



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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PREAMBLE

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| A | फाइल संख्या/ File No. | : | VIII/10-81/ DRI-AZU /O&A/HQ/2024-25 |
| B | कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date | : | VIII/10-81/ DRI-AZU /O&A/HQ/2024-25 Dated 03.06.2024 |
| C | मूल आदेश संख्या/ Order-In-Original No. | : | 212/ADC/SRV/O&A/2024-25 |
| D | आदेश तिथि/ Date of Order-In-Original | : | 30.12.2024 |
| E | जारी करनेकी तारीख/ Date of Issue | : | 30.12.2024 |
| F | द्वारापारित/ Passed By | : | SHREE RAM VISHNOI, ADDITIONAL COMMISSIONER |
| G | आयातक का नाम औरपता / Name and Address of Importer / Passenger | : | <p>1) SHRI DIPANKAR GHOSH, PROPRIETOR OF M/S. VISHWAKARMA CUTTING PRESS, MATHIYA CHORA, CHOKSI BAZAR, ANAND, RESIDENT OF 604, SAMRUDDHI COMPLEX, JIVANDEEP COLONY, ANAND- 388001</p> <p>2) SHRI AMISH V. MALJI, AUTHORISED SIGNATORY OF M/S. V. NAVINCHANDRA HIRACHAND MALJI JEWELLERS AND CO.,; RESIDENT OF 6, AVKAR, SARJAN SOCIETY, OPP. SARGAM SHOPPING CENTER, PARLE POINT, SURAT- 395007</p> <p>3) M/S. V. NAVINCHANDRA HIRACHAND MALJI JEWELLERS AND CO., SHOP NO.1 /2, HARSH CO-OP HSG SOCIETY, RAM CHOWK, GHOD DOD ROAD, SURAT.</p> <p>4) M/S. PATEL AMRUT KANTILAL ANGADIA, 71, GHANCHI NI POLE, MADANGOPAL HAVELI ROAD, MANEKCHOWK, AHMEDABAD, GUAJRAT.</p> <p>5) SHRI K.K. THAKOR, C/O M/S. PATEL AMRUT KANTILAL ANGADIA, 71, GHANCHI NI POLE, MADANGOPAL HAVELI ROAD, MANEKCHOWK, AHMEDABAD, GUAJRAT.</p> <p>6) SHRI N.J. PATEL, C/O M/S. PATEL AMRUT KANTILAL ANGADIA, 71, GHANCHI NI POLE, MADANGOPAL HAVELI ROAD, MANEKCHOWK, AHMEDABAD, GUAJRAT.</p> |
| (1) | यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है। | | |

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| (2) | कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंजिल, हुडको भवन, ईश्वर भवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है। |
| (3) | अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए: |
| (i) | अपील की एक प्रति और; |
| (ii) | इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। |
| (4) | इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधार्नों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा। |

BRIEF FACTS OF THE CASE

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

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

3. Accordingly, the examination of the baggage of the passengers was done in separate rooms of the DRI, Ahmedabad office under respective Panchnamas dated 07.06.2023. During examination of the bags of two passengers, who identified themselves as Shri N.J. Patel and Shri K.K. Thakor, employees working for Aangadiya firm- M/s. Patel Amrut Kantilal & Company, the officers found that their bags contained various parcels. The officers opened each and every parcel contained in the bags and prepared inventory of all the goods found during the examination of baggages.

4. On completion of the examination of the goods, the officers found that certain parcels containing gold which appeared to be of foreign origin. Further, the passenger could not produce any documents showing legitimate import of the said goods and these goods appeared to be of the nature of smuggled goods. The details of said gold, as

identified vide the markings on the gold and labels of the parcels are given in Table-I below:-

TABLE-I

| Sr. No. | Party from | Party to | Commodity | Nos. | Total Weight as mentioned on label of goods (in gms) | Mark |
|----------------|----------------------|----------------------|------------------|--------------------------|---|--|
| 1 | Deepankar | Bharat Chain | Gold (I) | 1 Cut Bar | 52.12 | valcambi suisse |
| 2 | Self | Rishabh Jewellers | Gold (I) | 4 bar+1 cut bar+ 1 Piece | 450 | JS BR Melter Assayer |
| 3 | Sapna Surat | Gujarat Bullions | Gold (I) | 8 Bars | 800 | SG Melter Assayer, Jay Renuka Refinery |
| 4 | Amish V Malji | Pahini Jewellers | Gold (I) | 2 Bars | 200 | Argor Heraeus SA |
| 5 | Pramod | GBR Chandresh Bhai | Gold (I) | lumps | 500 | |
| 6 | Damodardas Jewellers | V N Exports (Labour) | Gold Bar (I) | 1 Pc. | 100 | RRC 100 Gms For Job Work |
| 7 | Vasundhara Jewellers | R.B. Ornaments | Gold Bar (I) | 2 Pcs. | 148 | JDR |
| 8 | Damodardas Jewellers | N D Jewellery | Gold Bar (I) | 1 Pc. | 100 | RRC 100 Gms For Job Work |
| 9 | Jenny Silver | Nageshwar Chain | Gold Bar (I) | 2 Pcs. | 100 | |
| 10 | Vasundhara Jewellers | Gopinath Jewellers | Gold Bar (I) | 1 Pc. | 100 | JDR |
| 11 | Vasundhara Jewellers | S M Gold | Gold Bar (I) | 2 Pcs. (Cut Pcs) | 50 | |
| 12 | Vama Gold | Aadey Jewellers | Gold Bar (I) | 1 Pc (Cut Pcs) | 50.14 | |
| 13 | Vama Gold | Tanisha jewellers | Gold Bar (I) | 1 Pc (Cut Pcs) | 30 | |

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

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

6. Accordingly, statement of Shri Amrutbhai Harjivandas Patel, partner of M/s. Patel Amrut Kantilal Angadiya recorded under section 108 of the Customs Act, 1962 on 23.06.2023:-

6.1 Shri Amrutbhai Harjivandas Patel, Partner of M/s. Patel Amrut Kantilal Angadiya voluntarily presented himself on 23.06.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his statement. His statement was thus recorded on 23.06.2023, wherein he stated that:-

- I. He is engaged in the business in the field of Aangadiya (Courier) and that they receive goods in the form of parcels at one location and deliver the same to the location as specified by the sender of the parcel. He stated that they pay GST@18% as per the CGST rules and regulations.
- II. Their firm, M/s Patel Amrut Kantilal Angadia is specialized in courier services of Precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. He further stated that their company provide the above business services in Ahmedabad, Mumbai, Delhi, Vadodara, Surat, Navsari, Anand, Rajkot, Bhavnagar, Junagarh, Surendranagar, Morbi, Kolhapur.
- III. Regarding the procedure of booking and dispatch of parcels, their company's pickup vehicles generally go to the customers' office to collect the goods whereas in some case customer drop the goods at their office. Further, in their dealing of precious parcels, while collecting goods, the parcels are sealed by the sender of the parcel and they believe in the description of goods as mentioned on the parcel by the sender and collect freight on the basis of value declared by the sender of the parcel.
- IV. Regarding the documents of KYC collected from the sender and recipient, in most of cases they pick up the parcels from the office or business premises of the customer and also deliver the parcel at the address and details provided by the sender. The details like name and contact number are provided by the sender of the parcel and almost in all cases same is mentioned on the parcel. They insist to take copy of invoice or delivery challan from the senders of the parcel to which majority of the customers informs them that the same is attached inside the parcel or sometimes outside the parcel.
- V. Regarding verification of value of cargo while collection of goods, they receive goods on said-to-contain basis and act on the basis of invoice or the description provided by the customers.
- VI. Regarding delivery of the parcels, the parcels are delivered by them to the customers at their premises and sometimes in case of urgency the customer collects the parcel from their branch. Any legitimate goods with proper invoice can be transported but they mainly accept parcels related to precious and valuable goods, documents, Gems and Jewellery, Diamonds, Cash etc.
- VII. He also admitted that they cannot accept parcels related to foreign currency and foreign origin gold in bars or any other form, but sometimes the customer mis-declare the correct description and nature of the goods in the parcel.
- VIII. He was shown the Panchnama dated 07.06.2023, wherein the parcels carried by their Angadiya employee were detained. On perusal, he submitted following documents in respect of the gold detained vide Panchnama dated 07.06.2023 as in Table-II:

TABLE-II

| S. No. | Item Description | Weight of the gold (in grams) | Details of Sender | Details of recipient | Documents submitted |
|--------|-------------------------------------|-------------------------------|---|---------------------------------------|--|
| 1 | Gold (I) 1 Cut Bar | 52.120 | Shri Dipankar | M/s. Bharat Chain | Delivery challan/Insurance certificate of Aanagadiya dated 06.06.2023 |
| 2. | Gold (I) 4 bar +1 cut bar + 1 Piece | 478.030 | M/s. Heer Gold, Surat | M/s. Pahini Jewellers | Copy of invoice stating return issue for job work by M/s. Heer Gold to M/s. Rushabh Jewels submitted. |
| 3. | Gold (I) 8 Bars | 800 | M/s. Sapna Bullion, Surat, | M/s. Gujarat Bullion | Letter stating that gold is sent for job work. Also, invoice issued by M/s. Elvee Jewels Pvt. Ltd. and M/s. Jay Renuka Gold to M/s. Sapna Bullion submitted. |
| 4. | Gold (I) 2 Bars | 200 | Shri Amish V. Malji | M/s. Pahini Jewellers | Copy of Bill, Invoice submitted |
| 5. | Gold (I) lumps | 500 | Pramod Shah (M/. Poonam Jewellers, Surat) | M/s. Gujarat Bullion (Chandresh Bhai) | Letter stating that gold is sent for job work. Also invoice issued by Ms Anitaben Shah & Lishaben Shah to M/s. Poonam Jewellers. |
| 6. | Gold Bar (I) 1 Pc. | 100.00 | M/s. Damodar das Jewellers | M/s. V N Exports (Labour) | Copy of delivery challan submitted |
| 7. | Gold Bar (I) 2 Pcs. | 150.00 | M/s. Vasundhara Jewellers | M/s. R.B. Ornament | Delivery challan submitted |
| 8. | Gold Bar (I) 1 Pc. | 100.00 | M/s. Damodardas Jewellers | M/s. N D Jewellery | Copy of delivery challan submitted |
| 9. | Gold Bar (I) 2 Pcs. | 100.00 | M/s. Jenny Silver | M/s. Nageshwar Chain | Copy of invoice dated 06.06.2023 issued by M/s. Jeni Silver submitted |
| 10. | Gold Bar (I) 1 Pc. | 100.00 | M/s. Vasundhara Jewellers | M/s. Gopinath Jewellers | Delivery challan submitted |
| 11. | Gold Bar (I) 2 Pcs. (Cut Pcs) | 50.00 | M/s. Vasundhara Jewellers | M/s. S M Gold | Delivery challan submitted |
| 12. | Gold Bar (I) 1 Pc (Cut Pcs) | 50.140 | M/s. Vama Gold | M/s. Aadey Jewellers | Copy of invoice dated 06.06.2023 submitted |
| 13. | Gold Bar (I) 1 Pc (Cut Pcs) | 30.00 | M/s. Vama Gold | M/s. Tanisha jewellers | Copy of invoice dated 06.06.2023 submitted |

6.2 On being asked to produce documents related to import of gold bars as mentioned at Sr. No. 1 and 4 of the table above, Shri Amrutbhai Harjivandas Patel, stated that he had the documents as submitted by the customers i.e. copy of Delivery Challan and invoices pertaining to Shri Dipankar Ghosh and Shri Amish V. Malji of M/s. V. Navinchandra Hirachand Malji Jewellers & Co. in relation to gold bars as mentioned at Sr. No. 1 and 4 of the above table.

