox folder and Sent folder for 25.02.2010 for all the mails received by him on 25.02.2010 from Mohammed S Saleem/Saheebabad/India/Allana he produces a copy of the e-mail dated 25.02.2010 received from Mohammed S Saleem/Saheebabad/India/Allana who is an employee of his company at Sahibabad, U.P and confirms that this is the only e-mail received by him in his said e-mail account from Mohammed S Saleem/Saheebabad/India/Allana and it is clear that the contents of the said mail pertains to some other issue and not to the Confirmation of RA's.

- that he checked the outbox of his mail account for 25.02.2010 and noticed that he had not forwarded any mail on that day to info@sunkkalp.com or lic@sunkkalp.com, and as a fact of confirmation to the same he produced a printout of the page of the Sent box folder of his e-mail account for 25.02.2010 which shows that no such e-mail was forwarded by him on that date.
- that on being asked to explain the reason for such mismatch in the above two e-mails, he stated that the print out of e-mail shown to him today was actually never received by him and neither had he forwarded such e-mail from his e-mail account to any person.
- that as per his knowledge the e-mail account lic@sunkkalp.com was actually used by Shri.Vishal Vyas, an employee of M/s Sunkkalp Creations Pvt.Limited of Mumbai and the said firm was engaged in the trading/brokerage of export incentive licences and they have sold many licences through the said firm.
- that he produces a copy of the e-mail dated 12.01.2010 received in his e-mail account from Mohammed S Saleem alongwith an attachment. This mail was actually forwarded by him from his e-mail account to info@sunkkalp.com and lic@sunkkalp.com on the same day.

62. A further statement of Shri Vijay Amrutlal Gadhiya, Proprietor of M/s.Shivangi Enterprises and employed as Supervisor in M/s.Krish Overseas was recorded on 17/9/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :

- that the facts stated by him in his statements dtd.12/5/2010 and 13/5/2010 were true;
- that M/s. Shivangi Enterprise, Shop No.11, Atika Industrial Area, Rajkot was started by him in the year 2005-2006 for doing job work of machinery parts on the lathe machine;
- that his firm's current account was with HDFC Bank, Rajkot and the account number was 1012020002162;
- that M/s.Shivangi Enterprises in which he was doing lathe machining work was not doing well and he was running in loss;
- that he had decided to join Shri Piyush Surendra Viramgama's firm M/s.Krish overseas, Rajkot;
- that at that time Shri Piyush Surendra Viramgama informed him that he should open a current account with HDFC Bank, Rajkot;
- that as per the instructions of Shri Piyush Surendra Viramgama he had opened a new account with HDFC bank, Kalawad Road Branch, Rajkot and the account number was 03729000002927;
- that as he was an existing customer of HDFC Bank he did not require any introducer for opening this account;
- that he had permitted Shri Piyush Surendra Viramgama to use this account No.03729000002927 for his business purpose;
- that Shri Piyush Surendra Viramgama was in need of this account for doing the business of forged licences;
- that as per his knowledge, all the forged licences were sold to either M/s.Hindalco or M/s.Reliance and these two companies did not make cash payments and for the payments received from them, Shri

Piyush Surendra Viramgama needed a bank account, therefore, he got him to open this bank account;

- that he came to know about all the details because as admitted/confirmed by him in his earlier statements he had helped Shri Piyush Surendra Viramgama in forging the documents viz. Licences, release advises, bank attested documents and therefore, he was having full knowledge about these forged licences;
- that since he was also looking after the work of operating bank account, he knew as to how much and from where the money was received and how much and to where the money was transferred from this bank account.
- that he had opened the current account in July, 2008 in the name of M/s.Shivangi Enterprise as per the directions of Shri Piyush Surendra Viramgama and the a/c number was 03729000002927;
- that the entire amount deposited in this account pertained to the proceeds received towards sale of forged licences; whenever sale of forged licences took place, the payment towards the same was received in the account of M/s.Shivangi Enterprise at HDFC bank through RTGS/Cheque/Transfer etc.;
- that he was shown the account statement of M/s.Shivangi Enterprise, Rajkot HDFC bank a/c no.03792000002927;
- that the account statement is pertaining to the period from July, 2008 to 31/03/2010 and contains the details of all the credit-debit transactions which had taken place during that period;
- that the credit transactions of the said statement contained the date wise details of amounts credited and from these transactions it was apparent that a total of Rs.35,25,11,530/- was shown on the credit side of the said bank account statement;
- that the said amount credited in his bank account was not his money but all this money was got deposited by Shri Piyush Surendra Viramgama in his account;
- that he was not concerned with this amount and had not benefitted from this amount;
- that as stated by him earlier, this account was opened as per the directions of Shri Piyush Viramagama for the benefit of Shri Piyush Surendra Viramgama and use in the business of Shri Piyush Surendra Viramgama;
- that he had handed over the cheque book of this bank account to Shri Piyush Surendra Viramgama after signing all the leaves of the cheque book on both from and reverse side;
- that Shri Piyush Surendra Viramgama was operating this account and Shri Piyush Surendra Viramgama got all the amount credited and that such amount is relating to proceeds received towards sale of forged licences;
- that the debit side of the said account statement contained the date wise details of the amounts debited and from these transactions it is apparent that a total of Rs.35,35,11,530/- was shown on the debit side of the said bank account statement;
- that all these debit transactions were done by Shri Piyush Surendra Viramgama from his account;
- that whatever amount was debited from his bank account in the name of (i) Indiyana Marketing (ii) Indiyana Shoes (iii) Niyaz Ahmed

(iv) Nizam Ahmed (v) Qamar Jahan (vi) Ashok Kumar Gupta (vii) Unique Fabricator (viii) A.K.Gupta & Sons (ix) A.K.Gupta (x) Indiyana Enterprise (xi) Indiyana have all been transferred to one Shri Niyaz Ahmed at Kanpur;

- that he knew all these details because he had helped Shri Piyush Surendra Viramgama in preparing the forged licences.

63. The Union Bank of India, Kaushalpur Branch, Kanpur vide letter No. BM:Misc:2010 dtd.5/10/2010 forwarded the account statement and copies of cheques pertaining to account No.435802010502698 held by Shri Ashok Gupta.

64. A statement of Shri Gangadhar V. Shetty, Assistant Manager of M/s.Ganesh Shipping Agency, Mangalore was recorded on 18/10/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that in the year 1982 he joined M/s Sri Ganesh Shipping Agency, Sri Ram Building, 4-152/14, Kottara Chowki, Derebail, Mangalore as a clerk and was looking after work relating to Customs documentation. Thereafter, from time to time he got promotion and at present he is working as Assistant Manager. M/s Sri Ganesh Shipping Agency is a partnership firm and having three following partners.

- (i). Smt. B.Madavi Shetty
- (ii). Shri B. Nagaraja Shetty
- (iii). Shri B.Nithyananda Shetty

- that he has he had passed examination conducted under Regulation 8 of the Customs House Agent Licensing Regulation and is holding Card -F bearing No.10/2007.
- that the following three persons are working under him.

- (i). Shri Kiran Kumar Shetty – Card-H holder, looking after liaisoning working relating to import.
- (ii). Shri Prashant Chowta - Card-H holder, looking after liaisoning working relating to export and issuance of TRA.
- (iii). Shri Shivanand Shetty - looking after Misc paper work.

- that M/s Sri Ganesh Shipping Agency is a Custom House Agent and having CHA Licence No.2/80 issued by Custom House, Mangalore. They are having three branch offices, at Mangalore, Bangalore and Karwar. Mangalore Branch office telephone numbers are 0824-2459229/219, Fax No.0824-2458003.
- that they are doing Custom clearing work for mainly Timber importers and Cashew, Coffee and fish products exporters. Their main timber importing clients are M/s Jawahar Saw Mill, Mumbai, M/s Associate Lumbers, Mumbai, M/s Sharp Enterprises, Latur etc. Their major Cashew, Coffee and fish product exporter clients are M/s Mangalore Cashew, M/s Bola Raghvendra Kamat, M/s Bola

Sunder Kamat, M/s Gayatri Exports, M/s Raj Fish & Oil Company, M/s Mukka Sea Foods etc.

- that they do the custom clearing work for their clients at Mangalore Port.
- that some of their exporter clients also give them export incentives licences such as DEPB and VKGUY duly issued by respective DGFT authority, for registration at Mangalore port.
- that they used to get issue RA from Mangalore Customs in respect of licences registered at Mangalore port
- that the export incentive scheme licences are procured by their clients and handed over to their firm. They get these licences verified and registered by the Superintendent of Customs, at Mangalore. Thereafter these licences are sold by the exporters and the purchasing importer or the agent through whom the importer had purchased the licence sometimes approach them for issue of Release Advice, confirmation of genuineness of Release Advice etc.
- that on receipt of the request for verification of the genuineness of the Release Advice, the Superintendent of Customs addresses the concerned port authorities in favour whom the RAs are issued. Once, the RA's are verified, the credit of duty mentioned therein in the licences/RAs are availed/debited by their clients at their port of import.
- that regarding their connection with M/s Sunkalp Creation Pvt. Ltd., Mumbai, he states that in the year 2007-08, one person who introduced himself as Shri Kalpesh Daftary, contacted him on their office telephone and informed him that he is Director of M/s Sunkalp Creation Pvt. Ltd., Mumbai.
- that he (Shri Daftary) also informed him that his firm is engaged in trading of export incentive licences and asked him to get TRA issued for him in respect of licences which were sold through his firm and registered at Mangalore Port. He offered him Rs.2000/- per TRA. He accepted his (Shri Daftary) offer and started working for him.
- that he does not remember whether Shri Kalpesh Daftary had while talking to him for the first time give the reference of any other firm or person.
- that Shri Kalpesh Daftary used to send him original licence and transfer letter through Blue Dart courier or First Flight Courier to him at M/s Sri Ganesh Shipping Agency's office address under M/s Sunkalp Creation P. Ltd.'s letter head.
- that on the basis of these documents, he with the help of Shri Prashant Chowta get the TRA issue and send the original TRA in sealed cover, original licence and transfer letter to Shri Kalpesh Daftary at his Mumbai office address.
- that for the assistance provide by Shri Prashant Chowta, he paid him Rs.500/- per RA.
- that after issue of the RA, he issues invoice showing "Malini G. Shetty" as consulting firm for recovery of liaisoning charges from M/s Sunkalp Creation Pvt. Ltd., and Shri Kalpesh used to transfer the said amount to either his bank account or his wife's bank savings account no. 101001010004845. He produced the bank statement for the period from 03/04/2007 to 31/07/2010 in respect of his Canara Bank account and for the period from

21/08/2008 to 31/07/2010 in respect of State Bank of Mysore account.

- that he would submit copy of the bank statement of his wife's account within 7 days.
- that one of his (Shri Daftary) employee- Ms. Alean Khambhatta used to talk him on phone in this regard.
- that he had never personally met or seen Shri Kalpesh Daftary of M/s Sunkalp Creation. Pvt. Ltd.
- that he also used to talk to another person in M/s.Sunkalp Creation Pvt Ltd with regard to the issue of RA, however, he presently do not recall his name.
- that the said person's mobile no. is 09930259613.
- that he does not know Shri Piyush Viramgama or M/s Krish Overseas, Rajkot.

65. A statement of Shri Vinod Poovappa D.V, Superintendent, Central Excise & Customs, Mangalore was recorded on 21/10/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he is working as a Superintendent of Central Excise & Customs in Customs Commissionerate, Mangalore and is presently posted at International Airport, Mangalore from June-2010 onwards. During June-2009 to June-2010 he was posted with Custom House, Penambur, Mangalore.
- that in the Custom House he was posted in the Appraising section and was working as Appraiser. As an Appraiser he was handling the appraising work pertaining to imports under Chapter 01 to Chapter 50, additionally he was also looking after the work of Licence Section.
- that in the licence section he was overlooking the duties of registration of licences, issuance of release advice, additionally he was holding the charge of EDI section also.
- that in Mangalore Custom House regular Appraisers are not posted and the work of appraising is being looked after by the Superintendents on regular basis.
- that during the period of his posting at Mangalore Custom House the major importers were M/s Mangalore Refineries Private Limited; M/s Udipi Power Corporation Limited, M/s Ruchi Soya Industries Limited, M/s Rajashree Packagers Limited, M/s Mangalore Chemicals and Fertilisers Limited etc.
- that in Mangalore Custom House the import bills of entries and export shipping bills are filed and assessed in the EDI system and the EDI system is operational in the Custom House since the year-2000.
- that in the Licence Section the transferable duty free licences under different export promotion schemes like DEPB, FMS, FPS, VKGUY, DFRC, Advance authorization etc are produced by the importers for registration with the Appraising Section. These licences are issued by the DGFT offices. These licences are then registered in the EDI system and the EDI system generates a registration number to each licence.

- that in the EDI system any Licence can be registered only once and the EDI system will never accept any duplicate licence of the same number. Once the licences are received at the Appraising Section for registration the same are processed on file and after approval of the concerned Asstt./Deputy Commissioner the licence is forwarded to the EDI section for registration. After successful registration of the licence a signature is appended on the reverse side of the licence alongwith the stamp which marks the successful registration of the licence. After this the licence is returned back by the EDI section to the Appraising Section. Thereafter as per the requirement, if the licence is required to be utilized at Mangalore Port the same is debited in the bill of entry and the details of the bill of entry is endorsed on the reverse side of the licence along with the balance amount, if any. In case the licence is intended to be utilized at some other port in India, a release advice for the licence value is issued in favour of the port of utilization.
- that the Release Advice is signed by the Superintendent/Appraiser of the appraising section and countersigned by the Asstt./Deputy Commissioner of the appraising section.
- that during his period in the appraising section of Mangalore Custom House he was reporting to his Deputy Commissioner Shri. E. Sukumaran. Shri Sukumaran is presently posted to Central Excise, Calicut.
- that regarding the release advices issued by Mangalore Custom House in favour of Dahej Custom House during the period 2009-10, he stated that he does not remember exactly but he might have signed some release advices in respect of some licences for being utilized at Dahej, Magdalla or any other Custom House in Gujarat.
- that he produced a list all the Release Advices issued by Mangalore Custom House for being utilized in the ports of Gujarat like Dahej (INDAH1); Magdalla (INMDA1); ICD Dashrath (INBRC6); Okha (INOKH1) and Navlakhi (INNAV1).
- that out of these only the release advices issued between 25.06.2009 to 07.06.2010 were signed by him and the remaining might have been signed by the predecessor officers officiating as Superintendent, Appraising Section, Custom House, Mangalore, namely Shri.S Shiva Prasad and Shri.G Nataraj.
- that on being asked the name and contact details of the Custom House agents approaching Custom House Mangalore for obtaining Release Advices in favour of Gujarat Ports, he stated that one of the Custom House agents were M/s Ganesh Shipping Agency, Mangalore for which Shri.Gangadhar Shetty was the contact person having mobile number-09845085089.
- that one Shri. Prashant was also approaching them on behalf of M/s Ganesh Shipping in absence of Shri.Gangadhar,
- that the other CHA firm was M/s Cargo Links, Mangalore for which Mr. Sandeep was the contact person and his mobile number is 09880704606.
- that he was shown the signatures and rubber stamps appearing on the reverse side of 13 VKGUY licences, said to be of Vinod Poovappa D.V. i.e himself :

Sl. No	Licence No.	Licence Date	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder
1	310526777	02.07.09	2476	10.11.2009	4470235	0388066415
2	310523564	11.06.09	2468	10.11.2009	4003373	0388066415
3	310528212	10.07.09	2475	10.11.2009	6590018	0388066415
4	310529284	16.07.09	2464	10.11.2009	5626358	0388066415
5	310528689	13.07.09	2465	10.11.2009	4776335	0388066415
6	310523562	11.06.09	2474	10.11.2009	5753032	0388066415
7	310531532	10.11.09	2467	10.11.2009	6005453	0388066415
8	310521936	29.05.09	2459	10.11.2009	4426478	0388066415
9	310522743	05.06.09	2462	10.11.2009	7778161	0388066415
10	310512901	24.03.09	2460	10.11.2009	4572385	0388066415
11	310518177	04.05.09	2461	10.11.2009	5247824	0388066415
12	310522738	05.06.09	2463	10.11.2009	5173856	0388066415
13	310523566	11.06.09	2473	10.11.2009	5130380	0388066415

- that he has read and understood the documents and minutely examined the signatures and rubber stamps appearing on the reverse side of the licence and on the release advice and confirms that all the signatures appearing on the above licences and release advices and the rubber stamps are forged.
- that the same is also evident from the impression of the rubber stamp which is different from the genuine rubber stamp being used by him during that period.
- that he also confirmed that the format and printing of the forged release advices are different from the genuine release advices being generated by the EDI system at Mangalore Customs.
- that these release advices are shown to be issued for utilization at Dahej Port which is wrong as no such licences were registered at Mangalore Port and neither any such release advices were signed by him.

66. A statement of Shri E. Sukumaran, Deputy Commissioner of Central Excise & Customs, Calicut was recorded on 22/12/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he is working as a Deputy Commissioner of Central Excise & Customs in Customs Commissionerate, Calicut Central Excise and presently posted at Central Excise Division Calicut and holding additional charge of Central Excise Division Kannur from August-2010 onwards.
- that in the year July-2007 he was posted to Mangalore Customs Commissionerate and further posted with Custom House, Penambur, Mangalore where he worked upto July-2010. In the Custom House he was handling the charges of Appraising Section, EDI, Prosecution, Legal, Adjudication and occasionally he was also posted with International Airport, Mangalore.
- that in the Appraising section he was supervising the duties of registration of licences, issuance of release advice and issuance of confirmation letters.

- that he was counter signing on the Release Advice and the letters for verification of genuineness of the release advice were also signed by him.
- that being a supervisory head he is unable to recollect each and every documents signed by him unless they are shown to him.
- that during the period 2008-2010 he was being assisted by many superintendents of central excise and customs who were directly looking after the work of licence section and they were namely Shri.Vinod Poovappa, Shri.S.Shiva Prasad, Shri.G.Nataraj and Shri.Srinivas Igal.
- that in Mangalore Custom House regular Appraisers are not posted and the work of appraising is being looked after by the Superintendents on regular basis.
- that in Mangalore Custom House the import bills of entries and export shipping bills are filed and assessed in the EDI system and the EDI system is operational in the Custom House since the year-2000.
- that in the Licence Section at Custom House, Mangalore transferable duty free licences under different export promotion schemes like DEPB, FMS, FPS, VKGUY, DFRC, Advance authorization etc are produced by the importers for registration with the Appraising Section. These licences are issued by the DGFT offices. These licences are then registered in the EDI system and the EDI system generates a registration number to each licence.
- that in the EDI system any Licence can be registered only once and the EDI system will never accept any duplicate licence of the same number. Once the licences are received at the Appraising Section for registration the same are processed on file and after approval of the concerned Asstt./Deputy Commissioner the licence is forwarded to the EDI section for registration.After successful registration of the licence a signature is appended on the reverse side of the licence alongwith the stamp which marks the successful registration of the licence. After this the licence is returned back by the EDI section to the Appraising Section.
- that thereafter as per the requirement, if the licence is required to be utilized at Mangalore Port the same is debited in the bill of entry and the details of the bill of entry is endorsed on the reverse side of the licence along with the balance amount, if any. In case the licence is intended to be utilized at some other port in India, a release advice for the licence value is issued in favour of the port of utilization. The Release Advice is signed by the Superintendent/Appraiser of the appraising section and countersigned by the Asstt./Deputy Commissioner of the appraising section i.e himself.
- that during his tenure at Custom House, Mangalore he was in-charge of the Appraising Section and the Appraising Section is the section from where the Release Advices are issued in respect of the duty free transferable licences which were registered at Mangalore Custom House.
- that as a Asst./Dy. Commissioner of the appraising section he was also having the password of the EDI system and once the licences are registered in the system the same are visible in the menu of the

Asst./Dy. Commissioner. However as a Asst./Dy. Commissioner he was looking into the file only after the same was perused before him alongwith the print out of the Release Advice for counter signature.

- that as and when he was transferred and relieved from Custom House, Mangalore he had surrendered his password and the same was killed by the system incharge.
- that he does not exactly remember the release advices issued by Mangalore Custom House in favour of Dahej Custom House during the period 2008-09 and 2009-10, but he might have signed release advices in respect of licences for being utilized at Dahej, Magdalla or any other Custom House in Gujarat.
- that as a Asst./Dy. Commissioner he was signing only on the release advice alongside the signature of the Superintendent/Appraiser of Customs.
- that he minutely verified the signatures appearing on the said Release Advices above the stamp bearing impression as "Asstt. Commissioner of Customs (Ports), Panambur, Manglore-10" also in Hindi language.
- that on going through the impression of the said rubber stamp he stated that the rubber stamp is not the genuine rubber stamp used at Mangalore Custom House, because the rubber stamp used reads as "Asst. Commissioner of Customs (Docks), Penambur, Mangalore". There is no post of Asst. Commissioner of Customs (Docks), Penambur, Mangalore in Mangalore Custom House.
- that he verified each and every signature appearing on the Release Advices and confirmed that all the signatures are forged and not done by him and puts such endorsement on the body of each release advice as a confirmation to the facts stated by him.
- that he was shown the signatures and rubber stamps appearing on the 13 release advices issued against 13 VKGUY licences, purportedly registered at Mangalore Custom House :

Sl. No	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder	Licence No.	Licence Date
1	2476	10.11.2009	4470235	0388066415	310526777	02.07.09
2	2468	10.11.2009	4003373	0388066415	310523564	11.06.09
3	2475	10.11.2009	6590018	0388066415	310528212	10.07.09
4	2464	10.11.2009	5626358	0388066415	310529284	16.07.09
5	2465	10.11.2009	4776335	0388066415	310528689	13.07.09
6	2474	10.11.2009	5753032	0388066415	310523562	11.06.09
7	2467	10.11.2009	6005453	0388066415	310531532	10.11.09
8	2459	10.11.2009	4426478	0388066415	310521936	29.05.09
9	2462	10.11.2009	7778161	0388066415	310522743	05.06.09
10	2460	10.11.2009	4572385	0388066415	310512901	24.03.09
11	2461	10.11.2009	5247824	0388066415	310518177	04.05.09
12	2463	10.11.2009	5173856	0388066415	310522738	05.06.09
13	2473	10.11.2009	5130380	0388066415	310523566	11.06.09

- that he has read and understood the documents and minutely examined the signature and signature rubber stamps appearing on the release advice and confirmed that all the signatures appearing on the above licences and release advices and the rubber stamps are forged. The same is also evident from the impression of the

rubber stamp which is different from the genuine rubber stamp being used by Mangalore Custom House during that period.

- that the format and printing of the forged release advices are different from the genuine release advices being generated by the EDI system at Mangalore Customs. These release advices are shown to be issued for utilization at Dahej Port by M/s Reliance Industries Limited which is wrong as no such licences were registered at Mangalore Port and neither any such release advices were signed by him.
- that he was shown the statement of Shri.Vinod Poovappa, Superintendent of Central Excise, Mangalore recorded on 21.10.2010. He agreed with the facts stated by him.

67. A statement of Shri Ashok Kumar Gupta of Kanpur was recorded on 28/01/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he is having following bank accounts.
 - i. Account No. 43580210502698 in Union Bank of India, Kaushapuri Branch, Kanpur.
 - ii. Account No. 141104000011510 in IDBI Bank, Civil Lines, Kanpur.
 - iii. Account No. 30637732563 in State Bank of India, G.T. Road, Kanpur in the name of A.K. Gupta & Sons.
 - iv. Account No. 20774492912 in Allahabad Bank, Vijay Nagar, Kanpur.
 - v. Account No. 0577053000000299 in South Indian Bank, 80 Feet Road, Kanpur.
- that his uncle (chacha) Late Shri Ram Krishna Gupta was having a firm in the name and style of M/s Pearls Pvt. Ltd., who was engaged in the business of sale and purchase of export incentive licences at Kanpur. After completing his education he joined his uncle's firm M/s Pearls Pvt. Ltd. and started working there.
- that in the firm he was handling the work related to liasioning with DGFT and other office work. He used to prepare application on behalf of clients, take the applications to the DGFT office, get them approved after following the required procedure of DGFT and got the licence issued from DGFT.
- that he also assisted in finding the prospective buyers for their client, who purchases the said licence.
- that he worked there for 5-6 years and got full knowledge of the said business and also maintained good contacts with DGFT officials and trade / exporters.
- that thereafter, he decided to work independently, so he left the said job. During 1976-77, he started his own work. He got the advantage of his past contacts and his business was going smoothly.
- that about 2005-06, his said business was badly affected and he was facing deep financial crisis. His financial position went on from bad to worse. Thereafter, besides doing the said business, during April' 2008, he joined M/s Air Messageries India, who is an IATA approved Air Cargo Agents. It is a Delhi based firm and Shri S.S.Chawla is its Proprietor. He looks after their marketing works

and search clients for them. He is getting salary of Rs.10,000/- for his above job and also some commission on the sales.

- that some major exporters who are his clients are M/s Kushna Exports, M/s Royal Saddle Corporation, M/s Star Saddlery, M/s Liberty Chaple Company, M/s Indian Leather Industries, M/s H.R. Agencies, M/s King International Ltd., M/s Zaid International etc. All these exporters were based at Kanpur. Out of above exporters M/s King International Ltd., M/s Zaid International are still his clients and he is still doing DGFT liasioning work for them.
- that there are different types of transferable licences /authorizations such as DEPB (Duty Entitlement Passbook Scheme), VKGUY, DFIA (Duty Free Import Authorisation), EPCG (Export promotion of Capital goods scheme), FMS(Focus Market Scheme), FPS (Focus Product Scheme) etc. However, he has dealt with and is still dealing with FPS (Focus Product Scheme) licences only.
- that he was shown a document in the form of a copy of account statement of the bank account of M/s Shivangi Enterprise, Kishan Chambers, 5/6 Atika Indus. Area, Shop No.11, Rajkot 360002 having account no.03792000002927 with HDFC Bank, Kalawad Road Branch, Rajkot. He was also shown the entries detailed below:

Date	Narration	Chq/ Ref. Number	Date	Withdrawal Amount (Rs.)
14/10/2008	RTGS ASHOK GUPTA	0378988	14/10/2008	500000
01/12/2008	RTGS ASHOK KUMAR	0379003	01/12/2008	500000
01/12/2008	RTGS ASHOK KUMAR	0379002	01/12/2008	500000
16/12/2008	CHQ PAID-HIGH VALUE- ASHOK KUMAR GUPTA	0379011	16/12/2008	1002541
10/02/2009	RTGS A K GUPTA	0419135	10/02/2009	999890
02/03/2009	RTGS A K GUPTA AND SONS	0419147	02/03/2009	1000000
07/05/2009	RTGS A K GUPTA AND SONS	0419174	07/05/2009	994629
				5497060

- that he has read and understood the contents of the above entries and confirmed that the withdrawals shown against the above entries have actually been transferred to his bank accounts at Kanpur.
- that a total of Rs.5497060.00 (Rupees Fifty four lakhs ninety seven thousand and sixty only) was transferred from the account of M/s Shivangi Enterprise, Rajkot to his bank accounts at Kanpur.
- that he confirmed the receipt of the said amount of Rs.5497060/- (Rupees Fifty four lakhs ninety seven thousand and sixty only).
- that the entire amount of Rs.5497060/- (Rupees Fifty four lakhs ninety seven thousand and sixty only) was received in his bank accounts on behalf of Shri.Niyaz Ahmed of Kanpur.
- that as and when the amounts were received in his bank account Shri.Niyaz informed him that the amount has been transferred to his account and the same is required to be given back to him in cash. Then he alongwith Shri. Niyaz Ahmed would go to the concerned bank and he withdrew the required amount from his bank account and gave it to Shri.Niyaz and Shri.Niyaz would give

him back his commission, which was about 10% of the transacted amount.

- that on being asked as to how he knew Shri Niyaz Ahmad of Kanpur, he stated that one Shri Mohamed Quresh, was a friend of his uncle Late Shri Ram Krishna Gupta. He (Shri Quresh) used to come to meet his uncle in the office of M/s Pearls Pvt. Ltd., where he was working. His uncle introduced him to Shri Mohamed Quresh.
- that Shri Mohamed Quresh was working in Government Harness Factory, Kanpur. Slowly, Shri Mohamed Quresh and he became good friend.
- that since he was fond of having drinks and good food, he enjoyed the company of Md. Quresh.
- that during this period he met Shri.Niyaz Ahmed who was a friend of Shri Mohamed Quresh and sometimes he also joined them in the drinking sessions.
- that Shri Mohamed Quresh told him that Shri Niyaz is engaged in manufacturing and export of chappals and shoes. In this way Shri Niyaz Ahmad, he and Shri Mohamed Quresh became friends. Latter on he also came to know the Shri Niyaz Ahmad is having a shoe manufacturing unit in the name of M/s Indiyana Shoes, at Chamangaj, Kanpur.
- that during the year 2007, when he was facing severe financial crisis, he told Shri Niyaz Ahmad to help him out, to which he (Niyaz) assured him of some monetary help.
- that after some time Shri Niyaz Ahmad contacted him and said that he had sold some licences and is expecting to receive money for them. He also informed me that he did not want to receive sale proceeds of the same in his own bank accounts.
- that he (Niyaz) told him to lend his bank account for the said purpose and offered him around 10% of the amount that would be deposited. He accepted his proposal and thereafter, the above said deal occurred.
- that he was shown a document containing a photograph, and he identified the person as Shri.Niyaz Ahmed of Indiyana Shoes, Kanpur.
- that he is the same person to whom he had made a deal of lending his bank accounts for receiving money actually meant for him.
- that the amounts mentioned against the entries dated 14/10/2008 and 01/12/2008 were received at his savings bank Account No.435802010502698 with Union Bank of India, Kaushalpur Branch, Kanpur;
- that the amount mentioned against 01/12/2008 i.e the third entry of the above table, was received in his bank account with IDBI Bank, Civil Lines, Kanpur and then he transferred the said amount from that account to his savings bank account with Union Bank of India, Kaushalpur Branch, Kanpur.
- that he was shown the copy of his account opening form and account statement pertaining to his bank account No.435802010502698 with Union Bank of India, Kaushalpur Branch, Kanpur and confirms that the said documents pertain to his savings bank account only.

- that on being asked regarding the remaining transactions mentioned at table above, he stated that he does not remember exactly in which account the said amounts were received. However, he agreed to submit the details of his bank accounts where the amounts have been received and how they have been withdrawn.
- that he submitted copies of account statements of my bank account No. 435802010502698 with Union Bank of India, Kaushalpuri Branch, Kanpur and Account No. 141104000011510 in IDBI Bank, Civil Lines, Kanpur.
- that he has not met Shri Niyaz Ahmed since January-2010. That he is aware that DRI department had searched his residence and office for some forged licence case.
- that, as per his knowledge Shri.Niyaz Ahmed has closed down his factory-Indiana Shoes at Kanpur and is not staying at his residence at Kanpur.

68. A statement of Smt. D.P. Uma Devi, Superintendent of Central Excise & Customs, Bangalore was recorded on 18/02/2011 under Section 108 of the Customs Act, 1962 wherein she stated inter alia:

- that she is working as a Superintendent of Central Excise & Customs and is presently posted at Central Excise, Marthahalli Range, Division-IV, Central Excise Commissionerate, Bangalore-I. In March, 2008 she was posted to Mangalore Customs Commissionerate and was further posted to Customs, Vigilance Section, Custom House, Mangalore and she worked there till May,2009. Thereafter, she was posted to the Export Section of Custom House, Panambur, Mangalore and was working as Appraiser. She worked in the Appraising Section till May-2010.
- that as an Appraiser in the export section, she was handling the appraising work pertaining to exports, additionally she was also looking after the work of Licence Section i.e. Group VII. In the licence section she was overlooking the duties of verification and registration of duty free transferable licences like VKGUY/FPS/FMS etc.
- that in Mangalore Custom House regular Appraisers are not posted and the work of appraising is being looked after by the Superintendents on regular basis.
- that during the period of her posting at Mangalore Custom House the major exporters were M/s Mineral Enterprises, M/s Sesagoa Kumaraswamy Exporters, M/s Obolapuram Exporters, M/s Bola Raghavendra Kamath & Sons, M/s Bola Surendra Kamath & Sons etc. The major export items at Mangalore Port are Iron Ore, Fish Products, Cashew etc.
- that in Mangalore Custom House the export shipping bills are filed and processed in the EDI system which is in operation since the year-2000.
- that in the Licence Section the transferable duty free licences under export promotion schemes like FMS, FPS, VKGUY, EPCG etc are produced by the exporters/their authorized agents for registration with the Export Section. These licences are issued by the DGFT

offices. These licences are then registered in the EDI system and the EDI system generates a registration number to each licence. In the EDI system any Licence can be registered only once and the EDI system will not accept any licence of the same number twice.

- that once the licences are received in the Appraising Section for registration the same are processed on file and after approval of the concerned Asstt./Deputy Commissioner the licence is registered in the EDI section. After registration of the licence a signature is appended on the top left of the reverse side of the licence alongwith the stamp which indicates the registration of the licence. This signature is appended by the Superintendent, Export Section. Thereafter the licence is returned by the EDI section to the Appraising Section for carrying out the necessary procedure for debiting the same.
- that in the export section a register was being maintained manually containing the details of all the licences registered in the export section.
- that during her tenure at Export Section, Custom House Mangalore she was reporting to her Deputy Commissioner Shri. E.Sukumaran. Shri.Sukumaran is presently posted to Central Excise, Calicut.
- that Shri.Shrinivas Igal was her predecessor in the export section at Custom House, Mangalore.
- that on being further asked regarding the licences registered with Mangalore Custom House during her tenure in the Licence Section i.e. from May, 2009 to April, 2010, she states that she does not remember exactly but she had signed on the reverse side of many licences as a token of registration. Presently she does not remember the name of the licence holders.
- that on being asked the name and details of the Custom House agents approaching Custom House Mangalore for registration of the export incentive licences, she states that one of the Custom House Agents was M/s Ganesh Shipping Agency, Mangalore and Shri.Gangadhar Shetty was the contact person, his mobile number is 09845085089. In addition to Shri Gangadhar, one Shri.Prashant was also approaching them on behalf of M/s Ganesh Shipping. The other CHA firm was M/s Cargo Links, Mangalore and Shri Sandeep was the contact person, his mobile number is 09880704606.
- that she was shown the signatures stamps appearing on the reverse side of 13 VKGUY licences purportedly registered with Custom House, Mangalore during the period from May, 2009 to March, 2010 and purportedly signed by her:

Sl. No	Licence No.	Licence Date	Amount of duty Credit (in Rs.)	Name of Original Licence Holder (M/s)
1	0310523566	11.06.09	5130380.00	Allanasons Ltd.
2	0310522738	05.06.09	5173856.00	Indagro Foods Ltd.
3	0310518177	04.05.09	5247824.00	Indagro Foods Ltd.
4	0310512901	24.03.09	4572385.00	Indagro Foods Ltd.
5	0310522743	05.06.09	7778161.00	Indagro Foods Ltd.
6	0310521936	29.05.09	4426478.00	Frigorifico Allana Ltd.
7	0310531532	30.07.09	6005453.00	Allanasons Ltd.
8	0310523562	11.06.09	5753032.00	Allanasons Ltd.
9	0310528689	13.07.09	4776335.00	Allanasons Ltd.

10	0310529284	16.07.09	5626358.00	Indagro Foods Ltd.
11	0310528212	10.07.09	6590018.00	Allanasons Ltd.
12	0310523564	11.06.09	4003373.00	Allanasons Ltd.
13	0310526777	02.07.09	4470235.00	Allanasons Ltd.

- that she has read and understood the documents and carefully examined the signatures appearing on the reverse side of the licence and confirms that all the signatures appearing on the above licences are not hers and the signatures have not been made by her. She states that the signatures are forged and the person who has forged the signature has imitated her signature.

69. A further statement of Shri Ashok Kumar Gupta of Kanpur was recorded on 06/04/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was shown his letter dated nil vide which he had forwarded copies of account statement of following bank accounts hold by him.

- i. Account No. 141104000011510 in IDBI Bank, Civil Lines, Kanpur.
- ii. Account No. 30637732563 in State Bank of India, G.T. Road, Kanpur in the name of A.K. Gupta & Sons.
- iii. Account No. 20774492912 in Allahabad Bank, Vijay Nagar, Kanpur.
- iv. Account No. 0577053000000299 in South Indian Bank, 80 Feet Road, Kanpur.

