

आयुक्त सीमाशुल्क का कार्यालय (निवारक)

सीमाशुल्क भवन,जामनगर-राजकोट हाइवे, विक्टोरिया ब्रिज के पास,

जामनगर- (गुजरात) ३६०००१

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001

Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN- 20240871MM000000EFE7

1.	फाइलक्रमांक/ File Number	F. No. CUS/2003/2024-ADJN
2.	मूलआदेशक्रमांक/ Order-in-Original No.	06/Additional Commissioner/2024-25
3.	द्वारापारित/passed by	चुना राम / Chuna Ram अपरआयुक्त/ Additional Commissioner, (सीमाशुल्क) निवारक /Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order/आदेशदिनांक	13/08/2024
	Date of issue / आदेशजारीकिया	13/08/2024
5.	कारणबताओनोटिसक्रमांकएवंदिनांक Show Cause Notice Number & date	No. ADC-04/2024-25 dated 10.04.2024
6.	नोटिसीकानाम/ Name of Noticee	1. M/s. R.C. Jain, Ground Floor, Shop No.4, 16, HO Building, Anantawadi, Bhuleshwar, Mumbai- 400002 2. Shri Vikram Rameshkumar Jain, Power Attorney, M/s. R.C. Jain, Ground Floor,Shop No.4, 16, HO Building, Anantawadi, Bhuleshwar, Mumbai- 400002

01	इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned
02	इस मूल आदेश से व्यथित कोई भी व्यक्तिसीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a,(सीमा शुल्क नियम (अपील), 1982 के नियम 3के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिनके भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र,दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है।।(जिनमें से कम से कम एक प्रमाणित प्रति हो)

	<p>आयुक्त अपील ४ वी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 009 380 -</p>	<p>Commissioner (Appeals), 4th Floor, Hudco Bhavan, Ishvar Bhavan Road, Navrangpura, Ahmedabad - 380 009</p>
	<p>Any Person aggrieved by this Order-in-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).</p>	
03	<p>अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पररुपये) 0.50पचास पैसे केवल(काकोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।</p>	
	<p>The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.</p>	
04	<p>अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।</p>	
	<p>Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.</p>	
05	<p>अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम,और सिस्टेट 1982 नियम (प्रोसीजर) प्रक्रिया,के सभी नियमो का पूरा पालन हुआ है। 1982</p>	
	<p>While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.</p>	
06	<p>इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।</p>	
	<p>An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.</p>	

Brief Facts of the Case:

Acting on a specific intelligence, the officers of Customs (Preventive) Commissionerate, Jamnagar intercepted three (3) individuals at Wankaner Railway Station identified as Shri Dhruv, Shri Dipesh and Shri Sonu while they were en route from Mumbai to Rajkot in train No. 22945 (Saurashtra Mail) on October 4, 2023. During the search of their accompanied luggage, officers found various packages containing gold jewelry, silver jewelry, diamond, Apple Watch, Apple I-phone, gold bars, silver bars, etc. out of which some of the gold and silver articles appeared to be imported or of foreign origin. The individuals along with their respective luggage were brought to the HQ Office at Jamnagar. For ascertaining the quantity, value and origin of the gold and silver articles, an approved valuer of the Union Bank of India was called for. During search, it was also found that the goods were not accompanied with legitimate bills/documents and accordingly, the same were detained under Panchnama dated 04.10.2023. The approved valuer carried out the inspection of Gold and silver articles and also ascertained market value, origin and weight under Panchnama proceedings dated 04.10.2023. Detailed inspection of total 48 articles of Gold found in possession of Shri Sonu were recorded under Panchnama dated 4.10.2023 which includes Parcel Sr No. A-48 of Gold pieces totally weighing 336.6 Gram having value of Rs. 19,69,110/- categorized as "Imported" by the valuers.