Valuation and Seizure of Detained Goods-

7. Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer, examined the detained gold in presence of independent panchas and Shri Amrutbhai Harjivandas Patel under panchnama dated 08.08.2023 drawn at DRI office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad. Shri Kartikey Vasantrai Soni, Gold Assayer certified the purity of Gold, weight, rate of gold vide his valuation report dated 28.08.2023. As per the valuation report, the details of the detained gold are as given in Table-III:-

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| Sr. No. | Party from | Party to | Weight | Purity | Marking | Indian/ Imported marking | Rate Per Gram | Value |
|---------|----------------------|----------------------|---------|--------|------------------|--------------------------|---------------|----------|
| 1 | Deepankar | Bharat Chain | 52.120 | 999.0 | Valcambi Suisse | Imported | 6050 | 315326 |
| 4 | Amish V Malji | Pahini Jewellers | 200.000 | 999.0 | Argor Heraeus SA | | 6050 | 1210000 |
| 2 | Self | Rishabh Jewellers | 400.000 | 999.0 | JSBR | Indian | 6050 | 2420000 |
| | | | 78.030 | 999.0 | GTB | Indian | 6050 | 472081.5 |
| 3 | Sapna Surat | Gujarat Bullions | 500.000 | 999.0 | SG | Indian | 6050 | 3025000 |
| | | | 300.000 | 999.0 | RTR | Indian | 6050 | 1815000 |
| 5 | Pramod | GBR Chandresh Bhai | 500.000 | 999.0 | No Marking | | 6050 | 3025000 |
| 6 | Damodardas Jewellers | V N Exports (Labour) | 100.000 | 999.0 | RRG | Indian | 6050 | 605000 |
| 7 | Vasundhara Jewellers | R.B. Ornaments | 150.000 | 999.0 | JDR | Indian | 6050 | 907500 |
| 8 | Damodardas Jewellers | N D Jewellery | 100.000 | 999.0 | RRG | Indian | 6050 | 605000 |
| 9 | Jenny Silver | Nageshwar Chain | 100.000 | 999.0 | DBR | Indian | 6050 | 605000 |
| 10 | Vasundhara Jewellers | Gopinath Jewellers | 100.000 | 999.0 | JDR | Indian | 6050 | 605000 |
| 11 | Vasundhara Jewellers | S M Gold | 50.000 | 999.0 | Fine Gold 999 | Indian | 6050 | 302500 |
| 12 | Vama Gold | Aadey Jewellers | 50.140 | 999.0 | Fine Gold 999 | Indian | 6050 | 303347 |
| 13 | Vama Gold | Tanisha Jewellers | 30.000 | 999.0 | GC | Indian | 6050 | 181500 |

8. From the valuation report, it was determined that the detained gold as mentioned at Sr. No. 1 and 4 in the table above are of foreign origin. Further, the sender or the intended recipient of the gold could not produce the relevant documents pertaining to the import of the said gold. In view of the same, the detained goods were placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962. The details of seizure memo and goods seized are as given in Table-IV:-

TABLE-IV

| Sr. No. | Party from | Description of Goods | Weight | Value | Seizure Memo DIN/Date |
|---------|-----------------|----------------------|--------------|-----------------|---|
| 1. | Deepankar Ghosh | Gold (I) 1 Cut Bar | 52.120 gms. | Rs. 3,15,326/- | DIN-202310DDZ1000000B6CA dated 25.10.2023 |
| 2. | Amish V. Malji | Gold (I) 2 Bars | 200.000 gms. | Rs. 12,10,000/- | DIN-202310DDZ1000000E192 dated 25.10.2023 |

Release of the Indian Origin Gold:-

9. M/s. Patel Amrut Kantilal Angadiya submitted certain documents as detailed at para 6.1 above pertaining to their Indian origin gold detained under the Panchnama dated 07.06.2023. Accordingly, the representative of the said Aangadiya firm was called to the DRI office and the gold as mentioned in the table in the para 6.1 above, except

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the seized gold at Sr. Nos. 1 & 4, was released to the Aangadiya firms. The proceedings thereof were recorded under Panchnama dated 07.12.2023 in the presence of the independent panchas. Thus, the seized gold, as detailed below in Table-V, was again sealed back and kept in the DRI custody.

TABLE-V

| Sr. No. | Item Description | Details of Sender | Details of intended recipient |
|----------------|--|---|--------------------------------------|
| 1. | Cut piece of gold bar (foreign origin) of 52.12 grams weight | Shri Dipankar Ghosh | M/s. Bharat Chain |
| 2. | 2 gold bars (foreign origin) of 200 grams | Shri Amish V. Malji, M/s. V. Navinchandra Hirachandra Malji Jewellers & Co. | M/s. Pahini Jewellers |

INVESTIGATION W.R.T. 52.120 GRAMS OF FOREIGN ORIGIN GOLD BAR:-

10. During the course of investigation, statement of Shri Dipankar Ghosh, proprietor OF M/s. Vishwakarma Cutting Press, was recorded under section 108 of The Customs Act, 1962 on 22.01.2024-

10.1 Summons dated 16.01.2024 (under Section 108 of Customs Act, 1962) was issued to Shri Dipankar Ghosh and accordingly, statement of Shri Dipankar Ghosh, Proprietor of M/s. Vishwakarma Cutting Press was recorded on 22.01.2024, wherein he stated that:-

- I. They only do artisan work of Jewellery making as per the designs provided by the customers. They do not purchase or sell the gold bullion or jewellery and they are not into trading or retail business. He is handling all day to day work related to dealing with the customers, accounts etc.
- II. The said cut piece of foreign origin gold bar of 52.120 grams was given to him for making gold chain by Shri Jigarbhai Rana of M/s. Kusum Jewellers, 10, Dev Red Square Complex, Opposite Yogi Petrol Pump, Near New Bus Stand, Anand. Shri Jigarbhai had ordered a specific design for the gold chain for which a special machine was required. For the said purpose, he had contacted M/s. Bharat Chain, Ahmedabad to make the gold chain as they had the required machine to make the said design of the gold chain. For the same purpose, they had handed over the said gold piece of 52.12 grams to M/s. Patel Amrut Kantilal Aangadiya for delivery to M/s. Bharat Chain in the evening of 06.06.2023.
- III. He had no idea whether the said gold piece was smuggled in India and they were to merely make the gold chain from the gold provided to them by M/s. Kusum Jewellers, Anand. They had never been provided any import documents for the gold by M/s. Kusum Jewellers.
- IV. They never verify the origin of the gold. They merely make jewellery out of whatever gold or silver piece/ nugget provided by their customers and charge as per jewellery design. He does not have knowledge of Customs/ GST rules or whether the gold piece is illegally or legally procured from the source.

V. His customers mostly pay in cash for the orders after the job work. And in this case, payment was not made by M/s. Kusum Jewellers till then. He gives a handwritten receipt to the customer whenever any gold/ silver is given to them for jewellery making.

VI. He has not been supplied any import documents for the said gold of foreign origin weighing 52.120 grams. He will be able to provide the same once he receives the said documents from M/s. Kusum Jewellers, Anand.

11. During the course of investigation, statement of Shri Injamul Haque Sarkar, Proprietor of M/s. Bharat Chain, recorded under section 108 of The Customs Act, 1962 on 24.01.2024-

11.1 Summons dated 16.01.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Bharat Chain, Ahmedabad, the intended recipient of the gold sent by shri Dipankar Ghosh and accordingly, statement of Shri Injamul Haque Sarkar, Proprietor of M/s. Bharat Chain was recorded **on 24.01.2024**, wherein he interalia stated that:-

- I. he is engaged in the craft of jewellery making for which he receives Gold Bars or Cut pieces of Gold from various jewellers for making of jewellery.
- II. He has no idea about foreign origin gold however he knows that gold is identified by the hall mark on it.
- III. Shri Dipankar Ghosh is an old friend and he resides in Anand. Shri Dipankar Ghosh used to get some order made through him.
- IV. On being asked about the detained foreign origin gold cut piece of 52.120 grams, he stated that the said gold was being sent by Shri Dipankar Ghosh for making of a gold chain; however, he was not aware if the said gold was of foreign origin. He also stated that he does not have import documents pertaining to the said gold and he is also not aware about the same.

12. During the course of investigation, statement of Jigarkumar Arvindbhai Rana, Proprietor of M/s. Kusum Jewellers, Anand recorded under section 108 of The Customs Act, 1962 on 15.02.2024-

12.1 As per the statement of Shri Dipankar Ghosh recorded on 22.01.2024, the foreign origin gold seized by DRI in respect of them had been supplied by M/s. Kusum Jewellers, Anand. In view of the same, Summons dated 09.02.2024 under Section 108 of Customs Act, 1962 were issued to M/s. Kusum Jewellers, Anand to tender statements and submit details of import of gold or purchase of foreign origin gold during the relevant period. Shri Jigarkumar Arvindbhai Rana, proprietor of M/s. Kusum Jewellers accordingly appeared for tendering of statement on **15.02.2024**, wherein he interalia stated that:-

- I. His firm M/s. Kusum Jewellers is engaged in the retail sale of gemstones, gold and silver jewelry. They are not engaged in the trading of gold bars and procure only readymade jewelry from various wholesale dealers and sell them in retail market. He is handling all the day to day work, work related to sale and purchase, accounts etc.

- II. Shri Jigarkumar denied about handing over any gold of 52.12 grams to Shri Dipankar Ghosh or any of his employee for jewellery making. He stated that they have not issued any invoice to Shri Dipankar Ghosh or his firm and also no payment was received by them in respect of the said gold of 52.12 grams.
- III. They have never worked with Shri Dipankar Ghosh. On being asked about the ownership of the parcel of Shri Dipankar containing 52.12 grams of gold detained by DRI, Shri Jigarkumar stated that they are not owing the ownership of the said gold and the ownership lies completely with Shri Dipankar Ghosh.

13. During the course of further investigation, statement of Shri Dipankar Ghosh, Proprietor of M/s. Vishwakarma Cutting Press, recorded under section 108 of The Customs Act, 1962 on 18.03.2024:-

13.1 In view of the submission made by Shri Jigarbhai Rana of M/s. Kusum Jewellers as stated above, Summons dated 07.03.2024 under Section 108 of Customs Act, 1962 was again issued to Shri Dipankar Ghosh and accordingly statement of Shri Dipankar Ghosh was recorded on 18.03.2024, wherein, he was also shown the statement dated 15.02.2024 of Shri Jigarbhai Rana of M/s. Kusum Jewellers. Shri Dipankar Ghosh stated in his statement that:-

- I. He does not remember the exact markings on the said gold bar cut piece of 52.120 grams, but he was aware that the said gold bar cut piece had imported marking and was of foreign origin. He does not have any invoice for the said gold of 52.120 grams of gold and also, he was not issued any invoice for the same. However, it may be possible that the same may be purchased from some retailer as sometimes he purchased gold from retailers on the basis of rates, availability and requirement.
- II. He had not verified the purity of gold and he had just purchased the said gold from the person based on rate. He is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity and it is possible that the said person had smuggled or brought in the said gold through Ahmedabad Airport or any other airport from abroad as the gold bar cut piece is of foreign origin. Such person offered them the gold at a cheaper rate, therefore, they purchased the gold based on its purity and rates.
- III. He does not have any import documents for their seized gold of 52.120 grams as it was not provided by the person from whom they had purchased the said gold. On being asked as to why they did not seek any import documents from that person as that person offered him the gold on a cheaper rate, he stated that they do not have any legal knowledge of the Customs Act or rules.
- IV. About the ownership of the detained gold of 52.120 grams, Shri Dipankar stated that he owes the ownership of the said gold. He was aware that the said gold was of foreign origin before it was sent by them to M/s. Bharat Chain for making of chain for a customer. He made decision to purchase the said gold as he was getting the said gold at below market price.

INVESTIGATION W.R.T. 200 GRAMS OF FOREIGN ORIGIN GOLD BARS

14. During the course of further investigation, statement of Shri Amish Vikramkumar Malji, authorized signatory of M/s. V. Navinchandra Hirachand Malji Jewellers & Co., recorded under section 108 of The Customs Act, 1962 on 25.01.2024-

14.1 Summons dated 16.01.2024 under Section 108 of Customs Act, 1962 was issued to Shri Amish Malji of M/s. V. Navinchandra Hirachand Malji Jewellers & Co. and accordingly, statement of Shri Amish Malji was recorded on 25.01.2024, wherein he stated that:-

- I. He started the firm M/s. V. Navinchandra Hirachand Malji Jewellers & Co., which is registered in his mother's name, for the retail sale of gold and silver jewelry. They also purchase raw gold in the form of bars or cut pieces for job work and get the jewellery made from outside workshops based in Surat and Mumbai. He is handling all the day to day work, work related to sale and purchase of gold bars and gold & silver Jewellery, accounts etc.
- II. The said gold bars of 200 gms. were meant to be sent by them to M/s. Pahini Jewellery Ltd., Ahmedabad in lieu of the payment outstanding on their part to M/s. Pahini Jewellery Ltd. They had purchased some jewellery from M/s. Pahini Jewellery Ltd., Ahmedabad in the past and in exchange, they had agreed to settle a part of the payment by means of the raw gold being sent by them. The two gold bars were handed over by them to Aangadiya firm- M/s. Patel Amrut Kantilal & Co. on 06.06.2023 for delivery to M/s. Pahini Jewellery Ltd., Ahmedabad.
- III. The said gold bars are of foreign origin. Further, on being asked about as to whether the said gold bars were smuggled in India, he stated that they had purchased the gold bars from various persons who sell gold and jewellery in retail. Further he stated that it might be possible that they had brought in the said gold from Mumbai or Surat Airport. They do not have the import documents for the same and it is difficult to get it from the retailers.