- that he was shown copy of account statement of his Account No. 43580210502698 in Union Bank of India, Kaushalpuri Branch, which was submitted by him during recording of his statement dated 28.01.2011.
- that he was shown copy of account statement of above said bank accounts obtained by DRI from the respective bank authorities.
- that he has read and understood all pages of the document. He compared the above said each bank account statements submitted by him with bank account statements obtained by DRI from respective bank authorities and stated that entries made therein are same.
- that on the basis of credit entries made in respective bank accounts, he states that he had received Rs. 59,98,649/- from M/s Shivangi Enterprise, Kishan Chambers, 5/6 Atika Indus. Area, Shop No.11, Rajkot 360002 having bank account no.03792000002927 with HDFC Bank, Kalawad Road Branch, Rajkot. The details of the transactions are as under:

Date	Name of Bank & Account No. vide which the money was received from M/s Shivangi Enterprise, Rajkot.	Narration	Credited Amount (Rs.)
14/10/2008	Union Bank of India, Account No. 43580210502698	RTGS 03792000002927	500000
01/12/2008	IDBI Bank, Account No. 141104000011510	RTGS 03792000002927	500000
01/12/2008	Union Bank of India, Account	RTGS	500000

	No. 43580210502698	03792000002927	
16/12/2008	Union Bank of India, Account No. 43580210502698	Cheque Paid High Value- HDFC Bank, Rajkot	1002541
10/02/2009	State Bank of India, Account No. 30637732563	RTGS 03792000002927	999890
02/03/2009	State Bank of India, Account No. 30637732563	TR 03792000002927	1000000
07/05/2009	State Bank of India, Account No. 30637732563	RTGS 03792000002927	1496218
			5998649

- that according to his above bank account statements a total amount of Rs.59,98,649.00 (Rupees Fifty nine lakhs ninety eight thousand six hundred and forty nine only) was transferred from the bank account of M/s Shivangi Enterprise, Rajkot (account No. 03792000002927) to his bank accounts at Kanpur. He confirmed the receipt of the said amount of Rs.59,98,649.00 (Rupees Fifty nine lakhs ninety eight thousand six hundred and forty nine only).
- that he confirmed that the entire amount of Rs.59,98,649.00 (Rupees Fifty nine lakhs ninety eight thousand six hundred and forty nine only) was received in his bank accounts on behalf of and as per the directions of Shri.Niyaz Ahmed of Kanpur.
- that he referred to his previous statement dated 28.01.2011 and clarified that, at page no. 3 of his earlier statement dated 28.01.2011, the details of amount received by him from M/s Shivangi Enterprise, Kishan Chambers, 5/6 Atika Indus. Area, Shop No.11, Rajkot 360002 having account no.03792000002927 with HDFC Bank, Kalawad Road Branch, Rajkot, were given as per the account statement of HDFC Bank, Rajkot shown to him during recording of his statement. In the said table the amount of Rs.994629.00 was wrongly mentioned against 07.05.2009 i.e. seventh entry of the said table as it was wrongly shown in the account statement of HDFC Bank, Rajkot. As per bank statement of his State Bank of India, Account No. 30637732563, he had actually received Rs. 14,96,218.00 instead of Rs.9,94,629.00.
- that as and when the amounts were received in his bank account Shri.Niyaz informed him that the amount has been transferred to his account and the same is required to be given back to him in cash. Then he alongwith Shri.Niyaz Ahmed would go to the concerned bank and he withdrew the required amount from his bank account vide 'Self' cheques and gave the amount to Shri.Niyaz.
- that he was shown copies of bank instruments received from SBI, Kanpur as detailed below:
 - i) Copy of SBI pay-in-slip dated 14.01.2009 for deposit of Rs.1,50,000.00 in my SBI account by way of deposit of Cheque No.218590 dated 13.01.2009, The said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the SBI account.
 - ii) Copy of Cheque No.456543 dated 03.03.2009 drawn on Self for Rs.5,00,000.00 (rupees five lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

- iii) Copy of Cheque No.456545 dated 04.03.2009 drawn on Self for Rs.5,00,000.00 (rupees five lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - iv) Copy of Cheque No.456586 dated 04.09.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - v) Copy of Cheque No.456591 dated 06.10.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - vi) Copy of Cheque No.735470 dated 17.03.2010 of M/s Raj & Company drawn on A.K Gupta & Sons for Rs.5,42,300.00 (rupees five lakh forty two thousand and three hundred only) and concerned pay-in slip dated 18.03.2010. The said amount was received by him from M/s Raj & Co. in connection with the sale of duty free transferable licences of Focus Product Scheme. The said firm is handled by Shri.Vishal Agarwal and office is situated at 16/17, Civil Lines, Kanpur.
 - vii) Copy of Cheque No.188788 dated 03.04.2010 drawn on Self for Rs.1,00,000.00 (rupees one lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - viii) Copy of Cheque No.188796 dated 12.05.2010 drawn on Self for Rs.6,00,000.00 (rupees six lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
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- that out of all his bank accounts he had received money on behalf of Shri.Niyaz Ahmed in his bank accounts with Union Bank of India, State Bank of India and IDBI Bank Limited only.
 - that on being asked regarding his profit in lending his bank accounts to Shri. Niyaz, he stated that as stated by him he had received about 10% of the transacted value as his commission and that was his profit.
 - that since he was in deep financial crisis he agreed to the proposal of Niyaz. He never asked Niyaz as to what the money was related to.
 - that in his earlier statement dated 28.01.2011 at page no.5 in para three, he had stated that the amount (Rs. 5,00,000/-) mentioned against 01/12/2008 i.e the third entry of the table, was received in his bank account with IDBI Bank, Civil Lines, Kanpur and then he had transferred the said amount from that account to his savings bank account with union Bank of India, Kaushalpuri Branch, Kanpur, which is not correct. As per bank statement of his IDBI Bank, Account No. 141104000011510, he had not transferred the said amount to his savings bank account with union Bank of India, Kaushalpuri Branch, Kanpur.

- that regarding the present status of Shri.Niyaz Ahmed he stated that he had not met Shri Niyaz Ahmed since January-2010 and does not know his present whereabouts.

70. A further statement of Shri Ashok Kumar Gupta of Kanpur was recorded on 07/04/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was shown copies of bank instruments obtained by DRI from IDBI Bank, Mall Road Branch, Kanpur in respect of his bank account no. 141104000011510 and the details of same are as below:

1. Copy of Cheque No.022413 dated 08.12.2008 drawn on Self for Rs.1,00,000.00 (rupees One lakhs only). On being asked he stated that the said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
2. Copy of Cheque No.022411 dated 03.12.2008 drawn on Self for Rs.2,00,000.00 (rupees Two lakhs only). On being asked he states that the said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
3. Copy of IDBI pay-in-slip dated 14.11.2008 for deposit of Rs.90,000.00 in my IDBI account by way of deposit of Cheque No.216398 dated 14.11.2008, he had read and understood the document and put my dated signature on the same. On being asked he explained that, the said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the IDBI account.
4. Copy of Cheque No.022414 dated 10.12.2008 drawn on 11.12.2008 on account of Self for Rs.2,00,000.00 (rupees one lakh only). On being asked he stated that the said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

- that he was shown copies of bank instruments obtained by DRI from Union Bank of India, Kanpur in respect of his bank account no. 43580210502698 and the details of same are as below:

- i) Cheque No.216396 dated 10.11.2008, issued on account of Ashok Kumar Gupta (Account Payee cheque) for Rs.25,000.00 (rupees Twenty Five Thousand only). The said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the IDBI account.
- ii) Copy of Cheque No.216390 dated 14.10.2008 drawn on Self for Rs.2,00,000.00 (rupees Two lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
- iii) Copy of Cheque No. 216391 dated 17.10.2008 drawn on Self for Rs.1,80,000.00 (rupees one lakhs eighty thousand

- only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
- iv) Copy of Cheque No. 216394 dated 27.10.2008 drawn on Self for Rs.50,000.00 (rupees fifty thousand only). The said amount was withdrawn by him for expenses.
 - v) Copy of Cheque No. 216399 dated 14.11.2008 drawn on Self for Rs.2,10,000.00 (rupees two lakhs ten thousand only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - vi) Cheque No.216398 dated 14.11.2008, issued on account of Ashok Kumar Gupta (Account Payee cheque) for Rs.90,000.00 (rupees ninety thousand only). The said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the IDBI account.
 - vii) Copy of Cheque No. 216390 dated 13.01.2009 drawn on Self for Rs.1,50,000.00 (rupees one lakhs fifty thousand only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - viii) Copy of Cheque No. 218534 dated 02.12.2008 drawn on Self for Rs.5,00,000.00 (rupees five lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - ix) Copy of Cheque No. 218585 dated 02.12.2008 drawn on Self for Rs.1,00,000.00 (rupees one lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - x) Copy of Union Bank Of India pay-in-slip dated 12.12.2008 for deposit of Rs.10,02,541.00 in his Union Bank Of India account by way of deposit of Cheque No.379011 dated 12.12.2008 of HDFC Bank Ltd., Rajkot. The said cheque was given to him by Shri Niyaz Ahmad and he had deposited the said cheque to the Union Bank Of India account.
 - xi) Copy of Cheque No. 218587 dated 17.12.2008 drawn on Self for Rs.6,00,000.00 (rupees six lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - xii) Copy of Cheque No. 218588 dated 20.12.2008 drawn on Self for Rs.4,00,000.00 (rupees four lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - xiii) Copy of Cheque No. 218597 dated 24.03.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - xiv) Copy of Union Bank Of India pay-in-slip dated 07.05.2009 for deposit of Rs.1,50,000.00 in his Union Bank Of India account by way of deposit of Cheque No.456559 dated 07.05.2009 of SBI, Kanpur. The said amount was transferred by him from his bank account with SBI Bank to the Union Bank Of India account.

- xv) Copy of Cheque No. 209471 dated 28.05.2009 drawn on Self for Rs.1,20,000.00 (rupees one lakhs and twenty thousand only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - xvi) Copy of Union Bank Of India pay-in-slip dated 09.06.2009 for deposit of Rs.97,421.00 in my Union Bank Of India account by way of deposit of Cheque No.615358 dated 08.06.2009 of Overseas Bank.The said amount was received by him from one of his party/ client in connection with the sale of duty free transferable licences, however, he does not remember the name of said party.
 - xvii) Copy of Cheque No. 209476 dated 04.07.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
 - xviii) Cheque No.321 dated 11.09.2009, issued on account of Ashok Kumar Gupta (Account Payee cheque) for Rs.50,000.00 (rupees fifty thousand only). The said amount was transferred by him from his bank account with Union Bank of India, Kaushalpur Branch to his SBI, Bank account.
- that he was shown four computer printout of photographs of some persons, He identified them as under:
- i. PHOTOGRAPH/ PIC-1: Identify as Shri Mohammad Ali @ Munnabhai of Kanpur. He is a close friend of Shri.Niyaz since long time and is also having fabrication unit where he is doing fabrication work on fabrics for using them on the saddles. He had seen him a couple of times with Shri.Niyaz.
 - ii. PHOTOGRAPH/ PIC-2: Identify as Shri Haseeb Ahmed an employee of M/s Indiyana Shoes, Kanpur. He had seen him at the factory of Indiana shoes run by Shri.Niyaz Ahmed and Shri.Niyaz introduced him as his employee..
 - iii. PHOTOGRAPH/ PIC-1: Identify as Shri Mohammad Ali @ Munnabhai.
 - iv. PHOTOGRAPH/ PIC-1: Identify as Shri Mohammad Ali @ Munnabhai.
- that on being asked regarding the present whereabouts of Shri.Munnabhai he stated that he is not in contact with the person at present. On being asked regarding the involvement of Shri. Munnabhai in the business of Shri.Niyaz he stated that he is not aware of the same, but after the raid by DRI officers at the factory of Indiyana Shoes, he came to know that Shri Munnabhai is very close friend of Niyaz and they are meeting frequently.
- that he is not aware regarding the present whereabouts of Niyaz. However, he came to know that he is not staying at his residence any more and has shifted away to some other place alongwith his family. That as per his knowledge the factory of Indiyana Shoes is not working at present.

71. A statement of Dr. Manoj Prasad Guru, General Manager (Commercial) of M/s.Reliance Industries Ltd, Mumbai was recorded on 28/04/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- He is looking after the work of procurement and utilization of duty free transferable licences and their utilization in the imports made by their company. He is assisted by Shri Santosh Rane and he is reporting to Mrs.V.B Pardiwala, Senior Vice-President (Commercial) who is officiating in the same office as at Mumbai.
- They purchase various types of post export incentive transferrable licences viz. DEPB, FMS, FPS, VKGUY etc from open market.
- He is aware that these duty free transferable licences are actually obtained by various exporters from DGFT on the basis of their export performance. Being of transferable nature, these exporters prefer to transfer/sell them in the open market on premium or discount as per the prevailing market trend. These licences are obtained by various brokers/traders of licences from the exporters/actual licence holders.
- Various brokers/traders of licences are operating in the open market at Mumbai, Ahmedabad, Kolkata, New Delhi etc. After obtaining these licences, the brokers/traders would contact them for their sale/transfer and once they are satisfied with the licences offered to them, they procure/purchase them from the broker/trader.
- Regarding the procedure followed by their company for procuring these licences, he stated that in their company they are importing and exporting a lot of goods. For their imports they have an approximate annual requirement of about Rs.500 Crores. Out of the above requirement, about 50% is fulfilled by their own licences, i.e the licences obtained by RIL on the basis of the export performances. In order to fulfill the requirement of remaining amount of Rs.250 Crores, they are procuring licences from the open market.
- They are receiving a monthly planner from their procurement section which gives them an indication of the customs duty projected to be payable during the month. Based on this they float enquiries with their vendors of licences.
- On receipt of the rates from the vendors, they negotiate with the vendors as and when required to have a uniform purchase. These rates are decided by them in line with the prevailing market trend and it is finalized by Smt.V.B Pardiwala. After finalization of the rates, the Purchase Order is issued to the vendor/trader of licences.
- The purchase order is made for the total value of licences with certain terms and conditions. One copy of a similar Purchase Order No.XB3/7209193 dated 07.11.2009 is submitted by him.
- They are procuring these duty free licences from licence brokers like Bhavesh S Doshi having firms Suresh C Doshi, Bijal S Doshi; Jayesh Kothari having firm Jayesh Corporation, Viren Vora having

firm Vimal Enterprise; Kamal Deora having his firm Guruashish Exim who are registered with their company as Licence Brokers.

- In turn these brokers are bringing in some Licence Traders who are also enrolled with their company, their bank account is verified and registered with them.
- Once a Purchase Order is finalized, the brokers submit the licences alongwith corresponding Release Advices, transfer letters from the original licence holder/trader - in original, Annexure to the licence and Licence forwarding letter of the DGFT, all documents are in original.
- Regarding the release advices he states that one copy of release advice is received in sealed cover and one is received open (importer's copy). Upon receipt of the above documents they verify the licence details in the website of DGFT and upon confirmation from the website and after checking out the documents they confirm the sale.
- All payments are made through RTGS directly to the trader as per the bill raised by them. The payments are released to the trader within three working days of receipt of the licences.
- The bill for brokerage is separately raised by the brokers and paid by them to the brokers, in some exceptional cases they do not pay brokerage and the broker negotiates the same with the trader.
- The release advices are received alongwith the licences, i.e these are got issued by the trader and submitted to them.
- It is the responsibility of the broker / trader to forward these licences to the concerned manufacturing location where these are to be utilized at the time of import for debiting Customs duty. However, in urgent cases they arrange to send the licences to the respective sites on behalf of the broker but the responsibility lies with the broker.
- They pay the customs duty in respect of the goods imported by them by debiting from the various export incentive licences purchased by them from the market.
- Since the licences are available in the market at about 95% to 98% of the original value, the company saves on payment of import duty to the extent of the discount at which the licences are purchased by them from the market. However, the discount structure has remained steady at around 97 % to 98 % since last one year or so.
- Regarding the utilization of forged licences by Reliance Industries Limited during the year-2009-10 and detected by DRI, he stated that they were informed by Shri.Bhavesh Doshi at Mumbai that about 13 VKGUY/VKUY licences utilized by M/s RIL at Dahej port were detected as forged.
- As per his knowledge, the matter was immediately taken up by their company and the duty in respect of the said 13 licences has been paid by them.
- Regarding the procurement of these 13 VKUY licences, he stated that all these licences were procured by them from a licence trader M/s Hindustan Continental Limited, Kolkata through the broker Shri.Bhavesh Doshi of Mumbai. He submitted copies of the bills of HCL, copy of vendor registration of HCL, copy of e-payment application to RIL, RIL's payment advice note, copy of Purchase

order and copy of a statement containing the details of payments in respect of all the licences purchased vide the said purchase order.

- Vide the said purchase order they have purchased and utilized 17 licences out of which 13 were found forged; all the 13 licences were having mentioned the port of registration as Mangalore Sea and in all these licences the original licence holder is M/s Allanasons Limited or Indagro Foods Limited or Frigorifico Allana Limited all of Mumbai.
- The Release Advices enclosed with all the 13 licences were shown to be issued by Mangalore Customs in favour of Dahej Port.
- He was shown a letter F.No.S-01/05/2010 IMP dtd.19/07/2010 of the Additional Commissioner, New Custom House, Mangalore and enclosed alongwith the list of the DEPB/non-DEPB Release Advices actually issued by New Custom House, Mangalore for use at Dahej Port, Magdalla Port, ICD Dashrath, Okha Port and Navlakhi Port.
- He has compared the details of the 13 licences utilized by them with the list of Release Advices actually issued for Dahej Port by New Custom House, Mangalore and stated that the 13 licences for which Release Advices have been issued to M/s RIL for use at Dahej Port are not mentioned in the list of Release Advice actually issued by New Custom House, Mangalore for use at Dahej port, this clarified that these 13 licences were actually not registered with Mangalore Port and no Release Advices were issued by them for these 13 licences in favour of RIL for being utilized at Dahej Port.
- He was shown a letter F.No.S/5-Misc-85/10-11/Licence dated 13.07.2010 issued by the Commissioner (Import) JNPT, Nhava Sheva, Mumbai which shows that the 13 licences utilized by them were actually registered with Nhava Sheva and not Mangalore, which shows that the 13 VKGUY/VKUY licences utilized by them were actually forged.
- He was shown two sets of 13 VKUY/VKGUY licences alongwith their corresponding documents like release advice, transfer letters, licence forwarding letter, list of shipping bills enclosed with the licence. After carefully going through the said two sets of documents he noticed that in one set of licences they are shown to be registered at Mangalore and another set of 13 licences are shown to be registered at Nhava Sheva.
- He also noted that endorsements have been already made on the licences regarding their genuine/forged nature.
- On the basis of the letters and other documents shown to him and upon correlating the same, he concluded and confirmed that the 13 VKUY/VKGUY licences utilized by M/s Reliance Industries Limited at Dahej Port and procured from M/s Hindustan Continental Limited, Kolkata are forged and he also made such endorsements on the body of the forged licences.
- In the light of the above facts, he stated that these 13 VKUY/VKGUY licences used by M/s RIL at Dahej Port are not genuine but forged licences.
- In the light of the 13 licences being forged they are not entitled to the benefit of Noti.No.41/2005-CUS dtd.9/5/2005 and they are required to pay the Customs duty saved in case of these 13 licences in cash.

- M/s RIL have already paid up the total custom duty of Rs.6,95,53,884.00 involved in these 13 licences alongwith interest amounting to Rs.69,85,878.00

72. A statement of Shri Santosh Rane, Manager (Procurement) of M/s. Reliance Industries Ltd, Mumbai was recorded on 01/06/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- He is looking after the work of procurement and utilization of duty free transferable licences and their utilization in the imports made by their company. He is reporting to Dr.Manoj Guru (General Manager) and Mrs.V.B Pardiwala, Senior Executive Vice-President (Commercial) who are also officiating in their offices at Mumbai.
- Their company purchases various types of post export incentive transferrable licences viz. DEPB, FMS, FPS, VKGUY etc from open market.
- He is aware that these duty free transferable licences are actually obtained by various exporters from DGFT on the basis of their export performance. Being of transferable nature these exporters prefer to transfer/sell them in the open market on premium or discount as per the prevailing market trend. These licences are obtained by various brokers/traders of licences from the exporters/actual licence holders.
- Various brokers/traders of licences are operating in the open market at Mumbai, Ahmedabad, Kolkata, New Delhi etc.
- After obtaining these licences, the brokers/traders would contact them for their sale/transfer and once they are satisfied with the licences offered to them they procure/purchase them from the broker/trader.
- in their company they are importing and exporting a lot of goods. For their imports they have an approximate annual requirement of about Rs.500 Crores.Out of the above requirement, about 50% is fulfilled by their own licences, i.e the licences obtained by RIL on the basis of the export performances. In order to fulfill the requirement of remaining amount of Rs.250 Crores, they are procuring licences from the open market.
- They are receiving a monthly planner from their procurement section which gives them an indication of the customs duty projected to be payable during the month. Based on this they float enquiries with their vendors of licences.
- On receipt of the rates from the vendors, they negotiate with the vendors as and when required to have a uniform purchase. These rates are decided by them in line with the prevailing market trend and it is finalized by Smt.V.B Pardiwala.
- After finalization of the rates, the Purchase Order is issued to the vendor/trader of licences. The purchase order is made for the total value of licences with certain terms and conditions. One of the conditions of the purchase order specifies that the Release Advices are required to be got issued by the licence traders/brokers and the responsibility of the genuineness of the release advices were also with the traders/brokers of these licences.

- They are procuring these duty free licences from licence brokers like Bhavesh S Doshi having firms Suresh C Doshi, Bijal S Doshi; Jayesh Kothari having firm Jayesh Corporation, Viren Vora having firm Vimal Enterprise; Kamal Deora having his firm Guruashish Exim who are registered with their company as Licence Brokers. In turn these brokers are bringing in some Licence Traders who are also enrolled with their company, their bank account is verified and registered with them.
- Once a Purchase Order is finalized, the brokers submit the licences alongwith corresponding Release Advices, transfer letters from the original licence holder/trader - in original, Annexure to the licence and Licence forwarding letter of the DGFT, all documents are in original.
- Regarding the release advices he states that one copy of release advice is received in sealed cover and one is received open (importer's copy). Upon receipt of the above documents they verify the licence details in the website of DGFT and upon confirmation from the website and after checking out the documents they confirm the sale.
- On being specifically asked regarding the procedure of verification of the licences before acceptance by them, he states that for verification of the licences in the website of DGFT, they have to input the licence number and IEC code of the original licence holder in the requisite boxes in the website and the website shows the details of the licence like name and address of the original licence holder, licence category and FOB amount, the same are tallied with the details mentioned in the licence and then the licences are approved for acceptance.
- The port of registration of the licence is not found anywhere in the website and the same is not verified before the procurement of the licences.
- All payments are made through RTGS directly to the trader as per the bill raised by them. The payments are released to the trader within three working days of receipt of the licences.
- The bill for brokerage is separately raised by the brokers and paid by them to the broker, in some exceptional cases they do not pay brokerage and the broker negotiates the same with the trader.
- The release advices are received alongwith the licences, i.e they are got issued by the trader and submitted to them. This is as per the agreement made by their company with the licence brokers/traders.
- It is the responsibility of the broker / trader to forward these licences to the concerned manufacturing location where they are utilized at the time of import for debiting Customs duty. However, in urgent cases they arrange to send the licences to the respective sites/places on behalf of the broker but the responsibility lies with the broker.
- They pay the customs duty in respect of the goods imported by them by debiting from the various export incentive licences purchased by them from the market.
- Since the licences are available in the market at about 95% to 98% of the original value, the company saves on payment of import duty to the extent of the discount at which the licences are purchased by

them from the market. The discount structure has remained steady at around 97 % to 98 % since last one year or so.

- Regarding the utilization of forged licences by Reliance Industries Limited during the year-2009-10 and detected by DRI, he stated that they were informed by Shri.Bhavesh Doshi at Mumbai that about 13 VKGUY/VKUY licences utilized by M/s RIL at Dahej port were detected as forged.
- As per his knowledge the matter was immediately taken up by their company and the duty in respect of the said 13 licences has been paid by them.
- Regarding the procurement of these 13 VKUY licences, he stated that all these licences were procured by them from a licence trader M/s Hindustan Continental Limited, Kolkata through the broker Shri.Bhavesh Doshi of Mumbai.
- They had purchased a total of 17 licences through Shri. Bhavesh Doshi in a single purchase order. Out of these 17 licences, 13 were subsequently detected as forged by the DRI department.
- All the 13 licences which were found forged were having mentioned the port of registration as Mangalore Sea and in all these licences the original licence holder is mentioned as M/s Allanasons Limited or Indagro Foods Limited or Frigorifico Allana Limited all of Mumbai.
- The Release Advices enclosed with all the 13 licences were shown to be issued by Mangalore Customs in favour of Dahej Port.
- He was shown a letter F.No.S-01/05/2010 IMP dtd.19/07/2010 of the Additional Commissioner, New Custom House, Mangalore and enclosed alongwith the list of the DEPB/non-DEPB Release Advices actually issued by New Custom House, Mangalore for use at Dahej Port, Magdalla Port, ICD Dashrath, Okha Port and Navlakhi Port.
- He has compared the details of the 13 licences utilized by them with the list of Release Advices actually issued for Dahej Port by New Custom House, Mangalore and states that the 13 licences for which Release Advices have been issued to M/s RIL for use at Dahej Port are not mentioned in the list of Release Advice actually issued by New Custom House, Mangalore for use at Dahej port, this clarified that these 13 licences were actually not registered with Mangalore Port and no Release Advices were issued by them for these 13 licences in favour of RIL for being utilized at Dahej Port.
- He was shown a letter F.No.S/5-Misc-85/10-11/Licence dated 13.07.2010 issued by the Commissioner (Import) JNPT,Nhava Sheva, Mumbai which shows that the 13 licences utilized by them were actually registered with Nhava Sheva and not Mangalore, which shows that the 13 VKGUY/VKUY licences utilized by them were actually forged.
- He was shown two sets of 13 VKUY/VKGUY licences alongwith their corresponding documents like release advice, transfer letters, licence forwarding letter, list of shipping bills enclosed with the licence. The details of the licences are as under :

Sr. No.	VKGUY Licence No.	Licence Date	Duty Credit Amount of Licence (in Rs.)	Port of registration as per genuine licence	Port of registration as per forged licence

1.	310526777	02.07.2009	4470235/-	Nhava Sheva	Mangalore
2.	310523564	11.06.2009	4003373/-	Nhava Sheva	Mangalore
3.	310528212	10.07.2009	6590018/-	Nhava Sheva	Mangalore
4.	310529284	16.07.2009	5626358/-	Nhava Sheva	Mangalore
5.	310528689	13.07.2009	4776335/-	Nhava Sheva	Mangalore
6.	310523562	11.06.2009	5753032/-	Nhava Sheva	Mangalore
7.	310531532	30.07.2009	6005453/-	Nhava Sheva	Mangalore
8.	310521936	29.05.2009	4426478/-	Nhava Sheva	Mangalore
9.	310522743	05.06.2009	7778161/-	Nhava Sheva	Mangalore
10.	310512901	24.03.2009	4572385/-	Nhava Sheva	Mangalore
11.	310518177	04.05.2009	5247824/-	Nhava Sheva	Mangalore
12.	310522738	05.06.2009	5173856/-	Nhava Sheva	Mangalore
13.	310523566	11.06.2009	5130380/-	Nhava Sheva	Mangalore

- He has carefully gone through the said two sets of documents and noticed that in one set of licences they are shown to be registered at Mangalore and another set of 13 licences the port of registration are shown as Nhava Sheva.
- He also noted that endorsements have been already made on the licences regarding their genuine/forged nature by various persons including Shri. Manoj Guru of M/s Reliance Industries Limited, Mumbai.
- On the basis of the letters and other documents shown to him and upon correlating the same, he concluded and confirmed that the 13 VKUY/VKGUY licences utilized by M/s Reliance Industries Limited at Dahej Port and procured from M/s Hindustan Continental Limited, Kolkata are forged and he also made such endorsements on the body of the forged licences.
- In the light of the above facts he stated that these 13 VKUY/VKGUY licences used by M/s RIL at Dahej Port are not genuine but forged licences.
- In the light of the 13 licences being forged they we are not entitled to the benefit of Noti.No.41/2005-CUS dtd.9/5/2005 and they are required to pay the Customs duty saved in case of these 13 licences in cash.
- M/s Reliance Industries Limited have already paid up the total custom duty of Rs.6,95,53,884.00 involved in these 13 licences alongwith interest amounting to Rs.69,85,878.00.

73. A statement of Ms. Vahabish B. Pardiwala, Senior Vice-President (Procurement) of M/s. Reliance Industries Ltd, Mumbai was recorded on 02/06/2011 under Section 108 of the Customs Act, 1962 wherein she stated inter alia that:

- She is working as Senior Vice President (Procurement) with the company.
- She is looking after the work of procurement and utilization of duty free transferable licences and their utilization in the imports made by their company.
- She is assisted by Dr.Manoj Guru (General Manager) and Shri.Santosh Rane who are also officiating in their offices at Mumbai. She is the final authority in the section for procurement of duty free transferable licences.

- Their company purchases various types of post export incentive transferrable licences viz. DEPB, FMS, FPS, VKGUY etc from open market.
- She is aware that these duty free transferable licences are actually obtained by various exporters from DGFT on the basis of their export performance. Being of transferable nature these exporters prefer to transfer/sell them in the open market on premium or discount as per the prevailing market trend. These licences are obtained by various brokers/traders of licences from the exporters/actual licence holders.
- Various brokers/traders of licences are operating in the open market at Mumbai, Ahmedabad, Kolkata, New Delhi etc. After obtaining these licences, the brokers/traders would contact them for their sale/transfer and once they are satisfied with the licences offered to them, they we procure/purchase them from the broker/trader.
- In their company they are importing and exporting a lot of goods. For their imports they have an approximate annual requirement of about Rs.500 Crores. Out of the above requirement, about 50% is fulfilled by their own licences, i.e the licences obtained by RIL on the basis of the export performances.
- In order to fulfill the requirement of remaining amount of Rs.250 Crores, they are procuring licences from the open market.
- They are receiving a monthly planner from their procurement section which gives them an indication of the customs duty projected to be payable during the month. Based on this they float enquiries with our vendors of licences.
- On receipt of the rates from the vendors, they negotiate with the vendors as and when required to have a uniform purchase. These rates were decided by in line with the prevailing market trend and it is finalized by her.
- After finalization of the rates, the Purchase Order is issued to the vendor/trader of licences. The purchase order is made for the total value of licences with certain terms and conditions. One of the conditions of the purchase order specifies that the Release Advices are required to be got issued by the licence traders/brokers and the responsibility of the genuineness of the release advices were also with the traders/brokers of these licences.
- They are procuring these duty free licences from the licence brokers like Bhavesh S Doshi having firms Suresh C Doshi, Bijal S Doshi; Jayesh Kothari having firm Jayesh Corporation, Viren Vora having firm Vimal Enterprise; Kamal Deora having his firm Guruashish Exim who are registered with their company as Licence Brokers. In turn these brokers are bringing in some Licence Traders who are also enrolled with their company, their bank account is verified and registered with them.
- Once a Purchase Order is finalized, the brokers submit the licences alongwith corresponding Release Advices, transfer letters from the original licence holder/trader - in original, Annexure to the licence and Licence forwarding letter of the DGFT, all documents are in original.

- Regarding the release advices she states that one copy of release advice is received in sealed cover and one is received open (importer's copy).
- Upon receipt of the above documents they verify the licence details in the website of DGFT and upon confirmation from the website and after checking out the documents they confirm the sale.
- For verification of the licences in the website of DGFT they have to input the licence number and IEC code of the original licence holder in the requisite boxes in the website and then the website shows the details of the licence like name and address of the original licence holder, licence category and FOB amount, the same are tallied with the details mentioned in the licence and then the licences are approved for acceptance.
- The port of registration of the licence is not found anywhere in the website and the same is not verified before the procurement of the licences.
- All payments are made through RTGS directly to the trader as per the bill raised by them. The payments are released to the trader within three working days of receipt of the licences.
- Bill for brokerage is separately raised by the brokers and paid by them to the brokers, in some exceptional cases they do not pay brokerage and the broker negotiates the same with the trader.
- The release advices are received alongwith the licences, i.e these are got issued by the trader and submitted to them. This is as per the agreement made by their company with the licence brokers/traders.
- It is the responsibility of the broker / trader to forward these licences to the concerned manufacturing location where they are utilized at the time of import for debiting Customs duty. However, in urgent cases they arrange to send the licences to the respective sites/places on behalf of the broker but the responsibility lies with the broker.
- They pay the customs duty in respect of the goods imported by them by debiting from the various export incentive licences purchased by them from the market.
- The licences are available in the market at about 95% to 98% of the original value, the company saves on payment of import duty to the extent of the discount at which the licences are purchased by them from the market. The discount structure has remained steady at around 97% to 98% since last one year or so.
- Regarding the utilization of forged licences by Reliance Industries Limited during the year-2009-10 and detected by DRI, she stated that they were informed by Shri.Bhavesh Doshi at Mumbai that about 13 VKGUY/VKUY licences utilized by M/s RIL at Dahej port were detected as forged. As per her knowledge the matter was immediately taken up by their company and the duty in respect of the said 13 licences has been paid by them.
- Regarding the procurement of these 13 VKUY licences, she stated that all these licences were procured by them from a licence trader M/s Hindustan Continental Limited, Kolkata through the broker Shri.Bhavesh Doshi of Mumbai.

- They had purchased a total of 17 licences through Shri.Bhavesh Doshi in a single purchase order. Out of these 17 licences, 13 were subsequently detected as forged by the DRI department.
- All the 13 licences which were found forged were having mentioned the port of registration as Mangalore Sea and in all these licences the original licence holder is mentioned as M/s Allanasons Limited or Indagro Foods Limited or Frigorifico Allana Limited all of Mumbai.
- She also noted that the Release Advices enclosed with all the 13 licences were shown to be issued by Mangalore Customs in favour of Dahej Port.
- She was shown a letter F.No.S-01/05/2010 IMP dtd.19/07/2010 of the Additional Commissioner, New Custom House, Mangalore and enclosed alongwith the list of the DEPB/non-DEPB Release Advices actually issued by New Custom House, Mangalore for use at Dahej Port, Magdalla Port, ICD Dashrath, Okha Port and Navlakhi Port.
- She has compared the details of the 13 licences utilized by them with the list of Release Advices actually issued for Dahej Port by New Custom House, Mangalore and stated that the 13 licences for which Release Advices have been issued to M/s RIL for use at Dahej Port are not mentioned in the list of Release Advice actually issued by New Custom House, Mangalore for use at Dahej port, this clarified that these 13 licences were actually not registered with Mangalore Port and no Release Advices were issued by them for these 13 licences in favour of RIL for being utilized at Dahej Port.
- She was shown a letter F.No.S/5-Misc-85/10-11/Licence dated 13.07.2010 issued by the Commissioner (Import) JNPT,Nhava Sheva, Mumbai which shows that the 13 licences utilized by them were actually registered with Nhava Sheva and not Mangalore, which shows that the 13 VKGUY/VKUY licences utilized by them were actually forged.
- She was shown two sets of 13 VKUY/VKGUY licences alongwith their corresponding documents like release advice, transfer letters, licence forwarding letter, list of shipping bills enclosed with the licence. The details of the licences are as under:

Sr. No.	VKGUY Licence No.	Licence Date	Duty Credit Amount of Licence (in Rs.)	Port of registration as per genuine licence	Port of registration as per forged licence
1.	310526777	02.07.2009	4470235/-	Nhava Sheva	Mangalore
2.	310523564	11.06.2009	4003373/-	Nhava Sheva	Mangalore
3.	310528212	10.07.2009	6590018/-	Nhava Sheva	Mangalore
4.	310529284	16.07.2009	5626358/-	Nhava Sheva	Mangalore
5.	310528689	13.07.2009	4776335/-	Nhava Sheva	Mangalore
6.	310523562	11.06.2009	5753032/-	Nhava Sheva	Mangalore
7.	310531532	30.07.2009	6005453/-	Nhava Sheva	Mangalore
8.	310521936	29.05.2009	4426478/-	Nhava Sheva	Mangalore
9.	310522743	05.06.2009	7778161/-	Nhava Sheva	Mangalore
10.	310512901	24.03.2009	4572385/-	Nhava Sheva	Mangalore
11.	310518177	04.05.2009	5247824/-	Nhava Sheva	Mangalore
12.	310522738	05.06.2009	5173856/-	Nhava Sheva	Mangalore
13.	310523566	11.06.2009	5130380/-	Nhava Sheva	Mangalore

- She has carefully gone through the said two sets of documents and found that in one set of licences they are shown to be registered at

Mangalore and another set of 13 licences the port of registration are shown as Nhava Sheva.

- She also noticed that endorsements have been already made on the licences regarding their genuine/forged nature by various persons including Shri. Manoj Guru and Shri. Santosh Rane of M/s Reliance Industries Limited, Mumbai.
- On the basis of the letters and other documents shown to her and upon correlating the same, she concluded and confirmed that the 13 VKUY/VKGUY licences utilized by M/s Reliance Industries Limited at Dahej Port and procured from M/s Hindustan Continental Limited, Kolkata are forged and she also made such endorsements on the body of the forged licences.
- In the light of the above facts she stated that these 13 VKUY/VKGUY licences used by M/s RIL at Dahej Port are not genuine but forged licences.
- In the light of the 13 licences being forged, she stated that they are not entitled to the benefit Noti.No.41/2005-CUS dtd.9/5/2005 and they are required to pay the Customs duty saved in case of these 13 licences in cash.
- M/s Reliance Industries Limited have already paid up the total custom duty of Rs.6,95,53,884.00 involved in these 13 licences alongwith interest amounting to Rs.69,85,878.00
- She was shown the statements of Dr.Manoj Prasad Guru of M/s Reliance Industries Limited recorded on 28.04.2011 and Shri. Santosh Rane of M/s Reliance Industries Limited recorded on 01.06.2011. She agreed with the facts stated therein relating to the procurement and utilization of duty free transferable licences by M/s Reliance Industries Limited, Mumbai.