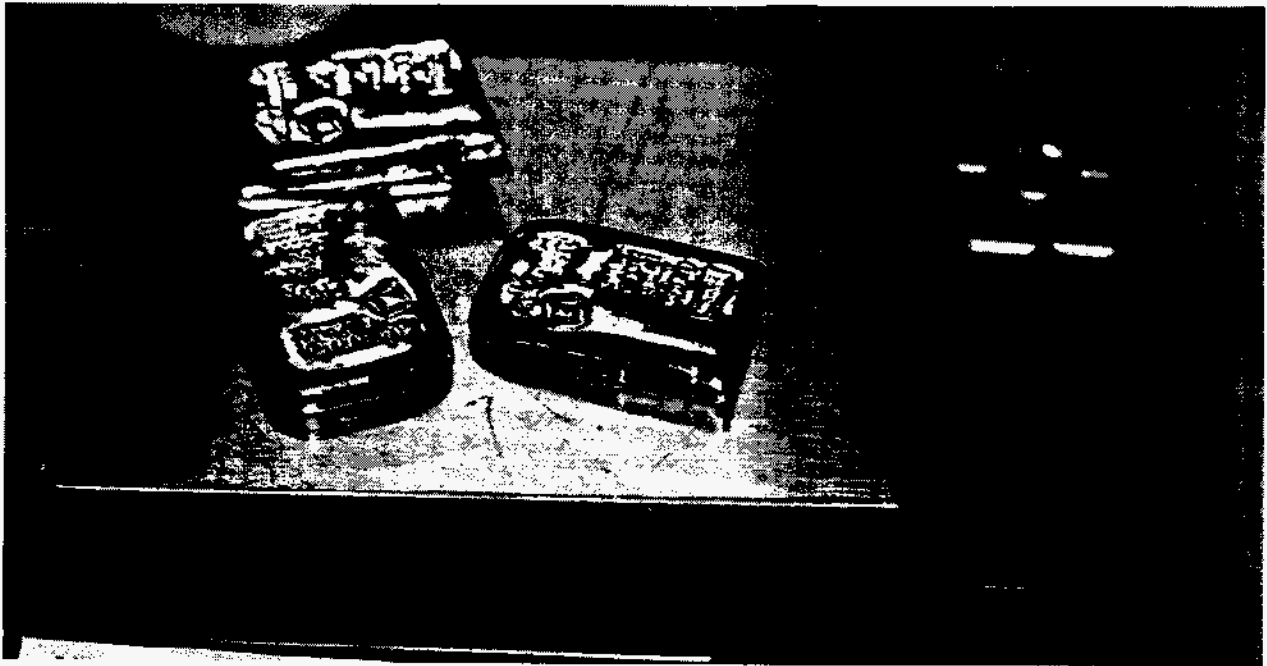
2. Shri Dhruv and Shri Dipesh disclosed during the panchnama proceedings that they were tasked with delivering the goods to Shri Bunty Singh of M/s. Surya Logistics, Rajkot, India. Shri Sonu disclosed that he was tasked to deliver the goods to Shri Parasbhai of M/s. Swami Narayan Parcel Services, Rajkot, India. Accordingly, Summons was issued to Shri Parasbhai under section 108 of the Customs Act, 1962. Therefore, a statement of Shri Parth Singh (Parasbhai), Proprietor of M/s. Swaminaryan Parcel Services (GSTIN:-27MUGPS9925L1ZF) was recorded under Section 108 of Customs Act, 1962 on 06.10.2023 wherein he, inter-alia, stated that Shri Sonu is an employee of M/s. Swaminarayan Parcel Services and has been working in his firm since one and half years; that his firm was an angadia service provider having registered place of business at Mumbai and a branch at Rajkot. He produced the description of the items, sender details, receiver details, invoices/voucher No. along with date as provided by the respective sender and stated that Shri Sonu, the employee of his firm used to collect the delivery from Mumbai and also receives parcel en route Surat from Shri Dilipbhai for delivery at Rajkot office. He further stated that they received the parcel in the packed condition; that in respect of Gold parcels/

packets the name of sender and receiver was written along with the phone number, value and weight; that in respect of Silver packets the name of sender & receiver, Phone number and weight were mentioned.

3. A further statement of Shri Parth Singh (Parasbhai), Prop: of M/s. Swaminarayan Parcel Services, Rajkot was recorded on 10.10.2023 wherein he inter-alia further produced documents in respect of total 33 items with description, sender details, receiver details, invoices/voucher No. along with date as provided by the respective sender on his mobile No. which includes following details in respect of parcel detained on 4.10.2023 and marked as Sr No. A-48 in respect of Imported God Bar weighing 336.6 gram:

29	Gold Bar	R C Jain, Mumbai	Bhavin Jewellers, Rajkot		IH-271	03.10.2023
	Gold Bar	Arihant Bullion and jewels LLP, Mumbai	R C Jain, Mumbai	10975		22.09.2023
	Gold Bar	Arihant Bullion and jewels LLP, Mumbai	R C Jain, Mumbai	11737		03.10.2023