15. During the course of further investigation, statement of Shri Miteshbhai Devendrabhai Shah, Director of M/s. Pahini Jewellery Limited, recorded under section 108 of The Customs Act, 1962 on 25.01.2024-

15.1 Summons dated 16.01.2024 under Section 108 of Customs Act, 1962 was issued to M/s. Pahini Jewellery Limited, Ahmedabad and accordingly, statement of Shri Miteshbhai Devendrabhai Shah, Director of M/s. Pahini Jewellery Limited was recorded on 25.01.2024. On being asked, he stated that:-

- I. Their firm is engaged in the making and wholesale trading of gold jewelry. They purchase raw gold in the form of bars or cut pieces for job work from various traders based in Ahmedabad and also the gold and silver jewellery from various traders based in Ahmedabad and Surat. He is handling all the day to day work, work related to sale and purchase of gold bars and gold & silver Jewellery, accounts etc.

II. The said Gold bars were being sent to us in lieu of the payment for the gold jewellery that was earlier being sold by us to M/s. V. Navinchandra Hirachand Malji Jewellers and Co., Surat. Accordingly, on the agreement of Shri Miteshkumar, they had handed over the said gold bars to M/s. Patel Amrut Kantilal Angadiya on 06.06.2023 for delivery to M/s. Pahini Jewellery Limited.

III. He is not aware of the origin of the gold and it was also not informed to them by M/s. V. Navinchandra Hirachand Malji Jewellersand Co., Surat. They have never been provided any import documents for the gold bars by M/s. V. Navinchandra Hirachand Malji Jewellersand Co.

IV. They have not made any payment to M/s. V. Navinchandra Hirachand Malji Jewellersand Co., Surat and the said gold was sent by them to adjust payment against the jewellery sold earlier by M/s. Pahini Jewellery Ltd to M/s. V. Navinchandra Hirachand Malji Jewellers & Co. M/s. V. Navinchandra Hirachand Malji Jewellers & Co. have not issued invoice to M/s. Pahini Jewellery Ltd as the said gold was not received by them, nor they have made any payment for the said gold. They do not owe the ownership of the gold of 200 grams and it lies with M/s. V. Navinchandra Hirachand Malji Jewellers and Co., Surat.

16. From the above, it appeared that in both the cases, Shri Dipankar Ghosh, proprietor of M/s Vishwakarma Cutting Press and Shri Amish V. Malji, authorised signatory of M/s. V. Navinchandra Hirachand Malji Jewellers & Co. accepted the ownership of the said gold bars in their respective statements recorded u/s 108 of Customs Act, 1962 and stated that they did not possess any documents relating to genuine/ legitimate import of their respective gold bars of foreign origin. It also appeared that the burden of proof in case of 'Gold' in terms of Section 123(1) of Customs Act, 1962 that they are not smuggled goods shall be laid on Shri Dipankar Ghosh and Shri Amish V. Malji respectively.

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

18. LEGAL PROVISIONS:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract

entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents."

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

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

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

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

"In this Act, unless the context otherwise requires,

...

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

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

...

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

...

(22) "goods" includes-

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

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

...

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

...

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

...

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

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

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

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

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

m) Section 77 of the Customs Act 1962:

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

n) Section 110 of Customs Act, 1962:

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

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

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

.....

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

.....

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

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

.....

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

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

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

Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act,
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

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

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

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

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or

the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.”

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

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

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

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

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

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

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

-

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

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

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

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

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

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

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

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

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

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

19. Summary of the Investigation:-

19.1 It appeared from the investigation that:

- (a) During the search of the baggage of the passengers intercepted outside Kalupur Railway Station on 07.06.2023, two employees working for Aangadiya firm - **M/s. Patel Amrut Kantilal Angadiya** – one, **Shri N.J. Patel** and other, **Shri K. K. Thakor** were found in possession of certain amount of gold. The said gold was subsequently detained on the reasonable belief that the same are liable for

confiscation under the provisions of the Customs Act, 1962 as the same may have been smuggled being foreign origin.

- (b) As per the labels present on the parcels of the gold detained on 07.06.2023 and documents submitted by Shri Amrutbhai Harjivandas Patel, Partner of M/s. Patel Amrut Kantilal Angadiya during his statement dated 23.06.2023, it appeared that: (i) one cut piece of gold bar having total weight of **52.120 grams** having Valcambi Suisse marking was being sent by **Shri Dipankar Ghosh** to M/s. Bharat Chain, Ahmedabad. (ii) 02 gold bars having total weight **200 grams** having Argor Heraeus SA markings were being sent by **Shri Amish V. Malji of M/s. V.Navinchandra Hirachand Malji Jewellers & Co.** to M/s. Pahini Jewellery Ltd, Ahmedabad.
- (c) Shri Kartikey Vasantray Soni, Gold Assayer, examined the said gold in presence of independent panchas and the representative of the Aangadiya firm and certified the purity of Gold, weight, rate of gold vide his valuation report dated 28.08.2023 ascertained that the said cut piece of gold bar of 52.120 grams pertaining to Shri Dipankar Ghosh and two gold bars of total weight 200 grams pertaining to Shri Amish V. Malji are of foreign origin and their fair value as per market rate are Rs. **3,15,326/-** and **Rs.12,10,000/-** respectively.
- (d) The said foreign origin gold, i.e. 52.120 grams pertaining to Shri Dipankar Ghosh and foreign origin gold, i.e., 200 grams pertaining to Shri Amish V. Malji appeared to be smuggled goods as Shri Dipankar Ghosh and Shri Amish V. Malji informed that they do not possess any documents relating to import of the said gold. Therefore, the said gold pertaining to Shri Dipankar Ghosh and Shri Amish V. Malji were placed under seizure vide Seizure Memos dated 25.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962.
- (e) Statement of the Shri Dipankar Ghosh was recorded u/s 108 of the Customs Act, 1962 in which he admitted that he was aware that the said gold was of foreign origin but he does not have import documents pertaining to the said gold. He also stated that sometimes they purchase gold from persons who come to their shop to sell gold in retail based on purity and rate, however, he was not provided any import documents or invoice by the said person. He also stated that it is possible that such persons might have smuggled the said gold from any Airport. He also admitted that he is owner of the seized goods.
- (f) Statement of the Shri Amish Malji was recorded u/s 108 of the Customs Act, 1962 in which he stated that it is possible that the said gold bars might be smuggled in India as they had purchased the gold bars from various persons who sell gold and jewellery in retail. Further he stated that it might be possible that they had brought in the said gold from Mumbai or Surat Airport. On being asked about the Import documents for the import of the said foreign origin gold bar of 200 gms, he stated that they do not have the import documents for the same and it is difficult to get it from the retailers. He also accepted that his firm is owner of the seized gold.
- (g) Statements of the intended recipients of the gold, i.e. Shri Injamul Haque Sarkar of M/s. Bharat Chain (intended recipient of 52.120 grams gold sent by Shri Dipannkar Ghosh) and Shri Miteshbhai Devendrabhai Shah of M/s. Pahini

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Jewellery Limited (intended recipient of 200 grams gold sent by Shri Amish V. Malji, of M/s. V. Navinchandra Hirachand Malji Jewellers & Co.) were recorded u/s 108 of the Customs Act, 1962 during which they stated that they were not aware of the origin of the said gold and they had also not made any payment in respect of the said gold.

- (h) From the above, it thus appeared that the said foreign origin gold, i.e. one cut piece of gold bar of 52.120 grams of Shri Dipankar Ghosh and 2 gold bars of 200 grams of Shri Amish V. Malji are smuggled goods in terms of Section 2(39) of Customs Act, 1962.
- (i) The burden of proving that the Gold seized from the Aangadiya- M/s. Patel Amrut Kantilal Angadiya under Panchnama dated 07.06.2023 are not smuggled goods, lies on Shri Dipankar Ghosh and Shri Amish V. Malji respectively. It appeared that during the investigation, both of them have failed to provide proof that the said foreign origin gold, i.e. 52.120 grams pertaining to Shri Dipankar Ghosh and 200 grams pertaining to Shri Amish V. Malji are not smuggled goods. Thus, it appeared that the said foreign origin gold weighing 252.120 grams in total valued at Rs. 15,25,326/- (Fifteen Lakhs Twenty-Five Thousand Three Hundred Twenty-Six only) are liable for confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962.
- (j) Further, it appeared that Shri Dipankar Ghosh, Shri Amish V. Malji of M/s. V. Navinchandra Hirachand Malji Jewellers & Co and M/s. V. Navinchandra Hirachand Malji Jewellers & Co is culpable and the act of omission and commission made on his part for the smuggling of gold which are liable for confiscation, has rendered him liable for penalty under Section 112(a), 112(b) & 117 of the Customs Act, 1962.
- (k) It also appeared that M/s. Patel Amrut Kantilal Angadia failed in their obligation to report the possession of foreign origin gold which are liable for confiscation under Section 111 of the Customs Act, to respective revenue authorities. By indulging themselves through their employees Shri K.K. Thakor and Shri N.J. Patel, in such acts of omission and commission, they rendered them liable for penal action under Section 112(a), 112(b) & 117 of the Customs Act, 1962.

20. Thereafter, the Show Cause Notice was issued vide F. No. VIII/10-81/DRI-AZU/O&A/HQ/2024-25 dated 03.06.2024 to - (1) M/s. Patel Amrut Kantilal Angadia, 71, Ghanchi Ni Pole, Madangopal Haveli Road, Manekchowk, Ahmedabad, Guajrat; (2) Shri Dipankar Ghosh, proprietor of M/s. Vishwakarma Cutting Press, Mathiya Chora, Choksi Bazar, Anand, Resident of 604, Samruddhi Complex, Jivandeep Colony, Anand-388001; (3) Shri Amish V. Malji, Authorised Signatory of M/s. V. Navinchandra Hirachand Malji Jewellers and Co.; Resident of 6, Avkar, Sarjan Society, Opp. Sargam Shopping Center, parle point, Surat- 395007, (4) M/s. V. Navinchandra Hirachand Malji Jewellers and Co., Shop No.1 /2, Harsh Co-Op HSG Society, Ram Chowk, Ghod DOD Road, Surat; (5) Shri K.K. Thakor, c/o M/s. Patel Amrut Kantilal Angadia, 71, Ghanchi Ni Pole, Madangopal Haveli Road, Manekchowk, Ahmedabad, Gujarat; and (6) Shri N.J. Patel, c/o M/s. Patel Amrut Kantilal Angadia, 71, Ghanchi Ni Pole, Madangopal Haveli

Road, Manekchowk, Ahmedabad, Guajrat; by the Additional Commissioner of Customs, Ahmedabad to show cause as to why:-

- a)** One cut piece of gold bar of foreign origin, weighing 52.120 grams in total, valued at Rs. 3,15,326/- (Three Lakhs Fifteen Thousand Three Hundread & Twenty Six Only) pertaining to Shri Dipankar Ghosh, Anand placed [under seizure vide Seizure Memo (DIN- 202310DDZ1000000B6CA) dated 25.10.2023, should not be absolutely confiscated under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- b)** Two gold bars of foreign origin, weighing 200 grams in total, valued at Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only) pertaining to Shri Amish V. Malji, M/s. V. Navinchandra Hirachndra Malji Jewellers & Co. [placed under seizure vide Seizure Memo (DIN-202310DDZ1000000E192) dated 25.10.2023, should not be absolutely confiscated under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- c)** Penalty should not be imposed on Shri Dipankar Ghosh, proprietor of M/s. Vishwakarma Cutting Press, Mathiya Chora, Choksi Bazar, Anand, Resident of 604, Samruddhi Complex, Jivandeep Colony, Anand- 388001 under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- d)** Penalty should not be imposed on Shri Amish V. Malji, Authorised Signatory of M/s. V. Navinchandra Hirachand Malji Jewellers and Co.; Resident of 6, Avkar, Sarjan Society, Opp. Sargam Shopping Center, parle point, Surat- 395007 under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- e)** Penalty should not be imposed on M/s. V. Navinchandra Hirachand Malji Jewellers and Co., Shop No.1 /2, Harsh Co-Op HSG Society, Ram Chowk, Ghod DOD Road, Surat under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- f)** Penalty should not be imposed on M/s. Patel Amrut Kantilal Angadia, 71, Ghanchi Ni Pole, Madangopal Haveli Road, Manekchowk, Ahmedabad, Guajrat under section 112 (a)/112 (b)/117 of the Customs Act, 1962;
- g)** Penalty should not be imposed on Shri N.J. Patel carrier of seized goods (as mentioned in para supra) and also an employee for Aangadiya firm-M/s. Patel Amrut Kantilal & Company under section 112 (a)/112(b)/117 of the Customs Act, 1962;
- h)** Penalty should not be imposed on Shri K.K. Thakor, carrier of seized goods (as mentioned in para supra) and also an employee for Aangadiya firm-M/s. Patel Amrut Kantilal & Company under section 112 (a)/112(b)/117 of the Customs Act, 1962;