74. A further statement of Shri Girish Ghelani, Proprietor of M/s.Vani Exports, Kolkata was recorded on 15/05/2012 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- He was shown statement dated 06.08.2010 of Shri.Surendra Kumar Kulhari of M/s Hindustan Continental Limited, Mumbai and his attention is drawn towards the Bill/Debit Note numbers VE/0921/09-10 dated 05.11.2009 and VE/0922/09-10 dated 05.11.2009 of his firm i.e M/s Vani Exports, 2, Clive Ghat Street, Kolkata-700001, attached with the said statement.
- He has read and understood the said documents and stated that :
 - a) Bill/Debit Note number VE/0921/09-10 dated 05.11.2009 shows the sale of 08 licences to M/s Hindustan Continental Limited, Kolkata by his firm M/s Vani Exports at a discounted rate of 42.13% per licence and the total sale amount comes to Rs.16221444.00 as against the total face value of 38503373.00 for all the 08 licences. The total amount Rs.16221444.00 is also written in words as 'One Crore Sixty two lakhs twenty one thousand four hundred forty four only'.
 - b) Bill/Debit Note number VE/0922/09-10 dated 05.11.2009 shows the sale of 09 licences to M/s

Hindustan Continental Limited, Kolkata by his firm M/s Vani Exports at a discounted rate of 55.00% per licence and the total sale amount comes to Rs.26181654.00 as against the total face value of 47603008 for all the 09 licences. The total amount Rs.26181654.00 is mentioned at the bottom and in the space provided, the corresponding amount in words is written as 'One Crore Sixty two lakhs twenty one thousand four hundred forty four only' which is not correct.

- On close observation of both the above Invoices he found that the Bill/Debit Notes shown to him are actually not generated at his office and are forged/fake bill/debit notes .
- On being asked to explain the reasons for the above observation, he stated that the format of the Bill/Debit Notes are not as per their own Bill/Debit Notes and also the colour of printing is different, size of the stationary is different, the signature appearing on the Bill/Debit Notes are also not his or of any of his authorized signatories.
- He requested that he be allowed to look into his Sale Bill files of the period-2009-10, submitted by him to DRI. He opened the Sales Bill file No.3 for the year-2009-10 and took out Bill/Debit Note numbers VE/921/09-10 dated 18.11.2009 and VE/922/09-10 dated 19.11.2009 appearing at page numbers 130 and 131 of the said file.
- He explained the details of the Bill/debit notes as under :
 - a) VE/921/09-10 dated 18.11.2009 shows the sale of four DEPB licences to M/s Hindustan Continental Limited, Kolkata at the discounted rate of 98% per Licence and the total sale amount is shown as Rs.16221443.00 as against the total Licence value of Rs.16552493.00. The total sale amount is also written in words in the appropriate place in the bill.
 - b) VE/922/09-10 dated 19.11.2009 shows the sale of one DEPB licences to M/s G L & Sons (Metal & Products) Pvt. Limited, 5A, Robinson Street, Kolkata-700017 at the discounted rate of 98.25% and the total sale amount is shown as Rs.255253.00 as against the total Licence value of Rs.259799.00. The total sale amount is also written in words in the appropriate place in the bill.
- He pointed out the differences in these two set of bills of the same number shown to him today. He also confirms that the two Bill/Debit Notes retrieved from File No.3 of the files submitted by him, are the genuine bill/debit notes raise by his firm M/s Vani Exports as they bear the genuine printing, their firm Logo printed, difference in the size of stationary is visible, the Bill number and date is highlighted with orange colour-which is their practice and the signature appearing on these bills are his.
- M/s Hindustan Continental Limited, Mumbai (HCL) is a company which is not known to him. However, Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt. Limited asked them to raise sales invoice on M/s. Hindustan Continental Ltd and they had merely followed his instructions.

- Their sale and purchase with M/s Hindustan Continental Limited was never direct as after each sale they were sending the Bill/Debit Notes to the address of SCPL and not to HCL. However the payments were received from the bank account of HCL.
- As per the prevailing practice in their trade they used make and receive on account payments and the transactions from HCL were also finalized in consultation with SCPL and the entire ledger account of HCL for a particular financial year was finalized in consultation with Shri.Kalpesh Daftary of M/s SCPL at the end of the financial year. Therefore bill-wise co-relation of payment details is not available in their accounts.
- As per Bill/Debit Note No. VE/921/09-10 dated 18.11.2009 they have sold 04 DEPB licences to HCL on 18.11.2009 and the Bill/Debit Note was sent to M/s SCPL. However, M/s SCPL did not submit this Bill/Debit Note to HCL and instead they raised another forged bill/debit note of the same number which shows sale of 08 licences in which first four licences are genuine as they are the same as in the genuine bill/debit notes. The remaining four licences shown in the bill/debit note are actually not sold by his firm.
- The 09 licences shown in the Bill/Debit Note No. VE/922/09-10 dated 05.11.2009 are also not traded by them as the said bill/debit note is not prepared by them and is a handiwork of Shri.Kalpesh Daftary of M/s SCPL as during that period Shri. Kalpesh Daftary was handling the entire work of M/s SCPL.
- He submitted a copy of the ledger account of Hindustan Continental Limited for the year-2009-10 which shows receipt of Rs.16221443.00 on 18.11.2009 which is against the Bill/Debit Note No.VE/921/09-10 dated 18.11.2009, however the amount of Rs.26181654.00 is not reflected in the ledger account as this sale is fake which was created by Shri Kalpessh Daftary and this sales is not made by his firm.
- On being asked to explain how an amount of Rs.5.05 crores was received from M/s. Hindustan Continental Ltd against a sale of Rs.2.18 crores, he again stated that the payments received by them were all on account payments and these too were controlled and made by Shri Kalpessh Daftary only. Therefore, excess payments i.e. payments in excess of the sales though received by them, they were not aware of the reason for the same and these excess payments too were further routed as per the instructions of Shri Kalpessh Daftary.
- He also submitted a copy of the ledger account of M/s G.L. & Sons (Metal & Products) Pvt. Limited for the year-2009-10 which shows an entry of Rs.255253.00 dated 19.11.2009 which is corresponding with the Bill/Debit Note No.VE/0922/09-10 dated 19.11.2009 raised by their firm for sale of one DEPB Licence.

75. A further statement of Shri Surendra Kumar Kulhari, Director of M/s.Hindustan Continental Ltd, Mumbai was recorded on 15/05/2012 under Section 108 of the Customs Act, 1962 wherein he stated inter alia that:

- He was shown the statement of Shri.Girish Ghelani of M/s Vani Exports, Kolkata dated 15.05.2012.
- He was shown two Bill/Debit notes of M/s Vani Exports, Kolkata which were contained in the purchase files which was withdrawn by DRI, Mumbai from his office under panchanama and which is attached to his statement dtd.06.08.2010, the details of these invoices are as under :
 - a) Bill/Debit Note number VE/0921/09-10 dated 05.11.2009 shows the sale of 08 licences to M/s Hindustan Continental Limited, Kolkata by M/s Vani Exports at a discounted rate of 42.13% per licence and the total sale amount comes to Rs.16221444.00 as against the total face value of 38503373.00 for all the 08 licences. The total amount Rs.16221444.00 is also written in words as 'One Crore Sixty two lakhs twenty one thousand four hundred forty four only'.
 - b) Bill/Debit Note number VE/0922/09-10 dated 05.11.2009 shows the sale of 09 licences to M/s Hindustan Continental Limited, Kolkata by M/s Vani Exports at a discounted rate of 55.00% per licence and the total sale amount comes to Rs.26181654.00 as against the total face value of 47603008 for all the 09 licences. The total amount Rs.26181654.00 is mentioned at the bottom and in the space provided, the corresponding amount in words is written as 'One Crore Sixty two lakhs twenty one thousand four hundred forty four only' which is not correct.
- He was shown two Bill/Debit notes of M/s Vani Exports, Kolkata which were contained in the sales files which was withdrawn by DRI, Kolkata from the office premises of M/s.Vani Exports, Kolkata, the details of these invoices are as under :
 - 1) Bill/Debit Note number VE/921/09-10 dated 18.11.2009 shows the sale of four (04) DEPB licences to M/s Hindustan Continental Limited, Kolkata at the discounted rate of 98% per Licence and the total sale amount is shown as Rs.16221443.00 as against the total Licence value of Rs.16552493.00. The total sale amount is also written in words in the appropriate place in the bill.
 - 2) Bill/Debit Note number VE/922/09-10 dated 19.11.2009 shows the sale of one (01) DEPB licences to M/s G L & Sons (Metal & Products) Pvt.Limited, 5A, Robinson Street, Kolkata-700017 at the discounted rate of 98.25% and the total sale amount is shown as Rs.255253.00 as against the total Licence value of Rs.259799.00. The total sale amount is also written in words in the appropriate place in the bill.
- On close observation of both the set of bill/debit notes he noticed that, the Bill/Debit Notes mentioned at 1) and 2) above were not received by M/s Hindustan Continental Limited. Instead they have

actually received only the bill/debit notes mentioned at a) and b) above.

- As stated by him in all his previous statements they have never seen any export incentive licences traded by their firm.
- They were raising the bills only and the entire activity of billing of licences by their firm was managed by Shri. Sashin Koradia. Later on he was aware that Shri. Kalpesh Daftary of M/s Sunkkalp Creations Private Limited was the main person behind the fraud of utilization of forged licences detected and investigated by DRI, Ahmedabad.
- In respect of the above two sets of invoices bearing the same numbers, he stated that instead of giving them the invoices issued by M/s.Vani Exports, Shri Kalpessh Daftary had probably prepared another set of invoices and gave it to them.
- Since they were not aware of the actual sale and purchase of the licences they never came to know about it.
- On being asked regarding the type of licences sold against these two invoices, he stated that he is not aware as to what are the licences sold against these bill/debit notes.
- He submitted a copy of the ledger account of M/s Vani Exports for the year-2009-10 (2 pages) as maintained by them in tally software.
- The said account shows the mention of the amounts of Rs.16221444.00 in credit side shown as purchase Kolkata at Vch.No.130 and an amount of Rs.26181654.00 also as Purchase Kolkata at Vch.No.129.
- On comparing the same with the Ledger account produced by Shri.Girish Ghelani, he finds that the amount of Rs.26181654.00 is not reflected in his account.
- This discrepancy must have occurred due to the handiwork of Shri. Kalpesh Daftary of M/s SCPL as during that period Shri.Kalpesh Daftary was handling the entire work of M/s SCPL and the purchase and sale of licences in their firm was managed by Shri. Sashin Koradia as per the directions of Shri.Kalpesh Daftary.
- They have made payment of Rs.5.05 crores to M/s.Vani Exports, Kolkata towards their purchases of Rs.4.80 crores.
- The payments were made and handled by Shri Kalpessh Daftary only and they were merely signing instruments and handing it over to him.
- They have received payment of approximately Rs.6.80 crores towards the sale of these 13 licences from M/s. Reliance Industries Ltd. Out of this Rs.5.05 crores was made to M/s.Vani Exports, Kolkata and the balance amount was made to other firms by Shri Kalpessh Daftary and they had merely signed cheques and handed over the same to him.

76. The hard disks, laptops, pendrives etc. withdrawn from the office and premises of M/s.Krish Overseas, Rajkot, M/s.Bansi Overseas, Rajkot and the residential premises of Shri Piyush Viramgama were sent to the Directorate of Forensic Science (DFS), Gandhinagar. The DFS vide their report No. DFS/EE/2010/CF/115 dtd.22/07/2011, DFS/EE/2010/CF/116 dtd.29/09/2011 and DFS/EE/2010/CF/119 dtd.13/10/2011

forwarded CD/DVD of the evidentiary documents retrieved from the same. Copies of the documents and evidences relevant to the investigations were called for from the DFS, Gandhinagar vide letter dtd.25/06/2012. The certified copies of the document printouts were forwarded by the DFS, Gandhinagar vide their letter No.DFS/EE/2010/CF/115 dtd.11.09/2012, DFS/EE/2010/CF/116 dtd.11/09/2012 and DFS/EE/2010/CF/119 dtd.11/09/2012.

77. Therefore, it appeared that in the instant case there has been contravention of provisions of Section 7 and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 14 of Foreign Trade (Regulation) Rules, 1993, apart from wrong availment of Notification No.41/2005-Cus dated 09.05.2005 and non-payment of duty of Rs. 6,95,53,888/- on the goods imported, as indicated in Annexure 'B' to the show cause notice. Accordingly, a show cause notice No.DRI/AZU/INV-21/2010 dated 08.04.2013 was issued to M/s. Reliance Industries Ltd, Bharuch and others by the Additional Director General, DRI, Zonal Unit, Ahmedabad calling upon them to show cause to the Commissioner of Customs, Ahmedabad as to why:-

- A. The goods valued at **Rs.38,92,76,299/-**, imported by presenting 13 forged/fake VKGUY should not be held liable for confiscation under Section 111 (d), (j) and (o) of the Customs Act, 1962;
- B. The Customs duty totally amounting to **Rs.6,95,53,888/-** which was debited utilizing the forged/fake VKGUY licences should not be demanded from them under Section 28 (4) (erstwhile proviso to Section 28 (1)) of the Customs Act, 1962;
- C. Interest should not be recovered from them on the said differential duty, as at (B) above, under Section 28AA (erstwhile 28AB) of the Customs Act, 1962;
- D. Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962;
- E. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

78. **(I)** Shri Kalpesh Daftary, of M/s.Sunkalp Creations Pvt Ltd, Mumbai and M/s.Bansi Overseas, Rajkot; **(II)** Shri Piyush Viramgama of M/s.Krish Overseas and M/s.Bansi Overseas, Rajkot; **(III)** Shri Niyaz Ahmed of M/s.Indiyana Shoes and M/s.Indiyana Marketing, Kanpur and **(IV)** Shri Vijay Gadhiya of M/s.Krish Overseas and M/s.Shivigangi Enterprise, Rajkot were also called upon to show cause to the Commissioner of Customs Ahmedabad as to why :-

- i) Penalty should not be imposed upon them under Section 112 (a) of the Customs Act, 1962 and
- ii) Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962.

FINDINGS OF THE ORIGINAL ADJUDICATING AUTHORITY

79. The show cause notice F. No: DRI/AZU/INQ-21/2010 dated 08.04.2013 was adjudicated by the Commissioner, Customs, Ahmedabad vide Order-in-Original No.4/Commr/O&A/2014 dated 24.03.2014, wherein:-

(i) Confiscated goods valued Rs.38,92,76,299 under Section 111(d), (j) and (o) of the Customs Act, 1962, but no fine was imposed as goods were not available for confiscation.

(ii) Confirmed and ordered recovery of the total Customs duty of Rs. 6,95,53,888/- under Section 28(8) of the Customs Act, 1962.

(iii) Ordered recovery of interest under Section 28AA of the Customs Act, 1962.

(iv) No penalty was imposed under Section 112 or Section 114 of the Customs Act, 1962 on M/s Reliance Industries Limited.

(v) Penalty was imposed on the following persons:

Sl.No.	Name of the person	Amount of penalty	
		Under Section 112(a) of CA, 1962	Under Section 114AA of the CA, 1962
1.	Shri Kalpessh Daftary of M/s Sunkkalp Creations Pvt. Ltd., Mumbai and M/s Bansi Overseas, Rajkot	Rs.48,00,000/-	Rs.21,00,000/-
2	Shri Piyush Viramgama of M/s.Krish Overseas and M/s.Bansi Overseas, Rajkot;	Rs.48,00,000/-	Rs.21,00,000/-
3	Shri Niyaz Ahmed of M/s.Indiyana Shoes and M/s.Indiyana Marketing, Kanpur	Rs.70,00,000/-	Rs.70,00,000/-
4	Shri Vijay Gadhiya of M/s.Krish Overseas and M/s.Shivigangi Enterprise, Rajkot	Rs.15,00,000/-	Rs.15,00,000/-

APPEAL FILED BY SHRI KALPESH DAFTARY OF M/S SUNKKALP CREATIONS PVT. LTD., MUMBAI AND M/S BANSI OVERSEAS, RAJKOT & SHRI PIYUSH VIRAMGAMA BEFORE HON'BLE TRIBUNAL, AHMEDABAD AGAINST ORDER-IN ORIGINAL NO.04/COMMR/O&A/2014 DATED-24/03/2014.

80. An appeal was filed by Shri Kalpessh Daftary & Shri Piyush Viramgama before the Hon'ble Tribunal, Ahmedabad and the same was

decided by the Hon'ble Tribunal vide Final Order No. A/10954-10955/2022 dated 10.08.2022.

The remand proceedings in the instant case have arisen out of Final Order No. (*operative portion are reproduced for ready reference*)

"4.1 It is the basic principle of the Natural justice that no one can be condemned unheard. Natural Justice is an un codified law purely based on principle of substantial justice and judicial spirit. Principles of Natural Justice are the cardinal principles, which must be followed in every judicial and quasi judicial proceeding. Authorities should exercise their powers fairly reasonably & impartially in a just manner. They should not decide a matter in backside of the party.

5. In this position, we find that there is clear violation of natural justice. Therefore, ex-parte order passed by the Adjudicating Authority will not sustain. Accordingly, we set aside the impugned order in respect of these Appellants and remand the matter to the Adjudicating Authority for passing a fresh order after granting sufficient personal hearing. The Appeals are allowed by way of remand to the Adjudicating Authority."

**DEFENCE SUBMISSION SUBMITTED BEFORE EARLIER
ADJUDICATING AUTHORITY:**

SHRI KALPESH DAFTARY:

81. Shri Kalpesh Daftary filed his written submission vide his letter dated 19.08.2013 and denied the charges made in the show cause notice. In fact, his reply did not actually counter the allegations made in the show cause notice and makes allegations on other conspirators who happened to be his associates when the offence was committed. Such allegations on other associates had got nothing to do with the charges made in the show cause notice against Shri Daftary. Shri Daftary has extensively mentioned about Dharmesh Gathani of Padmavati Agencies Pvt. Ltd in his reply. Fact of the matter, however, is that in the instant case, the fake licences were not supplied to Reliance Industries Ltd by Padmavati Agencies. This clearly exhibits that reply to SCN has been filed without going to the factual position and simply submitted a reply identical to reply submitted in the case of Hindalco Industries Ltd.

81.1. He claimed that it is case of Padvamati Agencies (P) Ltd., in connivance with Custom Officers of the port issuing and confirming the licenses and forged the documents and used the same for their personal gain. He also stated that he has retracted the statement recorded by DRI. Shri Daftary argued that Shri Dharmesh Gathani of Padmavati Agencies Pvt. Ltd in his statement has stated that they have been supply licences to Reliance Industries Ltd. Therefore, Daftary stated that Shri Dharmesh

Gathani was having easy access to Xerox copies of the used licenses by Reliance Industries Ltd at Dahej or Magdala port.

81.2. Shri Kalpesh Daftary stated that his statement was under pressure from Dharmesh Gathani who had made a police complaint. As per civil suit filed by Padmavati Agencies in City civil Court on 28.10.2010 they have mentioned full address of Niyaz Ahmed and this information was only with DRI. He also claimed that he has never visited Kanpur but Dharmesh Gathani has full details of Niyaz Ahmed. As per CBI investigation Ashok Gupta is main culprit in creating fake licenses and Niyaz Ahmed is witness in CBI investigation.

81.3. Shri Kalpesh Daftary also stated that allegations against him made in the show cause notice are on the basis of statements of various persons. Accordingly, he requested to provide opportunity to cross examine such persons through his lawyer so as to prove that statements of such persons are not completely true. He also contended that right to cross examination is a right under statute and it cannot be taken away. He also stated that the show cause notice is prima-facie time barred as DRI had arrested him therefore all details prior to arrest was with DRI. Now the show cause notice has been issued after two years of his arrest and hence the SCN is time barred as the extended period is not available as all facts were with DRI. He has also resisted the proposal to impose penalty on him.

SHRI PIYUSH VIRAMGAMA:

82. Shri Piyush Viramgama, filed his reply to show cause notice vide his letter dated 01.01.2014, wherein he stated:

- He confirmed having received the show cause notice and conversant with facts and circumstances of the case. He filed the reply/at this stage, with a view to bring certain important aspects, with a request to withdraw/drop this notice. He was an under-trial prisoner and unable to get any temporary bail, he could not properly instruct his lawyer. Hence on this count also, he submitted that he reserves his right to file further reply after getting released from imprisonment.
- He denied the charges made against him in the notice.
- He stated that the Show Cause Notice refers to number of statements of various persons and such persons mentioned in SCN have allegedly described the incident, which has been made basis of initiating proceeding against him. Therefore, requested to provide

opportunity for cross-examination of such person through his lawyer with a view to prove that the facts stated by such person's are not complete and hence cannot be made basis for issuance of SCN.

- He contended that the right to cross examination is a right given under statute and hence same cannot be taken away.
- He further stated that Show-Cause Notice is prima-facie time barred. That the DRI had arrested him for alleged irregularity or illegality of DEPB licenses. Hence the department is having notice of all the details at least prior to the arrest, in spite of this fact notice issued after period of more than one year and hence it is time barred and hence not maintainable in eye of law. The extended period of issuance of Show Cause Notice is not available after disclosure of facts and on the said basis arrest of the notice has taken place. Therefore, in view of true and correct interpretation of Section 28 of Custom Act notice itself is time barred.
- He further stated that the allegation under Custom Act raised u/s 111 (d), (j) and (o) as well as for invocation of personal penalty, do not apply to facts and circumstances of present case. In fact entire transaction of purchase and sale of DEPB licenses is neither done by notice or his company, therefore any of the provision of Section 111 are not invocable nor any of the provisions of personal penalty are invocable against him.
- He further contended that reliance has been placed on his statement recorded and at that time, he was imprisoned and was not having legal guidance, nor having documentary evidence. Such statement was immediately retracted by him.
- He argued that it is evident from the content of notice itself and more particularly from the procedure required to be followed to obtain the credit of the licenses that the Padvamati Agencies Pvt. Ltd., in connivance with custom officers of the port issuing and confirming the licenses as genuine licenses and of the utilizer port have forged the documents and used the same for their personal gain.
- Shri Viramgama submitted that Dharmesh Gathani had given his statement recorded on 22.04.2010. Padmavati agencies Pvt. Ltd is CHA (Custom House Agent). That CHA license was issued from Jamnagar Custom and said Padmavati Agencies are consultant of M/s. Hindalco and other such companies and hence they are fully aware of custom formality. Further in his statement he has further

said that they help exporters in application DGFT/Custom verification work. What is most relevant to note is that his statement differs from Police statement in 145/2010 register at Dahej. And as per Civil suit filed by M/s.Hindalco Industries Ltd at city Civil Court Ahmedabad they mentioned that they pay Rs. 3.75 crore for one licence consultancy charge to Padmavati Agencies Pvt. Ltd that show that they adjust forge licensees profit from other way.

- He submitted that statement of Bikas Pinaliwala stated that it is only Padmavati Agencies who gave low rate and higher quantity. That the genuineness of the RA's are required to be confirmed by RA issuing Customs Authority, Dahej Port. Though in the present case nor any fax or any letter of confirmation is sent from Dahej, Custom to Mangalore, Custom.
- Further Shri Viramgama submitted that Shri Bikas Pilaniwala of M/s. Hindalco stated that in addition to the Custom Authorities, the confirmation of genuineness of the release advice in respect of the alleged 85 licensees were also managed by none other but M/s. Padmavati Agencies (P) Ltd. Dharmesh Gathani is main conspirer of these forge licensees.
- Dharmesh Gathani of M/s Padmavati Agencies (P) Ltd stated that due to huge loss to M/s.Padmavati Agencies (P) Ltd in stock market and he took more money by borrowing same from market that's way they wanted easy money by selling forged license to M/s.Hindalco.
- Shri Viramgama stated that from the above facts and discrepancy mentioned above the allegation leveled against him with regards to act of omission and commission in forging and sale of forged DEPB/VKGUY licenses to M/s. Hindalco Industries Ltd is totally baseless, arbitrary and illegal. Hence, action proposed in the notice needs to be dropped.

DETAILS OF PERSONAL HEARING/CROSS-EXAMINATION

83. In view of the remand orders passed by the Hon'ble Tribunal, Ahmedabad, vide its Final Order No. A/10954-10955/2022 dated 10.08.2022, personal hearing for the purpose of conducting cross-examination was initially scheduled on 11.10.2023.

In case of Shri Kalpesh Daftary:

84. In response to this hearing opportunity, Shri Kalpessh Daftary, through his letter dated 09.10.2023, had requested a postponement of the hearing by one month. By accepting his request, a subsequent hearing was scheduled for 08.11.2023. In response, Shri Kalpessh Daftary, through his letter dated 08.11.2023, submitted a list of 27 individuals for cross-examination, however, he did not provide any specific reasons or justification for requiring the cross-examination of such a large number of witnesses. I find that the Hon'ble Tribunal remanded the case for fresh adjudication to ensure compliance with the principles of natural justice, particularly the right to cross-examine witnesses. However, this right is not unfettered or absolute. I further find that it is a settled principle of law that the noticee must provide specific and sufficient reasons for seeking the cross-examination of any witness. The adjudicating authority is not obligated to permit cross-examination merely upon a request; the noticee must substantiate their request with cogent reasons to establish the relevance and necessity of such cross-examination. In the present case, Shri Kalpessh Daftary's submission of a lengthy list of 27 individuals for cross-examination, without providing any justification, appears to be an attempt to misuse the opportunity provided under the remand order. I note that this conduct does not align with the principles enunciated in judicial pronouncements regarding the right to cross-examination. I further find that various courts in their judgments have reiterated the requirement for noticees to provide valid and specific reasons for cross-examination of witnesses. In support of my statement, I rely on the following judgements:

1. **K.L. Tripathi v. State Bank of India & Ors., (1984) 1 SCC 43** – The Hon'ble Supreme Court held that the principles of natural justice do not require an unlimited or unrestricted right to cross-examine witnesses. The necessity of cross-examination must be assessed based on the facts and circumstances of the case.
2. **Surjeet Singh Chhabra v. Union of India, (1997) 89 ELT 646 (SC)** – The Court emphasized that cross-examination is not an inherent right but must be justified by the noticee to ensure that it serves a meaningful purpose in the adjudication process.
3. **CCE v. Dhiren Chemical Industries, 2002 (139) ELT 3 (SC)** – The Hon'ble Court held that the adjudicating authority has the discretion to allow or deny cross-examination based on the relevance and necessity demonstrated by the noticee.
4. In the case of **M/s. Fortune Impex v. Commissioner of Customs, Calcutta**, as reported at [2001 \(138\) E.L.T. 556 \(Tri. - Kolkata\)](#), Hon'ble Tribunal observed at Para 12 that:
“it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of

26 persons for crossexamination without indicating the specific reasons for cross-examining the...it cannot be said that there was violation of principles of natural justice by not allowing the cross-examination of the persons sought by him." This view taken by the Tribunal has been affirmed by Hon'ble Supreme Court — [2004 \(164\) E.L.T. 4 \(S.C.\)](#) & 2004 (167) E.L.T. A134 (S.C.)”.

5. **Hon'ble CESTAT Kolkata in its decision in Dipu Das v. Commissioner of Customs Kolkata**, reported at [2010 \(261\) E.L.T. 408 \(Tri. - Del\)](#), has held that;

".....In adjudication proceedings, cross-examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same".

In light of the above decisions, it is evident that submission of a lengthy list of witnesses for cross-examination, without providing specific reasons or relevance, does not fulfill the criteria laid down under the law. Shri Kalpessh Daftary’s failure to substantiate his request undermines the objective of the remand order, which was intended to facilitate a fair and just adjudication process.

85. However, I find that to ensure fairness and compliance with the remand order, out of 27 witnesses, letters were subsequently issued to 15 witnesses as identified by Shri Kalpessh Daftary and on whose statements were mainly relied in the present proceedings, requesting their appearance for cross-examination. Details of the same are as under:

Sr. No.	Name of the person whose cross-examination sought	Date on which cross-examination granted	Whether cross-examination conducted
1	Ashok Gupta	12.09.2024, 04.10.2024, 23.10.2024	Postal authority has returned the letter with remark that the receiver has expired.
2	Girish Ghelani	13.09.2024, 03.10.2024, 23.10.2024	Letter returned from both addresses with remark “Left”.
3	Vishal Wadkar	13.09.2024, 19.09.2024	Returned by the postal authorities with remark “Not Known”.
4	Vishal Vyas	13.09.2024, 19.09.2024, 15.01.2025	Returned by the postal authorities with remark “Left”. Cross-examination conducted
5	S.P. Mojar	12.09.2024, 03.10.2024, 22.10.2024, 06.11.2024, 23.12.2024	Cross-examination conducted.

6	Sachin Koradia	12.09.2024, 03.10.2024, 22.10.2024	Did not appear on any dates.
7	Surendra Kulhari	12.09.2024, 04.10.2024, 23.10.2024, 06.11.2024, 24.12.2024	Did not appear on any dates.
8	PiyushViramgama	10.09.2024, 30.09.2024, 21.10.2024	Did not appear on any dates.
9	Vijay Gadhiya	10.09.2024, 01.10.2024, 22.10.2024	Returned by the postal authorities with remark "No such person".
10	Hiten Parekh	11.09.2024, 30.09.2024, 21.10.2024, 06.11.2024, 23.12.2024	Cross-examination conducted.
11	Rajesh Sajnani	11.09.2024, 01.10.2024, 22.10.2024, 06.11.2024, 23.12.2024	Appeared on 01.10.2024 but cross-examination not conducted as Shri Kalpesh did not appear. Cross-examination conducted.
12	DeepeshViramgama	10.09.2024	Returned by the postal authorities with remark "Left"
13	Rakesh Bainle	11.09.2024, 01.10.2024, 21.10.2024	Appeared on 11.09.2024 but cross not done as Shri Kalpesh did not appear. Cross-examination conducted.
14	Gangadhar Shetty	13.09.2024, 04.10.2024, 23.10.2024, 07.11.2024, 24.12.2024	Appeared on 04.10.2024 but cross not done as Shri Kalpesh did not appear.
15	Somnath Chaudhary	11.09.2024, 30.09.2024, 21.10.2024, 08.11.2024, 26.12.2024	Appeared on 11.09.2024 but cross-examination not conducted as Shri Kalpesh did not appear. Appeared on 08.11.2024 but cross-examination not conducted as Shri Kalpesh did not appear. Shri Kalpesh submitted letter dated 26.12.2024 for extension of dates for cross-examination.
16	Bindi Vora, employee of M/s Hindustan Continental Ltd., Mumbai		Cross-examination not granted by the adjudicating authority

17	Bhavesh Doshi, Authorised Signatory of M/s Suresh Doshi	as no reasons were given by the noticee to confront.
18	Badri Prasad Choudhory, Managing Director of M/s Sun Exports Pvt. Limited	
19	N.S. Mangava	
20	Shri Jatin Parekh, Director of M/s.Trident (India) Ltd, Ahmedabad	
21	Sangita Parekh, Director of M/s Sunkkalp Creations Pvt. Ltd., Mumbai.	
22	Arvind Sonawane, Export Executive of M/s Allanasons Ltd., Mumbai.	
23	Basir Jasani, Manager of M/s Allanasons Ltd., Mumbai.	
24	Vinod Poovappa, Superintendent, C.Ex., & Customs, Mangalore.	
25	Niyaz Ahmed of M/s.Indiyana Shoes and M/s.Indiyana Marketing, Kanpur	
26	Shri Manoj Guru of M/s Reliance Industries Limited	
27	Shri Santosh Rane of M/s Reliance Industries Limited	Cross-examination not granted by the adjudicating authority as no reasons were given by the noticee to confront.

Further, personal hearing in the matter was held on 11.02.2025 through video conferencing. Shri N.K. Tiwari, consultant of Shri Kalpessh Daftary and Shri Kalpessh Daftary himself appeared for personal hearing and during the hearing, Shri Tiwari, on behalf of Shri Kalpessh Daftary, raised certain points and stated that they would submit a detailed written reply incorporating the submissions made during the hearing by 17.02.2025. They were accordingly granted time until 17.02.2025 to file their final written submissions. As the personal hearing was conducted through video conferencing, the record of personal hearing was sent to Shri Kalpessh Daftary via email on 11.02.2025, with a request to return a signed copy of the same. However, signed copy of the record of personal hearing was not received from Shri Kalpessh Daftary even after passing of sufficient time. Consequently, a letter dated 13.02.2025 was issued to Shri Kalpessh Daftary, reminding him of the deadline for submission of the final written reply by 17.02.2025. Subsequently, vide email dated 14.02.2025, Shri Kalpessh Daftary submitted a modified version of the

record of personal hearing prepared by him. In the said record, additional points were incorporated which had not been raised during the actual personal hearing. Further, it is observed that the record submitted by Shri Kalpessh Daftary includes new contentions that were not part of the personal hearing proceedings. Moreover, during the hearing, they had voluntarily sought time to submit a detailed reply covering all their contentions and they were granted time accordingly.

86. In pursuance to the Hon'ble Tribunal order dated 10.08.2022, Shri Piyush Viramgama was granted opportunities for personal hearings on 11.10.2023 and 26.10.2023, to represent their defence. However, in response to both the personal hearings, Shri Piyush Viramgam has neither turned up for the hearing on the scheduled date nor submitted any reply in this regard. On request of cross-examination of Shri Piyush Viramgama by Shri Kalpesh Daftary, three letters dated 03.09.2024, 18.09.2024, and 04.10.2024, were issued to Shri Piyush Viramgama, requesting him to remain present at the Office of the Principal Commissioner of Customs, Ahmedabad, on the scheduled date and time for cross-examination. But, Shri Piyush Viramgama has neither appeared for the cross-examination nor made any request for postponement in this matter. In addition, in order to follow the principles of natural justice on the direction of the Hon'ble Tribunal, letter dated 28.10.2024 were issued to Shri Piyush Viramgama, to submit the list of witnesses whom he wishes to cross examine within seven days. The letter was acknowledged and received by him in person on 29.10.2024. Despite of providing the list of persons to be cross-examine within the stipulated time, Shri Piyush, vide letter dated 07.11.2024, has requested for one-month extension without adducing any specific reason. I further find that subsequent to his request for an extension, further communications, including letter dated 08.11.2024 and reminders dated 19.11.2024 and 04.12.2024, were issued to Shri Piyush Viramgama, instructing him to submit the list of witnesses for cross-examination. Till the beginning of this adjudicating proceedings, no reply was received from Shri Piyush Viramgama in continuation for their postponement. Although, the very fact reveals that the opportunity of cross-examination is not being taken in serious manner which reflects the contradictory approach of Shri Piyush Viramgama towards the opportunity provided by the Hon'ble Tribunal to controvert statements and cross examine the statements on which the department places its reliance. Without any presupposition, it is imperative to mention that such casual approach of postponement is not appreciable

and may adversely affect the adjudication process to complete in a reasonable time in the interest to safeguard the Govt. Revenue. In a fair and just way, I observe that the right of cross examination is not a tenable right which can be asserted irrespective of the facts and circumstances without participating in the adjudicating proceedings up to the final stage. In such circumstance, I find that the cross-examination would not be helpful to their defence or nothing fruitful would be elicited in cross-examination to conclude the adjudication process. Taking into considering the above facts and circumstances, I find that several opportunities have been granted to Shri Piyush Viramgama to participate in the adjudicating proceeding indicating sopecifically that failure to join the proceedings would compel to proceeds on the available records, however, in each and every occasion, Shri Piyush Viramgama has failed to avail opportunity for representing their contentions with the support of corroborative evidence before the adjudicating authority. Thus, there is no option left before me to proceed the adjudicating process on the basis of available records as well as per procedure and substance.

87. RECORD OF CROSS EXAMINATION CONDUCTED

A. Shri Rakesh Bainley and Shri N K Tiwari with Shri Kalpesh Daftary appeared for the cross examination on 21.10.2024 at 11:30 hrs, the details are:-

Q.1. There were two statements dated 23.07.2010 & 27.08.2012, have you signed both these statements?

Ans: Yes, I have signed both these statements.

Q.2. In your statement you have stated that you were posted at Dahej, please state whether it is a EDI port or Non-EDI port?

Ans: It was a Non-EDI port.

Q.3. In your statement you have stated that there were two fax machines were installed in the Custom House, Dahej, please state the exact location, where these fax machines were installed?

Ans: As the matter was more than 12 years old, I am not able to recall the same.

Q.4. In your statement you have stated that the fax received from the fax machines were also not legible, please state that have you ever brought to notice of higher authorities?

Ans: Do not remember.

Q.5. In your statement you have stated that M/s Hindalco Industries Limited were filing bill of entries and shipping bills on self basis but their work was being handled by M/s Kshitij Marine Services Private Limited, Surat. Please tell me the provisions of Customs Act, 1962, which provide such a dual method of clearance of imported goods or export of cargo?

Ans: Do not remember

Q.6. Do you know the directors of M/s Kshitij Marine Services Private Limited, Surat?

Ans: No, I do not know any of the director of M/s Kshitij Marine Services Private Limited, Surat.

Q.7. Please state the process of debiting the Customs Duty in a license.

Ans: At present, I am not able to recall this.