4. It appeared that Shri Parth Singh, Proprietor of M/s. Swami Narayan Parcel Services, Rajkot receiver of the goods, including 336.6 gm of 4 piece of Gold Pieces categorized as ‘Imported’ by the surveyor, from Shri Sonu could not provide the legitimate documents evidencing the origin of goods and/or the import documents evidencing the import duty payment of the goods. The goods were detained on 4.10.2023 on reasonable belief that the said goods were smuggled. However, in spite of been given sufficient time on dates 06.10.2023, 10.10.2023 & 14.10.2023, the detained goods comprising of various parcels and includes Gold pieces/ Gold Bars were placed under seizure vide seizure memo dated 16.10.2023 under the provisions of Section 110 of the Customs Act, 1962 under the reasonable belief that the same were liable to confiscation under section 111 of Customs Act, 1962. The seized goods kept at Godown of Customs Division, Jamnagar at Room No. 236, 2nd floor, Seema Shulk Bhavan, Jamnagar-Rajkot Highway, Near Victoria Bridge, Jamnagar. The seizure of these goods / parcels includes a parcel at Sr No. A-48 of 336.6 gram of 4 gold pieces having value of Rs.19,69,110/-. Copy of the Image is reproduced below:-



5. On the basis of the sender details provided by Shri Parth Singh, Proprietor of M/s. Swaminarayan Parcel Services, Rajkot, summons under section 108 of the Customs Act, 1962 was issued to M/s. R C JAIN (GSTIN:27AFEPJ6310B1Z1), Ground Floor, Shop No 4, 16 HO Building, Anantawadi, Bhuleshwar, Mumbai, Maharashtra, 400002 (hereinafter referred to as "the noticee" for the sake of brevity) and a statement of Shri Vikram Rameshkumar Jain, Authorised Power of Attorney by Shri Rameshkumar Chunilal Jain, Proprietor of M/s. R C JAIN, was recorded under Section 108 of Customs Act, 1962 on 15.12.2023 wherein he, inter-alia, stated that he has been given power of attorney by his father, Shri Rameshkumar Chunilal Jain, Proprietor of M/s. R C Jain (GSTIN : 27AFEPJ6310B1Z1) who is a senior citizen and unable to attend, therefore he had been nominated and appointed as lawful attorney to appear and attend the summons under section 108 of the Customs Act, 1962 . Shri Vikram Jain stated that he has been associated with this firm since more than 10 years and he is the manager in the firm; that his firm purchased gold bar from suppliers of gold bullion and thereafter manufacture gold ornaments as well as do job work for other traders; that one parcel i.e., A-48 of 336.6 grams of Gold Pieces seized vide seizure memo dated 16.10.2023 belonged to his firm; that Parcel No. A-48 of 336.6 grams Gold pieces, he had been assigned job work to make gold ornaments from M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE), Andhra Pradesh. He submitted the copy of the tax invoice No. G/23-24/11736 dated 03.10.2023 issued by M/s. Arihant Bullion and Jewels LLP (GSTIN:- 27ABIFA5289N1ZQ) wherein Gold Bar having serial No. AL 462271 to AL 462287 of total 1700 grams have been shipped to his firm and

billed to M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE). The payment of the 1700 grams of Gold Bar was done by M/s. Mahalaxmi Jewellers. Further he submitted the copy of tax invoice ref No. OD23100MUM358 dated 29.09.2023 issued to M/s. Arihant Bullion And Jewels LLP wherein 250 Nos of 100 grams of Gold Bar (i.e 25 kgs) has been purchased from Yes Bank through M/s. Brink's India Private Limited and the Serial Number AL 462271 to AL 462287 is mentioned in delivery challan dated 03.10.2023 having MAWB No. 17682779244. They had cut the pieces of the said gold bars and sent for job work for making gold balls which is used in making gold chain to M/s. Bhavin Jewellers, Rajkot (GSTIN:- 24AAQFB6168C1ZG) vide Voucher No. IH-271 dated 03.10.2023. Out of the cut pieces, he cannot say which of the four bar has been cut and sent to M/s. Bhavin Jewellers, Rajkot. On being asked about the documents with regard to its legitimate purchase and/or Customs duty paid documents, he stated that the seized gold pieces i.e., parcel No. A-48 of 336.6 grams of Gold Pieces had been purchased by M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE) and shipped to their firm from M/s. Arihant Bullion and Jewels LLP (GSTIN:- 27ABIFA5289N1ZQ). Further, as the purchase of the Gold bar is directly from the bank which is a legal purchase and no customs duty is involved in it. On being asked that in terms of Section 123 of the Customs Act, 1962, the documents submitted by him did not prove that the said parcel A-48 of 336.6 of Gold Pieces was not smuggled goods to which he stated the said parcel A-48 of 336.6 grams of Gold Pieces is of Domestic nature.