21. WRITTEN SUBMISSIONS:-

21.1 In response to the show cause notice, Shri Dipankar Ghosh, proprietor of M/s. Vishwakarma Cutting Press, Mathiya Chora, Choksi Bazar, Anand, Resident of 604, Samruddhi Complex, Jivandeep Colony, Anand- 388001 (hereinafter referred to as

“noticee no. 1” or “Shri Dipankar Ghosh”) submitted a reply through his authorised representative Shri N. J. Sukhwani, Advocate, as under:-

1. His client denies all the allegations mentioned in the Show Cause Notice dated 03.06.2024.
2. His client submits that by profession he is in job work of making gold or silver jewellery as per customer requirements. He is earning his daily bread by doing job work in making ornaments at Anand, Gujarat. The seizure has been done at Railway Station, Kalupur, Ahmedabad on 07.06.2023 is domestic area in Ahmedabad. The allegations of smuggling in the SCN are presumption and assumption in the SCN and here is no evidence to impose any penalty under section 112(a), 112(b) and 117 of the Customs Act 1962.
3. He submits that the as per the said information which has been mentioned in the SCN, the case has not been proved against him as from the parcel, which belongs to his client, foreign marking gold has been recovered, but it is received from one Jigarbhai Rana of Kusum Jewellers, Anand, as his client had stated in his statement dtd. 22.01.2024. His client had received this particular gold piece to make gold chain as demanded by Jigarbhai. But his client doesn't have machinery for making gold chain, which has asked by Jigarbhai. So, he has to take help of another such person, on search, he found that M/s. Bharat Chain in Ahmedabad is having that particular machinery. Therefore, the said gold bar sent to Ahmedabad for making as desired chain for Jigarbhai.
4. It is the case of the department that the gold is covered under section 123 of the Customs Act 1962. Therefore, as per the provision of 123 of the Customs Act 1962, the burden of proof, whether the said gold is smuggled or not, is on the person from whom it is recovered or claimed:- As per Section 123 of the Customs Act, 1962:-

“Sec. 123. The burden of proof in certain cases-

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

(a) in a case where such seizure is made from the possession of any person,–
(i) on the person from whose possession the goods were seized; and
(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

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

5. In the SCN the officers of DRI are relying only on section 123 the Customs Act 1962 by alleging that burden proof in the seizure is on his client and he should have discharged the burden, whether the gold is smuggled or not. For this purpose, the officers had issued the summons to my client for producing the licit documents for the seized gold.

6. As per the summons my client had appeared on 22.01.2024 before the officers of DRI and his statements were recorded. The said statements are exculpatory in the nature. In the statement his client had explained the source from where impugned unmarked gold weighing 52.120 grams was received by him. His client had received from one Jigarbhai Rana Prop. Of Kusum Jewelers, of Anand, Guajrat for converting it into gold chain, regarding this fact my client is ready to declare through affidavit. The assumptions and presumption of DRI has no support except bare allegations in the Summon and the SCN. Shri Jigarkumar Arvindbhai Rana, proprietor of M/s. Kusum Jewelers, at 10, Dev Red Square Complex, Opposite Yogi Petrol Pump, Near New Bus Stand, Anand, is the regular customer of his client, who gives him gold piece for making jewelries and he pays his wages in cash after his client complete my work.
7. His client was again called by DRI for further statement on 18.03.2024, this statement was not written as per the say and desire of his client. And only the signature had been taken on the so-called statement. His client retracts this statement because his client is not the purchaser nor the owner of the said gold piece. He had never voluntarily given such statement dtd. 18.03.2024.
8. His client had also provided all the information regarding the receiving the gold piece of 52.120 grams, even then. SCN is issued to his client, though formal enquiries were made with source from where the gold was received by his client.
9. His client was not shown the report of Shri Kartikey Vasantrai Soni, Govt. Assayer dated 08.08.2023.
10. The officers of DRI have not made any efforts by taking any forensic reports of 52.120 gold piece before issuance of Summon and SCN. Therefore, there are assumption and presumptions made against his client in the SCN are not true and correct. That his client is neither the owner nor the purchaser of the said 52.120 grams of gold piece. He received it only for making special designed and desired gold chain from Jigarbhai. Therefore, the said gold is not liable for confiscation and his client is not liable for any penalty.
11. His client has discharged the burden of proof under section 123 of the Customs Act 1962 in this reply along with the affidavit and also in the reply dtd-22.01.2024. Non-apperception of these statements and reply of SCN along with affidavit, will not make the gold ownership of his client as he is not claiming the ownership at all.
12. The present seizure of gold is done in domestic area of India and not at any international borders of India not even at airport. The person of M/s. Patel Amrut Kantilal Aangadiya had arrived at Railway Station, Kalupur, local port not from any international destination. The officers of DRI have failed to establish from which international border of India such gold has been smuggled in to India. Therefore, the gold weighing 52. 120 grams is not liable for confiscation.
13. There is no assay report of any Govt. mint to support the allegations or expert opinions in the SCN.
14. The importer could not provide any documents to prove the legal import of the same which is required as per Section 123 of the Customs Act, 1962 and based

upon the assayer's report and in the absence of any proper explanation or proper licit documents regarding the possession of the foreign marked gold by the owner of the gold as required under Section 123 of the Customs Act, 1962, therefore the foreign marked gold 52.120 grams to appears to have been smuggled one and as such liable for confiscation under Section 111 of the Customs Act, 1962. There is no evidence regarding such allegations.

15. His client is doing artisan work of jewellery making as per the designs provided and or asked/desired by the customers and has nothing to do with any imports and or purchase of gold from any Merchant. My client is merely provider of job work and making gold jewellery in India for which no license or permission is required under the Customs Act 1962.
16. His client says and submits his wages are stuck as the 52.120 grams of gold is seized by the DRI which he has sent to make desired designed gold chain to M/S Bharat Chain, Ahmedabad for Jigarbhai. The Kusum Jewelers had stopped his wages towards this gold piece and other items.
17. Gold weighing 52.120 grams seized on 07/06/2023 is not liable for confiscation - under Sections 111 (d), 111 (f), 111(j), 111(1) and 111 (m) of the Customs Act, 1962 in view of the submission.
18. His client is also not liable for any penalty under Section 112(a), Section 112(b) and Section 117 of the Customs Act, 1962 as he is not the owner of the said gold bar. Therefore, his client may kindly be freed from the allegations stated in the SCN dtd. 03.06.2024.

21.2 In response to the show cause notice, Shri Amish V. Malji of M/s. V.Navinchandra Hirachand Malji Jewellers & Co (hereinafter referred to as "noticee no. 2" or "Shri Amish Malji") and M/s. V.Navinchandra Hirachand Malji Jewellers & Co, (hereinafter referred to as "noticee no. 3") submitted a common reply as under:-

1. The Noticee is inter-alia engaged in business of trading of jewellery of precious metals. The Noticee purchased raw gold in form of bars or cut pieces from the domestic suppliers and send the same to outside workshop for making jewellery on job work basis. The Noticee purchases the gold bars form dealers based at Surat viz. M/s. N.R. Jewellers and M/s. Vidhi Jewellers.
2. In the normal course of business, the Noacee send the gold bars or cut pieces of gold to M/s. Pahini Jewellers Ltd., Ahmedabad for making jewellery. The Noticee also purchases jewellery form M/s. Pahini Jewellers Ltd. Ahmedabad.
3. The Noticee purchased jewellery from M/s. Pahini Jewellers Ltd. in the past and in exchange, it was agreed to settle the part outstanding amount by means of raw gold being sent to M/s. Pahini Jewellers Ltd. As agreed, the NoUcee decided to send 2 gold bars to M/s. Pahini Jewellers Ltd., towards outstanding amount to be paid to the suppliers. Accordingly, the Noticee handed over the said gold bars lying in his stock to Angadia Firm - M/s. Patel Amrut Kantilal and Company on 06.06.2023 for delivery to M/s. Pahini Jewellers Ltd., Ahmedabad.
4. The Noticee learnt that the officers from DRI intercepted 15 passengers who were approaching in the vehicle in the pickup area outside Railway station of

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Ahmedabad at 4.50 hours on 07.06.2023. The said passengers carried different bags and they informed that they worked for different Angadia firms. All these passengers were taken to DRI Ahmedabad Zonal Office situated at Unit No. 15, Magnate Corporate Park , Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad for examination of the bags being carried out by the above 15 passengers. Out of these 15 passengers, 2 passengers who identified themselves as Shri N.J. Patel and Shri K.K. Thakor, claimed to be employees and working with M/s. Patel Amrut Kantilal and Company. During investigation, the officers interalia found 2 gold bars having weight of 200 grams showing mark "Argor Heraeus SA". The DR! officers seized both these gold bars under Panchnama dated 07.06.2023 alongwith the other goods brought by other passengers under Panchnama.

5. Statement of Shri Amrutbhai Harjivandas Patel, Partner of M/s. Patel Amrut Kantilal Angadiya was recorded on 23.06.2023.
6. The Investigating Authority requested Shri Kartikey Vasantrai Soni, who is a Government approved Gold Assayer to examine the seized goods and provide value of it. After examination of the seized gold, he certified based on the visual inspection of the gold bars that the same are of foreign gold.
7. Statement of the Authorized Signatory of the Noticee was recorded on 25.01.2024 whereby he stated that the seized 200 grams 2 bars to be of foreign origin which were purchased by them from various persons who sell gold and jewellery in retail. He also provided name of the suppliers from whom the Noticee purchased the seized gold bars. He provided copies of the purchase invoices while recording his statement. He also stated that he sent these 2 gold bars to M/s. Pahini Jewellers Ltd., Ahmedabad from whom they purchased jewellery in past in lieu of payment outstanding on their part.
8. Statement of Shri Miteshbhai Devendrabhai Shah, Director of M/s. Pahini Jewellers Ltd., was recorded on 25.01.2024 whereby he also stated that the Noticee supplied 2 gold bars towards their outstanding amount to be recovered from them for supply of jewellery in past. He did not have idea about nature of the seized gold supposed to be supplied to them.
9. The above investigation was culminated into issuance of the Show Cause Notice whereby it has been alleged that the Noticee failed to provide import documents to substantiate their submission that the seized gold bars were legitimately imported in India. The Show Cause Notice alleges that the burden lies upon the Noticee to prove that they legitimately possessed the gold bars. Since the Noticee failed to discharge his burden, the Show Cause Notice proposes confiscation of the gold bars under Section 111 of the said Act and consequently imposition of penalty.

10. They further submitted that:

SEIZURE OF GOLD ITSELF IS ILLEGAL:

- a. The goods can be seized under Section 110 only if the proper officer had reason to believe that the goods are liable for confiscation under the said Act. The Revenue ought to have discharged their burden by showing tangible and cogent evidence that the seized gold bars are illegally imported into India. The investigating Officers

seized the goods on the alleged premise that it is foreign origin as the gold bars are having mark of foreign brand and therefore, the officers anticipated that it has been smuggled in India without verification of the documents attached with the parcels.

b. merely the gold bars mark the foreign brand it does not mean that it is a smuggled good particularly when the gold bars were seized in the domestic market. It is not the case of the Revenue that the employees of the Angadia Firm travelled from outside India. It is not also the case the goods in question were seized from the International Airport or closer to any international border.

c. Gold has been seized from the angadiya firm who carried the gold bars from the Noticee to deliver at Ahmedabad which has situated far away from any border town of India. Therefore, the Department cannot take the stand that on account of reasonable belief that the gold is of foreign origin, the seizure is affected. Reliance is placed on the following case laws: -

(i) *Aadil Majeed Banday v. Commissioner of Customs, Amdtsar - 2021 (378) E.L.T. 540 (Tri. - Chan)*

(ii) *Nand Kishore Modi v. Commr. of Cus. (Prev.), West Bengal - 2015 (325) E.L.T. 781 (Tri. - Kolkata)*

THE NOTICEE DISCHARGED THE BURDEN AS REQUIRED UNDER SECTION 123 OF SAID ACT:

a. In case of smuggling of goods, burden lies upon the Revenue to prove that importer/exporter has smuggled the goods. However, exception is provided under the said Act wherein burden lies upon an importer/exporter who involved into the specified goods mentioned in the Notification issued under Section 123 of the Customs Act to prove that it is legitimate import of the goods in dispute.

b. Section 123 of the Customs Act provides that where any goods to which this section applies, are seized under the Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods, shall be on the person from whose possession the goods were seized. This Section is equally applicable to gold and hence, a person from whose possession, such gold is seized, to prove that it is not smuggled gold.

c. the Noticee discharged his burden by providing name of the suppliers from whom the Noticee purchased the disputed gold bars. The Noticee also provided the stock account and copies of the invoices submitted by the suppliers to show legitimate purchase of the disputed gold. Since the Noticee discharged his burden by producing the legitimate documents, the goods are not required to be confiscated.

d. it is an obligation upon the investigating authority to verify the authenticity of the purchase documents supplied by the Noticee. The investigating authority did not verify the correctness of the statement made by the Authorized Signatory nor extended the investigation to M/s. N.R. Jewellers from whom the Noticee purchased the disputed gold bars. in the case of R. V.E. Venkatachala Gounder Vs. Arulmigu Visweswaraswami & V.P. Temple and Ors. 2003 (IO) TMI 639, the Hon'ble Supreme court held that by virtue of Section 123 of the Act, the burden to prove that the gold is not smuggled/ is on the person found in possession of the

gold. Thereafter, the onus keeps shifting. Once the person discharges his burden by showing the source of purchase of gold, then the burden lies upon the Revenue to show that the gold has been smuggled. In the case of Commissioner of Customs Vs Manisha Devi Jain reported in 2019 (370) ELT 401 (T) held that every piece of gold possessed by a person in India cannot be considered to be of smuggled nature and that the possessor of such gold cannot be made to discharge the onus u/s 123 of the Customs Act, 1962.