Q.8. Please state where was the Assistant Commissioner of Customs, Dahej sitting at that time?

Ans: The Assistant Commissioner of Customs, Dahej usually sat at Surat, office, however, he regularly visited the Dahej office for official work.

Q.9. Please state the medium or how the files were being taken from Dahej port to the Surat office of Assistant Commissioner of Dahej Customs.

Ans: I do not remember exact medium, however, it might be send through the departmental officers.

Q.10. Is there any provision in Customs Act, 1962 to facilitate the importer, who does not have the facility of storage or bonded warehouse? In such cases who is empowered to permit such facilitation, Assistant Commissioner or Superintendent?

Ans: Do not remember.

Q.11. In your statement, you have mentioned that you have sent the letter no. CH/DJ/32/2008-09 dated 10.09.2008 to Mangalore Customs. Please state that how this letter was sent to the Mangalore Customs, while the fax machine was not working and how they vide letter no. S-01/02/2008 imp dated 12.09.2008 reply of the said letter?

Ans: As the matter is too old, I am not able to recall the same at present.

Q.12. In your statement you have stated that approx. 4000 plus licenses were used by M/s Hindalco Industries Limited in a year, can you please

inform as to how many licenses per month were being used by M/s Hindalco in a month?

Ans: As the matter is too old, I am not able to recall the same at present.

Q.13. Is there any provision in the Customs Act, 1962 to provide the documents to the private person for carrying from one office to another office?

Ans: Do not remember.

Q.14. Please state about your present place of posting?

Ans: At present I am working as an Assistant Commissioner, Nahava Sheva-2, Mumbai.

B. Shri Hiten Parekh, Shri N K Tiwari consultant of Shri Kalpesh Daftary and Shri Kalpesh Daftary appeared for the cross examination on 23.12.2024 at 12:30 hrs. the details are as below:-

Q.1. Is any case booked by DRI/Customs against you?

Ans: No.

C. Shri Sarjerao Parbati Mojar, Shri N K Tiwari consultant of Shri Kalpesh Daftary and Shri Kalpesh Daftary appeared for the cross examination on 23.12.2024 at 13:00 hrs., the details are:-

Shri N K Tiwari asked his name and he stated that his name is Sarjerao Parbati Mojar, also known as "Chhotu". On being asked about his qualification, he replied that he is 8th class pass in Marathi Medium. When asked whether before signing the statement on 18.06.2010, he had read his statement, he replied that the statement was recorded in English and he was frightened, he did not know the content of the statement and signed without reading it. On being asked about his job in M/s Sankalp Creation Private Limited, he replied that earlier he used to work with Shri Pareshbhai and alongwith him he had worked in M/s Sankalp Creation Private Limited for approx. 28 years. On being questioned about his duties as a peon, he stated that his responsibilities included preparing and serving tea and water, as well as delivering and receiving letters for other staff members. When inquired whether he knew Shri Sashin Koradia, he responded that Shri Sashin Koradia used to visit their office to meet Shri Kalpesh Daftary; however, he did not know the nature of Shri Koradia's work. He further stated that Shri Koradia did not visit during Shri Pareshbhai's tenure but started visiting during Shri Kalpesh Daftary's tenure. In response to a question about the circumstances under which

his statement was recorded, he disclosed that he had received a summons from the DRI office and, in compliance with the summon, he visited the office to give his statement. When asked about Shri Vishal Wadkar, he stated that Shri Wadkar was an employee of Shri Sashin Koradia and occasionally visited their office to perform part-time work.

The contents of the cross-examination were read out and explained in Hindi to Shri Sarjerao Parbati Mojar, also known as "Chhotu," in the presence of Shri N.K. Tiwari and Shri Kalpesh Daftary.

D. Shri Rajesh Sajnani, retired Superintendent of Customs and Shri Kalpesh Daftary appeared for the cross examination on 23.12.2024 at 15:30 hrs, the details are:

Q.1. There were two statement dated 20.07.2010 & 27.08.2012, have you signed both these statements?

Ans: Yes, I have signed both these statements.

Q.2. In your statement you have stated that you were posted at Dahej, please state whether it is a EDI port or Non-EDI port?

Ans: It was a Non-EDI port.

Q.3. In your statement you have stated that two fax machines were installed in the Custom House, Dahej, please state the exact location, where these fax machines were installed?

Ans: As far as I remember, there was only one fax machine installed in the Custom House Dahej. As the matter is more than 15 years old, I am not able to recall the same.

Q.4. In your statement you have stated that M/s Hindalco Industries Limited were filing bill of entries and shipping bills on self basis but their work was being handled by M/s Kshitij Marine Services Private Limited, Surat. Please tell me the provisions of Customs Act, 1962, which provide such a dual method of clearance of imported goods or export of cargo?

Ans: I do not remember the provisions now, however, M/s Hindalco Industries Limited used to submit authorization letter in each case in favor of M/s Kshitij Marine Services Private Limited, Surat to attend the custom related work on their behalf.

Q.5. Do you know the directors of M/s Kshitij Marine Services Private Limited, Surat during 2007 to 2009?

Ans: Yes. Shri Parvin Dixit was one of its director.

Q.6. As per your statement, you have resigned from the department on 24.07.2009, however, you have joined M/s Kshitij Marine Services Private Limited, Surat on 01.08.2009 i.e. within 07 days, please state whether code of conduct is not applicable to you?

Ans: I have resigned from the department on 24.07.2009. I do not remember the date of joining in M/s Kshitij Marine Services Private Limited, Surat and my joining in this firm is also not related in the present case.

Q.7. Please state the process of debiting the Customs Duty in a license.

Ans: At present, I am not able to recall about the process.

Q.8. Please state where was the Assistant Commissioner of Customs, Dahej sit at that time?

Ans: The Assistant Commissioner of Customs usually sits at Surat office, however, he also used to visit the Dahej office whenever needed.

Q.9. Please state the medium or how the files were being taken from Dahej port to the Surat office of Assistant Commissioner of Dahej Customs.

Ans: I do not remember exact medium, however, files might have been sent through the departmental officers.

Q.10. Is there any provision in Customs Act, 1962 to facilitate the importer, who does not have the facility of storage or bonded warehouse? In such cases who is empowered to permit such facilitation, Assistant Commissioner or Superintendent?

Ans: As far as I remember neither Assistant Commissioner nor Superintendent is empowered to permit such facilitation.

Q.11. Is there any provision in the Customs Act, 1962 to provide the documents to the private person for carrying from one office to another office?

Ans: No.

E. Shri Vishal Vyas, Shri N K Tiwari consultant of Shri Kalpesh Daftary and Shri Kalpesh Daftary appeared for the cross examination on 15.01.2025 at 14:00 hrs., the details are:-

Q.1. What is your qualification?

Ans: I have 12th class passed.

Q.2. Are you well conversant in reading, writing and understanding the English language?

Ans: I am not fluent in English but I can read and understand to my ability.

Q.3. Were the statements recorded by the DRI, in English, explained to you in a language you understand well?

Ans: No

Q.4. Were the statements recorded based on your version of events and the facts you provided?

Ans: Mostly it is correct except only one thing I want to add that the sale purchase transactions were mainly looked after by Shri Paresh Parekh.

Q.5. Were you employed at Sankalp Creation Private Limited? If yes, since when and what were your duties at Sankalp Creation Private Limited, and to whom did you report?

Ans: I have joined this company in December 2008 and I was looking after the coordination related to sale purchase of license and I reported to Shri Paresh Parekh.

Q.6. Please name the office staff members of Sankalp Creation Private Limited during 2008-2010 and mention their respective duties or roles.

Ans: Following persons were working as office staffs during 2008 to 2010.

Mamta Ben Shah: Accounts related activity

Samir Sathbhaya: E-bike related activities

Alien Madam: Overall management

Chhotu @ Sarejarao Mojar: Peon

Ganesh DK: Courier, Xerox of license related

Q.7. How many types of business were Sankalp Creation Private Limited doing in the year of 2008-2010 ?

Ans: Sankalp Creation Private Limited were doing trading of licenses, showroom of clothes, mobile lamination in the name of Skinzam, E-bike export related activity.

Q.8. When did you leave Sankalp Creation Private Limited?

Ans: I have left the company in 2011.

Q.9. Who was responsible for the sales and purchase of licenses?

Ans: Pareshbhai looked after the sales and purchase of license in Sankalp Creation Private Limited.

Q.10. How were the licenses purchased, and how were they received?

Ans: The licenses were purchased by Shri Paresh bhai and were received through courier or messenger.

Q.11. After the receipt of the licenses, who verified them?

Ans: I verified the licenses received as per the list given by Shri Pareshbhai and thereafter handed over the same to Pareshbhai for further action.

Q.12. Were you called by the DRI? If so, for what purpose?

Ans: I was called for by the DRI to record my statement. On 18.06.2010, DRI officers came to our office and enquired about the Directors. Thereafter, they took me alongwith Chhotu and Shri Ganesh bhai to DRI office, Mumbai. They asked us about the Directors and beaten me and Chhotubhai and thereafter issued summons to me to appear on 25.06.2010.

Q.13. In your statements, you have mentioned that you followed the instructions of Kalpesh Daftary and carried out all activities as per his directions. Please explain how Kalpesh Daftary was involved if the entire license work was supervised by Paresh Parekh.

Ans: Shri Paresh Parekh was looking after the work of sale and purchase of license.

Q.14. What was Kalpesh Daftary's role at Sankalp Creation Private Limited?

Ans: He looked after the work related to DGFT, mobile lamination related work, export and manufacturing of E-Bike.

Q.15. Do you know Vishal Wadkar? Did he ever visit the office of Sankalp Creation Private Limited?

Ans: Yes, he usually comes to visit the office of Sankalp Creation Private Limited.

Q.16. As per your statement dated 28.05.2010, you were shown email printouts dated 14.07.2009 and 25.02.2010. Were these printouts taken by the officers from your computer at the time your statement was recorded?

Ans: No, I was only shown the emails printouts.

Q.17. As per your statement dated 25.06.2010, you were shown email printouts that were said to have been taken from the inbox of Shri Vishal Wadkar's computer. Was the inbox of Shri Vishal Wadkar's computer shown to you during recording of your statement?

Ans: No, I was shown copy of the printouts.

Q.18. In your statement dated 25.06.2010, you mentioned that the email ID "info@sunkkalp.com" was used by Kalpeshbhai. Is this correct?

Ans: No, the email id was used by Shri Paresh Parekh and others. I am not aware whether it was used by Shri Kalpesh Daftary or not.

Q.19. Did Paresh Parekh visit the Sankalp Creation Private Limited office during 2008-2010?

Ans: Yes, he regularly visited the office.

Q.20. I am referring to your statements where you mentioned that emails regarding the sale or purchase of licenses were sent under the instructions of Kalpeshbhai. Please confirm if this is accurate.

Ans: No, I have sent these emails on the direction of Shri Paresh Parekh.

Q.21. During the search at the Sankalp Creation Private Limited office on 30.04.2010, were you present? If yes, were any computers, laptops, hard drives, or pen drives seized by the DRI?

Ans: Yes, I was available during the Search. The DRI has not taken any computers, laptops, hard drives, or pen drives.

Q.22. As per your statement dated 25.06.2010, you mentioned that Vishal Wadkar visited only on Sundays. Did he visit on any other days as well?

Ans: He usually comes to Sunday, however, he sometimes used to come on other days also.

The contents of the cross-examination were read out and explained in Hindi to Shri Vishal Vyas in the presence of Shri N.K. Tiwari and Shri Kalpesh Daftary.

DEFENCE REPLY OF SHRI KALPESH DAFTARY:

88. The Noticee vide letter dated 17.02.2025 has submitted their defence reply and a summary of the said submission is as follows:

- 88.1. The Noticee vide letter dated 08.11.2023 sought Cross Examination of 27 witness. Out of 27 witnesses, the Adjudicating Authority allowed cross examination of only 15 witnesses and out of these 15 witnesses only 5 were offered for cross examination and the oral evidence of the said 5 witnesses could only relied upon in sustaining the allegation against Noticee and the oral evidence of remaining 22 witnesses cannot be considered in the preceding to arrive any adverse inference against Noticee in the proceedings;
- 88.2. Further it also brings to notice that present Noticee has already retracted statements recorded by DRI from Jail. Thus, said statements cannot be relied upon against the noticee;
- 88.3. Shri Hiten Parekh was cross examined on 23.12.2024. As Shri Parekh did not implicate Noticee in his oral evidence, he was cross examined only to ascertain as to whether any DRI or Customs case booked against him to which he replied negative. The deposition made by Shri Hiten Parekh during cross examination in fact was not correct. Here reference to Case No 346/RA/2001/ before the Chief Metropolitan Magistrate at Mumbai against Shri Hiten Parekh. The prayer was made by Shri Paresh Parekh a request for release of cash security and had Surety through Shri Paresh Parekh. On going through above oral evidence of Shri Hiten Parekh and the documentary evidence it revealed that in the cross examination he has not revealed the true and correct facts, however even in the oral evidence nowhere he has implicated Noticee in the trading of export incentive licences and thus the oral evidence of the Shri Hiten Parekh does not render any assistance to sustain allegation against Noticee;
- 88.4. During the course of cross examination of Shri Sarjerao Parbati Mojar @ Chhotu, it was stated by him that the statement was recorded in English and he was frightened and has signed without reading and knowing content of the statement. Shri Sarjerao has also submitted copy of affidavit dated 27.07.2010 filed by him, where he has made complaint of ill-treatment. Therefore, the said statement of Shri Sarjerao Parbati Mojar @ Chhotu can not be considered as admissible evidence in the proceeding against Noticee;
- 88.5. During the course of cross-examination of Shri Rakesh Bainle, he gave evasive answers to most of the questions by stating that the matter was too old and he was not able to recollect the same at present. It is noticed that RA No.1784 appears at two places on 17.11.2008 and 20.11.2008. Similarly, RA No.1785 also appears at

two places on the similar date. It is surprising to note as to how the RA's having same numbers were generated on two different dates for two different licenses and for two different amounts and still it was signed by the said Superintendent and also seen by him, thus, there was a gross negligence of duty on the part of the Superintendent;

- 88.6. During the course of cross-examination of Shri Rajesh Sajnani, he was asked to provide the provisions under the Customs Act, which provided a dual method where the importer was allowed to file the Bills of Entry on self basis and also to authorize some other agencies for handling the document to which he replied that he did not remember the provisions now. The Noticee craved to submit that the Customs Law does not provide for such a dual method for clearance of import cargo. Shri Sajnani was specifically asked about the details of directors of M/s. Kshitij Marine during 2007-2009 and he deliberately avoided the names of other directors as his wife was a Director in M/s. Kshitij Marine during the period. Thus, Shri Sajnani had vested interest in the functioning of M/s Kshitij Marine and had ensured that M/s. Hindalco authorized Kshitij for handling the documents. Thus, there was a gross misconduct on the part of Shri Sajnani, which has led to the defraud and loss to Government revenue at that material time;
- 88.7. Shri Vishal Vyas, during his cross-examination, stated that he was not fluent in English, and the statements recorded in English were not explained to him. He clarified that the work relating to the trading of licenses was handled by Shri Paresh Parekh, while he only coordinated the sale and purchase of licenses under the instructions and supervision of Shri Paresh Parekh. Licenses were purchased by Shri Paresh Parekh, received through courier or messenger, verified by Shri Vishal Vyas as per the list provided, and then handed over to Shri Paresh Parekh for further action. He further stated that the Noticee was involved in work related to DGFT, mobile lamination, export, and manufacturing of e-bikes, and not in the sale and purchase of licenses. The printouts of emails shown to him were not taken in his presence, and the emails were sent under the instructions of Shri Paresh Parekh. He also confirmed that no laptop, pen drive, hard disk, or any other digital media was seized during the search conducted by DRI at the premises of M/s Sunkalp Creation Pvt. Ltd. These facts make it clear that the Noticee had no involvement in the trading of licenses, and his name appears in the proceedings solely because he was one

of the directors at the relevant time. Shri Vishal vide letter dated 02.01.2025, submitted that he had filed a police complaint before the Senior Police Officer, Azad Maidan Police Station, Mumbai for ill treatment by DRI officers;

- 88.8. Further, on going through the panchnama (RUD-6) prepared during search at another premise of M/s Bansi Overseas, the panchnama are in English and the signatures appended by the panchas, it doesn't come out that either the said panchas were acquainted with English language. It may be seen that the panchas profession has been shown as services. Therefore, no such reliance on recovery of the said impression could be made if the panchas did not understand the nature of the recovery made by the officers during the course of search;
- 88.9. On going through the panchnama at RUD 7, it is revealed that the said panchnama was not drawn in presence of any of the authorized person of Shri Vijay Gadhiya but was drawn in presence of a house owner named Mrs. Dayaben Vinodbhai Varmura. Further, on going through the annexure to the said panchnama, specifically Annexure-B, it is revealed that it has impression of certain stamps said to have been recovered from the said premises, which are in English. On going through the signatures appended by the panchas and the house owner, it doesn't come out that either the said panchas or the house owner were acquainted with English language. It may be seen that the panchas profession has been shown as "owner of a Grocery and another involved in Carpentry work. Therefore, no such reliance on recovery of the said impression could be made if the panchas did not understand the nature of the recovery made by the officers during the course of search;
- 88.10. Further, as the department has failed to produce Shri Piyush Viramgama, Shri Vijay Gedhiya, Shri Deepesh Viranmgama, Smt Bindi Vora, Shri Jatin Parekh and Shri Girish Ghelani, the evidence tendered by them during the investigation cannot be considered as admissible evidence;
- 88.11. From the panchnama carried out at the premise of M/s Hindustan Continental Limited at Mumbai, it is found that Shri Surendra Kulhari specifically informed to the DRI officers that he was dealing of sales/purchase of various licences through Shri Paresh Parekh of M/s Sunkkalp Creation and paid a commission of Rs 0.25% by Shri Paresh Parekh. Further Shri Surendra Kulhari named the Noticee as an associate of Shri Paresh Parekh but added that most of dealing

with Shri Paresh Parekh only. The above facts get coordinate by the deposition made by Shri Vishal Vyas during course of the cross examination on 15.01.2025 before the Adjudicating Authority. Thus, it is absolutely clear that the Noticee has been involved in present processing merely because he was one of the directors in M/s Sunkkalp although Noticee was not involved directly or indirectly in sales/purchase of licence;

- 88.12. Shri Surendra Kulhari, Director of M/s Hindustan Continental Limited, stated that Shri Vishal Wadkar worked part-time at his company, which allegedly issued certain bills. Despite a turnover of Rs. 200 crore, M/s Hindustan used an employee's email for official communications. The company's bank statement from 12.12.2008 to 03.08.2011 confirms the supply of licenses to M/s Hindalco; however, the DRI investigation overlooked this crucial detail. Additionally, the statement indicates the existence of another bank account, which was also ignored, suggesting a selective approach by the DRI. Further, Shri Kulhari initially denied any contact with the Noticee or Shri Paresh Parekh but later claimed that Shri Sashin Koradia instructed him to prepare the bills. Despite these admissions, no show cause notice for a penalty was issued against him. Shri Kulhari's statements to the ED, CBI, and DRI contradict each other, particularly regarding the purchase of the company and cash transactions, rendering them unreliable for sustaining allegations. Furthermore, M/s Hindustan sought vendor registration with M/s Reliance Industries Limited, submitting a request letter bearing the verified signature of Shri Anil Patodia; however, the DRI failed to investigate this matter. The evidence suggests that Shri Kulhari orchestrated the forged license transactions. The investigation appears biased, selectively disregarding evidence favorable to the Noticee. As the department has failed to produce Shri Surendra Kulhari, the evidence tendered by him during the investigation cannot be considered as an admissible evidence;
- 88.13. In the said para 22, (RUD-24) that from the statements of Shri Vishal Vyas employee of M/s Sunkkalp Creation Pvt. Ltd. has been referred. Shri Vishal Vyas was summoned for cross-examination and he appeared on 15.01.2025. During the course of cross-examination it was stated by Shri Vyas that during the recording of the statement, he was manhandled and harassed by the Investigating Officers and had accordingly filed a police complaint at Azad Maidan Police Station, copy of which is submitted by him to

the adjudicating authority also. Thus, the facts incorporated in the statement of Shri Vishal Vyas, were not voluntary and the facts stated by him during cross-examination are required to be considered as voluntary and acceptable evidence;

- 88.14. During the investigation by the CBI and the Enforcement Directorate, statements of Shri Sashin Koradia were recorded on August 11, 2011, which reveals that Shri Sashin Koradia had known Shri Paresh Parikh, Director of Sunkkalp Creations, since 2003. In 2008, Shri Paresh Parikh introduced the noticee to Shri Koradia. However, Koradia's statements before the CBI on August 11, 2011, and the Enforcement Directorate on December 31, 2018, contained contradictions on the same facts, indicating that the statement recorded under Section 108 of the Customs Act was unreliable. Such inconsistencies render the statement inadmissible, and no adverse inference can be drawn against the noticee. Further, Shri Koradia identified Shri Pravin Jain as a known hawala operator involved in dummy transactions, yet the DRI did not summon him despite evidence linking him to multiple companies, including M/s Accurate Multitrade Pvt. Ltd. and M/s New Planet Trading Co. Pvt. Ltd. This selective investigation raises concerns about bias approach of DRI. Orders from the Hon'ble High Court of Gujarat and the Income Tax Tribunal, when analyzed alongside transactions involving M/s New Planet Trading Co., reveal that forged license sales and purchases were managed by Sashin Koradia through Pravin Jain. Sales of 14 forged licenses between M/s Ostwal Trading and M/s New Planet Trading were ignored by the DRI, further raises questions about the credibility of the investigation. As the department has failed to produce Shri Sashin Koradia, the evidence tendered by him during the investigation cannot be considered as admissible evidence;
- 88.15. In the proceedings before the Court, initiated based on the complaint filed by the CBI, Shri Neeraj Jadwani, the email domain supplier confirmed that the email password of Sunkkalp had been reset on numerous occasions by Shri Vishal Wadkar. It was also brought on record that a complaint regarding this issue had been made by the noticee in December 2009. This cross-examination establishes that the email account of Sunkkalp was being accessed and potentially misused by Shri Vishal Wadkar through repeated password resets. Therefore, it cannot be said that whatever documents or details, which have been recovered from the e-mail I.D. of Sunkkalp were created by Sunkkalp itself;

- 88.16. During the investigation, the e-mail account of Shri Vishal Wadkar was accessed by the DRI officers, and printouts of some e-mails were taken. These emails contain multiple banking transactions with M/s. New Planet Trading Pvt. Ltd., M/s. Punjab Chemicals Ltd., and M/s. Hindustan Continental Ltd. The RUD-116 (M/s. Hindalco SCN) printout from Shri Gathani's laptop, showing banking transactions, aligns with the transactions in Shri Wadkar's email printouts. This confirms that the transactions in question have no connection to the noticee. The details from the emails were verified by Shri Dharmesh Gathani, and it was established that all emails recovered from Shri Wadkar were accurate and true. This suggests a connection between Shri Wadkar, Shri Gathani, and Shri Sashin Koradia. It is important to mention that Shri Dharmesh Gathani is neither a witness nor a co-noticee in this case. The debit notes issued by M/s. Vrinda Agencies to M/s. Hindustan, referenced on pages 178 to 183 of RUD 28, show a format identical to those used by M/s. Padmavati and M/s. Vani Exports. Additionally, the statement of Shri Vishal Wadkar recorded by the CBI on 18.01.2012 indicates that he coordinated the paperwork for the sale and purchase of licenses of M/s. Hindustan and that Shri Kamal Podar had his email ID and mobile number. Shri Vishal Wadkar was fully aware of the licenses and the staff of M/s. Padmavati, M/s. Sunkkalp, and M/s. Hindustan. Furthermore, Shri Wadkar made contradictory statements compared to his earlier statements under Section 108 of the Customs Act, and such conflicting statements before different investigating agencies cannot be relied upon to sustain allegations against the noticee. As the department has failed to produce Shri Vishal Wadkar, the evidence tendered by him during the investigation cannot be considered as admissible evidence;
- 88.17. In para 48 (RUD-55), it is mentioned that Statement of Shri Bhavesh Doshi, Authorised Signatory of M/s Suresh Doshi Mumbai, was recorded and during the statement he provided a statement regarding the purchase and transfer of licenses. As per RUD-55, he submitted a chart (1 to 10 pages) upon DRI's request, showing that licenses were procured through the Noticee and Shri Paresh Parekh of M/s Sunkkalp Creation Pvt. Ltd. and later transferred to M/s Reliance Industries. The chart indicates that Shri Bhavesh Doshi sourced licenses from Shri Paresh Parekh in 2008, whereas the Noticee first contacted him in November 2009. This suggests that DRI did not verify when the chart was submitted or whether licenses

were supplied to M/s Reliance as early as May 2008. Shri Bhavesh Doshi further stated that M/s Reliance made payments to M/s Vani Exports, which ultimately reached M/s Sunkkalp Creation Pvt. Ltd. However, it remains unclear how he could confirm that all payments from M/s Reliance ultimately went to M/s Sunkkalp. The DRI investigation did not scrutinize his statement. As the department has failed to produce Shri Bhavesh Doshi, the evidence tendered by him during the investigation cannot be considered as admissible evidence;

88.18. In para 50 (RUD-60), Shri Badri Prashad Chowdhary stated that they sold licenses on a brokerage basis to M/s Hindalco Industries and M/s Reliance Industries but could not recall selling directly billed licenses to them. Instead, they arranged licenses for these companies through other traders like M/s MPG International and M/s Bally Exports, who raised the sales invoices. Additionally, invoices from firms such as M/s Vani Exports, M/s Padmavati Agencies, and M/s Hindustan Continental Ltd. were arranged by traders who originally sold the licenses i.e. M/s Sunkkalp Creations. He also confirmed arranging billing for Shri Bhavesh Doshi, indicating that he utilized M/s Hindustan and M/s Vani Exports for billing through Shri Chowdhary. As the department has failed to produce Shri Badri Prashad Chowdhary, the evidence tendered by him during the investigation cannot be considered as admissible evidence;

88.19. The noticee submits that he had retracted all his statements at the first available opportunity. Thus, the retracted statements could not be considered as admissible evidence during the course of proceedings to arrive at any guilt against the noticee. At this stage the noticee desires to put on record that he was receiving constant threat with regard to him and his family members and was compelled to give statements, which were factually incorrect. The said statements were given by the noticee when he was under a pressure of threat for which he had already lodged a police complaint seeking police protection. The circumstances under which the statements of noticee were recorded, assume significance in light of above submission and cannot be considered as voluntary statement given by the noticee. Therefore, no reliance on such statements recorded under threat and pressure can be considered;

88.20. CBI also investigated the matter for utilization of forged licenses at Dahej Port. In the charge-sheet submitted by CBI, it had produced certain documents, which clearly revealed that there was a gross

negligence and an act performed by the officers of Customs Dahej, at the material time, which was unbecoming of a government servant. From the statement of Shri N S Mangava clearly goes to show that in order to facilitate M/s Hindalco Industries Limited a short-cut method unknown un-prescribed under the Customs Law, was being followed for clearance of goods of M/s Hindalco, which has resulted in the misuse of the licenses by M/s. Hindalco. As Shri Mangava was not offered for cross-examination, the evidence tendered by him could not be considered as admissible evidence in the proceedings;

- 88.21. Shri Paresh Parekh traveled in 2008 and 2009 for business and personal purposes, indicating his health was not critical, and he was actively involved in license transactions. The Noticee, as Director of Sunkkalp, merely accompanied him to meetings with exporters and license sellers. RUD-226 also shows his last foreign travel in December 2009 and domestic travel in January 2010, but DRI did not verify his passport. Statements of exporters confirm dealings with Shri Paresh Parekh on behalf of M/s Sunkkalp Creation Pvt. Ltd. Further, a letter from the Coffee Exporters Association dated 22.01.2010 and an Agreement dated 14.01.2010, recovered during a search on 30.04.2010, bear his signature, proving he was fit and actively corresponding with license holders;
- 88.22. Shri Prashant Chawta, an employee of M/s. Ganesh Shipping Agency, Mangalore, in his statement stated that Shri Gangadhar Shetty paid Rs. 1,000 per TRA, whereas Shri Shetty himself stated he paid Rs. 500 per TRA. Shri Prashant further explained that confirmation requests were sent directly from the concerned customs to Mangalore Customs, which then replied via fax without providing copies to them. He never met the Noticee in Mangalore but encountered a person who introduced himself as Kamlesh, later identified as Shri Piyush Viramgama. When a photograph was shown to Shri Chowta, he identified the person as Kamlesh, although it was actually Shri Piyush Viramgama. This act of impersonation by Shri Piyush clearly indicates his malicious intent and dubious character. As the department has failed to produce Shri Prashant Chawta, the evidence tendered by him during the investigation cannot be considered as admissible evidence;
- 88.23. The statement of Shri Ashok Gupta, recorded almost six months after the date of getting bank account details of M/s Shivangi Enterprise, Rajkot, indicates that he received money on behalf of Shri Niyaz Ahmed. In his statement he also stated that Shri Niyaz Ahmed was aware of the DRI search in connection with forged

licenses from January 2010. According to the CBI charge sheet, Shri Ashok Gupta is the primary creator of the forged licenses, while Shri Niyaz Ahmed is identified as an approver, and he attended the court proceedings in Ahmedabad. However, till date, Shri Niyaz Ahmed has not been found by DRI. It is important to note that Shri Ashok Gupta was arrested by the CBI in connection with the utilization of forged licenses at Dahej. The noticee submits that, as per the DRI investigation, Shri Ashok Gupta is considered a witness only. As the department has failed to produce Shri Ashok Gupta, the evidence tendered by him during the investigation cannot be considered as admissible evidence;

- 88.24. Para 127 mentions that the RA for 13 forged licenses used by M/s Reliance at Dahej were countersigned by the Assistant Commissioner and also bear the signatures of the Superintendent of Customs in Mangalore. Oral evidence from both the Assistant Commissioner and the Superintendent was recorded, but they denied that the RA for the 13 licenses bore their signatures. The issue to consider here is how the investigation concluded that both the Assistant Commissioner and the Superintendent were providing true and correct facts. The investigating officer was not an expert in examining signatures, and in such cases, it was obligatory for the investigation to have the signatures examined by an expert. In the absence of any such examination during the investigation, the evidence provided by the Assistant Commissioner and the Superintendent cannot be considered reliable or credible;
- 88.25. Regarding the fax header, it is important to note that only mention of a fax number does not conclusively prove that a fax was sent from the number indicated in the header. It is within the prerogative of the sender to adjust or manipulate the fax number as per their choice, as per the circumstances. Further, during the investigation, the CBI requested MTNL Mumbai to provide details of the telephone number 26121841. MTNL Mumbai informed the authorities that no information was available regarding the installation of a fax machine on the said telephone number. As the relevant authorities have confirmed that no fax was associated with the mentioned telephone number, the issue of sending a fax from that number does not arise. Consequently, any adverse inference based on the fax number mentioned in the header under RUD 130 should be disregarded;

- 88.26. Para 154, dealt with Shri Niyaz Ahmed summons issue. Noticee would like to submitted that as thus DRI Officers to ascertain whether sincere efforts were taken by the Investigating Officers to trace out the Shri Niyaz Ahmed Only issued summons mentioned in the impugned SCN. Further, without prejudice Noticee would like to submit that Shri Niyaz Ahmed already given his statement before CBI s well as CBI Court Ahmedabad. The failure of DRI to trace Shri Niyaz Ahmed raises serious concerns regarding the effectiveness and integrity of the investigation in this case. The Noticee asserts that they sought an opportunity to cross-examine DRI Officer Shri Somnath Chowdhary to determine whether sufficient efforts were made by the Investigating Officers to locate Shri Niyaz Ahmed, an aspect not addressed in the impugned Show Cause Notice (SCN). Section 122A of the Customs Act applies the principles of natural justice to adjudication proceedings, thereby granting the Noticee the right to cross-examine individuals whose statements or evidence are relied upon by the Department. Several judicial decisions support this right, including *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, *Mehar Singh v. Appellate Board Foreign Exchange*, *M/s. Kesoram Cotton Mills Ltd. v. Gangadhar*, and others. The Noticee submits that although Shri Niyaz Ahmed has been presented before the CBI Delhi and the CBI Court in Ahmedabad, the DRI officers did not take his statement, despite having the opportunity. The reasons for this omission remain known only to the DRI officers. Moreover, the adjudicating authority did not allow the cross-examination of Shri Niyaz Ahmed, which the Noticee had requested, therefore, any evidence tendered by Shri Niyaz Ahmed should not be considered admissible in these proceedings;
- 88.27. The Noticee intend to highlight discrepancies in the DRI investigation, particularly regarding the distribution of proceeds from the sale of Forge licenses. As per para 145 of the show cause notice, the total sales consideration was Rs 6,95,53,888/-, yet para 148 states that Rs 10 crore was given to Shri Piyush Viramgama, which contradicts the recorded figures. This inconsistency suggests that the investigation lacks accuracy and is aimed at falsely implicating the Noticee. Similarly, paras 152 and 153 mention a transfer of Rs 4.41 crore from the bank accounts of M/s Shivangi to Shri Niyaz Ahmed and his family, allegedly under the Noticee's instructions. However, the proprietor of M/s Shivangi, Shri Vijay Gadhiya, never stated in his recorded statements that the transfers were made as

per the Noticee's direction. The Noticee asserts that no evidence supports these claims, and such allegations were made solely to create false implications. Additionally, the SCN suggests that the Noticee also paid Rs 2 crore in cash to Shri Niyaz Ahmed. This brings the total alleged payments to Rs 16.41 crore, while the recorded sales proceeds were only Rs 6.95 crore. These contradictions indicate that the DRI investigation is flawed, lacks factual accuracy, and is conducted with a mala fide intention;

- 88.28. The Noticee submits that Shri Somnath Chowdhary was not offered for cross-examination. However, in the CBI Court in Ahmedabad, Shri Somnath Chowdhary appeared on 23.03.2023, where he responded during cross-examination with the following statements: "It is true that I have not endorsed that I have attested the document after seeing the original. It is true that I have neither personal information nor any action taken regarding the contents of the document I attested. It is true that during our D.R.I. investigation, the name of Niyaz Ahmed came up. I do not remember whether Niyaz Ahmed was wanted or not during my D.R.I. investigation. I do not remember hearing the name of Bhavesh Doshi during my D.R.I. investigation. I do not currently remember whether it came out during my D.R.I. investigation that Bhavesh Doshi and Niyaz Ahmed were in contact with each other and used to talk."