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

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

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

6.2 It appeared from the documents/ invoices submitted by Shri Vikram Rameshkumar Jain, that M/s. Arihant Bullion And Jewels LLP had purchased 250 Nos of 100 grams of Gold bar (i.e. 25 kgs) from Yes Bank through M/s. Brink's India Private Limited out of which M/s. R C JAIN had received 17 GOLD BARS (each weighing 100 Grams) having serial No. AL 462271 to AL 462287 of total 1700 grams, on behalf of M/s. Mahalaxmi Jewellers, Andhra Pradesh. The seized 336.6 (Three Hundred Thirty Six point Six) Grams of FOUR GOLD PIECES under parcel No. A-48 prima-facie appeared to be different from 17 GOLD BARS (each weighing 100 Grams) having serial No. AL 462271 to AL 462287 as not a single piece could be easily identifiable with the Sr. No. said to have been shipped to his firm. It appeared that the Noticee had made the gold bar cut to pieces to deceive its smuggled identity. Further, no documents proving the legal possession or import of the said seized A-48 parcel containing 336.6 (Three Hundred Thirty Six point Six) Grams of FOUR GOLD PIECES has been provided by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN. No documents evidencing that the legal possession or purchase of the said gold pieces through Banks or Nominated Agencies was produced by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN during investigation. Moreover, they could have easily sent 3 Gold Bars of 100 grams out of 17 GOLD BARS of 100 Grams each easily identifiable with the Serial Number AL 462271 to AL 462287 and only 1 No. of 100 grams could have been cut to 36.6 grams to make it 336.6 grams. Therefore, it appeared that submissions made by Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN to be incorrect, inconsistent, not matching with the seized gold bar and non-convincing with the documents/ invoices submitted by him during his statement.

6.3 Thus it appeared that that the Noticee purportedly submitted the bills to show it a domestic purchase. Since the nature of this Gold i.e 4 Gold Pieces (

336.6 gms.) being domestic as claimed by the Noticee could not be established by the documents/ invoices the seized gold i.e., 336.6 (Three Hundred Thirty Six point Six) Grams of FOUR GOLD PIECES under parcel No. A-48, appeared to be treated as 'Prohibited Goods' as defined under Section 2(33) of the Customs Act, 1962 and 'Smuggled Goods' as defined under Section 2(39) of the Customs Act, 1962, as discussed hereinabove and liable to absolute confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962.

6.4 Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN and manager of the said firm, indulged in smuggling of gold into India illegally and illicitly in contravention of the provisions, prohibitions, restrictions, regulations etc. imposed at relevant time, as discussed hereinabove, has rendered the subject smuggled FOUR GOLD PIECES of 336.6 (Three Hundred Thirty Six point Six) grams valued at Rs.19,69,110/- liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962. These acts of omission and commission made on his part for the smuggling of gold which is liable to confiscation, appears to have rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

7. Therefore, a Show Cause Notice No ADC-04/2023-24 dated 10.4.2024 was issued to:

(1) M/s. R C JAIN (GSTIN:27AFEPJ6310B1Z1), Ground Floor, Shop No 4, 16 HO Building, Anantawadi, Bhuleshwar, Mumbai, Maharashtra, as to why:-

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

(2) Shri Vikram Rameshkumar Jain, Authorised Power of Attorney of M/s. R C JAIN, as to why:-

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

DEFENSE SUBMISSION:-

8. The Noticee vide their email dated 29.04.2024 submitted their defense reply wherein they inter alia submitted as under:-