STATEMENTS OF THE AUTHORIZED SIGNATORY OF THE NOTICEE AND OTHERS ARE EXCULPATORY

- During the investigation, the investigating authority recorded the statements of Shri Amrutbhai Harjivandas Patel, the Authorized Signatory, Shri Miteshbhai Shah, Director of M/s. Pahini Jewellers Ltd. None of the persons stated that the disputed seized gold are of smuggled gold. In the absence of any inculpatory statement, the goods should not be confiscated. In absence of any statement as well as contrary evidences, charges made in the Show Cause Notice for confiscation of gold cannot be sustained in view of the following decisions:
 - (a) C.C. Vs. Saclhan K.R. Das – 2010 (251) ELT 551 (T);
 - (b) Rasish Rathor – 2008 (226) ELT 641 (T);
 - (c) S.K. Chains Vs. C.C.E - 2001 (127) ELT 415 (T)

CROSS EXAMINATION OF GOVERNMENT APPROVED GOLD ASSAYER

- a. The Investigating authority seized the gold on the premise that the seized gold is foreign origin without ascertaining whether the brand embossed on the seized gold bars is genuine or not. The Revenue relied upon valuation report of Soni Kartikey Vasantrai who certified based on visual inspection that the seized gold are foreign origin. The said evidence cannot be relied upon for the following reasons:
 - (a) The expert certified based on visual investigation of gold bars;
 - (b) The export has not ascertained whether the said mark is genuine or not;
 - (c) The export has not ascertained by verifying the facts from the brand owners whose brand was marked over the seized gold regarding authenticity of the logo;
 - (d) It may be possible that the mark or brand marked on the seized goods may be fake;
- b. It is submitted that in absence of any cogent evidence in support to the opinion expressed by the expert, his report is not reliable. The captioned SCN solely relies on the report given by the expert. The Noticee therefore, requests your Honour to allow cross examination of Shri Soni Kartikey Vasantrai to bring the correct facts on record.
- c. It is an obligation upon the expert to demonstrate on what basis, he opined that the seized gold bars are of foreign origin. Since the expert failed to discharge his burden, his cross examination is Inevitable to bring the correct facts on record. The importance of the cross examination has been examined by various Courts. They relied upon the case of
 - Basudev Garg vs. Commissioner of Customs 2D:13 (294) E.L.T. 353 (Del.)
 - Flevel International Vs. Commissioner of Central Excise - 2016 (332) E.L.T. 416 (Del.)

d. any statements which are used against a person unless such statements are subjected to scrutiny in the form of cross examination by the affected persons, the same would only remain mere statement lacking any credibility. It is not the case that it is impossible for the Revenue to at least the Assayer to cross examination since he certified that the gold bars in question were of foreign make. Other than his report, there is no any documentary evidence to placed on record and therefore, it is very much essential in the interest of justice to allow cross examination of Shri Soni Karikey Vasantrai.

ORAL VERSUS DOCUMENTARY EVIDENCES

- The Noticee produced the requisite documents to prove that he legitimately purchased the gold bars. The SCN refers to the statements of the Appellant and Expert opinion and alleged that the Noticee purchased foreign origin gold bars. It is well settled law that if oral statements are contrary to the documentary evidences, the later prevails over oral statements. In the present case, oral evidences are contrary to the documentary evidences viz. invoice issued by the supplier. Hence, oral evidences cannot be relied upon for initiation of providing under the provisions of the Customs Act as held in the following decisions:
 - a. Philip Fernandes Vs Commissioner of Customs 2002 (146) ELT 180 (T);
 - b. Santogen Textile Mills Ltd Vs C.C.Ex 2017 (347) ELT 581 (Bom);
 - c. Commissioner of Central Excise Vs Latex Chemicals 2005 (181) ELT 138 (T);

GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(d), 111(j), 111(l) AND 111(m) OF THE SAID ACT

- a. Goods can be confiscated under Section 111(d) if the said goods are imported or attempted to be imported or are brought within the Indian Customs Water for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force. In the present case, the Noticee provided copies of the invoices for the seized gold from where they purchased the gold bars. The Noticee discharged his burden to show that the said gold bars were legitimately purchased. The gold is freely traded in India. Once the Assessee shows from where he purchased the gold bars, it cannot be said that it is still considered as the imported goods as defined in Section 2 (25) of the said Act.
- b. The goods can be confiscated under Section 111(j) of the said Act if dutiable or prohibited goods are removed or attempted to be removed from the customs area or warehouse without permission of the appropriate officer or contrary to the terms of the permission. In the present case, the Noticee purchased the seized gold bars from the domestic supplier. The Noticee provided the name of the supplier from whom he purchased the gold bars. The Revenue has not extended the investigation at the supplier end. The investigating authority has not shown in the Show Cause Notice that how the disputed goods removed or attempted to be removed from the customs area in violation of Section 111(j) of the Act.
- c. The captioned Show Cause Notice alleges that the goods are liable for confiscation under Sections 111 (1) and 111(m) as the said goods are not included in the entry made in the Act or declaration made under Section 77 of the Act. It is submitted that the disputed goods are not an imported goods and therefore, Section 111 (1)

and 111(m) are not applicable. Further the Noticee has not imported the disputed goods and therefore, provisions of 111(1) and 111(m) are not applicable. The Noticee is not making any declaration with the Customs Authority that the Noticee purchased gold bars from the domestic market.

d. In view of the above submissions, the goods are not liable for confiscation under Section 111 (d), 111(j), 111(l) and 111 (m) of the said Act and therefore, penalty under the provisions of 112 cannot be imposed. Neither the Noticee nor the authorised signatory was knowingly involved in smuggling of gold into India or reason to believe that the same are liable for confiscation under Section 111 and therefore, penalty under Sections 112 and 117 cannot be imposed.

11. The Noticee prays that the allegations and charges levelled in the show cause notice may kindly be dropped and requests that an opportunity of personal hearing may kindly be granted.

21.3 Shri Rohan Thakkar, CA submitted written submission on behalf of M/s. Patel Amrut Kantilal Angadia on 26.11.2024 as under:-

1. The Noticee reject all the allegations casted upon him under the said SCN. In the present case, the Noticee is into the business of the Angadiya, and he has not imported the goods, rather he was transporting the goods, from one place to another place. Further Noticee is also in possession of the legitimate invoice of goods transported by him.
2. From the statements given by the partner of the Noticee and also the supplier of the goods and recipients of the goods, it is nowhere going to established that the Noticee was aware that the goods are that transported are smuggled goods, hence, it is spick and span that the noticee has no idea that the Gold Bars, which has been detained by the DRI officer, are Foreign origins and the same are smuggled goods. Further, they receive the goods in the packed seal hence, they are not in position to check whether the Gold bars that has been transported by the Noticee are the Foreign Origin or not. Noticee is simply doing the business of the transport of the goods which he has been asked to it, he has no authority to check the legality of the goods, Noticee has to rely on the documents given by the supplier and information provided by the Supplier. It is the supplier who has to check the goods and the onus remain on the supplier only.
3. Your department of the goodself has stated that the burden of the proof lies on the suppliers of the goods that the goods which are being detained are not smuggled goods. As stated above the Noticee is not in the position to verify the goods which are being transported are smuggled goods. Additionally, it is submitted that the goods which has been carried by the Noticee have the proper legitimate documents issued from the Suppliers. Hence, the Noticee has to rely on the invoices issued by the suppliers. Noticee has no jurisdiction neither he has authority to unearth that from where the supplier has procured the impugned Goods.
4. The Noticee is not only carrying the goods which department has believed to be the foreign goods, they are also transporting other goods like Ornaments, jewellery, Indian origin Bars, etc. which has the legitimate documents and the same has also been verified by the DRI officer, if the Noticee has the illicit intention then they will

be transporting only goods of the smuggled goods and the Noticee is into the business since 2002 and he is genuinely doing his business. Which clearly indicates that the noticee was completely unaware about the origin of the impugned Goods.

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

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

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

8. Noticee was not aware that the gold which was being transported are foreign origin. The noticee herein case acted in the bona fide manner, completing his duty, what he had paid for, he was not aware that the disputed goods are smuggled Goods. Further, appellant is not directly or indirectly involved with suppliers. For attracting the penalty under section conscious knowledge of an offender who is concerned in carrying or removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any offending goods which he knows or has reason to believe that the same is liable to confiscation under Section 111 to be liable to penalty. When a person does not know or has a reason to believe that the goods are liable for confiscation under section 111, penalty under section 112 will not apply. He relied upon:

- i. *Js. Oberoi Versus Commissioner Of Customs, Chandigarh (2014) 308 ELT 526 = (2014) 12 TMI 985 (Tri-Delhi).*
- ii. *M/S. Panjratn Road Carriers, M/S. Gill Randhawa Roadlines, M/S. Akal Transport Company, M/S. Dd Khosla Transport Pvt. Limited, M/S. Arisudana Industries Limited And M/S. Karam Freight Movers Versus Commissioner Of Customs, Ludhiana (2017) 10 TMI 1264 (Tri- Chandigarh).*
- iii. *Akbar Badruldin Jiwani vs Collector of Customs 1990 AIR 1579, 1990 SCR (1) 369*

- iv. *CC v. Amin Chandrakant* 2010 (258) E.L.T 36 (Guj)
- v. *Sonam International v. CC*, 2012 (279) E.L.T. 572 (Tri. - Del.)
- vi. *Peico Electronics & Electricals Ltd v. CC*
- vii. *CC v. Pawan Kumar Gupta*

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

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

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

- i. *Gujarat Borosil v CCE* (2007) 217 ELT 367 (CESTAT)
- ii. *Suren International Limited v CC* 2006 (203) ELT 597 (CESTAT)
- iii. *Rammaica (India) Limited v. CCE* 2006 (198) ELT 379 (CESTAT)
- iv. *O P Agarwal v CC* (2005) 185 ELT 387 (CESTAT)
- v. *Vinod Kumar v. CCE* (2006) 199 ELT 705 (CESTAT)
- vi. *Carpenter Classic Exim v CC* (2006) 200 ELT 593 (CESTAT)
- vii. *Farwood Industries v. CCE* (2005) 185 ELT 401 (CESTAT)
- viii. *Subhash Gupta v. CCE* (2007) 10 STT 411 (CESTAT)
- ix. *Commissioner of Central Excise Versus M/s. Goodwill Electricals* 2010 - TMI - 202550 - BOMBAY HIGH COURT
- x. *Cipla Coated Steel v. CCE* 1999 (113) ELT (490) (CEGAT)
- xi. *M Hariraju v. CCE* 1998 (100) ELT (203) (CEGAT);
- xii. *Jalmadhu corporation v. CCE* 1999 (114) ELT 883 (CEGAT);
- xiii. *Bindu S Mehta v. CCE* 2000 (121) ELT 281 (CEGAT);
- xiv. *A K Tantia v. CCE* 2003(158)ELT 638 (CESTAT SMB);
- xv. *Bellary steel v. CCE* 2003(157) ELT 324(CESTAT);
- xvi. *Poonam Sparkv v. CCE* 2004(164) ELT (282) (CESTAT)
- xvii. *HMTD Engineering v. CC* 2000(122) ELT 749(CEGAT)

xviii. SM Zschimmer & Scharwz v. CCE 2000 (126) ELT 729(CEGAT);
 xix. CCE v. New Tobacco Co. 2001(134) ELT 176 (CEGAT);
 xx. Concorde Overseas v. CCE 2003 (156) ELT 287 (CESTAT);
 xxi. Nusli Davar v. CCE 2003 (156) ELT 1022 (CEGAT);
 xxii. L P Desai v. UOI 2004 (165) ELT (151) (Del HC);
 xxiii. Standard Pencils v. CCE 2006 (197) ELT 346 (CESTAT);
 xxiv. P V Malhotra v. CCE 2006 (194) ELT 89 (CESTAT);
 xxv. Hindustan Lever v. CCE(2007) 210 ELT 60 (CESTAT SMB)
 xxvi. Caltron Instruments v. CCE 2004 (165) ELT 174 (CESTAT)
 xxvii. Dayaram Agarwal v. CCE(2007) 218 ELT 33 (CESTAT)
 xxviii. applied electronics v. CCE 2001(130) ELT 500=40RLT 409 (CEGAT)
 xxix. Arebee Star Maritime Agencies v. CCE 2004 (173) ELT 185 (CESTAT)
 xxx. Shrikant Processors v. CCE2006 (203) ELT 98 (CESTAT SMB)
 xxxi. Chowbey Sugandhit v. CCE 2001 (131) ELT 222 (CEGAT)
 xxxii. Metro Appliances v. CCE(2001) 137 ELT 554 (CEGAT);
 xxxiii. Laurel Organics v. CCE 2002(140) ELT 151 (CEGAT);
 xxxiv. Mewar Bottling v. CCE 2002(140) ELT 237 (CEGAT);
 xxxv. Keshav Kumar Tharad v. CCE 2003 (156) ELT 211 (CESTAT SMB);
 xxxvi. Nirmal metal fabricators v. CCE (2004) 169 ELT 168 (CESTAT SMB);
 xxxvii. Mettaco Engineering v. CC2005 (182) ELT 210 (CESTAT);
 xxxviii. S K & Co. v. CCE 2006 (203) ELT 137 (CESTAT).