Shri Somnath Chowdhary, as the investigating officer in the case of forged licenses used at Dahej Port, failed to recall or mention the names of key co-noticees during the investigation. Furthermore, the Noticee submits, without prejudice, that Shri Somnath Chowdhary, the investigating officer in the present case, was arrested by DRI Ahmedabad in case no. DRI/AZU/GI-02/ENQ-78/INT-41/2019. The investigation was also conducted by CBI ACB Gandhinagar, which filed a charge sheet in case no. CBI SPCC/02/2022 at the City Civil Court in Ahmedabad against Shri Somnath Chowdhary as the prime accused. The Noticee raises concerns regarding the integrity and effectiveness of the investigation conducted in the present case. The entire investigation was carried out with malafide intent and was motivated to protect the main individuals involved in the misuse of forged licenses;

- 88.29. The penalties on Noticee have been proposed under section 112(a) of the Customs Act, 1962. The issue of penalty under section 112 (a) came before the Hon'ble High Court of Gujarat in the case of

Commissioner of Customs V/s Sanjay Agarwal and the Hon'ble Court held that penalty under section 112 (a) cannot be imposed on trader/broker in case of forged license. Similar views were taken in the case of Commissioner of Customs Vs Shah Alloys Ltd. reported at 2011 (169) ELT 323 (Guj.). It is further submitted that for imposition of a penalty, some degree of involvement or knowledge of the contravention on the part of the abettor must be shown. In the subject notice, no evidence, direct or indirect, has been presented to show that I had any knowledge of the contravention of law. Thus, applying the ratio of the above binding decision of the Hon'ble court in the present case, no penalty is imposable on the Noticee under section 112 (a) of the said Act. Reliance is placed on various judgements in respect of non applicability of penalty in the present case;

- 88.30. The subject notice proposes a penalty under Section 114(AA) of the Customs Act. In the present case, there is no evidence to suggest that the noticee had any knowledge of the licenses being forged or invalid. The noticee, as a director of the company, was not involved in the sale or purchase of licenses, which was handled by Shri Paresh Parekh. Therefore, there is no evidence to support any claim of knowledge or intention to commit the alleged offense, and as such, the penalty under Section 114(AA) is not applicable. Additionally, it is important to clarify that the noticee has not made any false statements or submitted fraudulent documents, and there is no such allegation in the Show Cause Notice. Penalty under Section 114(AA) can only be imposed when duty is evaded due to false or incorrect statements, and in this case, the duty has been paid along with interest. There is no denial of this fact in the Show Cause Notice. Therefore, the penalty cannot be imposed under Section 114(AA). The notice also suggests penalties under Sections 114(A) and 114(AA). It is well-established that penalties under Sections 112(a), 114(A), and 114(AA) cannot be imposed simultaneously. Section 114(A) applies to cases of short or non-levy of duty due to fraud, and since the duty is owed by the importer, it cannot be invoked against the noticee. The entire action against the noticee appears to be based on statements made by co-noticees, Shri Piyush Viramgama and Shri Dharmesh Gathani. It has consistently been held by various courts and tribunals that statements made by co-noticees cannot be relied upon unless corroborated by other tangible evidence. In this case, there is no

such corroborative evidence, and the allegations against the noticee are based on presumptions and assumptions. Consequently, no action can be taken based on mere presumption. In support of his contention, the Noticee rely on the decision of Hon'ble Supreme Court in case of *Radha Kishan Bhatia v. Union of India* (2004). In this case, there is no evidence suggesting the noticee was involved in the importation of the goods, and thus, they cannot be considered responsible for the goods. Furthermore, penalties should not be imposed in the ordinary course unless it is clear that the taxpayer acted in defiance of the law. The Hon'ble Supreme Court's decision in *Hindustan Steel Ltd. v. State of Orissa* (AIR 1970 SC 253) supports the contention that a penalty should only be imposed when it is demonstrated that the party acted deliberately in defiance of the law. In the present case, there is no such evidence, and the penalty imposed is legally unsustainable. Further, a confession alone cannot serve as the basis for imposing a penalty without independent, tangible evidence to support it;

88.31. The entire proceeding against the noticee is based on presumptions and assumptions and not supported by any fact and is thus vitiated by an error of law. There being no valid and tangible evidence against the noticee, no penalty is imposable. In support of of his contention he places reliance on the judgement of the following decisions;

- (i) *Oudh Sugar Mills Ltd. v. Union of India* -[1978 \(2\) E.L.T. 172](#) (S.C.)
- (ii) *Kalvert Foods India Pvt. Ltd. v. CCE, Mumbai* -[2003 \(152\) E.L.T. 131](#) (T)
- (iii) *Deepak Tandon v. CCE, Bhubaneswar* -[2000 \(126\) E.L.T. 1079](#) (T)

88.32. The proceedings against the noticee for imposition of penalty are entirely based on third party evidence. Here it may be submitted that the residential as well as office premises of the Noticee was searched during the course of investigation. Thus, there is no direct or indirect evidence relatable to the noticee, which has been produced and brought on record in the present proceedings and all the evidences relied upon are based on third party statements and documents recovered from the third party premises. Such third party oral statements and documents received from third party premises alone cannot be considered as an admissible evidence to draw any adverse inference against the noticee in the present

proceedings. In this regards reliance is placed upon following decisions:

- i. *Santosh Tobacco v. Commissioner of Central Excise, Delhi-I*, [2014 \(311\) E.L.T. 465](#) (Tri. - Del.)
- ii. *Commissioner of Central Excise, Delhi-I v. Vishnu & Co. Pvt. Ltd.* - [2016 \(332\) E.L.T. 793](#) (Del.)

88.33. It is settled law that even inculpatory statements are required to be supported by tangible evidences, which in the present case is absent. It was submitted that such un-authenticated documents cannot be relied upon to prove the charges of forgery merely on the basis of some of the statements whose veracity was not even tested. In this regards reliance is placed upon following decisions:

- *J&K Cigarettes Ltd. v. Collector reported at 2009 (242) E.L.T. 189* (Del.)
- *Commissioner of C. Ex., Lucknow v. Premier Alloys Ltd.* - *2019 (366) E.L.T. 659* (All.)
- *Rama Spinners Pvt. Ltd. v. Commissioner of Cus. & C. Ex., Hyderabad-I*, *2017 (348) E.L.T. 321* (Tri. - Hyd.)

88.34. The noticee submits that he had retracted all his statements at the first available opportunity. Thus, the retracted statements could not be considered as admissible evidence during the course of proceedings to arrive at any guilt against the noticee. In support of the above contention, the noticee craves to refer and rely on the following decisions;

- (i) *Birendra Kumar Singh v. CC, Lucknow* - *2006 (198) E.L.T. 460* (Tri. - Del.);
- (ii) *Narayan Das v. CC, Patna* - *2004 (178) E.L.T. 554* (Tri. - Kol.)
- (iii) *Sharad Dugar v. CC, New Delhi* - *2003 (151) E.L.T. 321* (Tri. - Del.)
- (iv) *Mahabir Prasad v. CC, Patna* - *2000 (126) E.L.T. 803* (Tri.)

88.35. The statements were recorded under pressure and coercion, and evidence to this effect has already been provided through a police complaint filed by the noticee, which is included hereinabove. Furthermore, confessional statements alone are insufficient to draw adverse conclusions in the proceedings. In the case of Hissar Pipes, the Hon'ble Tribunal held that a confession is merely the starting point of an investigation, not its conclusion. Similarly, in the matter of *Tejwal Dyestuff Industries v. Commissioner of C.Ex., Ahmedabad* - *2007 (216) E.L.T. 310* (Tri.-Ahmd.), the Hon'ble Tribunal held that

a confession does not bind a co-noticee without corroborative evidence. The court must consider all other relevant evidence and assess whether the confessional statement can be relied upon implicitly. Accepting a confessional statement without evaluating other materials may undermine the consideration of other evidence that could outweigh the evidentiary value of the confession;

- 88.36. The noticee submits that as per the directions of the Hon'ble Tribunal it had requested for cross-examination of 27 witnesses out of which cross-examination of only 15 witnesses were allowed. Out of the said 15 witnesses, only 5 witnesses were offered for cross-examination during the course of proceedings. Thus, effectively 22 witnesses who were either not called or not offered for cross-examination, the deposition made by them cannot be considered as evidence in the present proceedings. He has placed reliance on various judgements;
- 88.37. In the present proceedings the investigation has withdrawn digital media i.e. pen drive and other digital media from various places, which have been relied upon in sustaining the allegations against the noticee. It is submitted that the data obtained from pen drive are not substantive evidence and therefore, based on the said data alone, no adverse inference can be drawn against the noticee. In this regards reliance is placed upon decision in case of **Principal Commissioner of CGST & Central Excise Vs Shah Foils - 2020 (372) E.L.T. 632 (Guj.)**;
- 88.38. It is submitted that in view of above submissions, emails cannot be relied in the present case as conditions of Section 65 of Evidence Act is not satisfied in the present case. Thus, email communication cannot be relied upon in the present case. In this regards reliance is placed upon decision in case of **Modern Laboratories v. Commissioner — 2017 (358) E.L.T. 1179 (Tribunal)**;
- 88.39. In view of the above facts, the case may be decided in favor of the noticee and the allegation mentioned in the SCN may be dropped accordingly.

DISCUSSION AND FINDINGS:

89. Now, I proceed to examine the evidences and records of the case in context of the two noticees, Shri Kalpesh Daftary, one of the Directors of M/s. Sunkkalp Creations Pvt Ltd, Mumbai (hereinafter referred as M/s

SCPL for the sake of brevity) and Shri Piyush Viramgama, Proprietor of M/s. Krish Overseas, Rajkot.

90. I find that the Hon'ble Tribunal, in its order dated 10.08.2022, has remanded the present case back to the adjudicating authority on the grounds of ensuring compliance with the principles of natural justice. It is pertinent to note that the Hon'ble Tribunal has not examined the merits of the case in its orders. Furthermore, I note that the original adjudicating authority had already deliberated on and decided the merits of the case. Vide Order-in-Original (OIO) No. 04/COMMR/DRI/2014 dated 24.03.2014, the adjudicating authority confirmed the demand against M/s Reliance Industries Limited and imposed penalties on four other co-noticees, including Shri Kalpessh Daftary and Shri Piyush Viramgama. In this context, it is observed that on the basis of appeal filed by Shri Kalpessh Daftary and Shri Piyush Viramgama the Hon'ble Tribunal remanded the OIO No. 04/COMMR/DRI/2014 dated 24.03.2014 to the adjudicating authority with a direction to decide the matter afresh concerning these two noticees. The Tribunal also instructed the adjudicating authority to decide the case after following the principles of natural justice. I find that the Hon'ble Tribunal did not set aside the OIO in its entirety and refrained from commenting on the merits of the case. In light of the above, I find no justification to re-examine the merits of the case in its entirety. Therefore, I proceed to examine the merits of the case relating to both the noticees i.e. Shri Kalpessh Daftary and Shri Piyush Viramgama adhering to the principles of natural justice as emphasized by the Hon'ble Tribunal.

91. I have carefully examined the case records and the submissions made by both the Noticees. At the outset, I find that the detailed investigation conducted by the Directorate of Revenue Intelligence (hereinafter referred as 'the DRI' for the sake of brevity) has unequivocally established that a total of 98 VKGUY and 08 DEPB licences, along with the corresponding Release Advices and other related documents, were forged. Out of these, 13 forged VKGUY licences were sold to M/s. Reliance Industries Ltd, Dahej, while 85 forged VKGUY and 08 DEPB licences were sold to M/s. Hindalco Industries Ltd, Dahej. However, since the present notice pertains solely to the 13 forged VKGUY licences utilized by M/s. Reliance Industries Ltd, Dahej, my findings are confined to these 13 licences, although references may be made to other forged licences sold to

M/s. Hindalco Industries Ltd as part of the overall investigation and evidentiary analysis.

92. I note that Shri Kalpessh Daftary was one of the Directors of M/s. Sunkkalp Creations Pvt Ltd, Mumbai, and was engaged in the purchase and sale of transferable licences. Shri Kalpessh Daftary was procuring various types of licences from M/s. Allanasons Ltd, Mumbai, and its associate companies, namely M/s. Frigorifico Allana Ltd and M/s. Indagro Foods Ltd, Mumbai. As per the information provided by these companies, during the period 2008-2009 and 2009-2010, M/s. SCPL purchased 388 licences from them. These licences were subsequently sold by M/s. SCPL under its own sale invoices/debit notes, as well as through other entities, including M/s. Accurate Multitrade Pvt Ltd, Mumbai, and M/s. Padmavati Agencies Pvt Ltd, Ahmedabad. Of these 388 licences originally sold by M/s. Allanasons Ltd, Mumbai, and its associate companies, 13 VKGUY licences were subsequently forged and sold to M/s. Reliance Industries Limited. The corresponding genuine 13 VKGUY licences were sold by/through M/s SCPL to M/s. E.I. Dupont Pvt Ltd, M/s Honda Siel Cars and M/s. Lupin Laboratories.

93. I find that the DRI had obtained the original documents related to the 13 fake/forged VKGUY licences used by M/s. Reliance from Customs, Dahej. Additionally, the original documents for the corresponding 13 genuine VKGUY licences were procured from the relevant Custom authorities and the respective importers who had purchased and utilized them. These forged licences and release advices were utilized by M/s. Reliance Industries Ltd at Dahej port.

94. I find that the evidence collected during the investigation clearly establishes that Shri Kalpessh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya, and Shri Niyaz Ahmed conspired to forge 13 VKGUY licences, along with the corresponding Release Advices and other related documents. The investigation findings confirm that the 13 forged VKGUY licences sold to M/s. Reliance Industries Ltd were among the 388 licences originally purchased by M/s. SCPL from M/s. Allanasons Ltd, Mumbai, and its associate companies, namely M/s. Frigorifico Allana Ltd and M/s. Indagro Foods Ltd, Mumbai.

95. It was further revealed that the 388 licences sold by M/s. Allanasons Ltd, Mumbai, and its associate companies, namely M/s.

Frigorifico Allana Ltd and M/s. Indagro Foods Ltd, Mumbai, to M/s. Sunkkalp Creations Pvt Ltd were all genuine licences duly issued by the jurisdictional DGFT to the respective exporters. Out of these 388 licences, 13 VKGUY licences were subsequently forged and sold to M/s. Reliance Industries Ltd. The details of the invoices issued by M/s. SCPL under which these 13 genuine VKGUY licences were sold to M/s. Sun Export, Mumbai, are as follows:

Sr. No.	Invoice No. & Date of SCPL	Invoice issued to	Licence No. & Date	Licence Amount
1	SCPL/VKGUY/09-10/065 dtd.11.09.2009	M/s. Sun Export Pvt Ltd, Mumbai.	0310522743/05-06-2009	7778161/-
			0310521936/29-05-2009	4426478/-
			0310512901/24-03-2009	4638435/-
			0310522738/05-06-2009	
2	SCPL/VKGUY/09-10/067 dtd.17.09.2009	M/s. Sun Export Pvt Ltd, Mumbai.	0310518177/04-05-2009	5247824/-
3	SCPL/VKGUY/09-10/079 dtd.09.10.2009	M/s. Sun Export Pvt Ltd, Mumbai.	0310529284/16-07-2009	5626358/-
			0310531352/30-07-2009	6005453/-
			0310528689/13-07-2009	4776335/-
			0310523562/11-06-2009	5753032/-
			0310523564/11-06-2009	4003373/-
			0310523566/11-06-2009	5130380/-
			0310526777/02-07-2009	4470235/-
			0310528212/10-07-2009	6590018/-

96. I find that after purchase of the aforementioned 13 licences, M/s. Sun Export Pvt. Ltd., Mumbai, subsequently sold 12 of these licences to another licence trader, M/s. Trident (India) Ltd., Ahmedabad, while one licence was sold to M/s. S.R. International, Mumbai, another licence trader, who in turn sold it to M/s. Honda Siel Cars. Further, out of these 12 licences, M/s. Trident (India) Ltd, Ahmedabad sold 11 licences to M/s. E.I. Dupont Pvt. Ltd. and one licence to another licence trader, M/s. Vani Exports, Kolkata, who subsequently sold it to M/s. Lupin Laboratories. Consequently, these 13 genuine VKGUY licences were ultimately utilized by M/s. E.I. Dupont Pvt. Ltd., M/s. Honda Siel Cars and M/s. Lupin Laboratories. The sale of these 13 genuine licences was effectuated by M/s. SCPL under their own invoices. These licences were registered at

JNCH, Mumbai and Release Advices were too issued in favour of M/s. E.I. Dupont Pvt. Ltd., M/s. Honda Siel Cars, and M/s. Lupin Laboratories.

97. The investigation further revealed that subsequent to the sale of these 13 genuine VKGUY licences, the same licences were forged/fabricated and again sold to M/s. Reliance. The forged nature of these licences was confirmed by the jurisdictional DGFT, i.e., the issuing authority, which verified that the 13 VKGUY licences used by M/s. Reliance at Dahej Port were fake/forged. As per the case records, these 13 forged/fake licences were purportedly issued by DGFT, Mumbai. Upon scrutiny of the photocopies received from the offices of the DGFT, it was revealed that although licences bearing these numbers and particulars were indeed issued by DGFT, the port of registration on the original licences was JNPT, whereas in the forged licences, the registration was fraudulently altered to Mangalore Sea. This discrepancy confirmed their fraudulent nature. On scrutiny, it was revealed that these 13 VKGUY licences though shown to have been registered with Mangalore Customs, were not in fact registered with them nor Mangalore Customs had ever issued any Release Advice in respect of these 13 VKGUY licences.

98. I note that the evidence on record establishes that Shri Niyaz Ahmed of M/s. Indiyana Shoes, Kanpur, was involved in forging of the licences and was an accomplice of Shri Piyush Viramgama. Shri Kalpesh Daftary was introduced to Shri Niyaz Ahmed by Shri Piyush Viramgama and together they conspired to forge the licences. The evidence further reveals that, following their discussions, photocopies of the 13 genuine VKGUY licences, available with Shri Kalpesh Daftary, were provided to Shri Niyaz Ahmed. Using the details and particulars of these genuine licences, Shri Niyaz Ahmed prepared the forged/fake licences. Furthermore, the depositions of Shri Piyush Viramgama and Shri Kalpesh Daftary confirm that these licences were forged using genuine DGFT stationery.

99. I also find that the cross-verification with Mangalore Customs also brought out the same result. During the investigation, it was found that the DRI had requested a copy of the register of licences maintained by Mangalore Customs for the relevant period. Upon scrutiny, it was established that these 13 VKGUY licences, although falsely shown as registered with Mangalore Customs, were never actually registered there, nor did Mangalore Customs issue any Release Advice for these licences.

This unequivocally established that the 13 VKGUY licences, falsely claimed to have been registered with Mangalore Customs and used by M/s. Reliance at Dahej on the basis of purported Release Advices from Mangalore Customs, were forged/fabricated.

100. I find that the verifications carried out with the DGFT as well as the concerned Custom House i.e. New Custom House, Mangalore confirmed that the annexure to forged licences too were forged/faked. The exporters to whom the genuine licenses were originally issued by the DGFT had not exported goods from Mangalore Port. The port of registration indicated in the DGFT letters forwarding the licenses used by M/s. Reliance was Mangalore Sea. Similarly, the forged annexures also indicated Mangalore as the port of export. However, as per the copies of the license forwarding letters provided by the jurisdictional DGFT to the DRI, the port of registration in the genuine licenses issued by the DGFT was Jawaharlal Nehru Port Trust (JNPT). This clearly establishes that the license forwarding letters and the annexures to the licenses used by M/s. Reliance and presented to Customs, Dahej, were forged. I find that this conclusion is further substantiated by the statements of Shri Piyush Viramgama and Shri Kalpesh Daftary, who admitted to having forged the license forwarding letters of the DGFT and the annexures to the licenses.

101. I further find that during the search at the residential premises of Shri Piyush Viramgama, two pen drives were recovered, among other items. These pen drives were sent to the Directorate of Forensic Science (DFS), Gandhinagar, for retrieval of documents relevant to the investigation. The DFS forwarded the Certified printouts of the documents relevant to the investigation which included:

- 1) The licence forwarding letters purportedly of DGFT, Mumbai prepared in Microsoft Word showing the port of registration as Mangalore Sea.
- 2) Scanned copies of the genuine licences issued by DGFT, Mumbai.
- 3) 12 Release Advices prepared in Text files purported to have been issued by Mangalore Customs in favour of M/s. Reliance Industries Ltd for use at Dahej Port.

102. I find that the investigation has established that the acts of forgery in this case were not limited to the creation of fake licenses alone. The fraudulent activities also extended to the preparation of forged release

advices, transfer letters of original license holders, and letters purportedly issued by the Customs Department confirming the genuineness of release advices in favor of M/s Reliance. As already stated hereinabove, transferrable licenses are sold in the open market and purchased by importers for the purpose of paying Customs duty at the time of import. To enable the buyer of the license to utilize it, the original license holder issues a letter transferring the license to the buyer. These transfer letters require the verification/authentication of the transferor's signature by the bank authorities with whom the license holder has an account. The transfer letters are issued on the letterheads of the concerned firms or companies. I further find that Shri Kalpessh Daftary was involved in trading transferable licenses, dealing with genuine licenses, and selling them to various firms. As such, he was in possession of the transfer letters issued by the original holders of the genuine licenses. Similar to the forgery of the licenses using photocopies of genuine licenses traded by him, it is evident that using the transfer letters and letterheads of the firms to whom the genuine licenses were issued, forged transfer letters were created in the names of these firms. The fact that the transfer letters were forged is supported by evidence obtained during the searches of Shri Vijay Gadhiya's residential premises and Shri Piyush Viramgama's office premises, where rubber stamps, negatives, and butter paper images used for preparing rubber stamps of different banks and exporter firms were recovered, like:-

- i) Rubber stamp of Oriental Bank of Commerce,
- ii) Rubber stamp of HDFC Bank Ltd,
- iii) Rubber stamp of one V. NAGARAJAN (329), Chief Manager.
- iv) Negative for preparing rubber stamp of Union Bank of India, Kollam Civil Stn.Branch
- v) Negative for preparing rubber stamp of The Federal Bank Ltd, Kollam
- vi) Negative for preparing rubber stamp of ING Vysya Bank Ltd, Kollam
- vii) Negative for preparing rubber stamp of Indian Bank, Kollam
- viii) Negative for preparing rubber stamp of Bank of Baroda.
- ix) Negative for preparing rubber stamp of The Catholic Syrian Bank
- x) Negative for preparing rubber stamp of Axis Bank Ltd, Kollam.
- xi) Negative for preparing rubber stamp of The South Indian Bank Ltd, Kollam
- xii) Negative for preparing rubber stamp of State Bank of India, Kollam
- xiii) Negative for preparing rubber stamp of Emmanuel Cashew Industries
- xiv) Negative for preparing rubber stamp of Abbas Cashew Company
- xv) Negative for preparing rubber stamp of Quilon Export Enterprises

xvi) Negative for preparing rubber stamp of Bola Raghvendra Kamath & Sons.

xvii) Negative for preparing rubber stamp of Lekshmi Enterprises.

xviii) Negative for preparing rubber stamp of Poornachandra Cashew Co

xix) Negative for preparing rubber stamp of Peniel Cashew Co.

Shri Piyush Viramgama explicitly admitted in his statements that the negatives and butter paper images of the rubber stamps were actually used to make/ manufacture rubber stamps by his employee, Shri Vijay A. Gadhiya, as per his instructions. These rubber stamps were subsequently utilized to forge transfer letters of various parties and to falsify signature verifications purportedly conducted by bank officers. In his statement, Shri Vijay Gadhiya admitted that he affixed the rubber stamps on the forged transfer letters under the instructions of Shri Piyush Viramgama. The absence of any agency responsible for verifying the signatures of bank officials at any stage encouraged Shri Piyush Viramgama to engage in such fraudulent activities.

103. I also find that the data retrieved by DFS Gandhinagar from the two pen drives recovered from the residential premises of Shri Piyush Viramgama, included a Microsoft Word document containing a scanned letter C.No.S-01/47/2009 Imp dtd.16/04/2009. The letter was duly signed and stamped, purportedly by Shri E. Sukumaran, Assistant Commissioner of Customs, New Custom House, Mangalore to Dahej Customs confirming the genuineness of 13 Release Advices all dated 06.04.2009. This evidence conclusively establishes that not only were the licenses and their allied documents forged, but even the letters confirming the genuineness of the licenses were fabricated by Shri Piyush Viramgama and Shri Kalpesh Daftary. Further, as already stated hereinabove, communications confirming the genuineness of Release Advices are transmitted exclusively via fax or email and not through physical or original letters. Therefore, the presence of an original letter in possession of Shri Piyush Viramgama raises serious suspicion and strongly indicates its fabricated and forged nature, as such a document should not have been available with him under any circumstances.

104. I further find that not only the licences were forged but also all other documents such as Release Advices, forwarding letters of DGFT, Annexures attached to the licences, were also simultaneously forged. The evidences recovered from the office premises of M/s. Bansi Overseas

included one VKGUY licence bearing No. 0710059272/0/24/00 dated 21/8/2008, purportedly issued by the DGFT, Bangalore to M/s. General Commodities Private Limited, Bangalore with a duty credit of Rs.43,87,551/-. The port of registration of the said licence was mentioned as Mangalore Sea and contained endorsements purportedly made by the Superintendent of Customs, Mangalore. Shri Piyush Viramagama and Shri Kalpessh Daftary, in their voluntary statements, confirmed that the said licence was a forged/fake document. Furthermore, in his statement dated 06/09/2010, Shri Piyush Viramagama provided a list containing details of 20 licenses, admitting that the licenses listed at serial numbers 1 to 9 and 17 to 20 were forged and had been utilized. The 13 licenses admitted to be forged and contained in the list produced by Shri Piyush Viramagama were the 13 VKGUY licenses used by M/s. Reliance at Dahej.

105. I note that the documents retrieved and forwarded by the DFS, vide their report Nos. DFS/EE/2010/CF/115, DFS/EE/2010/CF/116 and DFS/EE/2010/CF/119, all dated 11/09/2012, contained printouts of 29 Release Advices prepared by showing them to have been purportedly issued by Mangalore Customs for use at Dahej Port. Out of these 29 Release Advices, 12 were used by M/s. Reliance at Dahej. The details of these Release Advices, which were recovered by the DFS and used by M/s. Reliance, are as follows:

Sr.No.	Release Advice No.& Date	Licence Number & Date	Duty Amount (Rs.)
1	2459/10-11-2009	0310521936/29-05-2009	4426478/-
2	2460/10-11-2009	0310521936 /29-05-2009	4426478/-
3	2461/10-11-2009	0310518177/04-05-2009	5247824/-
4	2462/10-11-2009	0310522743/05-06-2009	7778161/-
5	2464/10-11-2009	0310529284/16-07-2009	5626358/-
6	2465/10-11-2009	0310528689/13-07-2009	4776335/-
7	2467/10-11-2009	0310531532/30-07-2009	6005453/-
8	2468/10-11-2009	0310523564/11-06-2009	4003373/-
9	2473/10-11-2009	0310523566/11-06-2009	5130380/-
10	2474/10-11-2009	0310523562/11-06-2009	5753032/-
11	2475/10-11-2009	0310528212/10-07-2009	6590018/-
12	2476/10-11-2009	0310526777/02-07-2009	4470235/-

106. I note that in a general practice, before allowing utilization of the Release Advices, Customs authorities at the port of import, get the Release Advice verified from the RA issuing port by sending a letter seeking

confirmation of genuineness of the Release Advice. Further, the procedure followed is that the letters seeking confirmation of genuineness is sent by Fax to the concerned RA issuing port and no letter is sent by post. Similarly, the letters confirming the genuineness are also received by Fax and no letter is sent by post. Thus, in the process, no letter in original is received by either the sending or receiving Custom House. While forging the Customs letters confirming genuineness of the Release Advices, Shri Piyush Viramgama and Shri Kalpessh Daftary took advantage of the fact that original letters are not sent in original to the RA issuing port and only sent by Fax. It has also been brought out in the course of the investigations that the licence broker/trader who had sold the licence to the ultimate user was responsible for getting the confirmation of genuineness of the Release Advice and he too was interested in getting the confirmation as soon as possible for the reason that the payment towards the licence was made by the buyer only after confirmation of genuineness of the Release Advice.

107. I also find that during the course of investigation, the letter purportedly issued by Mangalore Customs confirming the genuineness of the 13 Release Advices used by M/s. Reliance at Dahej Port were obtained from Custom House, Dahej. Further, records regarding confirmation of the genuineness of the said Release Advices were also submitted by Shri Bhavesh Doshi. On perusal of the said letter, it was revealed that the letter was not the original copy but was received via fax. This was evident from the header at the top of the letter, which indicated its transmission through fax. In the said letter the following header is seen at the top of the letter:

Sr.No.	Letter No. & Date	RA number	Header detail
1	S-01/04/2009 IMP dtd.17/11/2009	2450 to 2465, 2467, 2468, 2473 to 2476 all dtd.10/11/2009	08 0222612184, SUNKKALP, #2198 P 001/001.

From the above table, it is evident that the letter was faxed from M/s. Sunkkalp Creations Pvt. Ltd., Mumbai. The possibility that M/s. SCPL received the letter directly from Mangalore Customs and subsequently forwarded it to M/s. Reliance has been categorically ruled out. This is due to the fact that, as per the official records, no Release Advices were ever issued by Mangalore Customs in respect of the 13 forged or fraudulent licenses that were used by M/s. Reliance at Dahej Port. I further find that it is on record that none of the 13 licenses in

question were registered with Mangalore Customs, therefore, the issuance of Release Advices or any confirmation regarding the authenticity of these licenses does not arise.

108. I further find that in case of 13 forged licenses used by Reliance at Dahej Port, the port of registration was falsely mentioned as Mangalore Sea, and the same were shown to have been registered with Customs at Mangalore. To facilitate the usage of these licenses, the Release Advices related to these 13 licenses were also forged for use by Reliance at Dahej Port. Evidence indicates that at Mangalore Customs, import bills of entry and export shipping bills are processed through the EDI system, which has been operational since the year 2000. The licenses are registered in the EDI system, and Release Advices are issued through it. Mangalore Customs confirmed that none of these 13 licenses were registered with them, nor were any Release Advices issued by them to M/s. Reliance for use at Dahej. Thus, the Release Advices utilized by M/s. Reliance at Dahej are unequivocally fraudulent.

109. I find that on verification of the relevant register of licenses maintained by Mangalore Customs for the pertinent period, it was found that 13 VKGUY licenses utilized by M/s. Reliance at Dahej were not registered with them. Furthermore, to verify the authenticity of the endorsements purportedly made by the officers of Mangalore Customs on the reverse side of the forged/fake licenses, statements of the concerned officers were recorded. Smt. Uma Devi, Superintendent of Customs & Central Excise, Mangalore, who was posted in the Export Section of Mangalore Custom House during the relevant period from May 2009 to May 2012, stated that the signatures appearing on the 13 licenses did not belong to her and had been forged by imitating her signature. Evidence further revealed that the rubber stamps affixed on these licenses were also found to be counterfeit. Further, statement of Shri Poovappa D.V, Superintendent of Customs (Appg.I) at Mangalore Customs was recorded on 21.10.2010. After thoroughly reading and carefully analyzing the licenses and release advices, as well as conducting a meticulous examination of the signatures and rubber stamps appearing on the reverse side of 13 licenses and the corresponding release advices, he unequivocally confirmed that all the signatures affixed on the said licenses and release advices, along with the rubber stamps, were forged. Similarly, other officers posted in the Export Section and License Section

too confirmed that the signatures appearing on the reverse side of the 13 forged/fake licenses were not theirs and were indeed forged.

110. The Release Advices in respect of the 13 forged/fake licences used by M/s. Reliance at Dahej were all purported to have been counter signed by Shri E. Sukumaran, the then Assistant Commissioner (Docks), Mangalore Custom. The Release Advices also bore the stamps and signature purported to be that of the Superintendent of Mangalore Customs. During the course of his statement, Shri Sukumaran stated that the Rubber stamp appearing on the Release Advices in respect of the 13 VKGUY licences, used by M/s. Reliance were not genuine as there was no such post as Assistant Commissioner (Docks) in Mangalore Custom House. He stated that the signatures appearing on the 13 Release Advices were not made by him and that they were all forged signatures.

111. I find that Shri Piyush Viramgama in his voluntary statements explicitly admit that he forged the signatures of the DGFT officer appearing on the 13 forged/fake licences, which was also confirmed by Shri Kalpesh Daftary in his voluntary statement. Additionally, both Shri Piyush Viramgama and Shri Kalpesh Daftary admitted to having forged the licence forwarding letters of DGFT along with the annexures to these licences. Documents recovered by the Directorate of Forensic Science (DFS), Gandhinagar, from the hard disk drives and pen drives seized from the office and residence of Shri Piyush Viramgama further substantiate these facts. These documents include, inter alia, forged licence forwarding letters purportedly of DGFT, wherein the port of registration is fraudulently indicated as Mangalore Sea. The annexures to these licences, purportedly of DGFT and created in Microsoft Excel, also falsely mention Mangalore Sea as the port of export. The recovery of such documents by DFS, Gandhinagar, conclusively establishes that, as admitted by Shri Piyush Viramgama and Shri Kalpesh Daftary in their statements recorded under Section 108 of the Customs Act, 1962, the DGFT forwarding letters and annexures to the licences were fabricated/ generated by them in their office. Furthermore, statements from Mangalore Customs officers recorded under Section 108 of the Customs Act, 1962, confirm that the rubber stamps and signatures appearing on the reverse side of these 13 VKGUY licences used by M/s. Reliance at Dahej were not genuine and that both the signatures and stamps on these licences were forged.

112. I find that incriminating evidences in the form of rubber stamps of the DGFT, Rajkot, Round Seal (Stamp) of Mangalore Customs, Rubber Stamps of different banks, negatives for preparing rubber stamps of the firms whose licence were forged as well as rubber stamps of the banks whose stamps were used for verification of signatures on the transfer letters etc were recovered during the search at the residential premises of Shri Vijay Gadhiya, employee and associate of Shri Piyush Viramgama. I further find that in their voluntary statements, Shri Piyush Viramgama, Shri Vijay Gadhiya, and Shri Kalpessh Daftary admitted that the round seal (rubber stamp) of Mangalore Customs was used for forging letters purportedly issued by Customs, Mangalore, to confirm the genuineness of Release Advices. Moreover, the rubber stamps of various banks were used to forge stamps and signatures of banks on the transfer letters of the licenses. These admissions, coupled with the recovery of incriminating evidence, conclusively establish a direct link to the fraudulent activities.

113. I find that Shri Piyush Viramgama, Shri Vijay Gadhiya, and Shri Kalpessh Daftary, in their respective statements, admitted to forging the endorsement of registration and issuance of Release Advices on the reverse side of the 13 licenses used by M/s. Reliance. Shri Piyush Viramgama specifically admitted that he had forged the signatures of the Superintendent of Customs appearing on the reverse side of the licenses. Additionally, Shri Viramgama admitted to preparing the Release Advices on his computer, replicating the actual Release Advices issued by Mangalore Customs, and forging the signature of the Superintendent of Customs on them. Shri Vijay Gadhiya, in his statement, admitted to preparing and affixing the rubber stamps on the Release Advices at the instructions of Shri Piyush Viramgama. The statements of Shri Piyush Viramgama were further corroborated by Shri Kalpessh Daftary, who stated that the rubber stamps and signatures on the Release Advices were forged by Shri Piyush Viramgama.

114. I find that it is on record that forged license used by M/s Reliance was purchased by them from M/s Hindustan Continental Limited through a broker Shri Bhavesh Doshi of M/s.S.C.Doshi & Sons, Mumbai. Further, M/s Hindustan Continental Limited, Kolkata has shown its purchase from M/s Vani Exports, Kolkata. Moreover, these licenses were issued by Allanasons Ltd, Mumbai, and its associate companies, namely M/s. Frigorifico Allana Ltd and M/s. Indagro Foods Ltd, Mumbai.

115. Since these 13 VKGUY licences were originally issued to M/s. Allanasons Ltd, Mumbai by DGFT, Mumbai, on being requested, M/s. Allanasons Ltd, Mumbai vide their letters ASL/186/2010 dtd.6/7/2010 and ASL/187/2010 dtd.8/7/2010 submitted the details of the licences sold/transferred by them during 2008-2009 and 2009-2010. From the details submitted by them, I find that these 13 VKGUY licences were sold/transferred by them to M/s. SCPL. The details of the Release Advices issued by the concerned Custom House in respect of the genuine licences, corresponding to 13 forged VKGUY licences, too indicated that they had not issued any release advices in favour of M/s. Reliance Industries Ltd for use at Dahej.

116. On perusal of relevant records, I find that 13 forged VKGUY licences used by M/s. Reliance were purchased by them from M/s. Hindustan Continental Ltd, Mumbai through the broker Shri Bhavesh Doshi. Further, the billing was made from Kolkata address to save on VAT which is leviable on sale of licences in Gujarat but is exempted in West Bengal. On investigation regarding these 13 forged VKGUY licences, Statements of Shri Bhavesh Doshi, authorized signatory of M/s Suresh C. Doshi, Mumbai were recorded on 06.07.2010 & 24.07.2010. During the statement, he stated that they supply the licenses on commission basis to M/s Reliance Industries Limited and others. In his statements, Shri Bhavesh Doshi disclosed that the invoices of M/s. Padmavati Agencies Pvt. Ltd., M/s. Vani Export, and M/s. Hindustan Continental Ltd., all based in Kolkata, reflecting the sale of licenses to M/s. Reliance Industries Ltd., were arranged and provided by Shri Kalpessh Daftary. He further stated that in November 2009, Shri Kalpessh Daftary directly approached him with a proposal to supply licenses to M/s. Reliance Industries Ltd. without involving intermediaries, to which he agreed. Following this agreement, he supplied approximately 70 licenses to M/s. Reliance Industries Ltd. under the invoices of the aforementioned firms, with an assurance from Shri Kalpessh Daftary that he would receive a commission. The physical deliveries of these licenses, along with other relevant documents, were managed by Shri Chotu, an employee of Shri Daftary. For verification of the Release Advice, M/s. Reliance Industries Ltd. faxed customs confirmation letters to him, who in turn forwarded the same to M/s. SCPL. The confirmation letters of the Release Advice were sent by M/s. SCPL and he subsequently forwarded these letters to M/s. Reliance Industries Limited at their Parel office. On being asked about these 13 forged licenses, he informed that these licences were sold to

them by Shri Kalpessh Daftary of M/s. SCPL, however the billing was done by M/s. Hindustan Continental Ltd. Further, on being confronted with the records of original sales of the license as well as the forgery of the licenses, Shri Bhavesh Doshi unequivocally accepted that the 13 licenses purchased from M/s. Sunkkalp Creations Pvt. Ltd. through Shri Kalpessh Daftary were not genuine but forged.

117. I find that the statement of Shri Surendra Kulhari, Director of M/s Hindustan Continental Ltd., was recorded on 26.05.2010, 12.06.2010, 06.08.2010, and 15.05.2012 under Section 108 of the Customs Act, 1962. During his statement, when specifically questioned about the sale of the 13 forged licenses to M/s Reliance, he stated that his company was merely issuing invoices to facilitate the sale of the licenses to M/s Reliance. Trading of these licenses were carried out under the instructions of Shri Kalpesh Daftary of M/s SCPL, while the billings were arranged by Shri Sashin Koradia of Mumbai. For the said 13 VKGUY licenses, purchase invoices from M/s Vani Export, Kolkata, were provided to him by Shri Kalpesh Daftary. Shri Kulhari further stated that his company never received physical copy of the licenses and only issued invoices for which they received a commission from Shri Kalpessh Daftary. He further disclosed that M/s Hindustan Continental Limited had received approximately Rs. 6.80 crores from M/s Reliance Industries Limited against sale of these 13 licenses, out of which Rs. 5.05 crores was paid to M/s Vani Exports. The remaining amount was distributed among other firms as directed by Shri Kalpesh Daftary. All payments were managed by Shri Kalpesh Daftary, while Shri Kulhari and his firm merely signed and handed over financial instruments. When questioned about the duplicate invoice numbers, as disclosed by Shri Girish Ghelani in his statement dated 15.05.2012, Shri Kulhari stated that instead of providing invoices issued by M/s Vani Exports, Shri Kalpesh Daftary had likely prepared another set of invoices and provided those invoices to his firm. He emphasized that he never reviewed the details mentioned in the purchase or sale invoices, as all transactions were conducted strictly under the instructions of Shri Kalpesh Daftary of M/s Sunkkalp Creations Pvt. Ltd., Mumbai.