8.1 That they submitted Tax invoice No. G/23-24/11736 dated 03.10.2023 issued by M/s. Arihant Bullion and Jewels LLP (GSTIN:- 27ABIFA5289N1ZQ) Mumbai in the name of M/s. Mahalxmi Jewelers (GSTIN 37AALNPJ5604R1ZE) of 1700 gms Gold Bar and Tax invoice No. OD23100MUM358 dated 29.09.2023 for gold bar weighted 250 pieces of 100 gms dated 3.10.2023 in the name of M/s. Arihant Bullion And Jewels LLP from Yes Bank; that Imported Gold bars are being sold by nominated agencies with brands of Valcambi Suisse, Argor Herasus Switzerland, Munze Osterreich, Australia Perth, PAMP Suisse ; that Gold Bars generally received in 100 gm and 1000 gm; that other weights are 1gm, 2gm 5 gm, 10 gm, 50gm and 100 gm which are not generally Trade items in Gold Bullion Market; that it is not compulsory for a trader to buy full piece of gold bar as they buy as per their requirement in fractions of weight for manufacture of gold ornaments; that they can provide fraction of gold bar piece for job work and just for the identification purpose it is not required to provide entire piece to job worker and not practical too to provide every job worker entire piece of Gold Bar consisting of Serial Number; that also there is no binding circular, rule, guidelines or laws restrict them to procure only full piece of gold bar and provide only full piece of gold bar to job worker; that Gold industry does not functions as per view of the department; that if job worker required only 336.6 gms of gold bar only, then it is not compulsory to provide such gold from one gold bar only after providing gold cut pieces to various job worker according to order given to them; that M/s. RC Jain got 1700 gms of Gold Bar from M/s. Mahalxmi Jewellers for job work of gold ornament; that they got delivery in the evening of 3.10.2023 and had only 2-3 hrs to plan manufacturing, distribution of gold bar in certain weight to various job worker on same day for fast production and delivery to principal jeweler (M/s. Mahalxmi Jewelers) and to deliver it to Parcel service firm on time; that in absence of any guidelines or restrictions binding upon them they didn't verify that they should provide 3 pieces of 100 gms of gold bar each and 36.6 grms gold bar piece for a single job worker; that in the case of doing 3 piece of 100 gms with serial number, then the department will raise question on 4th piece of 36.6 gram of gold bar for its being not containing serial number or branch name or identity mark to verify with the tax invoice provided by them; that therefore department's ask for serial number on each bar does not stand.

9. The Noticee referred case law of Shri Nitya Gopal Biswa Vs Commr of Customs (Prev), Kolkata to say that the department is not able to establish the smuggled nature of seized foreign marked gold in this case; that it does not justify Noticee's malicious intention to deceive it's smuggling identity; that imported gold bar formally identifiable from branch name and assayer's mark on gold bar only; that serial number is just a tracking id to identifiable by importer and manufacture or assayer only.

9.1. The Noticee further submitted that they had provided all required purchase documents which provides audit trail of all purchase transaction and also provided duty paid documents as purchased from Yes bank; that therefore, department's stand of "No documents evidencing that the purchase of the said gold through Bank or Nominated Agencies" is not valid; that therefore Show Cause Notice does not stand and gold seized in parcel No 48 is not liable to confiscation under Section 111(d) and Section 111(l) of the Customs Act and also they are not liable to a penalty under Section 112 of the Customs Act, 1962.

10. It is submitted that they provided Tax Invoice No. OD23100MUM358 dated 29.09.2023 in the name of M/s. Arihant Bullion And Jewels LLP (GSTIN 27ABIFA5289N1ZQ) from Yes bank with annexure to the invoice showing serial number of Gold Bars; that since the serial number is not available in the seized piece of Gold Bar, it can not be verified but department can confirm its purity which is allowed to import as per contracts of IIBX. It is further submitted that the same tax invoice was provided by M/s. Hreenkar Jewellery Mumbai and verified by the Customs (Preventive), Jamnagar by a letter dated 23.11.2023 issued to M/s. Brink's India Pvt Ltd , Mumbai and it was confirmed by them vide email dated 23.11.2023 that 250 Pieces of Gold Bar were sold by them which also contains a Gold Bar with Sr No. AL -462324; that the Noticee has Got Delivery of Gold Bar with Sr No. AL 462271 to AL 462287; that they produced image of Gold Bar Sr NO. AL 462324 released by the Department vide Release Order No. GEN/INT/INTL/ 11/2023 dated 19.12.2023; that therefore department can confirm that the said Gold Bar AL - 462324 is of Valcambi Suisse and hence all Gold Bar supplied under Vide Tax Invoice No. OD23100MUM358 dated 29.09.2023/ 3.10.2023 is of Valcambi Suisse by Yes Bank to M/s. Arihant Bullion and Jewels LLP and is appearing on the seized Gold bar as is the image produced in the Show Cause Notice. It is therefore established that the noticee provided purchase bill is in line of licit documents for the purposed of verification of identity of Gold Bar with and hence intention

of identity delusion is not in question and they have discharged their burden as provided under Section 123 of the Customs Act, 1962 to state that the gold bares are imported in nature and duty paid according to Customs Act, 1962.