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

13. The noticee neither has the knowledge of the goods being carried is smuggled Goods nor he has transgressed the in provisions of the Customs Act, 1962 as he was not involved in the importation of the disputed goods. The Noticee was only doing transportation of the goods in the normal course of his business. The Noticee has not imported the disputed goods nor he has any illicit intention to remove the goods. As the Noticee has not violated any of the provisions of the Customs Act, 1962, hence, the penalty under section 117 is not be tenable.

21.4 Shri Rohan Thakkar, CA submitted written submission on behalf of Shri N. J. Patel on 26.11.2024 similar to reply as given in Para 21.3 above.

21.5 Shri Rohan Thakkar, CA submitted written submission on behalf of Shri K. K. Thakor on 26.11.2024 similar to reply as given in Para 21.3 above. Additionally, he submitted that

- the close reading of the RUD-8 states that, the goods which were detained by the DRI officer are recovered from the other employee of the Patel Amrut

Kantilal whose name is N.J Patel. The goods which were detained from Shri K K Thakor has been handed over to the M/s Patel Amrut Kantil & Co. The 8 parcels detained from the Noticee are Indian origin and the same has been handed over. Hence, there is no smuggled goods has been recovered from the Noticee. Therefore, there will be no violation of the any provisions of the Customs Act, 1962. Therefore, the SCN has to set aside.

22. PERSONAL HEARINGS:-

22.1 Shri Nitin Sukhwani, Advocate, attended the personal hearing on behalf of Shri Dipankar Ghosh on 14.11.2024. Shri Nitin Sukhwani, Advocate reiterated the written submission presented by them on 12.07.2024 and submitted that they do not agree with the allegation on his client in the Show Cause Notice. He requested to drop the proceedings initiated in the SCN against his client and provisions for penalties in the Show Cause Notice. He also reiterated submission of Affidavit of receiving gold piece for making gold chain is submitted along with earlier written submission.

22.2 Ms. Shweta Garge, Advocate attended personal hearings on behalf of Shri Amish V. Malji and M/s. V.Navinchandra Hirachand Malji Jewellers & Co on 26.11.2024, through Video-conferencing. Ms. Garge reiterated the written submission and requested to drop the proceedings initiated in the SCN.

22.3 Shri Rohan Thakkar, CA attended personal hearings on behalf of M/s. Patel Amrut Kantilal Angadia, Shri K.K. Thakor and Shri N.J. Patel, on 27.11.2024, through Video-conferencing. Shri Rohan Thakkar reiterated the written submissions and requested to drop the proceedings initiated in the SCN. He also submitted that since no foreign origin gold was found in bag seized from Shri K. K. Thakor, hence no penalty should be imposed on him.

23. DISCUSSION AND FINDINGS:-

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

23.2 I find that while acting upon specific intelligence, the officers of DRI intercepted 15 passengers outside Kalupur Railway Station, Ahmedabad at around 04:50 hrs. on 07.06.2023. During the examination of the baggage of the passengers at the office of DRI, Ahmedabad Zonal Unit ("AZU"), bags of two passengers, Shri N.J. Patel ("noticee no. 5") and Shri K.K. Thakor ("noticee no. 6"), employees working for Aangadiya firm- M/s. Patel Amrut Kantilal & Company ("noticee no. 4" or "the aangadiya firm"), the officers found that certain parcels were containing gold which appeared to be of foreign origin. A detailed investigation revealed that "one cut piece of gold bar having total weight of 52.120 grams having **VALCAMBI SUISSE** marking" was being sent by Shri Dipankar Ghosh ("noticee no. 1") to M/s. Bharat Chain, Ahmedabad and "02 gold bars having total weight 200 grams having **ARGOR HERAEUS SA** markings" were being sent by Shri Amish V. Malji ("noticee no. 2") of M/s. V.Navinchandra Hirachand Malji

Jewellers & Co. ("noticee no. 3") to M/s. Pahini Jewellery Ltd, Ahmedabad. Shri Kartikey Vasantray Soni, Gold Assayer, examined and certified that said gold bars are of foreign origin and their fair value as per market rate are Rs. 3,15,326/- and Rs.12,10,000/- respectively. The said Gold bars were placed under seizure vide Seizure Memos dated 25.10.2023 under the provisions of Section 110 of Customs Act, 1962. Statements of all noticees and others were recorded u/s 108 of the Customs Act, 1962 and the aforesaid show cause notice was issued proposing confiscation of said gold bars under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 and penalties on all the noticees under Section 112(a), 112(b) & 117 of the Customs Act, 1962. Thus, I find that the issue before me to decide as to:

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

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

52.120 GRAMS GOLD BAR HAVING VALCAMBI SUISSE MARKING

23.3.1 I find that one cut piece of gold bar having total weight of 52.120 grams recovered from the employees of M/s. Patel Amrut Kantilal & Company have markings as "**VALCAMBI SUISSE**". I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM.R. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** as quoted under:-

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

35. The four gold biscuits recovered from the drawer of the appellant were of foreign origin. The appellant produced receipt no. 170, dated 6-7-1994 from Khairati Ram Desraj Delhi for purchase of five biscuits out of which one was stated to have been melted. The appellant thus proved the valid possession of these four biscuits. Regarding 16 pieces of gold comprising of

eight gold biscuits recovered from beneath the grass of the lawn attached to the premises, the suspicion of the authorities cannot be doubted. The concealment of these gold pieces with foreign markings were sufficient to create reasonable believe that the gold being of foreign origin, in the absence of any evidence of their valid import was smuggled gold. The burden thus under Section 123(1) was on the appellant to prove that the goods were either non-foreign origin or were validly purchased. Shri Faiyaz Ahmad tried to retract his statement that he had not purchased the gold recorded, on 10-8-1994, which was not accepted by the Adjudicating Officer. Shri Zaki Ishrati, however, did not retract his statement."

In above case law, Hon'ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statement of Shri Amrutbhai Harjivandas Patel, Partner of M/s. Patel Amrut Kantilal & Company, I find that no evidence of valid import of the said Gold Bar was produced before the departmental officers.

23.3.2 I further find from the statement of Shri Dipankar Ghosh given under Section 108 of the Customs Act, 1962 on 22.01.2024 that:-

"

On being asked specifically about one no. of seized gold bar piece having total weight of 52.120 grams of 999 purity, I state that the said gold piece, having total weight of 52.120 grams of 999 purity is of foreign origin and the same was

On being asked about the Import dockets for the import of the said foreign origin gold piece of 52.12 grams, I state that we have not been supplied any Import dockets for the import of the said foreign origin gold of 52.12 gms by "

In his statement dated 18.03.2024, Shri Dipankar Ghosh stated that:-

"

On being asked about the identity mark or SI. No. of the seized gold bar, I state that I do not remember the exact markings on the said gold bar cut piece of 52.120 grams, but I state that I was aware the said gold bar cut piece had imported marking and was of foreign origin. On being asked, I state that I do not have any invoice for the said gold of 52.120 grams of gold and also, I state that I was not issued any invoice for the same. However, it may be possible that the same may be purchased from some retailer as sometimes I purchased gold from retailers on the basis of rates, availability and requirement.

I also state that I do not have any import documents for our seized gold of 52.120 grams as it was not provided by the person from whom we had purchased the said gold. On being asked as to why we did not seek any import documents from that person as he offered me the gold on a cheaper rate, I state that we do not have any legal knowledge of the Customs Act or rules.

"

I find that in both the statements, Shri Dipankar Ghosh admitted that the said Gold Bar is of the foreign origin and he did not have any import document in respect of it.

23.3.3 I further find that the Gold Bar was further examined by Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer (“Assayer”), in presence of independent panchas and Shri Amrutbhai Harjivandas Patel under panchnama dated 08.08.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 28.08.2023. I find that the assayer in his valuation report clearly mentioned that the bar is of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** wherein the Hon’ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking, as quoted under:-

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

In view of the above, I held that the said Gold Bar, bearing foreign marking “**VALCAMBI SUISSE**” and being examined by the Government approved Assayer/Valuer, is of the foreign origin based on the Valuation Report dated 28.08.2023.

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

- a) Metals and Minerals Trading Corporation Limited (MMTC);
- b) Handicraft and Handloom Export Corporation (HHEC);
- c) State Trading Corporation (STC);
- d) Project and Equipment Corporation of India Ltd. (PEC);

- e) STC Ltd.;
- f) MSTC Ltd.;
- g) Diamond India Ltd. (DIL);
- h) Gems and Jewellery Export Promotion Council (G & J EPC);
- i) A star Trading House or a Premier Trading House under Paragraph 3.10.2 of the Foreign Trade Policy and
- j) Any other authorized by Reserve Bank of India (RBI).

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

23.3.5 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of Gold Bar of 52.120gms having markings "**VALCAMBI SUISSE**" was found in the possession of employees of Aangadia firm M/s. Patel Amrut Kantilal & Company. The sender of the said gold bar is Shri. Dipankar Ghosh, but he could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bar is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee no. 1 under Section 123 of the Customs Act, 1962 which he failed to discharge as he could not produce the documentary evidence of the import of the said Gold bar. I

23.3.6 I find that in consequence of the provisions of Section 123, that noticee no. 1 was owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee no. 1 Ghosh was found owning the gold, the form in which gold was being carried namely Gold bar, all these circumstances establish beyond a shadow of doubt that the noticee no. 1 i.e. Shri Dipankar Ghosh was possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observed by the Madras High Court in **Malabar Diamond Gallery P. Ltd. vs. Additional Director General, Directorate of Revenue Intelligence, Chennai - 2016 (341) E.L.T. 65 (Mad.)**:-

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

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

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

23.3.7 I further find from the statement of Shri Dipankar Ghosh dated 18.03.2024 that he admitted the Gold Bar being purchased from someone, who might have smuggled the same through Airport. The relevant portion is quoted under:-

“

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

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

I also state that I do not have any import documents for our seized gold of 52.120 grams as it was not provided by the person from whom we had purchased the said gold. On being asked as to why we did not seek any import documents from that person as he offered me the gold on a cheaper rate, I state that we do not have any legal knowledge of the Customs Act or rules.

On being asked about the ownership of the detained gold of 52.120 grams, I state that I am owing the ownership of the said gold. I further state that I was aware that the said gold was of foreign origin before it was sent by us to M/s. Bharat Chain for making of chain for a customer. I also state that it is possible that the detained gold of 52.120 grams might have been smuggled through Ahmedabad or any other airport. I also state that though I did not inquire much into it as I was not aware of the legal provisions of the Customs Act and Rules. I state that I made decision to purchase the said gold as I was getting the said gold at below market price.

”

In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the said Gold Bar has been smuggled into India.

02 GOLD BARS HAVING TOTAL WEIGHT 200 GRAMS HAVING "ARGOR HERAEUS SA MARKINGS"

23.3.8 I find that two gold bars having total weight of 200 grams recovered from the employees of M/s. Patel Amrut Kantilal & Company have markings as "**ARGOR HERAEUS SA**". I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM.R. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** para supra, where, Hon'ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statement of Shri Amrutbhai Harjivandas Patel, partner of M/s. Patel Amrut Kantilal & Company, I find that no evidence of valid import of the said Gold Bars was produced before the departmental officers.