118. I observe that the documents recovered from the office premises of M/s. Vani Exports, Kolkata, along with details provided by Shri Girish Ghelani, revealed that 13 forged licenses used by M/s. Relance at Dahej were not recorded in their sales records. I find that Shri Girish Ghelani,

proprietor of M/s. Vani Exports, in his voluntary statements recorded under Section 108 of the Customs Act, 1962, on 20.05.2010, 21.05.2010, and 15.05.2012, categorically denied issuance of invoices purportedly related to the sale of these forged licenses. I further find that when specifically questioned about the sale of 13 licenses to M/s. Hindustan Continental Limited, Kolkata, through Bill/Debit Note Nos. VE/0921/09-10 and VE/0922/09-10, both dated 05.11.2009, he disclosed that the documents presented to him were forged. He identified discrepancies in the format, printing colour, stationery size, and signatures and confirmed that neither he nor any authorized signatory of his firm had issued these invoices or debit notes. As per Bill/Debit Note No. VE/921/09-10 dated 18.11.2009, M/s. Vani Exports had sold 4 DEPB licenses to M/s. Hindustan Continental Limited on 18.11.2009, and the Bill/Debit Note in respect to this sale was sent to M/s. SCPL, however, M/s. SCPL did not submit this document to M/s. Hindustan Continental Limited; instead, they issued a forged Bill/Debit Note bearing the same number, falsely reflecting the sale of 8 licenses. I observe that he further stated that the first four licenses mentioned in the forged document were genuine, as they matched those in the original Bill/Debit Note, but the remaining four were never sold by M/s. Vani Exports. Furthermore, 9 licenses shown in Bill/Debit Note No. VE/922/09-10 dated 05.11.2009 were also not traded by M/s. Vani Exports, as this invoice was not issued by their firm, instead, it was fraudulently created by Shri Kalpesh Daftary of M/s. SCPL, who was handling the entire operations of M/s. SCPL during that period. Additionally, when asked to explain the receipt of Rs. 5.05 crores from M/s. Hindustan Continental Limited against an actual sale of only Rs. 2.18 crores, Shri Ghelani stated that all payments were controlled and processed by Shri Kalpesh Daftary. He further clarified that he was unaware of the reasons behind these excess transactions and the excess payments received in his firm were routed as per Shri Kalpesh Daftary's instructions.

119. I find that Shri Piyush Viramgama in his statement stated that the letter confirming genuineness of the Release Advices was prepared by Shri Kalpesh Daftary and mailed/faxed to Shri Piyush Viramgama who used to put the round seal of Custom House, Mangalore, [which was recovered from the residential premises of Shri Vijay Gadhiya], on the said letter and re-faxed or mailed it back to Shri Kalpesh Daftary after scanning the same. Once the fax or mail was received back by Shri Kalpesh Daftary, the signature on the letter of confirmation was also scanned by Shri

Kalpessh Navinchandra Daftary from some other genuine document of customs and the scanned portion was affixed on the letter and the print out of the same was taken and faxed to Shri Bhavesh Doshi. It is also evident from case records that the letters requesting confirmation of genuineness was not faxed from Dahej Customs directly to Mangalore Customs on account of non-functional of fax at Dahej Customs. Therefore, letters seeking confirmation were always handed over to the employees of the CHA M/s. Nationwide Shipping Services. Similarly, the letter confirming the genuineness of the Release Advices were never received at the Fax installed in Dahej Customs but the same were sent by Shri Bhavesh Doshi to M/s Reliance and the same was presented to the Customs officers by the employees of M/s. Nationwide Shipping Services. These facts were also confirmed and corroborated by the statement of Shri Vijay Gadhiya, the associate and employee of Shri Piyush Viramagama. Shri Vijay Gadhiya had admitted that he affixed/put rubber stamp on the verification letter of Customs on the instructions of Shri Piyush Viramagama.

120. From the above, it summarizes that for transacting the sale of the said 13 forged VKGUY licences, Shri Kalpesh Daftary had sold the genuine 13 VKGUY licences to M/s. Sun Exports, Mumbai under the invoices of his firm M/s SCPL and proceeded to get these 13 licences forged by Shri Niyaz Ahmed, Shri Piyush Viramagama and Shri Vijay Gadhiya. These forged licences were then sold by Shri Kalpessh Daftary through the broker, Shri Bhavesh Doshi to M/s. Reliance Industries Ltd. The sale invoices to M/s. Reliance in respect of these forged/fake VKGUY licences was issued by Shri Kalpessh Daftary from M/s. Hindustan Continental Ltd, Kolkata. Shri Kalpessh Daftary forged the invoices of M/s. Vani Exports, Kolkata showing sale of these 13 licences to M/s. Hindustan Continental Ltd, Kolkata. Since M/s. Vani Exports, Kolkata and M/s. Hindustan Continental Ltd, Kolkata were having transactions of sale/purchase of licences between them, which too were arranged by Shri Kalpessh Daftary of M/s SCPL through Shri Sasshin Koradia and they were making and receiving on account payments, it was very convenient for Shri Kalpessh Daftary to receive payment from M/s. Reliance in respect of the 13 forged VKGUY licences in the name of M/s. Hindustan Continental Ltd from where it was transferred to M/s. Vani Exports, Kolkata and other firms as per his requirement of funds. However, the financial transactions pertaining to the sale of these 13 forged VKGUY licences were all controlled and managed by Shri Kalpessh Daftary.

121. I find that the face value of the 13 forged licences sold to M/s. Reliance amounted to **Rs.6,95,53,888/-**. These licences were sold to M/s. Reliance at a discounted price of about 96% to 98% of the face value and were originally sold under the invoices of M/s. Hindustan Continental Ltd, Kolkata. These 13 forged VKGUY licences were shown to have been sold to M/s. Hindustan Continental Ltd, Kolkata by M/s. Vani Exports, Kolkata. The sales and the invoices of M/s. Vani Exports, Kolkata were forged/faked by Shri Kalpessh Daftary. On receipt of payment from M/s. Reliance, M/s. Hindustan Continental Ltd made payments to M/s. Vani Exports, Kolkata whose invoices were forged to show sale of the said 13 VKGUY licences to M/s. Hindustan Continental Ltd, Kolkata. The payments were received and made by the firms on an on-account basis and there was no bill wise or licence wise co-relation of the payments. The excess payments received in account of M/s Vani Exports were further routed as per Shri Kalpesh Daftary's instructions. Further, the sale and purchase of the licences were all controlled by Shri Kalpessh Daftary only and the firms were merely issuing invoices on commission basis. The receipt and payment of funds were being done on the specific instructions of Shri Kalpessh Daftary, and the firms/companies who had issued sales invoices had no control over the same as it did not belong to them.

122. On perusal of relevant records, I find that the bank account of M/s. Shivangi Enterprise, a Proprietary firm of Shri Vijay Gadhiya was extensively used by Shri Kalpessh Daftary and Shri Piyush Viramgama for receiving the sale proceeds of the forged/fake licences sold by them. Apart from the 13 forged VKGUY licences sold to M/s. Reliance, Shri Kalpessh Daftary alongwith his other associates had also sold 85 forged/fake VKGUY and 08 DEPB licences to M/s. Hindalco Industries Ltd, Dahej for which also the aforesaid bank account was used by them. The matter of the forged licences sold to M/s. Hindalco Industries Ltd, Dahej is not a subject matter of this proceedings, therefore, I am not going to that aspect in this Order. However, the short point is that Shri Kalpessh Daftary had in collusion with Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed in all forged/faked and sold 98 VKGUY licences and 08 DEPB licences. The sale proceeds of these forged/fake licences were received in the bank account of M/s. Shivangi Enterprises as well as in the names of other firms provided by Shri Sashin Koradia. From the HDFC bank account statement of M/s. Shivangi Enterprise, Rajkot pertaining to the period from July, 2008 to 31/03/2010 it is seen that an amount of Rs.35,25,11,530/- was received and credited to the

said account. Out of this that an amount of Rs. 35,35,11,530/- paid out from the said account and which is shown on the debit side of the said bank account statement. As stated hereinabove, in the sale and purchase of licences, the payments are not made on one-to-one basis of either the invoice or the licence. As these traders buy and sell licences to one another on a regular basis, they make and receive on account payments. Therefore, I find that it is not possible to co-relate the payments received/made licence wise or invoice wise.

123. I find that digital evidences in the form of the emails recovered from the email account of Shri Vishal Wadkar, employee of Shri Sashin Koradia and part time employee of Shri Kalpessh Daftary clearly indicate that the payments were made and received in the names of various firms and the accounting in respect of these transactions were maintained by Shri Sashin Koradia in the code name of 'zoo'. The account of Shri Kalpessh Daftary was maintained by Shri Sashin Koradia in the code name of 'zoo'. It was also revealed by Shri Sashin Koradia that funds were rotated between different firms and in a large number of cases, the amounts were converted in to cash and delivered to either Shri Kalpesh Daftary/SCPL or to other firms and persons on the instructions of Shri Kalpessh Daftary and the cash was sent through Angadias for delivery to the concerned persons. I find that the cash transactions related to angadia activity was also confirmed by Shri Vishal Jagannath Wadkar, Employee of Shri Sashin Koradia in his statement.

124. Shri Piyush Viramgama in his statements admitted to having received an amount of Rs.1.75 crores for his role in the forgery out of which about Rs. 60 lakhs was received by him in the account of his firm M/s. Krish Overseas from M/s. SCPL and the balance amount was received by him in cash from the account of M/s. Shivangi Enterprise, Rajkot. When Shri Kalpessh Daftary was questioned in this regard, he disagreed with the statement of Shri Piyush Viramgama and stated that Shri Piyush Viramgama had in fact got about Rs. 10 crores for his role in the forgery of the licences i.e. including the forged licences sold to Hindalco Industries. Shri Kalpessh Daftary explained the distribution of the sale proceeds as under:-

20% of the original licence value of the licence was given to Niyaz, 20% of the original licence value was taken by Piyush, and as the licences were normally sold at 90% of the original

value, he got 50% of the original value of the licence. The money received from the sale of the forged licences was transferred by the companies of Sashinbhai i.e. M/s. Punjab Chemical and Crop Protection Ltd or M/s. Hindustan Continental Ltd., M/s. Osatwal Trading to the bank account of Shivangi Enterprise only to extent of the share of Niyaz and Piyush i.e. 40% of the original value of the licence. Part of his share of the money was withdrawn in cash by Sashinbhai from his companies i.e. M/s. Punjab Chemical and Crop Protection Ltd or M/s. Hindustan Continental Ltd., M/s. Osatwal Trading and paid to him in cash and part of the money was transferred to M/s. Sunkkalp Creations Pvt Ltd by these firms. Though his share in the sale of the forged licences was 50% of the original value of the licence, he effectively got only 40% because about 10% was the charges of Sashinbhai for arranging the billings, making cash payments etc.

125. I further find that Shri Kalpessh Daftary was, in the course of his statement recorded on 18/07/2010, shown the 'zoo' account submitted by Shri Sashin Koradia and asked to identify the cash transactions from the said account. The cash transactions identified by Shri Kalpessh Daftary totally amounted to Rs. 60 crores. Shri Daftary further stated that out of Rs. 60 crores, Rs. 40 crores pertained to the sale of forged licences to M/s.Hindalco Industries Ltd and M/s.Reliance Industries Ltd. Of this, Rs.28 crores was his profit from the sale of forged licences to M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd. From the remaining amount of Rs.12 crores, Rs. 10 crores were paid by him in cash to Shri Piyush Viramgama and Rs.2.0 crores was paid in cash to Shri Niyaz in Mumbai. The amount of Rs.40 crores was cashed by Shri Shashinbhai from the various firms in whose names he arranged billings for sale and purchase of licences.

126. Shri Piyush Viramgama in his statement dtd.12/05/2010 stated that the payments, were made to Shri Niyaz Ahmed, M/s. Indiyana Shoes, Shri Ashok Gupta etc. in respect of the forged licences. Shri Vijay Gadhiya, Proprietor of M/s. Shivangi Enterprise, Rajkot from whose account the payments were made, had in his statement dtd.17/09/2010 stated that whatever amount was debited from his bank account in the name of (i) Indiyana Marketing (ii) Indiyana Shoes (iii) Niyaz Ahmed (iv) Nizam Ahmed (v) Qamar Jahan (vi) Ashok Kumar Gupta (vii) Unique

Fabricator (viii) A.K. Gupta & Sons (ix) A.K. Gupta (x) Indiyana Enterprise (xi) Indiyana have all been transferred to Shri Niyaz Ahmed at Kanpur. During the course of the investigation, it was found that M/s. Shivangi Enterprise, Rajkot was having another account bearing No. 910020005728774 with Axis Bank Ltd, Rajkot. It was seen that payments have been made to Shri Niyaz Ahmed and others from this account too.

127. I find that in the present case, the facts of the case is admitted by the noticees in their voluntary statements recorded by the DRI under section 108 of the Customs Act, 1962. The law on the validity of the statements recorded under section 108 of the Act has been well settled in catena of decisions. Firstly, such statements made to the customs officers are admissible in evidence and not hit by section 24 of the Evidence Act as the customs officers are not police officers. Further, I find that the statement recorded by the DRI is not considered as statement recorded by the police and the same is admissible in the eyes of law. The same view has been upheld by the Hon'ble Supreme Court as well as other courts in various judicial pronouncements. In support of my contentions, I rely on the following judgements:

(a) Raj Kumar Karwal v. Union of India (1990) 2 SCC 409: The Hon'ble Supreme Court held that:

“the officers of the Department of Revenue Intelligence who have been vested with powers of an Officer-in-Charge of a police station under [Section 53](#) of the NDPS Act, 1985, are not police officers within the meaning of [Section 25](#) of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him”.

(b) Ramesh Chandra Mehta vs The State of West Bengal [(1969) AIR 381, 1969 SCR (2) 461]: The Hon'ble Supreme Court held that:

For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 and the judgment of this Court in Badku Joti Savant's case (1), we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of s. 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by s. 25 of the Indian Evidence Act.

(c) In case of **Shri Naresh J. Sukhawani v. Union of India**, as reported at [1996 \(83\) E.L.T. 258 \(S.C.\)](#), Hon'ble Supreme Court of India had held that :

4. *It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected*

by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India.

(d) In ***Illias v. Collector of Customs, Madras - 1983 (13) E.L.T. 1487 (S.C.) = 1969 (2) SCR 613*** the Hon'ble Supreme Court had held that Customs authorities have been invested under the Act with many powers of a police officer in matters relating to arrest, investigation and search, which the Customs Officers did not have under the Sea Customs Act. Even though the Customs Officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognisable offence, *they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs officials would be admissible in evidence against them.*

(e) In ***State of Punjab v. Barkat Ram - (1962) 3 SCR 338*** a three-Judge Bench of the Hon'ble Supreme Court as per majority held that the confession made to the Customs Officer and conviction on the basis of such confession under the Land Customs Act, 1924 was held valid.

128. Shri Kalpesh Daftary in his defence denied the charges made in the show cause notice. Further, in most of his reply portion, he made allegations on other conspirators who happened to be his associates when the offence was committed. Such allegations on other associates are not reproduced here in view of the fact that it has got nothing to do with the charges made in the show cause notice against Shri Daftary. Further, Shri Kalpesh himself admitted that in case of various statements recorded by the DRI, they have not implicated him in their statements and therefore he did not comment on these statements.

128.1. He claimed that it is case of Padvamati Agencies (P) Ltd., in connivance with Custom Officers of the port issuing and confirming the licenses and forged the documents and used the same for their personal gain. Shri Daftary argued that Shri Dharmesh Gathani of Padmavati Agencies Pvt. Ltd in his statement has stated that they have been supplying licences to Reliance Industries Ltd. Therefore, Shri Dharmesh

Gathani was having easy access to Xerox copies of these used licenses by Reliance Industries Ltd at Dahej or Magdala port. In this regard, I find that fact of the matter, however, is that the licenses supplied to M/s Reliance is forged licenses and genuine licenses of these forged licenses were supplied by M/s SCPL to M/s Sun Export, who subsequently sold the same to M/s Trident India Limited, Mumbai and M/s S. R. International. Therefore, the question of availability of Xerox of these license with Shri Dharmesh Gathani does not arise. Further, Shri Piyush Viramgama has disclosed in his statements that the Xerox copies of the license were arranged by Shri Kalpesh Daftary. Further, the same was also accepted by Shri Kalpesh Daftary in his voluntary statements. Therefore, I do not find any force in the argument of the noticee and I reject the same.

128.2. Shri Kalpesh Daftary has contended that he requested cross-examination of 27 witnesses; however, the Adjudicating Authority allowed cross-examination of only 15 witnesses, out of which only 5 were ultimately offered for cross-examination. He asserted that the oral evidence of these 5 witnesses alone could be relied upon to sustain the allegations against him, while the oral evidence of the remaining 22 witnesses should not be considered for drawing any adverse inference in the proceedings.

I observe that Shri Kalpesh Daftary, vide his letter dated 08.11.2023, submitted a list of 27 individuals for cross-examination. However, he failed to provide specific reasons or justification for seeking the cross-examination of such a large number of witnesses. It is a well-established principle of law that the right to cross-examine witnesses, while an essential component of natural justice, is neither unfettered nor absolute. The noticee is required to demonstrate the necessity and relevance of cross-examination by providing cogent reasons. The Hon'ble Tribunal, while remanding the matter for fresh adjudication, directed compliance with the principles of natural justice, including affording the right to cross-examine witnesses. However, this direction did not confer an unconditional right to cross-examine all witnesses merely upon request. In the present case, Shri Kalpesh Daftary's submission of an extensive list of 27 individuals, without assigning specific grounds, appears to be an attempt to misuse the opportunity granted under the remand order. The adjudicating authority is not bound to permit cross-examination based on a blanket request; rather, it is within its discretion

to require the noticee to establish the relevance and necessity of cross-examining particular witnesses. This position is supported by various judicial pronouncements. In *K.L. Tripathi v. State Bank of India* (1984) 1 SCC 43, the Hon'ble Supreme Court held that the principles of natural justice do not mandate cross-examination in every situation. The requirement for cross-examination depends on the facts and circumstances of each case, and the demand must be justified with valid reasons. Reference is also made to the relevant case laws discussed in paragraph 84 above, which are not reproduced here.

Further, in his submission dated 17.02.2025, in response to the para-wise objections, Shri Kalpessh Daftary stated that certain individuals, namely (1) Shri Hiten Parekh, (2) Shri Ashok Kumar Gupta, and (3) Smt. Bindi Vora, among others, had not implicated him in their statements. Despite this, he included these individuals in his request for cross-examination without furnishing any justification. I find that this contradictory stance further underscores the lack of bona fide grounds for the broad request for cross-examination, which is inconsistent with the judicial requirement to provide specific reasons. I find that efforts were made in good faith to facilitate the cross-examination of witnesses. Multiple notices, spanning four to five instances, were issued to secure the witnesses appearance. However, on several occasions, neither Shri Kalpessh Daftary nor his authorized representative attended the scheduled cross-examination. Conversely, in some cases, the witnesses themselves failed to appear despite being summoned. It is important to note that the adjudicating authority, as a quasi-judicial body, is not representing the interests of the revenue or the noticee. It is duty-bound to ensure that the noticee is granted a fair opportunity to defend their case. However, the authority cannot compel witnesses to appear if they refuse to do so. The absence of cross-examination due to non-availability of witnesses, despite reasonable efforts, does not automatically invalidate their statements, especially when such statements are corroborated by other material evidence. Applying these principles to the present case, I find that Shri Kalpessh Daftary was provided with ample opportunity to cross-examine witnesses. I find that non-completion of cross-examination does not render the statements void or inadmissible. The statements of witnesses, corroborated by the noticee's statements, co-noticees, and other circumstantial evidence, retain their evidentiary value. Having provided sufficient opportunities to Shri Kalpessh Daftary, I am not inclined to disregard the statements solely due to the non-appearance of

witnesses for cross-examination, particularly when their statements are corroborated by other evidence. The principles of natural justice require a fair opportunity to be given but do not mandate that proceedings be indefinitely stalled at the noticee's behest. Therefore, the contention that the statements of the remaining 22 witnesses should be disregarded is devoid of merit.

128.3. Shri Kalpessh Daftary contended that he had retracted all his statements at the first available opportunity. Thus, the retracted statements could not be considered as an admissible evidence during the course of proceedings to arrive at any guilt against the noticee. On going through the records of the case, I find that the statements dated 14/15/16/17/18.07.2010, 09.02.2011, 07.03.2011, and 08.03.2011, made by Shri Kalpessh Daftary, were provided by him in his own handwriting and in a language known to him. I find that in these statements, *he disclosed detailed information about his past business activities, establishment of his proprietorship firm, M/s Bansi Overseas, and the employment of Shri Piyush Viramgama under him. He further mentioned the death of his father and his strained relationship with his wife, which led to their divorce in 2006. He also described his association with Shri Dharmesh Gathani, Director of M/s PAPL, his meetings with Shri Paresh Parekh, and his appointment as a Director in M/s Sankalp Creation Private Limited. Shri Kalpessh Daftary provided a comprehensive explanation of the entire process involved in selling DEPB/VKGUY licences, including verification and payment receipt. He elaborated on the documents required for the sale and subsequent use of a DEPB license, such as Original License, Forwarding Letter from DGFT, List of Shipping Bills accompanying the license, and the Transfer Letter from the exporter, duly attested by a bank officer. He explicitly detailed the scheme of forging DEPB/VKGUY licences and the step-by-step execution of the same, along with the specific roles played by each of the noticees in the forgery, and the manner in which profits were distributed in cash among them.* I further find that the statement dated 09.02.2011 was recorded while Shri Kalpessh Daftary was in Sabarmati Jail, wherein he disclosed the details regarding cash transactions and their settlement involving him, Shri Piyush Viramgama, and particularly Shri Dharmesh Gathani. The statements recorded on 07.03.2011 and 08.03.2011 were obtained by the Directorate of Revenue Intelligence under the permission of the Additional Chief Magistrate, at the DRI office. In these statements, he disclosed crucial facts, including details regarding cash settlements among the noticees. At

the material time, Shri Kalpessh Daftary was under police protection, and it is improbable that, under such circumstances, while he was in judicial custody, any coercion, threat, or undue influence could have been exerted upon him for the purpose of obtaining his statements. I find that the statements of Shri Kalpessh Daftary contain specific and intricate details, procedure of sale and purchase of licenses, distribution of the profit received from forgery of the DEPB/VKGUY licences, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statements. Moreover, the facts of the statements of Shri Kalpessh Daftary have been confirmed by the statements of the other co noticees, in their respective statements given before the DRI Officers. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statements in question.

I also observe that the initial statements of Shri Kalpessh Daftary were recorded on 14/15.07.2010, and he was arrested on 16.07.2010. However, he filed his retraction only on 03.08.2010, i.e., fifteen days after the recording of his statements, and the said retraction was addressed to the Additional Chief Magistrate. Statements recorded under Section 108 of the Customs Act, 1962, are presumed to be voluntary and admissible in the eye of law. If a noticee alleges that his statement was obtained under threat, coercion, or pressure, he is expected to retract it immediately, or at least within a reasonable time, after the recording of such a statement. Shri Kalpessh Daftary had ample opportunity to disclose any alleged coercion at the time of his production before the Judicial Magistrate after his arrest. However, he did not retract his statement until fifteen days later. The delayed retraction, addressed to the Additional Chief Magistrate instead of the DRI, further raises doubts about its genuineness. It is a well-established legal principle that retraction of a statement should be made promptly, preferably before the same authority that recorded the statement, or at the earliest opportunity. In the present case, the delay of fifteen days in filing the retraction and the fact that it was not addressed to the DRI suggests that the retraction was merely an afterthought, aimed at evading the consequences of the violations committed by him. I further find that the mere fact that a statement has been retracted does not imply that the statement loses its evidentiary value. This principle has been enunciated by the Hon'ble Supreme Court as well as other courts as discussed under:

- a) In the case of **Surjeet Singh Chhabra reported at 1997 (89) ELT 646 (SC)** the Hon'ble Supreme Court has observed that:

*It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. **The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner.** So there is no need to call Panch witnesses for examination and cross-examination by the petitioner.*

- b) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.

- c) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

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

- d) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the

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

(emphasis supplied)

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

In light of the above judicial pronouncements, the argument of Shri Kalpessh Daftary to the effect that retracted statement has no evidentiary value is not maintainable. I am, therefore, of the view that the statements in question were given by Shri Kalpessh Daftary voluntarily in explanation of the plethora of documents seized from the business/residential premises of the noticees containing those details which he wished to state and the same is admissible in the present proceedings.

128.4. Shri Kalpessh Daftary further contended that, during the course of cross-examination of Shri Sarjerao Parbati Mojar @ Chhotu, the latter stated that his statement was recorded in English, a language he did not understand, and that he was frightened and had signed the document

without reading or knowing its contents. Shri Sarjerao, by way of a letter dated 02.01.2025, also submitted a copy of an affidavit dated 27.07.2010, wherein he had alleged ill-treatment. On this basis, Shri Daftary argued that the statement of Shri Sarjerao Parbati Mojar @ Chhotu could not be treated as admissible evidence in the proceedings against him. However, upon examination of the facts and circumstances, I find that the statement of Shri Sarjerao Parbati Mojar @ Chhotu was recorded on 18.06.2010, wherein he disclosed detailed facts about his association with Shri Paresh Parekh for over 25 years, the separation of directors of M/s Trident India Limited, the shifting of the company's offices, the creation of a new firm, M/s Splendid Overseas, the change of name from M/s Trident India Limited to M/s SCPL, and the present directors of M/s SCPL. He further admitted to working for M/s SCPL, undertaking personal assignments, receiving and booking transactions with various angadia firms, and collecting cash from these firms on the instructions of Shri Kalpesh Daftary, particularly during the period when Shri Paresh Parekh was unwell and Shri Daftary was overseeing the firm's operations. Although Shri Sarjerao later claimed during cross-examination that he was unaware of the contents of his statement as it was recorded in English, which he did not understand, and that he had signed it under duress but I find this assertion unconvincing. Notably, the affidavit dated 31.07.2010, submitted as evidence of ill-treatment, makes no reference to the statement recorded on 18.06.2010. Further, there is no record indicating that the affidavit was submitted to the Directorate of Revenue Intelligence or any other competent authority at the relevant time. The mere execution of an affidavit more than a month after the statement was recorded holds little evidentiary value, especially when it was not presented before the authority that recorded the statement. Moreover, while Shri Sarjerao claimed inability to understand English, it is pertinent to note that the affidavit dated 31.07.2010 is itself typed in English, raises serious doubts about the authenticity of his claims during cross-examination.

I further find that Shri Daftary relied on a letter dated 02.01.2025, purportedly authored by Shri Sarjerao Parbati Mojar @ Chhotu and addressed to the Superintendent, Adjudication. However, it is perplexing how Shri Daftary came into possession of this letter, which indicates his continued influence over Shri Sarjerao. I further note that Shri Sarjerao in his letter mentioned about cross examination of Shri Vishal Vyas, which in regular course has no connection with the cross examination of Shri

Sarjerao and I find it a deliberate attempt to divert the adjudication in favour of Shri Kalpessh. This inference is further supported by the fact that Shri Kalpessh Daftary, in his statement dated 14.07.2010, described Shri Sarjerao as one of the oldest and most loyal employees of the company. The close association between the two suggests that Shri Sarjerao is acting under the direction and influence of Shri Daftary, particularly in his attempts to retract his initial statement. Furthermore, Shri Sarjerao's detailed disclosure during the investigation included facts predating the existence of M/s SCPL, which he could not have fabricated without intimate knowledge gained from his longstanding association with the firm. These statements bear the hallmarks of truth, made at a time when his allegiance to Shri Daftary was likely less compromised by the exigencies of the present proceedings. It is apparent that Shri Sarjerao is now attempting to retract his earlier truthful statement under influence of Shri Daftary. In view of the foregoing, I find no merit in the contention raised by Shri Daftary regarding the inadmissibility of Shri Sarjerao Parbati Mojar @ Chhotu's statement, and I accordingly reject the same.

128.5. Shri Kalpessh further contended that during the cross-examination, Shri Vishal Vyas stated that he was not fluent in English, and the statements recorded in English were not explained to him. He also clarified that the work relating to the trading of licenses was handled by Shri Paresh Parekh, while he only coordinated the sale and purchase of licenses under the instructions and supervision of Shri Paresh Parekh. The printouts of emails shown to him were not taken in his presence, and the emails were sent under the instructions of Shri Paresh Parekh. He also confirmed that no laptop, pen drive, hard disk, or any other digital media was seized during the search conducted by DRI at the premises of M/s Sunkalp Creation Pvt. Ltd. These facts make it clear that he had no involvement in the trading of licenses, and his name appears in the proceedings solely because he was one of the directors at the relevant time. Shri Vishal vide letter dated 02.01.2025, submitted that he had filed a police complaint before the Senior Police Officer, Azad Maidan Police Station, Mumbai for ill treatment by DRI officers.

It is observed that the statements of Shri Vishal Vyas, an employee of M/s SCPL, were recorded by the DRI on 28.05.2010, 25.06.2010, and 26.06.2010. During recording of his statements, Shri Vyas disclosed that he was 12th class pass and described his role in M/s SCPL. He specifically stated that the sale and purchase transactions related to

DEPB/VKGUY licences of M/s SCPL were handled by Shri Kalpesh N. Daftary, who also operated and controlled the e-mail ID info@sunkkalp.com. Upon being shown various printouts of emails sent by him to different persons, Shri Vyas identified and explained the details of these emails, which pertained to the sale and purchase of various licenses. When questioned about the issuance of two invoices for the same licenses, he categorically stated that it was done under the instructions of Shri Kalpesh Daftary. I observe that Shri Vyas lodged a complaint dated 19.06.2010, wherein he alleged misbehavior by DRI officers on 18.06.2010 and mentioned signing upon the statement of his office colleague, Shri Sarjerao Parbati Mojar @ Chhotu. However, the complaint did not contain any allegation that his own statements were recorded under threat, pressure, or coercion. Furthermore, I find that his statements were recorded both before and after the date of the complaint i.e. on 28.05.2010, 25.06.2010, and 26.06.2010, which clearly indicates that the complaint is unrelated to the veracity or voluntariness of his statements in the present proceedings. There is also no record of any retraction of his statements for approximately 14 years. It is only now, for the first time, that he changed part of his statement during cross examination. I further find that during cross-examination, Shri Vyas himself confirmed the accuracy of the facts stated in his statements, except for his attempt to resile from his assertion that sale and purchase transactions were handled by Shri Kalpesh Daftary. I find that the timing and nature of this deviation, after such a long gap, cast doubt on its credibility and strongly suggest external influence. Notably, a letter dated 03.09.2024, issued to Shri Vishal Vyas for his appearance for cross-examination, was returned by postal authorities with the remark "Left" from both of his addresses. Additionally, when a third letter was issued to Shri Sarjerao Parbati Mojar @ Chhotu, he responded by stating that he would appear along with Shri Vyas, despite Shri Vyas having left the employment of M/s SCPL in 2011. Moreover, the letters dated 02.01.2025, submitted by both Shri Vyas and Shri Mojar, are drafted in identical language and convey nearly identical facts, further suggesting coordination between the two. It is pertinent to note that Shri Kalpesh Daftary made reference to the letter dated 02.01.2025, which was addressed by Shri Vyas to the Superintendent (Adjudication). The manner in which Shri Daftary came into possession of this letter raises serious concerns and demonstrates his continued influence over Shri Vyas. This close association and the apparent control exercised by Shri Daftary over Shri Vyas strongly suggest that the latter's attempt to retract his earlier

statements is not voluntary but is a result of the undue influence and pressure exerted by Shri Daftary. Furthermore, the detailed disclosures made by Shri Vyas during the investigation were corroborated by the statements of other witnesses and co-noticees, and such intricate details could not have been informed without intimate knowledge of the company's business operations. These facts affirm the credibility of his original statements, which were made at a time when his allegiance to Shri Daftary was likely less influenced by the present proceedings. The circumstances clearly indicate that Shri Vyas is now making a belated and motivated attempt to retract his truthful statements under the influence and direction of Shri Daftary. Therefore, I find no merit in the contentions raised by Shri Daftary challenging the admissibility and veracity of Shri Vyas's statements. Accordingly, the objections raised by Shri Daftary are rejected.

128.6. Shri Kalpessh Daftary also contended that the CBI had also investigated the matter concerning the utilization of forged licenses at Dahej Port. He submitted that, in the charge sheet filed by the CBI, certain documents were produced, which, according to him, clearly revealed gross negligence and misconduct on the part of the Customs officers at Dahej at the relevant time.

Upon consideration of this submission, I observe that there is nothing on record to indicate that the CBI conducted any investigation specifically concerning the present matter. It is also pertinent to observe that the CBI is an independent agency, and the investigation carried out by it, along with its findings, has no direct relevance to the present proceedings. It is not uncommon for two different agencies to form different opinions on a similar issue, depending on their respective mandates and priorities. Moreover, Shri Kalpessh Daftary has not disclosed the final outcome of the CBI investigation, nor has he clarified his own role or involvement in the matter identified by the CBI. I find that his submissions are confined to allegations of negligence on the part of the officers. I further find that Shri Kalpessh has placed on record only selective portions of the CBI charge sheet. I do not find any reason to rely on such incomplete documents to draw a fair conclusion in the matter.

128.7. In the panchnama carried out at the premise of M/s Hindustan Continental Limited at Mumbai, it is mentioned that Shri Surendra Kulhari specifically informed the DRI officers that he was dealing with sales/purchase of various licences through Shri Paresh Parekh of M/s

Sunkkalp Creation and was receiving commission of 0.25% from Shri Paresh Parekh. Shri Kalpesh emphasized that Shri Surendra Kulhari named him as an associate of Shri Paresh Parekh but added that most of dealing were with Shri Paresh Parekh only.

In this regard, I observe that during the panchnama proceedings dated 18.05.2010, when questioned about his business activities, Shri Surendra Kulhari stated that he was engaged in the sale and purchase of various licenses through Shri Paresh Parekh of M/s Sunkkalp Creation and was receiving a commission of 0.25% from Shri Paresh Parekh. He further disclosed that Shri Kalpesh Daftary was an associate of Shri Paresh Parekh. I find that the statement of Shri Surendra Kulhari, Director of M/s Hindustan Continental Ltd., was recorded under Section 108 of the Customs Act, 1962, on multiple occasions i.e. on 26.05.2010, 12.06.2010, 06.08.2010 and 15.05.2012. During his statement, when specifically questioned about the sale of 13 forged licenses to M/s Reliance Industries Limited, he stated that his company merely issued invoices to facilitate the sale of these licenses. He further clarified that the trading of these licenses was conducted under the instructions of Shri Kalpesh Daftary of M/s SCPL, while the billing arrangements were managed by Shri Sashin Koradia of Mumbai. Additionally, for these 13 licenses, the purchase invoices of M/s Vani Export, Kolkata, were provided to him by Shri Kalpesh Daftary. I further find that Shri Kulhari disclosed that M/s Hindustan Continental Ltd. had received approximately Rs. 6.80 crores from M/s Reliance Industries Limited against the sale of these 13 licenses. Out of this amount, Rs. 5.05 crores was paid to M/s Vani Exports, while the remaining funds were distributed among other entities as directed by Shri Kalpesh Daftary. He also confirmed that all financial transactions were managed by Shri Kalpesh Daftary. From the above facts, it is evident that when specifically questioned about the 13 forged transactions, Shri Kulhari identified Shri Kalpesh Daftary as the principal handler of the transactions and the primary financial beneficiary. In view of the foregoing, I find no merit in the contentions of the noticee, and accordingly, I reject the same.

128.8. Shri Kalpesh further submitted that the panchnama at RUD 7 was drawn in the presence of Mrs. Dayaben Vinodbhai Varmura, the house owner, and not in the presence of any authorized representative of Shri Vijay Gadhiya. Notably, Annexure-B to the panchnama contains impressions of certain stamps allegedly recovered from the premises,

which are in English. However, the signatures of the panchas and the house owner indicate that none of them appeared to be familiar with the English language. It is also noted that the panchas were a grocery shop owner and a carpenter by profession. He contended that reliance cannot be placed on the recovery of such impressions if the panchas did not understand the nature of the articles recovered during the search.