23.3.9 I further find from the statement of noticee no. 2 i.e. Shri Amish V. Malji of M/s. V.Navinchandra Hirachand Malji Jewellers & Co. given under Section 108 of the Customs Act, 1962 on 25.01.2024 that:-

"

Now, I am also being asked to peruse the Panchnama dated 08.08.2023 vide which the examination of the detained gold was done by the govt approved valuer. I peruse the same and in token of the same, I put my dated signature on last page of the same. I am also being told that the verification of the detained gold bars was done by Shri Kartikey Vasantray Soni, Govt. approved valuer. I peruse the report of Shri Kartikey Vasantray Soni vide dated 28.08.2023 and also put a dated signature on the same in the token of being seen. In the said valuation report, it appears that the 200 grams gold pertaining to M/s. Amish V. Malji and mentioned as Parcel No. 4 are having Argor Heraeus SA marking and are of foreign origin. I further state that after perusal of the said report I admit that the gold bar sent by us are having Argor Heraeus SA marking and are of foreign origin.

On being asked specifically about the two no. of seized gold bar having total weight of 200 grams of 999 purity, I state that the said gold bars, having total weight of 200 grams of 999 purity are of foreign origin. Further, on being asked about as to whether the said gold bars were smuggled in India, I state that we had purchased the gold bars from various persons who sells gold and

jewellery in retail. Further I state that it might be possible that they had brought in the said gold from Mumbai or Surat Airport.

I also state that we have never been provided any import documents for the gold bars by any of the suppliers. On being asked as to why we do not seek any import documents from the suppliers, I state that we do not have any legal knowledge of the Customs Act or rules, so we have never sought any import documents from the suppliers but we always insist on the GST invoice from the suppliers for the purchase of the gold.

I find that in his statements, Shri Amish V Malji admitted that the said Gold Bar is of the foreign origin and he did not have any import document in respect of it.

23.3.10 I further find that the Gold Bars was further examined by Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer ("Assayer"), in presence of independent panchas and Shri Amrutbhai Harjivandas Patel under panchnama dated 08.08.2023,

and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 28.08.2023. I find that the assayer in his valuation report clearly mentioned that the bar is of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar, bearing foreign marking "**ARGOR HERAEUS SA**" and being examined by the Government approved Assayer or Valuer, is of the foreign origin based on the Valuation Report dated 28.08.2023.

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

23.3.12 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of 02 Gold Bar of 200 gms having markings "**ARGOR HERAEUS SA**" were found in the possession of employees of Aangadia firm M/s. Patel Amrut Kantilal & Company. The sender of the said gold bar is Shri Amish V. Malji of M/s. V.Navinchandra Hirachand Malji Jewellers & Co., but he could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bar is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee no. 1 under Section 123 of the Customs Act, 1962 which he failed to discharge as he could not produce the documentary evidence of the import of the said Gold bar. I

23.3.13 I find that in consequence of the provisions of Section 123, that noticee no. 3 was owners/senders of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee no. 3 Ghosh was found owning the gold, the form in which gold was being carried namely Gold bar, all these circumstances establish beyond a shadow of doubt that the noticee no. 1 i.e. M/s. V.Navinchandra Hirachand Malji Jewellers & Co. was possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in **Malabar Diamond Gallery P. Ltd. (supra)**, "*If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited.*"

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23.3.14 I further find from the statement of Shri Amish V. Malji dated 25.01.2024 that he admitted the Gold Bar being purchased from someone, who might have smuggled the same through Airport. The relevant portion is quoted under:-

“

jewellery in retail. Further I state that it might be possible that they had brought in the said gold from Mumbai or Surat Airport.

I also state that we have never been provided any import documents for the gold bars by any of the suppliers. On being asked as to why we do not seek any import documents from the suppliers, I state that we do not have any legal knowledge of the Customs Act or rules, so we have never sought any import documents from the suppliers but we always insist on the GST invoice from the suppliers for the purchase of the gold.

”

23.3.15 In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the Gold Bar has been smuggled into India. I find that unlike the case of *Aadil Majeed Banday* (*submitted by the noticee*), in present case, the Gold Bars were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold Bars by the Government approved Assayer. Further unlike the case of *Nand Kishore Modi* (*submitted by the noticee*), the noticees could not provide any evidence of legal purchase of the said Gold Bars. Therefore, I find that the ratio of case laws cited by the noticee no. 2 and 3 against seizure of Gold, are not applicable in the instance case.

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

23.4.1 I find that that the Show Cause Notice proposed absolute confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 of above said Gold Bars i.e. “one cut piece of gold bar having total weight of 52.120 grams having **VALCAMBI SUISSE** marking” having market value Rs. 3,15,326/- and “02 gold bars having total weight 200 grams having **ARGOR HERAEUS SA** markings” having market value Rs.12,10,000/-.

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

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

.....

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being

imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....

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

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

.....

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

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

23.4.3 From the discussion in foregoing paras, I find that said Gold Bars i.e. "one cut piece of gold bar having total weight of 52.120 grams having **VALCAMBI SUISSE** marking" having market value Rs. 3,15,326/- and "02 gold bars having total weight 200 grams having **ARGOR HERAEUS SA** markings" having market value Rs.12,10,000/- recovered from Shri N.J. Patel and Shri K.K. Thakor, employees working for Aangadiya firm- M/s. Patel Amrut Kantilal & Company, were seized vide Seizure Memos dated 25.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the said gold bar were smuggled into India with an intention to evade payment of Customs duty. From the Valuation Report and admissions of the noticee no. 1 i.e. Shri Dipankar Ghosh and noticee no. 2 i.e. Shri Amish V. Malji, it was found that the same were of foreign origin and had been brought into India without any valid import documents which made them smuggled Gold as defined under Section 2(39) of the Customs Act, 1962.

23.4.4 I also find that the noticees did not controvert the facts detailed in the Panchnama during the course of recording their statements recorded under section 108 of the Customs Act, 1962 except that they stated that they are not aware of the Customs Laws and Rules. since ignorance of law is no excuse as held by **Hon'ble High Court of Calcutta in the case of Provash Kumar Dey v. Inspector of Central Excise and Others reported at 1987 (31) E.L.T. 13 (Cal.)**, therefore, I find that therefore statement of the noticee no. 1 and 2 may be taken as evidence. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passengers/owner of the Aangadia Firm. The said smuggling of Gold thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

23.4.5 I find that as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized or the person who was taking the ownership of the said Gold bars. In the present case, neither Shri Dipankar Ghosh, nor Shri Amish Malji has discharged their burden. In his statement dated 25.01.2024, Shri Amish Malji stated that:-

On being asked as to from which suppliers, the said gold bars of 200 grams were purchased, I state that I cannot state for sure the supplier's name as we purchase the gold from various suppliers. However, I am submitting herewith our trading stock ledger for the period from 01.04.2023 to 10.06.2023, as per which we had 400 grams of gold of opening stock as on 02.04.2023 and after that we had purchased 450 grams of gold on several dates from M/s. N. R. Jewellers, Surat and 80.6 grams of gold from M/s. Vidhi Jewellers, Surat.

On being asked the verification of foreign origin gold purchased from M/s N.R. Jewellers, Surat, I state that we usually verify the foreign origin gold by verifying the logo of foreign company. I further state that in the invoice, they only mention Gold bar (999/995) under the description of goods and do not mention the origin of the gold Bar, whether Indian or foreign.

On being asked about the Import dockets for the import of the said foreign origin gold bar of 200 gms, I state that we do not have the import documents for the same and it is difficult to get it from the retailers.

“ _____ ”

23.4.6 From the facts discussed above, it is evident that said gold i.e. “one cut piece of gold bar having total weight of 52.120 grams having **VALCAMBI SUISSE** marking” having market value Rs. 3,15,326/- and “02 gold bars having total weight 200 grams having **ARGOR HERAEUS SA** markings” having market value Rs.12,10,000/-, are liable for confiscation, under the provisions of Sections 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By owning the said gold without valid import documents made the impugned goods fall within the ambit of ‘smuggling’ as defined under Section 2(39) of the Act.

23.4.7 I find that as per Section 2(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of ‘prohibited goods’. This makes the gold seized in the present case “prohibited goods” as the Gold Bars were smuggled into India. In

view of the above discussions, I hold that the said gold bars are liable for absolute confiscation. I rely on the case decided by the Hon'ble High Court of Madras in respect of **MALABAR DIAMOND GALLERY PVT LTD**, where the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that “restriction” also means prohibition. In Para 89 of the order, it was recorded as under;

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

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

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

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

23.4.9 Given the facts of the present case before me and the judgments and rulings cited above, I hold the said gold bars i.e. “one cut piece of gold bar having total weight of 52.120 grams having VALCAMBI SUISSE marking” having market value Rs. 3,15,326/- and “02 gold bars having total weight 200 grams having ARGOR HERAEUS SA markings” having market value Rs.12,10,000/-, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(j), 111(l) & 111(m) of the

Customs Act, 1962.

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

SHRI DIPANKAR GHOSH, PROPRIETOR OF M/S. VISHWAKARMA CUTTING PRESS, ANAND

23.5.1 I find that Shri Dipankar Ghosh, proprietor of M/s. Vishwakarma Cutting Press, Anand (“noticee no. 1”) had in his initial statement dated 22.01.2024 stated that the said cut piece of foreign origin gold bar of 52.120 grams was given to him for making gold chain by Shri Jigarbhai Rana of M/s. Kusum Jewellers, who had ordered a specific design for the gold chain for which a special machine was required. For the said purpose, he had contacted M/s. Bharat Chain, Ahmedabad to make the gold chain as they had the required machine to make the said design of the gold chain. He had handed over the said gold piece of 52.12 grams to employee of M/s. Patel Amrut Kantilal Angadiya for delivery to M/s. Bharat Chain in the evening of 06.06.2023. Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that he had no idea about that and that they were to merely make the gold chain from the gold provided to them by M/s. Kusum Jewellers, Anand. On being asked, he stated that M/s. Kusum Jewellers is one of their regular customers. He also stated that they had never been provided any import documents for the gold by M/s. Kusum Jewellers. Later in his statement dated 18.03.2024 on being shown the statement of Shri Jigarkuma Rana of M/s. Kusum Jewellers he changed his version that he had purchased the said foreign origin Gold of 52.120 grams from person who come to their shops to sell gold in retail. He admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold.

23.5.2 I find that the noticee no. 1 has contended that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from both of his statements that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold. I also find that he accepted in his statement dated 18.03.2024 that he had purchased the said foreign origin Gold from persons coming to his shop for selling Gold in retail. Therefore, I find that he had intentionally tried to mislead the investigation by presenting wrong facts in his first statement.

23.5.3 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that Shri Dipankar Ghosh had knowingly indulged/concerned himself in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who **acquires possession of** or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**,

or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that Shri Dipankar Ghosh is culpable and the act of omission and commission made on his part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, has rendered him liable for penalty under Section 112 of the Customs Act, 1962.

23.5.4 I find that Shri Dipankar Ghosh has retracted from his statement dated 18.03.2024 during his submissions dated 12.07.2024 he is neither the purchaser nor the owner of the said gold piece and he had never voluntarily given such statement. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, wherein the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given. I would also like to refer to the judgment in the case of **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]** wherein it was held as under:

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

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

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

I find that once there is an admission by the noticee himself nothing further is required to be proved to the contrary. The Apex Court in **SURJEET SINGH CHHABRA V. UNION**

OF INDIA - 1997 (89) E.L.T. 646 (SC) held that confession made by the appellant binds him. Reliance is placed on **COMMISSIONER OF C. EX., MADRAS V. M/S. SYSTEMS AND COMPONENTS PVT. LTD. - 2004 (165) E.L.T. 136 (S.C.)** where it has been held that it is a basic and settled law that what has been admitted need not be proved. I find in view of above that retraction from the statement appeared to be an afterthought with intension to evade punitive proceedings. The noticee no. 1 have contended that the statement dated 08.03.2024 had been recorded in coercion. In the case of **SRG INTERNATIONAL VS. COMMISSIONER OF CUSTOMS, AMRITSAR REPORTED AT 2011 (269) E.L.T. 497 (TRI. - DEL.)**, it was held that –

“Mere bald allegation that confessional statement was recorded under coercion and duress, by itself, is not sufficient to discard the confession - Burden to prove that it was obtained under duress and coercion lies on person retracting it - Section 108 of Customs Act, 1962. [Para 4(1)]”

23.5.6 I find that the noticee has contended that his statements are exculpatory in nature, however I find that his contentions does not sound well when he has accepted purchasing smuggled Gold and ownership of the same. I rely on the judgment of **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI)** as held under:-

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

23.5.7 I find further that Shri Dipankar Ghosh is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

SHRI AMISH V. MALJI AND M/S. V. NAVINCHANDRA HIRACHAND MALJI JEWELLERS & CO.