Upon careful examination, I observe that the panchnama dated 27.04.2010 was, in fact, drawn at the residential premises of Shri Vijay Gadhiya. During the panchnama proceedings, various incriminating evidences, including rubber stamps and round seals of the DGFT, Rajkot, round seals of Mangalore Customs, stamps of different banks, and other similar articles, were recovered from the premises. The significance of this recovery is further corroborated by the voluntary statement of Shri Vijay Gadhiya dated 12.05.2010, recorded under Section 108 of the Customs Act, 1962. In his statement, upon being shown the panchnama dated 26.04.2010, along with the seized articles such as rubber stamps, negatives of rubber stamps, and butter paper prints, Shri Vijay Gadhiya admitted that these items were kept at his residence on the instructions of Shri Piyush Viramgama. I find that he also explained that this was done at the time when the office premises of M/s Krish Overseas was being shifted from Somnath Complex to Krish Business Planet. I further find that the statement of Shri Vijay Gadhiya was subsequently affirmed by the co-noticees. Shri Piyush Viramgama, in his voluntary statement dated 13.05.2010, recorded under Section 108 of the Customs Act, 1962, confirmed the facts stated by Shri Vijay Gadhiya. Additionally, Shri Kalpesh Daftary himself, in his voluntary statement dated 15.07.2010, also recorded under Section 108 of the Customs Act, 1962, after perusal of the statement of Shri Vijay Gadhiya, likewise confirmed the facts mentioned therein. In light of these facts, I find that the contention raised regarding the understanding and competence of the panch witnesses is devoid of merit. The argument that the panchas, being a carpenter and a grocery shop owner, and the house owner, were not familiar with the English language and therefore could not comprehend the details of the recovered articles, is not tenable. The panchnama was prepared in Gujarati, and the panchas signed it in Gujarati, which is a common practice as individuals usually sign documents in the language in which the content is written. Furthermore, Annexure-B merely contains brief descriptions of various rubber stamps, primarily in the form of one-liners or short phrases, and it does not require advanced proficiency in English

to understand impressions of stamps. Any person with a basic familiarity with English can comprehend the simple contents or impressions of rubber stamps. Therefore, I find that the assertion that the panchas were incapable of understanding the nature of the recovered items is baseless and without substance. The fact that the recovery and the panchnama were subsequently accepted and affirmed by Shri Vijay Gadhiya and further confirmed by Shri Piyush Viramgama and Shri Kalpesh Daftary reinforces the credibility of the panchnama proceedings and the recovery made thereunder. Hence, I hold that the objections raised on these grounds are without merit and liable to be rejected.

128.9. Shri Kalpesh submitted that during the investigation by the CBI and the Enforcement Directorate, statements of Shri Sashin Koradia were recorded, which reveals that Shri Sashin Koradia had known Shri Paresh Parikh, Director of Sunkkalp Creations, since 2003. In 2008, Shri Paresh Parikh introduced the noticee to Shri Koradia. However, Koradia's statements before the CBI on August 11, 2011, and the Enforcement Directorate on December 31, 2018, contained contradictions on the same facts, indicating that the statement recorded under Section 108 of the Customs Act was unreliable. Such inconsistencies render the statement inadmissible, and no adverse inference can be drawn against the noticee. Further, Shri Koradia identified Shri Pravin Jain as a known hawala operator involved in dummy transactions, yet the DRI did not summon him despite evidence linking him to multiple companies, including M/s Accurate Multitrade Pvt. Ltd. and M/s New Planet Trading Co. Pvt. Ltd. Orders from the Hon'ble High Court of Gujarat and the Income Tax Tribunal, when analyzed alongside transactions involving M/s New Planet Trading Co., reveal that forged license sales and purchases were managed by Sashin Koradia through Pravin Jain. He contended that in view of the above facts and as the department failed to produce Shri Sashin Koradia for cross examination, his statement can not be relied upon.

I observe that during the course of investigation, multiple statements of Shri Sashin Koradia were recorded under Section 108 of the Customs Act, 1962, on various dates, including 02.06.2010, 11.06.2010, 12.06.2010, 05.08.2010 and 06.08.2010. In these statements, he elaborately described the procedure, facts, cash transactions, cash distributions and circumstances relating to the sale and purchase of licenses with M/s. SCPL, and highlighted the role of Shri Kalpesh Daftary. I also observe that Shri Sashin stated that he came into contact

with Shri Pareshbhai Parekh in 2004, who was engaged in the trading of export incentive licenses. He further disclosed that Shri Kalpesh Daftary was introduced to him by Shri Paresh Parekh in 2007-2008. They requested him to provide firms for billing activities, offering him a commission of 25 paise per hundred on the turnover of the bills. Consequently, Shri Sashin approached Shri Surendra Kulhari, Director of M/s Hindustan Continental Limited, to use his company for billing purposes for transactions conducted by M/s SCPL. He offered Shri Kulhari a commission of 20 paise per hundred, to which he agreed. Acting on the instructions of Shri Kalpesh Daftary, Shri Sashin provided signed blank cheques of M/s Hindustan Continental's bank account to him. Additionally, he arranged five firms i.e. Accurate Multi Trade Pvt. Ltd., Ostwal Trading Co. Pvt. Ltd., New Planet Trading Company Pvt. Ltd., R R Impex (Kolkata), and Fast Stone Trading Company Pvt. Ltd. through his friend, Shri Pravin Jain. He admitted that neither he nor the owners of these firms had ever seen any transferable duty-free license physically, nor were they aware of which licenses were genuine or forged. The billings were conducted solely based on the instructions of Shri Kalpesh Daftary. I further find that Shri Sashin produced the ledger account of M/s SCPL for the period from April 1, 2008, to March 31, 2010, maintained under the code name "ZOO." He explained the meaning of various coded names in the records, revealing that "Zoo" referred to M/s Sunkalp Creations Pvt. Ltd., "Babloo" represented firms associated with Shri Pravin Jain, "HGM" denoted accounts managed by Shri Hasmukh Gulabchand Mehta, a sales tax consultant, "SC" stood for service charges, "ATM" referred to cash transactions, and "Supat" was the code for M/s Hindustan Continental Ltd. Upon receiving instructions from Shri Kalpesh Daftary, he arranged purchase invoices in the name of the designated firms. As per the directions of Shri Kalpesh Daftary he would also arrange for preparation of sales invoices. I note that he further explained the transactions by way of an illustration in following manner:

"M/s New Planet Trading would on the instructions of Shri Kalpesh Daftary purchase licences from M/s. General Commodities at 75% of the licence value and would raise a sale invoice in the name of M/s.Ostwal Trading Pvt Ltd. at 80% of the licence value, who would in turn raise a sales invoice in the name of M/s. Hindustan Continental Ltd at 85% of the licence value. M/s. Hindustan Continental Ltd would in turn raise a sales invoice in the name of the firm instructed by Shri Kalpesh Daftary at 90% of the licence value. By the above routing of purchase and sales, the sale value of the licence is raised by each firm and accordingly the profit is split

among the firms. However, this splitting of the profit is only on paper and these firms are not the beneficiaries. The difference between the actual purchase value of the licence and the actual final sale value of the licence goes to only M/s. Sunkkalp Creations Pvt Ltd. He gets only commission/service charge @ 6% of the profit and this is split by him with the firms involved in the transaction”.

I further find that Shri Sashin further revealed that the financial transactions involved in these activities were transferred to M/s SCPL through cheques, RTGS, and, predominantly, cash payments. He produced records of cash transactions labeled under the code “ATM” in the accounts of M/s SCPL, amounting to Rs. 62,25,31,660. Of this, Rs. 60,63,16,660 was disbursed to different individuals based on the instructions of Shri Kalpesh Daftary. In several instances, cash was handed over to Shri Chhotu, an employee of Shri Daftary, without any knowledge of its further use. Additionally, payments were made to other unidentified individuals as per Shri Daftary’s directives. I also observe that Shri Sashin explained the cash generation process with an illustration mentioned as under:

Shri Kalpesh Daftary gives them an invoice of Shivangi Enterprise for licences originally valued at Rs.100/-. As per the invoice of Shivangi Enterprise the licences are sold to Punjab Chemical and Crop Protection Ltd (PCCPL) at Rs.42. On the instructions of Shri Kalpesh Daftary M/s.PCCPL in turn sells the licences at Rs.92 to M/s.Vani Exports. M/s. Vani Exports would make payment of Rs.92 to M/s.PCCPL either by cheque or RTGS and M/s.PCCPL would retain the profit of Rs.50 and return Rs.42 to M/s.Shivangi Enterprise either by RTGS or by cheque. The profit of Rs.50 is then converted to cash and paid to Shri Kalpesh Daftary.

I further find that the statement of Shri Sashin was recorded during combined investigation of utilization of forged licenses by M/s Reliance and M/s Hindalco and therefore he has provided combined figures of both these importers. I further find that Shri Sashin Koradia has explained each detail of billing activity, cash generation, cash distribution very minutely and the involvement of Shri Kalpesh Daftary in the forgery of licenses and the cash transactions was further corroborated by the statements of other individuals, including Shri Vishal Vyas, Shri Sarjerao Mojar @ Chhotu, Shri Vishal Wadkar, Shri Piyush Viramgama, Shri Girish Ghelani and others. This was supported by incriminating documents collected during the investigation, such as emails, records maintained by Shri Sashin Koradia, rubber stamps, blank letterheads of Customs,

courier records for sending of set of licenses with other documents, fax transmissions from Shri Kalpessh Daftary's office, and details of cash transactions etc. These collectively established the nexus between Shri Kalpessh Daftary and the forgery of licenses subsequently utilized by M/s Reliance to evade customs duty. The contention that Shri Sashin Koradia's statement should be discarded due to discrepancies in his statements before the CBI and ED is not sustainable. It is a settled legal position that statements recorded under Section 108 of the Customs Act, 1962, have evidentiary value and are admissible as evidence under the Indian Evidence Act, 1872. Statements recorded by the Police under Section 161 of the Code of Criminal Procedure, 1973, or by the CBI, do not carry the same evidentiary value in Customs adjudication proceedings. This view finds support in the judgment of *Naresh J. Sukhwani v. Union of India* (1996) 4 SCC 488, wherein the Hon'ble Supreme Court held that statements recorded under Section 108 of the Customs Act are admissible evidence and can be relied upon without formal proof. Similarly, in *Surjeet Singh Chhabra v. Union of India* (1997) 89 ELT 646 (SC), it was held that a confession made under Section 108 is not hit by the bar of Section 25 of the Evidence Act. Moreover, I find that Shri Sashin Koradia has not retracted his statements till date and therefore, the statements given before the DRI has proper evidentiary value. Considering the evidence on record and the corroborative statements of other persons, I find that Shri Kalpessh Daftary has played prominent role in the forgery of the licenses, which was subsequently utilized by M/s Reliance. The claim that the entire case is based solely on the statement of a co-noticee is not true, as the financial transactions, cash distributions, statements of other witnesses as well as co-noticees and other documentary evidence independently substantiate the allegations. Therefore, I find that the statements made by Shri Sashin Koradia under Section 108 of the Customs Act, 1962, are found to be credible and applicable in the present proceedings.

128.10. Shri Kalpessh further submitted that in para 48 (RUD-55), it is mentioned that Statement of Shri Bhavesh Doshi, Authorised Signatory of M/s Suresh Doshi Mumbai, was recorded and during the statement he provided a statement regarding the purchase and transfer of licenses. As per RUD-55, he submitted a chart (1 to 10 pages) upon DRI's request, showing that licenses were procured through the Noticee and Shri Paresh Parekh of M/s Sunkkalp Creation Pvt. Ltd. and later transferred to M/s Reliance Industries. The chart indicates that Shri Bhavesh Doshi sourced

licenses from Shri Paresh Parekh in 2008, whereas the Noticee first contacted him in November 2009. This suggests that DRI did not verify when the chart was submitted or whether licenses were supplied to M/s Reliance as early as May 2008. Shri Bhavesh Doshi further stated that M/s Reliance made payments to M/s Vani Exports, which ultimately reached M/s Sunkkalp Creation Pvt. Ltd. He contended that it remains unclear how he could confirm that all payments from M/s Reliance ultimately went to M/s Sunkkalp. As the department has failed to produce Shri Bhavesh Doshi, the evidence tendered by him during the investigation cannot be considered as admissible evidence.

I find that statement of Shri Bhavesh Doshi, authorized signatory of M/s Suresh C. Doshi, Mumbai were recorded on 06.07.2010 & 24.07.2010. Shri Bhavesh Doshi disclosed that the invoices of M/s. Padmavati Agencies Pvt. Ltd., M/s. Vani Export, and M/s. Hindustan Continental Ltd., all based in Kolkata, reflecting the sale of licenses to M/s. Reliance Industries Ltd., were arranged and provided by Shri Kalpessh Daftary. I find that during the statement, he produced a worksheet detailing 417 licenses supplied to M/s Reliance Industries Ltd. between August 2008 and March 2010, primarily procured through M/s Sun Exports, owned by Shri B.P. Choudhary. He further explained that these licenses were originally purchased by M/s SCPL, owned by Shri Kalpessh Daftary and Shri Paresh Parekh, from exporters. Shri Daftary then sold them to Shri B.P. Choudhary, who, in turn, offered them to Shri Bhavesh Doshi for supply to M/s Reliance Industries Ltd. on a brokerage basis. He also clarified that only brokerage invoices were raised by them to M/s Reliance Industries Ltd. He further stated that the payment in respect of these licences was made by M/s. Reliance Industries Ltd directly to the firm who had issued the sales invoice. The payment was being made generally by RTGS fund transfer. For instance, if the sales invoice was issued by M/s Vani Exports, they would be receiving the payment from M/s Reliance Industries Ltd. And M/s Vani Exports would then make payment to the firm from whom they had purchased the licence. In this manner the payment was finally made to M/s SCPL. I also find that in November 2009, Shri Kalpessh Daftary directly approached Shri Bhavesh Doshi with a proposal to supply licenses directly to M/s Reliance Industries Ltd. without involving intermediaries, which he accepted. Following this arrangement, approximately 70 licenses were supplied under invoices from the aforementioned firms, with an assurance from Shri Daftary that Shri Doshi would receive a commission. The

physical delivery of these licenses and relevant documents was managed by Shri Chotu, an employee of Shri Daftary. For verification of the Release Advice, M/s. Reliance Industries Ltd. faxed customs confirmation letters to him, who in turn forwarded the same to M/s. SCPL. The confirmation letters of the Release Advice were sent by M/s. SCPL and he subsequently forwarded these letters to M/s. Reliance Industries Limited at their Parel office. When questioned about the 13 forged licenses, Shri Doshi stated that they were sold by Shri Kalpesh Daftary of M/s SCPL, though the billing was done by M/s Hindustan Continental Ltd. Additionally, an email dated November 7, 2009, was found, sent to Shri Bhavesh Doshi's email ID (scdoshi@vsnl.com) by Shri Kalpesh Daftary from his email ID (info@sunkkalp.com), forwarding an email from Shri Bashir Jasani (bfjasani@allana.com). This email contained details of 18 licenses belonging to M/s Allanasons Ltd., M/s Indagro Foods Ltd., and M/s Frigorifico Allana Ltd., with a total value of Rs. 10,17,35,232/-. Shri Doshi confirmed that this value matched exactly with the purchase order dated November 7, 2009, issued by M/s Reliance Industries Ltd. These 18 licenses included the 13 forged licenses used by M/s Reliance Industries Ltd., while the original licenses were supplied to M/s SCPL by M/s Allanasons Ltd. and its associates. It was also established that the email ID info@sunkkalp.com was primarily handled by Shri Kalpesh Daftary, a fact corroborated by his voluntary statements and the statement of his employee, Shri Vishal Vyas. Therefore, I find that in November 2009, Shri Kalpesh contacted him regarding the direct supply of licenses to M/s Reliance and during this period, forged licenses were supplied to M/s Reliance through Shri Kalpesh Daftary, who provided the invoice of M/s Hindustan Continental Limited. Therefore, the contention of the notice lacks merit and liable for rejection. Further, with respect to his contention that Shri Bhavesh Doshi did not appear for cross examination, therefore, his statement should not be considered in the present proceedings, I have already discussed this issue in detail and held in para 128.2 above that non-completion of cross-examination does not render the statements void or inadmissible. Therefore, I hold the contention of the noticee is devoid of merit and I reject the same.

128.11. Shri Kalpesh Daftary further submitted that, in the proceedings before the Court initiated on the basis of complaint filed by the CBI, Shri Neeraj Jadwani, the email domain supplier confirmed that the email password of Sunkkalp had been reset on numerous occasions by Shri Vishal Wadkar. It was also brought on record that a complaint regarding

this issue had been made by Shri Kalpesh in December 2009. This cross-examination establishes that the email account of Sunkkalp was being accessed and potentially misused by Shri Vishal Wadkar through repeated password resets. He contended that in view of the above facts, it cannot be said that documents or details, recovered from the e-mail I.D. of Sunkkalp were created by Sunkkalp itself.

Upon a detailed examination of the submissions made by Shri Kalpesh Daftary, I find that he placed reliance on the cross-examination of Shri Neeraj Jadwani. In his testimony, Shri Neeraj confirmed that the domain "Sunkkalp.com" had been provided to Shri Kalpesh Daftary, who was the director of M/s SCPL. Further, Shri Neeraj categorically stated that the email account associated with M/s SCPL was managed by its Manager, Shri Vishal Wadkar. This specific statement holds significant weight as it establishes that Shri Neeraj was well aware that Shri Vishal Wadkar held the position of Manager at M/s SCPL and was entrusted with the management of the company's email accounts. Additionally, from the evidence on record, it is noted that Shri Neeraj, in his deposition, referred to an incident in 2009-10, when Shri Kalpesh Daftary had lodged a complaint regarding issues with the company's email account, stating that emails were being automatically sent. Upon receiving this complaint, Shri Neeraj reset the password to the email account and handed over the new password to Shri Vishal Wadkar. This sequence of events, as narrated by Shri Neeraj, is of considerable importance as it reaffirms his familiarity with Shri Vishal Wadkar and his understanding that Shri Vishal was acting in his capacity as Manager of M/s SCPL. Although Shri Kalpesh Daftary asserted that he had made a complaint in December 2009 regarding unauthorized access to the email account, however, I find that he failed to produce any documentary evidence substantiating the existence or contents of such a complaint. In the absence of such proof, it cannot be conclusively established as to the precise nature or subject matter of the alleged complaint. What emerges clearly from the statements made by Shri Neeraj Jadwani is that he had unequivocal knowledge of Shri Vishal Wadkar's role as Manager of M/s SCPL. Even after the alleged complaint was lodged by Shri Kalpesh Daftary, Shri Neeraj continued to reset the email password and provide the same to Shri Vishal Wadkar. This fact substantially weakens the contention of Shri Kalpesh Daftary, as it indicates that Shri Vishal Wadkar was acting in an official capacity on behalf of M/s SCPL and had legitimate access to the company's email account. In light of the aforementioned facts and the deposition of Shri

Neeraj Jadwani, it is evident that the attempt by Shri Kalpesh Daftary to dissociate himself from the emails and documents retrieved from the Sunkkalp domain lacks credibility. His argument that the email account was being misused appears to be a mere afterthought, devised to evade the implications of the incriminating evidence obtained from the said email account. The continuous resetting of the password and its subsequent handover to Shri Vishal Wadkar, who was known and recognized as the Manager of M/s SCPL by Shri Neeraj Jadwani, strongly suggests that the emails and documents generated from the said account were either created by Shri Kalpesh Daftary himself or by his authorized representative including Shri Vishal Wadkar, in the normal course of business. Therefore, considering the entirety of the evidence and the statements placed on record, the explanation offered by Shri Kalpesh Daftary appears to be a feeble excuse aimed at disowning the crucial documentary evidence obtained from the email account associated with the domain "Sunkkalp.com" and I therefore find that the contention raised by Shri Kalpesh Daftary is devoid of merit and I hereby reject the same.

128.12. Shri Kalpessh further contended that regarding the fax header, it is important to note that only mention of a fax number does not conclusively prove that a fax was sent from the number indicated in the header. He argued that it is within the prerogative of the sender to adjust or manipulate the fax number as per their choice, as per the circumstances. Further, during the investigation, the CBI requested MTNL Mumbai to provide details of the telephone number 26121841. MTNL Mumbai informed the authorities that no information was available regarding the installation of a fax machine on the said telephone number. As the relevant authorities have confirmed that no fax was associated with the mentioned telephone number, the issue of sending a fax from that number does not arise and any adverse inference based on the fax number mentioned in the header under RUD should not be taken against him.

I find that this contention of Shri Kalpessh Daftary is not tenable in light of the evidence on record. I find that the existence and active use of a fax machine at the office of M/s Sunkkalp Creations Pvt. Ltd. have been corroborated by multiple statements, including that of Shri Kalpessh Daftary himself. I observe that his employee, Shri Vishal Vyas, in his statement dated 28.05.2010, stated that buyers would forward copies of Customs letters requesting confirmation of the genuineness of documents.

These letters were received either by fax or by email with a scanned attachment. The same were then forwarded to their agents at the port of registration. Upon verification, the agents would send back confirmation letters, which were again received either by fax or email. Shri Vishal Vyas specifically mentioned that the *fax number of M/s SCPL was 022-26121841*. Furthermore, I find that Shri Kalpessh Daftary, in his statements dated 14/15.07.2010, admitted that Shri Piyush Viramgama forged the Mangalore Customs verification letters and *faxed them to his office at M/s SCPL*. He further stated that confirmation letters regarding the genuineness of all forged licenses were prepared and faxed by Shri Piyush from Rajkot to M/s SCPL's office in Mumbai, from where they were again faxed to M/s Hindalco Industries or to Customs at Dahej. This sequence of events clearly demonstrates that the fax facility at M/s SCPL was operational and actively used during the relevant period. Additionally, I note that Shri Prashant Kumar Chowta, Customs Clerk of M/s Ganesh Shipping Agency, Mangalore, in his statement dated 22.10.2010, disclosed that Shri Kalpessh Daftary used to send transfer letters by courier and he in turn would fax request letters to their office. Shri Piyush Viramgama, in his statement, also admitted that letters confirming the genuineness of the Release Advices were prepared by Shri Kalpessh Daftary and either mailed or faxed to him. Upon receiving the fax, he affixed a counterfeit round seal of Custom House, Mangalore, and then *re-faxed or emailed the forged documents back to Shri Kalpessh Daftary*. Furthermore, during the investigation conducted by the Directorate of Revenue Intelligence, letters purportedly issued by Mangalore Customs confirming the genuineness of 13 Release Advices, which were utilized by M/s Reliance at Dahej Port, were examined. The letter bore the fax number 26121841. This further substantiates that the fax number in question was actively used in connection with the activities under investigation. In view of the corroborative statements from various individuals and the documentary evidence, there is sufficient proof to establish that the fax facility at M/s SCPL, bearing number 26121841, was indeed in use at the relevant time. The claim that no fax was associated with the said telephone number, as asserted based on MTNL's response, is thus rendered inconsequential in light of the overwhelming evidence to the contrary. Therefore, the contention raised by Shri Kalpessh Daftary is devoid of merit and stands rejected.

128.13. Shri Kalpessh Daftary contended that, during the process of verifying the genuineness of the forged 13 Release Advices (RAs), the

statements of the Assistant Commissioner and the Superintendent of Customs, Mangalore, were recorded. He argued that these officers had denied the signatures on the RAs were theirs, but objected that the investigation had concluded the signatures were forged without obtaining an expert opinion. He questioned the credibility and reliability of the statements of the officers, asserting that without expert examination, the investigation could not be conclusively determined that the officers were providing true and correct facts.

From the records of the case, I find that during the verification process statements of the officers of the RA issuing port were recorded by the DRI regarding the authenticity of the licenses and RAs. Smt. Uma Devi, Superintendent of Customs & Central Excise, Mangalore, who was posted in the Export Section of Mangalore Custom House during the relevant period from May 2009 to May 2012, stated that the signatures appearing on the 13 licenses did not belong to her and had been forged by imitating her signature. Evidence further revealed that the rubber stamps affixed on these licenses were also found to be counterfeit. I further find that Shri Poovappa D.V, Superintendent of Customs (Appg.I) at Mangalore Customs categorically confirmed that the signatures appearing on 13 licenses were not his and that the rubber stamps affixed on those licenses were also fake. I further observe that statement of Shri Sukumaran revealed that the rubber stamp appearing on the RAs corresponding to the 13 VKGUY licenses used by M/s. Reliance was not genuine, as there was no such post as Assistant Commissioner (Docks) in Mangalore Custom House. He further affirmed that the signatures on the 13 RAs were not his and had been forged. The statements of other Superintendents, whose signatures were purportedly on the RAs for the 13 licenses used by M/s. Reliance, were also recorded. All of these officers uniformly confirmed that the signatures and rubber stamps on the said 13 RAs were forged and not made by them. The contention raised regarding the necessity of expert verification lacks merit when the officer himself confirmed that he has not signed the documents and moreover it is on record that genuine licenses was used by some other importer. Moreover, the statements of the officers were recorded under Section 108 of the Customs Act, 1962, which is admissible as evidence. I further find that when the statements are corroborated by facts on record, there arises no need for further cross-verification by a handwriting expert. The corroborative evidence, coupled with the officers' own statements, is sufficient to establish the fraudulent nature of the documents beyond doubt. Hence, I find that the objection

raised by Shri Kalpessh Daftary is found to be baseless and lacking in reasoning and consequently, his argument is dismissed.

128.14. The Noticee intend to highlight discrepancies in the DRI investigation, particularly regarding the distribution of proceeds from the sale of forged licenses. As per para 145 of the show cause notice, the total sales consideration was Rs 6,95,53,888/-, yet para 148 states that Rs 10 crore was given to Shri Piyush Viramgama, which contradicts the recorded figures. This inconsistency suggests that the investigation lacks accuracy and is aimed at falsely implicating the Noticee. Similarly, paras 152 and 153 mention a transfer of Rs 4.41 crore from the bank accounts of M/s Shivangi to Shri Niyaz Ahmed and his family, allegedly under the Noticee's instructions. However, the proprietor of M/s Shivangi, Shri Vijay Gadhiya, never stated in his recorded statements that the transfers were made as per the Noticee's direction. The Noticee asserts that no evidence supports these claims, and such allegations were made solely to create false implications. Additionally, the SCN suggests that the Noticee also paid Rs 2 crore in cash to Shri Niyaz Ahmed. This brings the total alleged payments to Rs 16.41 crore, while the recorded sales proceeds were only Rs 6.95 crore. These contradictions indicate that the DRI investigation is flawed, lacks factual accuracy, and is conducted with a mala fide intention.

I find that the meticulous investigation conducted by the DRI has unequivocally brought to light a sophisticated and well-orchestrated scheme involving the utilization of forged DEPB, VKGUY, etc licenses, leading to large-scale evasion of customs duty. As a result, M/s Reliance Industries Ltd., Dahej, was found to have evaded customs duty amounting to ₹6,95,53,888/- through the use of 13 forged VKGUY licenses. In a brazen attempt to circumvent liability, the noticee has contended that it is implausible to distribute approximately Rs. 16 crore from sale proceeds amounting to Rs. 6.95 crore. I observe that initially, the inquiry was initiated against M/s Hindalco Industries Limited based on intelligence regarding the misuse of forged DEPB and VKGUY licenses. During the investigation, it was discovered that M/s Reliance Industries Ltd. had also used forged licenses, making it necessary to expand the scope of the probe. I observe that the investigation conclusively established that a total of 98 VKGUY and 8 DEPB licenses, along with their corresponding Release Advices and related documents, were forged. Among these, 13 forged VKGUY licenses were utilized by M/s Reliance Industries Ltd., Dahej, while 85 VKGUY and 8 DEPB licenses were utilized

by M/s Hindalco Industries Ltd., Dahej. The entire fraudulent operation was orchestrated through an elaborate financial web, wherein the bank account of M/s Shivangi Enterprise, a proprietary firm of Shri Vijay Gadhiya was extensively utilized by Shri Kalpessh Daftary and Shri Piyush Viramgama for the receipt of sale proceeds derived from these counterfeit licenses. It has been incontrovertibly established that this act of forgery was planned and executed by Shri Kalpessh Daftary, Shri Piyush Viramgama, Shri Niyaz Ahmed and others. As similar modus operandi was used to sell forged licenses to M/s Reliance as well as M/s Hindalco by the same persons, therefore, common statement covering forgery in M/s Reliance as well as M/s Hindalco were recorded during the investigation. I further find that common evidences were also gathered during the investigation. The gravity of these findings is further reinforced by the testimony of Shri Kalpessh Daftary, who, during the course of his statement recorded on 18/07/2010, was confronted with the 'zoo' account submitted by Shri Sashin Koradia. I find that the cash transactions identified by Shri Kalpessh Daftary totally amounted to Rs. 60 crores. Shri Daftary further stated that out of Rs. 60 crores, Rs. 40 crores pertained to the sale of forged licences to M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd. Of this, Rs.28 crores was his profit from the sale of forged licences to M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd. From the remaining ₹12 crore, ₹10 crore was paid in cash to Shri Piyush Viramgama, and ₹2 crore was handed over to Shri Niyaz in Mumbai. The magnitude of this deception is further highlighted by the fact that the sum of ₹40 crore was liquidated in cash by Shri Shashinbhai through various firms under whose names he orchestrated billings for the sale and purchase of licenses. In light of this irrefutable chain of evidence, I find that it becomes abundantly clear that the figure cited in the Show Cause Notice represents the cumulative profit amassed by Shri Kalpessh Daftary, Shri Piyush Viramgama, and their co-conspirators from forgery of total 98 licenses used by M/s Reliance as well as M/s Hindalco. Further, I find that the evidence on record, including statements from multiple co-noticees, individuals, email correspondences, cash transaction records, courier logs, and rubber stamps used in the creation of forged documents, unequivocally establishes Shri Daftary's role in the fraudulent scheme. Consequently, I find that the contentions raised by the noticee not only lack merit but are also a transparent attempt to obfuscate the reality of his involvement in this elaborate scheme of financial subterfuge. Therefore, in view of the evidence at hand, this contention of the noticee is rejected outright.

128.15. Shri Kalpessh contended that the investigation conducted in the present case was flawed and compromised, raising specific concerns regarding the role and conduct of the investigating officer, Shri Somnath Chaudhary. He asserted that Shri Somnath Chaudhary was not offered for cross-examination during the adjudication proceedings, thereby violating the principles of natural justice. He further referred to his cross-examination before the CBI Court on 23.03.2023, highlighting that during the investigation into the alleged misuse of forged licenses at Dahej Port, Shri Somnath Chaudhary failed to recall or identify the names of key co-noticees. Shri Kalpessh also referred to his arrest by DRI in a separate case and mentioned the involvement of CBI in a similar matter, suggesting that the investigation in the present case was conducted with malafide intent to shield the primary individuals responsible for the misuse of forged licenses.

Upon careful examination of the records of the case, I find that the list submitted by Shri Kalpessh Daftary vide letter dated 08.11.2023, seeking cross-examination of 27 witnesses, include the name of Shri Somnath Chaudhary. In light of the principles of natural justice and in compliance with the directions of the Hon'ble Tribunal, the request was duly considered, and accordingly, Shri Somnath Chaudhary was directed to appear for cross-examination. He appeared on 11.09.2024 & 08.11.2024; however, neither Shri Kalpessh Daftary nor his authorized representative was present to conduct the cross-examination. Subsequently, another opportunity was provided to cross-examine Shri Somnath Chaudhary on 26.12.2024. On this occasion as well, Shri Kalpessh Daftary, vide his letter dated 26.12.2024, sought an extension, thereby further delaying the cross-examination. It is pertinent to note that the adjudicating authority, being a quasi-judicial body, is obligated to ensure a fair opportunity is provided to the noticee to defend their case but is not required to allow indefinite adjournments at the noticee's request. Shri Kalpessh Daftary was granted sufficient opportunities to cross-examine the investigating officer, and the repeated failure to avail such opportunities cannot be construed as a denial of natural justice. Regarding the allegations made by Shri Kalpessh Daftary concerning the arrest of Shri Somnath Chaudhary and the registration of a CBI case against him, I find that these incidents occurred in 2019, nearly nine years after the investigation in the present matter was conducted. The mere fact of subsequent allegations or proceedings against the investigating officer does not automatically vitiate the investigation

conducted in the past. A person's conduct at a later stage cannot retrospectively cast doubt on the integrity of his previous work. I note that Shri Somnath Chaudhary was previously awarded the Presidential Medal for his meritorious service, which also lends credibility to his professional conduct during the period relevant to the present investigation. I further note that any criminal misconduct on the part of Shri Somnath Chaudhary in a separate case does not confer immunity upon the individuals against whom cases were initiated during his tenure as an investigating officer. Each case must be assessed on its own merits, and mere allegations against the officer do not invalidate the findings of every investigation conducted by him. As regards the contention of malafide intention in implicating Shri Kalpesh Daftary, I find that no credible evidence or specific material has been produced to substantiate such an allegation. Mere assertions of bias or improper motive, without tangible proof, are insufficient to undermine the investigation. From the discussion hereinabove, I hold that Shri Kalpesh Daftary was afforded ample opportunity to cross-examine the investigating officer. The proceedings have, therefore, adhered to the principles of natural justice. The invocation of the subsequent arrest and allegations against Shri Somnath Chaudhary bears no material relevance to the present case, particularly when viewed in light of his professional recognition during the relevant period. The investigation cannot be deemed compromised merely based on unsubstantiated allegations, and the assertion of malafide intent remains unproven. Therefore, I find that the contention of Shri Daftary is without merit and liable for rejection.

128.16. Shri Kalpesh submitted that during the investigation, the DRI has seized digital media, including a pen drive and other electronic storage devices, from various locations. The data retrieved from these devices has been relied upon to support the allegations against the noticee. He contended that the data obtained from the pen drive does not constitute substantive evidence, and no adverse inference can be drawn against the noticee solely on the basis of such data. It is further contended that the email communications relied upon in the present case are inadmissible, as the requirements of Section 65B of the Evidence Act, have not been satisfied.

Upon careful consideration of the material on record, I find that the allegation against Shri Kalpesh Daftary is not solely based on digital evidences. I find that the allegation is supported by statements of various

witnesses, co-noticees, and employees of Shri Daftary, along with his own voluntary statements and several incriminating documents seized during the investigation. Further, the evidences recovered from various emails were corroborated by his employee, Shri Vishal Vyas, who specifically identified the transactions and explained the purpose behind them. He also accepted that some emails were sent by him on directions of Shri Kalpessh Daftary. These details are consistent with the statements of other individuals and are further supported by corroborative evidence. Additionally, the authenticity of the email records was verified by both the sender and the recipients, including an employee of Shri Kalpessh Daftary. In view of the foregoing factual and legal position, I find that the contention raised by the noticee is untenable and liable for rejection.

128.17. He also contended that the entire proceeding against him is vitiated by an error of law, as it is based on mere presumptions and assumptions, without any factual support. He further contended that both the residential and office premises of the noticee were searched during the investigation, yet no direct or indirect evidence linking the noticee to the alleged misconduct was found or brought on record. The evidence relied upon consists solely of third-party statements and documents recovered from third-party premises. Such statements and documents, in the absence of corroborative evidence, cannot be treated as admissible proof to draw an adverse inference against the noticee.

Upon careful examination of the material evidence and arguments presented, I find the contention of the noticee to be untenable. The claim that the proceedings are based solely on presumptions and assumptions is devoid of merit. I find that the investigation conducted by the Directorate of Revenue Intelligence has established concrete evidence demonstrating the role of Shri Daftary in the forgery and misuse of licenses for evasion of customs duty. Notably, M/s Reliance has already paid an amount of Rs. 6,95,53,884/- along with applicable interest of Rs. 69,85,878/-, thereby acknowledging the liabilities arising out of the fraudulent transactions. Moreover, M/s Reliance has lodged an FIR and filed a civil suit against the sellers concerning the forgery of licenses. The investigation has further revealed that Shri Kalpessh Daftary played a pivotal role in orchestrating the forgery. The DRI apprehended him along with other individuals involved in the scheme. During the course of searches conducted by the DRI, various incriminating pieces of evidence were recovered, including but not limited to:

- Emails and printouts detailing fraudulent transactions,
- Records of cash transactions maintained by Shri Sashin Koradia,
- Rubber stamps and blank letterheads of Customs authorities,
- Courier records evidencing the transmission of forged licenses and other documents,
- Fax transmissions from Shri Kalpessh Daftary's office containing forged letters,
- Documentary evidence detailing cash transactions linked to the fraudulent scheme.

I find that the evidentiary value of these materials was further strengthened by the voluntary statements of third-party individuals from whose premises these documents were recovered. Notably, the individuals concerned confirmed the authenticity of the documents and the underlying transactions in their statements. Furthermore, Shri Kalpessh Daftary himself, in his voluntary statements, provided a detailed disclosure of the entire scheme of forgery, including its planning, execution, and the distribution of profits arising from the forgery of licenses. Additionally, records of emails retrieved during the investigation were corroborated by Shri Vishal Vyas, an employee of Shri Kalpessh Daftary, who specifically identified the fraudulent transactions and provided detailed explanations regarding their purpose. This independent corroboration further substantiates the allegations against Shri Kalpessh Daftary. I note that the Hon'ble Supreme Court and various High Courts have consistently held that circumstantial evidence, when corroborated by other material evidence and voluntary statements, can be sufficient to establish guilt. In *K.I. Pavunny v. Assistant Collector* (1997) 3 SCC 721, the Hon'ble Supreme Court ruled that voluntary confessions made under Section 108 of the Customs Act, 1962, are admissible evidence and can be relied upon in proceedings against the accused. Further, in *Kanhaiyalal v. Union of India* (2008) 4 SCC 668, the Apex Court reiterated that evidence collected from co-accused and accomplices, when supported by other corroborative evidence, is sufficient to hold a person guilty of customs violations and fraud. In view of the above judgements and findings, it is evident that the proceedings against the noticee are not based on mere assumptions or presumptions but are supported by tangible evidence, including financial records, cash transactions, transfer of excess amount by M/s Vani Exports, use of 90 lakhs by him for purchase of shares of M/s. Siddhant Estate Pvt. Ltd., transfer of Rs. 3.10 Crore in his other directorship firm namely M/s.Sonbar Developers and Investment Pvt. Ltd,

witness statements, and documentary evidence. The contention that the case relies solely on third-party data and their statements is incorrect. The allegations against the noticee are independently substantiated by multiple sources of corroborative evidence, including documentary proof, voluntary confessions, and the statements of co-noticees and other witnesses. The evidence on record conclusively establishes his involvement in the fraudulent activities relating to the forgery and misuse of licenses, leading to the evasion of customs duty by M/s Reliance. Therefore, I find no merit in the arguments raised by Shri Kalpessh Daftary and accordingly reject his contention.

128.18. I have gone through the lengthy submission made by Shri Kalpesh Daftary vide his letter dated 19.08.2013 & 17.02.2025. At the outset, I find that the focus of his reply is to make allegations of other conspirators which has got nothing to do with the allegations made in the show cause notice, therefore I do not find it necessary to consider the reply relating to such allegations and counter allegations.

129. The defence submission made by Shri Piyush Viramgama vide his letter dated 01.01.2014 does not have any substance. In fact, he has not seriously contested the allegations made in the notice and simply denied the charges. Further, so far as his request for cross examination of other noticees or witnesses in this case is concerned, I find that after receipt of the Hon'ble Tribunal order dated 10.08.2022, two opportunities for personal hearing on 11.10.2023 and 26.10.2023 was provided to Shri Piyush Viramgama. However, in response to both the personal hearings, Shri Piyush Viramgam has neither turned up for the hearing on the scheduled date nor submitted any reply in this regard. I further find that in order to follow the principles of natural justice, letter dated 28.10.2024 was issued to Shri Piyush Viramgama, for seeking the list of witnesses whom he wishes to cross examine within seven days. Shri Piyush has acknowledged and received the said letter in person on 29.10.2024. I find that despite of providing the list of persons to be cross-examined within the stipulated time, Shri Piyush, vide letter dated 07.11.2024, has requested for one-month extension without adducing any specific reason. Without any presupposition, it is imperative to mention that such casual approach of postponement is not appreciable and may adversely affect the adjudication process to complete in a reasonable time in the interest to safeguard the Govt. Revenue. I further find that subsequent to his request for an extension, further communications, including a letter dated

08.11.2024 and reminders dated 19.11.2024 and 04.12.2024, were issued to Shri Piyush Viramgama, requesting him to submit the list of witnesses for cross-examination. I find that although, the very fact reveals that the opportunity of cross-examination is not being taken in serious manner which reflects the contradictory approach of Shri Piyush Viramgama towards the opportunity provided by the Hon'ble Tribunal to controvert statements and cross examine the statements on which the department places its reliance. Taking into consideration the above facts and circumstances, I note that several opportunities have been granted to Shri Piyush Viramgama to participate in the adjudicating proceedings and to submit the list of witnesses he wishes to cross examine, however, on each and every occasion, Shri Piyush Viramgama has failed to avail opportunity of representing their contentions with the support of corroborative evidence before the adjudicating authority.

129.1. I have carefully examined the submission dated 01.01.2014 made by Shri Piyush Viramgama and find that it is factually incorrect to say that the charges leveled against him in the Show Cause Notice notice are on the basis of statements of other individuals. Fact of the matter is that in the statements recorded on various dates by DRI under Section 108 of the Customs Act, 1962, Shri Piyush Viramgama himself has categorically explained the procedure from forging the licenses to receipt of their share. He also admitted his role in the entire episode of forging the licences and other allied documents. I find that the above said admission made by Shri Piyush Viramgama gets substantiated from various incriminating documents/articles recovered from his office as well as residential premises during the course of searches in these premises which include:

- i) Rubber stamp of Oriental Bank of Commerce,
- ii) Rubber stamp of HDFC Bank Ltd,
- iii) Rubber stamp of one V. NAGARAJAN (329), Chief Manager.
- iv) Negative for preparing rubber stamp of Union Bank of India, Kollam Civil Stn.Branch
- v) Negative for preparing rubber stamp of The Federal Bank Ltd, Kollam
- vi) Negative for preparing rubber stamp of ING Vysya Bank Ltd, Kollam
- vii) Negative for preparing rubber stamp of Indian Bank, Kollam
- viii) Negative for preparing rubber stamp of Bank of Baroda.
- ix) Negative for preparing rubber stamp of The Catholic Syrian Bank
- x) Negative for preparing rubber stamp of Axis Bank Ltd, Kollam.
- xi) Negative for preparing rubber stamp of The South Indian Bank Ltd, Kollam

- xii) Negative for preparing rubber stamp of State Bank of India, Kollam
- xiii) Negative for preparing rubber stamp of Emmanuel Cashew Industries
- xiv) Negative for preparing rubber stamp of Abbas Cashew Company
- xv) Negative for preparing rubber stamp of Quilon Export Enterprises
- xvi) Negative for preparing rubber stamp of Bola Raghvendra Kamath & Sons.
- xvii) Negative for preparing rubber stamp of Lekshmi Enterprises.
- xviii) Negative for preparing rubber stamp of Poornachandra Cashew Co
- xix) Negative for preparing rubber stamp of Peniel Cashew Co.

Apart from above incriminating documents/articles, Shri Piyush Viramgama during the course of his statement recorded on 06/09/2010 submitted the bills of Shree Maruti Courier Service Pvt. Ltd., Rajkot, in respect of documents / parcels sent from his firm M/s Krish Overseas, Rajkot to various persons / firms. The said bills contained datewise consignee name to whom documents were sent. From the details contained in the said bills it is seen that there are a number of consignments sent to Shri Niyaz Ahmed, Kanpur. This corroborates the statements of Shri Piyush Viramgama and Shri Kalpesh Daftary that the photocopies of the genuine licences were sent to Shri Niyaz Ahmed for preparing a forged set of licences. Additionally, the account of M/s. Krish Overseas, Rajkot submitted by M/s. Sunny International, Rajkot, a travel agent, vide their letter dtd.12/07/2012 indicates quite a number of air ticket bookings made for Shri Niyaz Ahmed and his associates by Shri Piyush Viramgama. The payments in respect of these air tickets have been made by M/s. Krish Overseas, Rajkot of Shri Piyush Viramgama. I also find that Shri Prashant Chowta, an employee of M/s. Ganesh Shipping Agency, Mangalore, in his statement dated 22.10.2010 disclosed that during August-September, 2008 Shri Kalpesh Daftary told him over telephone that one of his employees was coming to Mangalore in connection with TRA of some licence. After some time, one person called him and, in the meeting, the said person introduced himself as Shri Kamlesh and informed that he was the partner of Shri Kalpesh Daftary. On being shown the photographs of various person, he identified the photograph of Shri Piyush Viramgama as Shri Kamlesh. Upon being informed that the person who introduced himself as Kamlesh was actually Shri Piyush Viramgama, Shri Chowta stated that he was unaware of the person's true identity. I find that this act of impersonation by Shri Piyush clearly indicates his malicious intent and dubious character.

129.2. I further find that Shri Piyush Viramgama had in his statements admitted of having received an amount of Rs.1.75 crores for his role in the forgery related to M/s Reliance and M/s Hindalco, out of which about Rs. 60 lakhs was received by him in the account of his firm M/s. Krish Overseas from M/s. SCPL and the balance amount was received by him in cash from the account of M/s. Shivangi Enterprise, Rajkot. I also find that Shri Kalpesh Daftary in his statement disclosed that Shri Piyush Viramgama has received an amount of Rs. 10 Crores as a share from this forgery of licenses. Even going by the admission made by Viramgama himself, he had received an amount of 1.75 crores and he has even given the break-up of this amount. Therefore, the contentions of Shri Viramgama that charges made against him in the SCN are on the basis of statement of others are factually incorrect, and does not merit acceptance.

129.3. I also do not find any merit in the submission made by Shri Viramgama that the show cause notice is time-barred. I find that no worthwhile reason has been put forward substantiating the claim of time bar except by saying that he was arrested and therefore DRI was aware about the forged nature of the licences, hence extended period was not available for issuance of show cause notice after disclosure of facts on the basis of which he was arrested. According to Section 28(4) of the Customs Act, 1962, where any duty has not been levied or has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts by the importer, the proper officer can within five years from the relevant date, serve notice on the person chargeable with duty which has not been so levied or which has been so short-levied or short-paid. Thus, in the instant case, the notice has been issued within the time limit prescribed under Section 28(4) of the Customs Act, 1962. The Customs Act, 1962 does not prescribe any time limit for the other actions proposed in the show cause notice such as confiscation of the goods and imposition of penalty. Therefore, the issue of time-bar raised by Shri Viramgama is devoid of substance and hence the same is rejected.

129.4. Shri Piyush Viramgama has contended that reliance has been placed on his statement recorded during a period when he was imprisoned and did not have access to legal counsel or documentary evidence. He further asserts that he retracted this statement immediately thereafter. In this regard, I find that legal assistance is not a prerequisite for providing a statement unless the questions posed pertain to highly technical matters. In the present case, the statements recorded were

general in nature and did not involve any intricate technicalities related to the goods or procedures. Furthermore, as discussed in para 128.3 supra, I have already examined the evidentiary value of statements that have been retracted at a later stage. In light of this discussion and relevant judicial pronouncements, I find that the statements recorded under Section 108 of the Customs Act, 1962, even if subsequently retracted, retain their probative value and can be used as evidence against Shri Piyush Viramgama and other co-noticees. Therefore, I hold that the contention of the noticee regarding lack of legal guidance at the time of recording the statement does not hold merit and I reject the same.

129.5. I further find that other submissions made by Shri Viramgama are not relevant to the case as it has got nothing to do with the charges leveled against him in the show cause notice.

130. I further find that Shri Kalpesh Daftary and Shri Piyush Viramgama have quoted and relied on various case laws/judgments in their defense submission to support their contention on some issues raised in the Show Cause Notice. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances, and cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

131. From the above, it is crystal clear that Shri Kalpessh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed had forged 13 VKGUY licences, related Release Advices and documents corresponding to these licences., I also find that these licences were actually forged by Shri Niyaz Ahmed while the Release Advices and the letters confirming the genuineness of the Release Advices were forged by Shri Piyush Virmagama. The forged rubber stamps and signatures of the Customs officers on the reverse side of the licences were also forged by Shri Piyush Viramgama which was admitted in his statements recorded under Section 108 of the Customs Act, 1962 and duly corroborated by Shri Kalpesh Daftary in his statements. Shri Vijay Gadhiya in his statement had also admitted that he had prepared the rubber stamps which were affixed by him on the transfer letters, on the reverse side of the licences, Customs letter confirming genuineness of the Release Advices on the instructions of Shri Piyush Viramgama.

132. From the above facts and circumstances as discussed hereinabove, I find that Shri Kalpessh Daftary and Shri Piyush Viramgama alongwith other persons had conspired and forged the 13 VKGUY licences which were ultimately sold to M/s. Reliance by M/s Hindustan Continental Limited through broker Shri Bhavesh Doshi. The total duty credit involved in these 13 forged licences is Rs. 6,95,53,888/-. This duty credit was utilized by M/s. Reliance for paying duty in respect of the goods imported by them under the bills of entry, as per the show cause notice. However, in view of the fact that these 13 licences were forged/fake licences which were neither issued by the DGFT nor registered with the Customs authorities, these documents were void *ab inito*. Accordingly, the benefit of the said notifications was not admissible in as much as the exemption (debit of duty from the licences) under these notifications was undisputedly available only to genuine licences issued by the DGFT and which were registered with the Customs authorities. Further, the Release Advices in respect of these 13 licences presented before Customs, Dahej too have been established to be forged/fake documents and, therefore, these Release Advices too were void *ab inito* and not valid documents. Therefore, the exemption under the said notification was wrongly claimed and availed by M/s. Reliance.

133. It clearly and categorically emerges from the evidences discussed and findings recorded hereinabove that Shri Kalpessh Daftary and Shri Piyush Viramgama alongwith others had conspired and decided to forge the 13

VKGUY licences and sell it through M/s Hindustan Continental Limited to M/s Reliance. Shri Kalpesh Daftary was instrumental for providing copies of corresponding genuine licences, RA and other allied documents for facilitating forgery of the licences and other allied documents. He was also managing the cash transactions with the help of Shri Sashin Koradia. Shri Kalpesh was also instrumental in selling such forged licences and other allied documents to M/s Reliance through Shri Bhavesh Doshi. Piyush Viramgama alongwith others forging the licenses, RA, Customs letter verifying genuineness of RA, signature of Customs Officers, Bank Officers, DGFT etc.

134. I find that evidences available on records indicate that initially Shri Kalpesh Daftary thought of doing the business of forged transferrable licences and discussed this idea with Shri Piyush Viramgama who was an old associate of Shri Kalpesh Daftary. Once having decided to forge the licences, it was Shri Piyush Viramgama who introduced Shri Niyaz Ahmed of Kanpur to Shri Kalpesh Daftary. Shri Niyaz Ahmed was already into the business of forging such licences. Thereafter Kalpesh Daftary and Shri Niyaz Ahmed had met on number of occasions and decided to go ahead with forging licences. Shri Kalpesh Daftary was already into the trading business of genuine licences and by that way he had access to genuine licences, so he had agreed to Shri Niyaz Ahmed to supply photo copies of genuine licences based on which Niyaz Ahmed agreed to forge parallel fake licences. Thereafter Shri Kalpesh Daftary decided to supply such forged licences to M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd for its usage at Dahej Port. The Dahej port was specifically selected in view of the fact that at that time it was a non-EDI port, it would be easy to utilize the forged licences there. I further find that Shri Kalpesh Daftary knew Shri Bhavesh Doshi since 2008 and he knew that Shri Bhavesh Doshi was a broker of M/s Reliance. I also find that in November 2009, Shri Kalpesh Daftary directly approached Shri Bhavesh Doshi with a proposal to supply licenses directly to M/s Reliance Industries Ltd. without involving intermediaries, which he accepted. After this agreement, Shri Kalpesh sold 13 forged licenses to Reliance through Shri Bhavesh Doshi, though the billing was done by M/s Hindustan Continental Ltd. The confirmation letters of the Release Advice of these 13 forged licences were also sent by Shri Kalpesh Daftary of M/s. SCPL to Shri Bhavesh Doshi, who in turn forwarded the same to M/s Reliance. Thus, it is clearly evident that lot of planning and strategy have gone into

the commission of offence which also exhibit the criminal mind set of above said individuals.

135. Based on the evidence at hand, it is clear that Shri Kalpessh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya, and Shri Niyaz Ahmed conspired to forge 13 VKGUY licenses and the corresponding release advices and other related documents. From the voluntarily statements of Shri Piyush Viramgama and Shri Kalpessh Daftary, it is evident that the licenses were forged by Shri Niyaz Ahmed, while the release advices and the letters confirming the authenticity of the release advices were forged by Shri Piyush Viramgama. Furthermore, the forged rubber stamps and signatures of Customs officers on the reverse side of the licenses were also fabricated by Shri Piyush Viramgama, as he admitted in his statement recorded under Section 108 of the Customs Act, 1962. These facts were further corroborated by Shri Kalpessh Daftary in his statement, where he indicated that the forged licenses were printed by Shri Niyaz Ahmed, while other documents, including transfer letters, release advices, and bank signatures, were forged by Shri Piyush Viramgama. The incriminating evidence recovered, such as the rubber stamps of the DGFT, Rajkot, the round seal (rubber stamp) of Mangalore Customs, rubber stamps of various banks, and negatives for preparing rubber stamps of the firms whose licenses were forged, substantiates these statements. Additionally, Shri Vijay Gadhiya, in his statement, categorically admitted that he had prepared the rubber stamps, which were subsequently affixed to the transfer letters, on the reverse side of the licenses, and on the Customs letters confirming the authenticity of the release advices, all on the instructions of Shri Piyush Viramgama. There are evidences to hold that sales proceeds of such forged licences were shared amongst Shri Kalpessh Daftary and Piyush Viramgama among others.

136. Therefore, from the findings above, I find that 13 VKGUY licenses used by M/s Reliance were forged in connivance with Shri Kalpesh Daftary and Shri Piyush Viramgama in the manner above. Accordingly, I also find that the Commissioner, Customs, Ahmedabad [earlier adjudicating authority] vide Order-in-Original No. 4/Commr/DRI/2014 dated 24.03.2014 confiscated goods valued at Rs. 38,92,76,299/- involved in 13 forged licenses under Section 111(d), (j) and (o) of the Customs Act, 1962 and ordered recovery of Customs Duty to the tune of Rs. 6,95,53,888/- debited utilizing the said licenses under Section 28(8) of the Customs Act, 1962 along with appropriate interest from M/s Reliance.

The Customs duty amount of Rs. 6,95,53,884/- and Rs. 69,85,878/- of interest voluntarily paid by M/s Reliance was also appropriated in the said OIO.

137. From the facts and evidences discussed in the earlier paras, I summarize the entire case and the culpability of both the noticees as under:-

- (i) M/s M/s. Allanasons Ltd, M/s. Indagro Foods Ltd and M/s. Frigorifico Allana Ltd sold 13 VKGUY licenses to M/s Sunkkalp Creations Pvt. Ltd. through Shri Kalpessh Daftary, one of the Directors of M/s Sunkkalp Creations Pvt. Ltd.
- (ii) Investigations has revealed that Shri Kalpessh Daftary with the help of Shri Piyush viramgama and others faked/forged the 13 VKGUY licenses and further sold to M/s Reliance Industries Limited, who used these licenses for import; These licenses were purchased from M/s Hindustan Contiental Limited through broker Shri Bhavesh Doshi;
- (iii) Forgery of licenses was done by Shri Niyaz Ahmed of M/s Indiyana Shoes, Kanpur, in connivance with Shri Kalpessh Daftary and Shri Piyush Viramgama;
- (iv) Forgery was affected by changing port of registration from JNPT to Mangalore Sea;
- (v) Corroboration was received from DGFT, Mumbai where the genuine Licenses and Release Advices issued against them were tallied and it was found that 13 VKGUY licenses were forged and none of the DGFT or the RA issuing port has issued these licenses in favour of M/s Reliance Industries Limited;
- (vi) Statements of concerned customs officers working in the relevant Custom Houses confirmed that the signatures appended in the Release Advices were not theirs, which proved that the Release Advices were forged; Shri Piyush Viramgama used to forge the signatures of the customs officers on the verification report and fax it to Shri Kalpessh Daftary, which in turn faxed it to Shri Bhavesh Doshi for onward submission at DAHEJ port;
- (vii) Rubber stamps of DGFT, Banks and various firms/companies were recovered from the residential premises of Shri Vijay Gadhiya, employee

and associate of Shri Piyush Viramgama. Letters of signature verification by the bank officers to be used for forgery was also recovered;

(viii) In addition to the forged licenses, transfer letters of original license holders, Release Advices, letters of jurisdictional Customs House confirming the genuineness of Release Advices issued in favour of M/s Reliance was also found to be forged. Letters requesting confirmation of genuineness issued by Mangalore Customs were not received from Dahej Customs fax machine but was faxed to M/s Reliance by Shri Bhavesh Doshi after receipt of the same from Shri Kalpessh Daftary, which proves the act of forgery;

(ix) None of the exporters to whom the genuine licenses were issued deposed that the ultimate user of the licenses was M/s Reliance;

(x) Documentary evidences of the letters showing issuance by Mangalore Customs to confirm the genuineness of Release Advices used by M/s Reliance at Dahej Port were found to be forged. The top side of such letters contained the fax number of M/s Sunkkalp Creations Pvt. Ltd, which showed that the forged Release Advices were being sent by Shri Kalpessh Daftary;

(xi) Shri Surendra Kulhari, Director of M/s Hindustan Continental Limited, stated that his company had merely issued invoices to M/s Reliance to facilitate the sale of these licenses. The trading of these licenses was conducted under the instructions of Shri Kalpesh Daftary of M/s SCPL, while the billing arrangements were managed by Shri Sashin Koradia of Mumbai. Additionally, for these 13 licenses, the purchase invoices of M/s Vani Exports, Kolkata, were provided to him by Shri Kalpesh Daftary. M/s Hindustan Continental Ltd. received approximately Rs. 6.80 crores from M/s Reliance Industries Limited against the sale of these 13 licenses. Out of this amount, Rs. 5.05 crores was paid to M/s Vani Exports, while the remaining funds were distributed among other entities on direction of Shri Kalpesh Daftary;

(xii) Shri Girish Ghelani, proprietor of M/s Vani Exports, whose sales invoices were provided to M/s Hindustan Continental Limited by Shri Kalpesh Daftary, stated that his firm had not issued Bill/Debit Notes i.e. VE/0921/09-10 and VE/0922/09-10, both dated 05.11.2009, to M/s Hindustan Continental Limited for the sale of 13 licenses. Upon perusal of the said invoices/debit notes, he confirmed that they were forged.

Additionally, when asked to explain the receipt of Rs. 5.05 crores from M/s Hindustan Continental Limited against an actual sale of only Rs. 2.18 crores, Shri Ghelani stated that all payments were controlled and managed by Shri Kalpesh Daftary and that the excess payments received in his firm were routed as per Shri Kalpesh Daftary's instructions.

(xiii) The bank account of Shri Vijay Gadhiya of M/s Shivangi Enterprise, Rajkot was used for rotating the funds in respect of sale of the forged licenses;

(xiv) Shri Kalpesh Daftary took the services of Shri Sashin Koradia of Mumbai for billing purpose to carry out the financial transactions involved in the sale of the forged licenses, who provided details of firm i.e. M/s Hindustan Continental Ltd. The amounts were converted into cash and delivered to Shri Kalpesh Daftary by way of angadiya. Shri Kalpesh Daftary and Shri Piyush Viramgama admitted to have received significant amount for their role in the forgery. Details of fund being transferred from M/s Shivangi Enterprises, Rajkot to Shri Niyaz Ahmed & others were recovered from the office premises of Shri Piyush Viramgama, which showed the financial benefits to the conspirators.

(xv) Shri Kalpesh confirmed that out of total Rs.40 Crores, Rs.28 Crores was his profit from the sale of forged licences and Rs.10 Crores was paid to Shri Piyush Viramgama and Rs. 2 Crores was paid to Shri Niyaz as instructed by Shri Piyush;

(xvi) The amount of Rs.40 Crores was cashed by Shri Sashinbhai Koradia from the various firms in whose names the billings for sale and purchase of forged licences were arranged and all of this was done on the direction of Shri Kalpesh Daftary;

(xvii) Shri Kalpesh has used Rs.90 lakhs for purchase of shares of M/s. Siddhant Estate Pvt. Ltd., and Rs.3.10 Crores transferred to M/s.Sonbar Developers and Investment Pvt. Ltd., in which he was a Director;

(xviii) There are evidences that sales proceeds of such forged licences were shared amongst Shri Kalpesh Daftary and Piyush Viramgama among others;

(xix) Statements of Shri Kalpesh Daftary, Shri Piyush Viramgama and associate Shri Vijay Gadhiya, corroborative statements of various other

persons narrated in the earlier paras and other documentary evidences confirms the conspiracy by the two kingpins, Shri Kalpesh Daftary, Shri Piyush Viramgama in the instant case;

(xx) It is undoubtedly clear that the 13 forged licenses were used and M/s Reliance had voluntarily paid an amount of Rs. 6,95,53,884/- alongwith applicable interest of Rs. 69,85,878/-, which concludes the fact that the forgery has been done in the present case.

138. I have also taken into consideration cross-examination of several persons as sought by Shri Kalpesh Daftary and from the examination, nothing concrete has emerged so as to exonerate his actions in the entire case. In case of Shri Piyush Viramgama, I find that ample opportunities have been granted to him for cross examination as mentioned in my earlier paras, however, he did not even bother to respond to the opportunities given to him to represent his case or to submit the list of persons to whom he wishes to cross examine.

139. Rule 14 of the Foreign Trade (Regulation) Rules, 1993 (FTRR,) 1993 prohibits making, signing or causing the making or using of any false declaration for the purposes of importing of any goods. It also prohibits employing of any fraudulent practice for importing of any goods. In the instant case, Shri Kalpesh Daftary, Shri Piyush Viramgama, have indulged in making, signing and causing the forging and utilisation of forged documents for import of goods by M/s. Reliance Industries Limited.

140. From the foregoing paras, it is quite evident that a well-thought-out strategy was devised to forge the licences. The deliberate selection of Dahej Port, a non-EDI port, as the conduit for this illicit activity, underscores the meticulous and calculated planning executed by Shri Kalpesh Daftary and Shri Piyush Viramgama. Shri Kalpesh Daftary with Shri Piyush Viramgama knowingly indulged in the forging of the Release Advices and the Customs letters confirming the genuineness of the Release Advices. Shri Kalpesh Daftary had in collusion with Shri Piyush Viramgama sold the 13 forged VKGUY licences to M/s. Reliance which were used at Dahej Port. The sale proceeds of these 13 forged licences were received from M/s. Reliance by M/s. Hindustan Continental Ltd, Kolkata from whom the same was routed through various firms, mainly M/s. Shivangi Enterprise, Rajkot and distributed amongst Shri Kalpesh Daftary, Shri Piyush Viramgama. Shri Kalpesh Daftary had actively and knowingly concerned himself in fraudulent evasion of customs duty by

selling such forged VKGUY licences sold to M/s. Reliance Industries Limited. The cunning nature of this forgery is evidenced by the creation of fake billing in the name of M/s Vani Exports, Kolkata on similar invoice which was actually sold by M/s Vani Exports to M/s Hindustan involving sale of 4 DEPB license. The elaborate deception and falsification involved confirm their active role in defrauding the customs authorities. Shri Kalpessh Daftary and Shri Piyush Viramgama had also actively and knowingly engaged in violating the prohibition imposed under Rule 14 of the Foreign Trade (Regulation) Rules, 1993, inasmuch as they had knowingly indulged in creating and selling of such forged VKGUY licences along with a complete set of documents, viz., Release Advices and letters confirming the genuineness of the Release Advices used by M/s. Reliance Industries Limited at Dahej for the importation of goods. By doing so, the aforementioned individuals have rendered themselves liable to punishment under Section 135 of the Customs Act, 1962, for which I find that Shri Kalpessh Daftary, Shri Piyush Viramgama, and Shri Vijay Gadhiya were arrested under Section 104 of the Customs Act, 1962, by the DRI during the course of the investigation.

141. From the foregoing discussions, it is evident that the aforementioned individuals, through their acts of commission and omission in forging and selling forged VKGUY licences to M/s. Reliance Industries Limited, caused the evasion of customs duty amounting to Rs. 6,95,53,888/-. Consequently, the goods imported by M/s. Reliance Industries Limited have become liable to confiscation under the provisions of Section 111(d), (j), and (o) of the Customs Act, 1962. By engaging in such conduct, the aforementioned individuals have rendered themselves liable to penal action under Section 112(a) as well as under Section 114AA of the Customs Act, 1962.

142. According to Section 112(a) of the Customs Act, 1962, any person who, in relation to any goods, does or omits to do any act, which act or omission would render such goods liable to confiscation under Section 111, is liable to a penalty under this section. After elaborate discussion hereinabove, I have already held that by various fraudulent acts committed by the aforementioned individuals, viz., Shri Kalpessh Daftary, Shri Piyush Viramgama alongwith others, the goods imported and cleared by M/s. Reliance Industries Limited by debiting forged VKGUY licences are liable to confiscation under Section 111 of the Customs Act, 1962.

Consequently, the aforementioned individuals are liable to a penalty under Section 112(a) of the Customs Act, 1962.

I find that Shri Kalpessh Daftary, in his defence, relied on the judgment of the Hon'ble Gujarat High Court in *Commissioner of Customs v. Sanjay Agarwal*, wherein it was held that a penalty under Section 112(a) cannot be imposed on a trader or broker in cases involving forged licenses. Similar observations were made in *Commissioner of Customs v. Shah Alloys Ltd., 2011 (169) ELT 323 (Guj.)*. He further argued that for a penalty to be imposed, there must be evidence demonstrating his knowledge or involvement in the contravention of law, which, according to him, was absent in the present case.

The evidence on record, including statements from multiple co-noticees, individuals, email correspondences, cash transaction records, courier logs, and rubber stamps used in the creation of forged documents, unequivocally establishes Shri Daftary's role in the fraudulent scheme. Shri Kalpessh Daftary played a key role in providing copies of genuine licenses, RAs, and other related documents, which facilitated the forgery of licenses and allied documents. The original licenses, which were initially acquired by M/s SCPL from M/s Allanasons Limited and its affiliated entities, were subsequently sold to M/s Sun Exports. However, after sell of the original licenses, Shri Kalpessh Daftary alongwith Shri Piyush Viramgama and others forged these licenses and exploiting his network and expertise, he facilitated the sale of the forged licenses to M/s Reliance through M/s Hindustan Continental Limited, thereby layering the fraudulent transactions to obscure the illicit nature of the scheme. I further find that in a further attempt to create an illusion of legitimacy, he fabricated invoices/debit notes under the name of M/s Vani Export to falsely depict genuine purchase transactions of M/s Hindustan Continental Limited. Acting under his directives, M/s Vani Export proceeded to make excess payments to him, thereby reinforcing the intricate web of financial misrepresentation. The scale of his financial misdeeds is underscored by the fact that he personally facilitated a payment of Rs. 10 crore to Shri Piyush Viramgama, further exemplifying his strategic role in the orchestration and execution of this elaborate fraudulent enterprise. His actions, meticulously planned and executed with precision, leave no room for doubt regarding his culpability in the entire scheme. His involvement in the forgery of VKGUY licenses was further corroborated by the statements of individuals including Shri

Vishal Vyas, Shri Sarjerao Mojar @ Chhotu, Shri Vishal Wadkar, Shri Girish Ghelani, and others. Supporting documents such as emails, records of cash transactions maintained by Shri Sashin Koradia, various rubber stamps, blank letterheads of Customs, courier records for the transmission of forged licenses and fax transmissions from Shri Daftary's office collectively establish his role in the forgery. I further find that the reliance placed by Shri Daftary on the judgment in Sanjay Agarwal is misplaced, as the factual matrix in that case differs significantly from the present case. In the present case, there is substantial and corroborative evidence establishing Shri Kalpessh Daftary's active and instrumental role in the forgery and fraudulent utilization of DEPB/VKGUY licenses, which distinguishes this matter from the case laws mentioned by him in his defence. I note that in case of K.I. International Ltd. versus Commissioner of Customs, Chennai, reported in 2012 (282) E.L.T. 67 (Tri. - Chennai), the South Zonal Bench of the Tribunal upheld the penalty imposed under Section 112 of the Customs Act, 1962, on traders, brokers, and sub-brokers involved in forging and fraudulently obtaining Telegraphic Release Advice. Therefore, the contention raised by Shri Kalpessh Daftary is not tenebale and I reject the same.

As I have already held the subject goods are liable for confiscation under Section 111 of the Customs Act, 1962, therefore, I find and hold that for their acts and commissions, Shri Kalpessh Daftary and Shri Piyush Viramgama are liable for penalties each under Section 112(a) of the Customs Act, 1962.

143. According to Section 114AA of the Customs Act, 1962 if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods. In the instant case, Shri Kalpessh Daftary and Shri Piyush Viramgama had indulged in making, signing and causing the forging and utilisation of forged documents for import of goods by M/s Reliance. By doing so, Shri Kalpessh Daftary and Shri Piyush Viramgama, have become liable for separate penalty under Section 114AA of the Customs Act, 1962. I find that Shri Kalpessh Daftary in his defence contended that in the present case, there is no evidence to held that he had any knowledge of the licenses being forged; not made any false statements; duty is already paid alongwith interest; not looking after the

sales and purchase of licenses in M/s SCPL; penalties under Sections 112(a), 114(A), and 114(AA) cannot be imposed simultaneously; entire action against him is based on statement of the co-noticees; penalty should not be imposed when the noticee did not act deliberately in defiance of law; confession alone cannot serve as the basis of imposing a penalty without independent and tangible evidence to support it and therefore he is not liable for penalty. He has also relied upon on some judgements in support of his contention. I find that the show cause notice prescribes a penalty under Sections 112 and 114AA of the Customs Act, 1962, rather than under Section 114A.

As discussed in the preceding paragraphs, it is unequivocally established that Shri Kalpesh Daftary played a pivotal role in the forgery of VKGUY licenses. His direct involvement is evident, as he provided copies of the original licenses, facilitating their forgery and consequently leading to the evasion of customs duty amounting to ₹6,95,53,888/-. This substantial amount was subsequently remitted by M/s Reliance, accompanied with applicable interest of ₹69,85,878/, following the initiation of an investigation by the Directorate of Revenue Intelligence. Had Shri Kalpesh Daftary not supplied the original licenses, the fraudulent activity could not have been orchestrated. Additionally, his receipt of financial benefits from the forged licenses underscores his active complicity. I further find that the allegations against him are not based on mere conjecture or the statements of co-noticees but are substantiated by a multitude of evidentiary materials meticulously compiled by the DRI. His assertion that he was unaware of the forgery lacks credibility and is entirely untenable. The financial gains he derived from these fraudulent transactions serve as irrefutable proof of his involvement. Furthermore, in the wake of the investigation, he deliberately evaded appearing before the DRI. I note that despite being physically present in India and visiting his office, he strategically instructed his staff to mislead government officials by claiming he was out of the country. Such conduct unequivocally indicates his awareness of the fraud and his deliberate attempts to evade accountability, further reinforcing his complicity. With regard to his contention that a mere admission of fact cannot serve as the foundation for imposing a penalty, it is pertinent to note that his statement, recorded under Section 108 of the Customs Act, possesses legal evidentiary value. Moreover, it is corroborated by a plethora of supporting evidence. The ratio of case laws he has relied upon are inapplicable, as the facts and circumstances of the present matter are distinct. I find that the penalty is

not being imposed solely based on statements from co-noticees; rather, it is backed by corroborative documents and concrete evidence. I note that judicial precedents have consistently held that mens rea and intent are integral to the imposition of penalties, and in the present case, there exists ample evidence of his deliberate participation in the forgery of DEPB/VKGUY licenses. Consequently, I find that his contentions stand meritless and accordingly I reject the same.

In light of the foregoing deliberations, I find and hold that Shri Kalpesh Daftary and Shri Piyush Viramgama are liable for separate penalties under Section 114AA of the Customs Act, 1962.

144. Accordingly, I pass the following order:-

ORDER

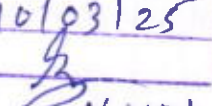
1. I impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) on Shri Kalpesh Daftary of M/s Sunkalp Creations Pvt. Ltd. & M/s Bansi Overseas, under Section 112 (a) of the Customs Act, 1962.
2. I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) on Shri Kalpesh Daftary of M/s Sunkalp Creations Pvt. Ltd. & M/s Bansi Overseas, under Section 114AA of the Customs Act, 1962.
3. I impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) on Shri Piyush Viramgama of M/s Krish Overseas and M/s Bansi Overseas under Section 112 (a) of the Customs Act, 1962.
4. I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) on Shri Piyush Viramgama of M/s Krish Overseas and M/s Bansi Overseas under Section 114AA of the Customs Act, 1962.

145. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

146. The Show Cause Notice issued from F.No. DRI/AZU/INQ-21/2010 dated 08.04.2013 is disposed off in above terms.

③ RECEIVED
CUSTOMS (HQ), A'BAD.

DATE : 10/03/25


SIGN. : 

NAME : 

DIN: 20250371MN0000515215

By Regd. Post A/D.

F.No.VIII/10-14/Commr/O&A/DRI/2013


SHIV KUMAR SHARMA
Principal Commissioner
Customs, Ahmedabad

Dated: 10.03.2025

To

- 1) Shri Kalpessh Daftary, 301, Shubhangam, 14, Swastik Society, 2nd JVPD Scheme, Vileparle (West), Mumbai – 400 056.
- 2) Shri Piyush Viramgama, (i) Aashiyana, Fulwadi Park Plot No.16, Street No.2, Nana Mauva, Nr. Shastri Nagar, 150 Ft Ring Road, Rajkot & (ii) House No. 820, Street No. 4, Bandh Sheri, Saurashtra Kala Kendra Co Operative Housing Society, Rajkot, 360007

Copy to:

- 1) The Chief Commissioner of Customs, Gujarat Zone, Customs House, Near All India Radio, Navrangpura, Ahmedabad.
- 2) The Additional Director General, Directorate of Revenue Intelligence Zonal Unit, Ahmedabad.
- 3) The Assistant Commissioner of Customs, Dahej.
- 4) The Superintendent (Systems), Customs, HQ., Ahmedabad (for uploading in Department's web-site).
- 5) Guard File