23.5.8 I find that Shri Amish V. Malji, authorised signatory of M/s. V. Navinchandra Hirachand Malji Jewellers & Co had in his statement dated 25.01.2024 stated that were meant to be sent by them to M/s. Pahini Jewellery Ltd., Ahmedabad in lieu of the payment outstanding on their part to M/s. Pahini Jewellery Ltd, Ahmedabad in the past and in exchange, they had agreed to settle a part of the payment by means

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of the raw gold being sent by them. The two gold bars were handed over by them to Aangadiya firm- M/s. Patel Amrut Kantilal & Co. on 06.06.2023 for delivery to M/s. Pahini Jewellery Ltd., Ahmedabad. Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that they had purchased the gold bars from various persons who sell gold and jewellery in retail. He also stated that they do not have any import documents for the gold bars. He admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold. I find that Shri Amish V. Malji has knowingly concerned himself in purchase of foreign origin gold bars of 200 grams. Neither Shri Amish V. Malji nor M/s. V. Navinchandra Hirachand Malji Jewellers (being beneficial owner of the said gold) were able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on Shri Amish V. Malji & M/s. V. Navinchandra Hirachand Malji Jewellers to establish that the said gold bars are not smuggled goods, which he has failed to provide. I also find that Shri Amish V. Malji had accepted in his statement dated 25.01.2024 that he had purchased the said foreign origin Gold in retail.

23.5.9 I find that the noticee no. 2 and 3 has contended that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from his statement that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold.

“

On being asked as to from which suppliers, the said gold bars of 200 grams were purchased, I state that I cannot state for sure the supplier's name as we purchase the gold from various suppliers. However, I am submitting herewith our trading stock ledger for the period from 01.04.2023 to 10.06.2023, as per which we had 400 grams of gold of opening stock as on 02.04.2023 and after that we had purchased 450 grams of gold on several dates from M/s. N. R. Jewellers, Surat and 80.6 grams of gold from M/s. Vidhi Jewellers, Surat.

”

In view of the above, I find that Shri Amish V. Malji & M/s. V. Navinchandra Hirachand Malji Jewellers are the beneficial owner of the smuggled Gold.

23.5.10 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that Shri Amish V. Malji and M/s. V. Navinchandra Hirachand Malji Jewellers & Co. had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who acquires **possession** of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or **purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I hold that that Shri Amish V. Malji and M/s. V. Navinchandra Hirachand Malji Jewellers & Co. are

culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

23.5.11 I find that the both noticees have requested for the cross-examination of the Government Approved Gold Assayer Shri Kartikey Vasantrai Soni, however the request of noticees could not be exceeded to due to the reason that The Assayer is not a witness or co-noticee in the matter, but he factually and scientifically verified the nature of goods, purity, and origin of the Gold bars.

23.5.12 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee no. 2 as held in the following cases:-

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

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

23.5.13 I find that the noticee has contended that his statements are exculpatory in nature, however I find that his contentions does not sound well when he has accepted purchasing smuggled Gold and ownership of the same. I rely on the judgment of **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI)** as held under:-

"Evidence gathered under Section 108 of the Customs Act, 1962 is not from an accused or accused person. The words "accused" or "accused person" is used only in a generic sense in law. Recording of the proceeding by customs being pre-accusation stage that is not extracted from an accused. Therefore, customs officer is not a police officer as is defined under Evidence Act and

Code of Criminal Procedure. Accordingly, appellant's plea that the exculpatory statement of the appellant has credence in evidences does not sound well when he had pre-meditated design to commit fraud against Revenue"

23.5.14 I find further that Shri Amish V. Malji & M/s. V. Navinchandra Hirachand Malji Jewellers & Co. are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was their duty to comply, as they purchased and possessed the smuggled gold. I also find that they also did not discharge their burden under Section 123 truthfully.

M/S. PATEL AMRUTBHAI KANTILAL ANGADIA

23.5.15 I find that in present case, two employees namely Shri K. K. Thakor and Shri N. J. Patel of M/s. Patel Amrut Kantilal Angadia ("Aangadia Firm") were intercepted by the officers of DRI in the 'Pick up' area outside the Kalupur Railway Station, Ahmedabad and on the examination of the baggage of the those two employees, the officers of DRI found that certain parcels containing gold which appeared to be of foreign origin. I find that the employees of the Aangadia Firm could not produce any documents showing legitimate import of the said goods and these goods appeared to be of the nature of smuggled goods. I find from the statement of Shri Amrutbhai Harjivandas Patel, partner of M/s. Patel Amrut Kantilal Angadiya recorded under section 108 of the Customs Act, 1962 on 23.06.2023, that M/s Patel Amrut Kantilal Angadia is specialized in courier services of Precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. and the said parcels were carried by their employees Shri K. K. Thakor and Shri N. J. Patel for delivery to concerned recipients. Further, as discussed in foregoing paras, one Gold cut bar weighing 52.120 grams having marking "**VALCAMBI SUISSE**" sent by Shri Dipankar Ghosh and two Gold bars of 200 grams having marking "**ARGOR HERAEUS SA**" sent by Shri Amish V. Malji of M/s. V. Navinchandra Hirachand Malji Jewellers & Co., were found to be smuggled Gold and found to be liable for confiscation under Section 111 of the Customs Act, 1962.

23.5.16 I find that M/s. Patel Amrut Kantilal Angadia (noticee no. 4) had concerned themselves into smuggling of Gold as they had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I find that Shri Amrutbhai Harjivandas Patel, partner of M/s. Patel Amrut Kantilal Angadiya admitted in his statement dated 23.06.2023 that they cannot accept the parcels containing foreign origin gold for transport. The quoted texted is reproduced below:-

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

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

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

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

SHRI N.J. PATEL:

23.5.20 I find that Shri N. J. Patel had concerned himself into smuggling of Gold as he had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I also find that Shri N. J. Patel was well aware of their company's work as well as nature of his own job. He had to deal with delivery of precious and valuable goods, documents, jewellery, diamonds, cash etc. He was supposed to know the documents required with each type of goods mentioned above and the laws and rules governing their possession, carrying, selling, purchasing etc., ignorance of law is no excuse. I find that merely acting upon the directions of his employer M/s. Patel Amrut Kantilal Angadia, was not expected from him however while receiving the parcels containing smuggled Gold, he should have checked the documents of legal purchase/import of the said smuggled Gold.

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

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

SHRI K.K. THAKOR:

23.5.23 I find that Shri K. K. Thakor (noticee no. 6) has submitted that all the parcels in his bag detained by the officers of DRI and released vide Panchnama dated 07.12.2023, as they were found to be of Indian Origin, and no smuggled goods have been recovered from him. Hence, no penalty may be imposed on him. I find that Shri K. K. Thakor had not concerned himself into smuggling of Gold as far as no smuggled/foreign origin Gold was recovered from him. Therefore, I hold that Shri K. K. Thakor is not liable for penalty under Section 112(b) of the Customs Act, 1962.

23.5.24 I also find that Shri K. K. Thakor was well aware of their company's work as well as nature of his own job. He had to deal with delivery of precious and valuable goods, documents, jewellery, diamonds, cash etc. He was supposed to know the documents required with each type of goods mentioned above and the laws and rules governing their possession, carrying, selling, purchasing etc., ignorance of law is no excuse. I find that Shri K. K. Thakor had not reported to the concerned authorities about the smuggled gold carried by his colleague Shri N. J. Patel. I find that Shri K. K. Thakor is liable for penalty under Section 117 of the Customs Act, 1962 as he had contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act, 1962.

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

ORDER

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

- a) I order absolute confiscation of one cut piece of gold bar of foreign origin, weighing 52.120 grams in total, valued at **Rs. 3,15,326/- (Three Lakhs Fifteen Thousand Three Hundred & Twenty Six Only)** pertaining to Shri Dipankar Ghosh, Anand placed under seizure vide Seizure Memo (DIN-202310DDZ1000000B6CA) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

b) I order absolute confiscation of two gold bars of foreign origin, weighing 200 grams in total, valued at **Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only)** pertaining to Shri Amish V. Malji, M/s. V. Navinchandra Hirachandra Malji Jewellers & Co. placed under seizure vide Seizure Memo (DIN-202310DDZ1000000E192) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

c) I impose a penalty of **Rs. 75000/- (Rupees Seventy Five Thousand Only)** on Shri Dipankar Ghosh, proprietor of M/s. Vishwakarma Cutting Press, Mathiya Chora, Choksi Bazar, Anand, Resident of 604, Samruddhi Complex, Jivandeep Colony, Anand- 388001 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;

e) I impose a penalty of **Rs. 25000/- (Rupees Twenty Five Thousand Only)** on Shri Dipankar Ghosh, proprietor of M/s. Vishwakarma Cutting Press, Mathiya Chora, Choksi Bazar, Anand, Resident of 604, Samruddhi Complex, Jivandeep Colony, Anand- 388001 under section 117 of the Customs Act, 1962;

f) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only)** on Shri Amish V. Malji, Authorised Signatory of M/s. V. Navinchandra Hirachand Malji Jewellers and Co.; Resident of 6, Avkar, Sarjan Society, Opp. Sargam Shopping Center, parle point, Surat- 395007 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;

g) I impose a penalty of **Rs. 25000/- (Rupees Twenty Five Thousand Only)** on Shri Amish V. Malji, Authorised Signatory of M/s. V. Navinchandra Hirachand Malji Jewellers and Co.; Resident of 6, Avkar, Sarjan Society, Opp. Sargam Shopping Center, parle point, Surat- 395007 under section 117 of the Customs Act, 1962;

h) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only)** on M/s. V. Navinchandra Hirachand Malji Jewellers and Co.; Resident of 6, Avkar, Sarjan Society, Opp. Sargam Shopping Center, parle point, Surat- 395007 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;

i) I impose a penalty of **Rs. 25000/- (Rupees Twenty Five Thousand Only)** on M/s. V. Navinchandra Hirachand Malji Jewellers and Co.; Resident of 6,

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OIO No. 212/ADC/SRV/O&A/2024-25

Avkar, Sarjan Society, Opp. Sargam Shopping Center, parle point, Surat-395007 under section 117 of the Customs Act, 1962;

- j) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. Patel Amrut Kantilal Angadia, 71, Ghanchi Ni Pole, Madangopal Haveli Road, Manekchowk, Ahmedabad, Guajrat under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- k) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on M/s. Patel Amrut Kantilal Angadia, 71, Ghanchi Ni Pole, Madangopal Haveli Road, Manekchowk, Ahmedabad, Guajrat under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- l) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri N. J. Patel, employee for M/s. Patel Amrut Kantilal & Company under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- m) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri N. J. Patel, employee for M/s. Patel Amrut Kantilal & Company under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- n) I do not impose any penalty on Shri K.K. Thakor, employee for M/s. Patel Amrut Kantilal & Company under section 112(a) or 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras;
- o) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri K.K. Thakor, employee for M/s. Patel Amrut Kantilal & Company under section 117 of the Customs Act, 1962 as discussed in foregoing Paras.

20. The Show-cause notice bearing no. VIII/10-81/DRI-AZU/O&A/HQ/2024-25 dated 03.06.2024 is disposed of in terms of the para above.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

F. No. VIII/10-81/DRI-AZU/O&A/HQ/2024-25
DIN- 20241271MN00002252A1

Dated: **30.12.2024**

BY SPEED POST:

To,

- 1) **SHRI DIPANKAR GHOSH,**
PROPRIETOR OF M/S. VISHWAKARMA CUTTING PRESS,
MATHIYA CHORA, CHOKSI BAZAR, ANAND,

F. No. VIII/10-81/ DRI-AZU /O&A/HQ/2024-25
OIO No. 212/ADC/SRV/O&A/2024-25

RESIDENT OF 604, SAMRUDDHI COMPLEX,
JIVANDEEP COLONY, ANAND- 388001

2) **SHRI AMISH V. MALJI,**
AUTORISED SIGNATORY OF
M/S. V. NAVINCHANDRA HIRACHAND MALJI JEWELLERS AND CO.,
RESIDENT OF 6, AVKAR, SARJAN SOCIETY,
OPP. SARGAM SHOPPING CENTER, PARLE POINT,
SURAT- 395007

3) **M/S. V. NAVINCHANDRA HIRACHAND MALJI JEWELLERS AND CO.,**
SHOP NO.1 /2, HARSH CO-OP HSG SOCIETY,
RAM CHOWK, GHOD DOD ROAD, SURAT.

4) **M/S. PATEL AMRUT KANTILAL ANGADIA,**
71, GHANCHI NI POLE, MADANGOPAL HAVELI ROAD,
MANEKCHOWK, AHMEDABAD, GUJARAT

5) **SHRI K.K. THAKOR,**
C/O M/S. PATEL AMRUT KANTILAL ANGADIA,
71, GHANCHI NI POLE, MADANGOPAL HAVELI ROAD,
MANEKCHOWK, AHMEDABAD, GUAJRAT.

6) **SHRI N.J. PATEL,**
C/O M/S. PATEL AMRUT KANTILAL ANGADIA,
71, GHANCHI NI POLE, MADANGOPAL HAVELI ROAD,
MANEKCHOWK, AHMEDABAD, GUAJRAT.

Copy to:

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