11. The Noticee further submitted that the department has not proceeded to verify the authenticity of licit purchase documents submitted as on 2.11.2023; that even after production of documents the department has taken one sided view and assumed that no such licit documents possessed by the owner of the goods which is not valid and confirms that the department is not able to establish the smuggled nature of seized foreign marked gold. The Noticee further referred case laws of (i) M/s. DI Gold Designer Jewellery Vs. Commisioiner of Customs (Preventive), Delhi, (ii) Shri Nitya Gopal Biswas Vs Commr. Of Customs (Prev), Kolkata and (iii) M/s. Jitendra Bhauprasad Soni Vs Ahmedabad Customs to submit that even if imported gold bar is seized from market and not seized from customs area, then in those cases also it has been held as under:-

- (i) All the foreign marked gold being bout and sold in India is not of smuggled nature;
- (ii) Reasonable doubt of smuggled nature of foreign marked gold may be sufficient for the purpose of seizure of gold by virtue of section 123 of the Customs Act, 1962 but the same not sufficient for confiscation under Section 125 of the Customs Act, 1962
- (iii) Merely because the foreign marked gold is involved, the same is wrongly held to be smuggled one.

Personal Hearing:

12. Personal hearing in the matter was held on 03.07.2024. Shri Chirag Dhanak, C.A. attended the hearing on behalf of the Noticee. He re-iterated submissions dated 29.04.2024, made additional submission dated 03.07.2024 and requested to decide the case based on merits.

12.1 In their submission dated 03.07.2024 the noticee relied upon following Case Laws to submit that the Noticee has discharged onus casted upon them under Section 123 of the Customs Act, 1962 and the seized Gold is legally procured by them and can not be held to be smuggled Gold.

- 1 Dhanishtha Gold -2019 (369) E.L.T. 688 (Tri. - Ahmd.)
- 2.Ashok Kumar Agarwal- 2017 (348) E.L.T. 555 (Tri. - Kolkata)
- 3.S.K. Chains -2001 (127) E.L.T. 415 (Tribunal)
- 4.Giridharai Dubey- 2002 (149) E.L.T. 427 (Tri. - Kolkata)]

DISCUSSION AND FINDINGS:

13. I have carefully gone through the case records including Show Cause Notice, submission dated 29.04.2024, records of personal hearing and submission dated 03.07.2024.

14. The issue to be decided in the matter is :-

(i) Whether seized 336.6 Grams of Four Gold pieces valued at Rs.19,69,110/- is liable to confiscation under Section 111(d), 111 (i) and 111(l) of the Customs Act, 1962 and Penalty under Section 112 of the Customs Act, 1962 is to be imposed upon the Noticee or not?

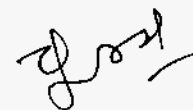
(ii) Whether Shri Vikram Rameshkumar Jain, Authorized Power of Attorney of the Noticee is liable to penalty under Section 112 of the Customs Act, 1962 or not?

15. The crux of the matter is that it is department's case that the seized imported cut piece of Gold is restricted goods and liable to confiscation under Section 111 of the Customs Act, 1962 in absence of supporting import documents. The Noticee has contended that the goods are not imported by them but purchased locally and produced purchase bills as under:-

(i) Tax invoice No. G/23-24/11736 dated 03.10.2023 issued by M/s. Arihant Bullion and Jewels LLP (GSTIN:- 27ABIFA5289N1ZQ) wherein Gold Bar having serial No. AL 462271 to AL 462287 of total 1700 grams have been shipped to his firm and billed to M/s. Mahalaxmi Jewellers (GSTIN:- 37ALNPJ5604R1ZE)

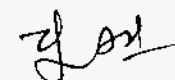
(ii) Tax invoice ref No. OD23100MUM358 dated 29.09.2023 issued to M/s. Arihant Bullion And Jewels LLP wherein 250 Nos of 100 grams of Gold Bar (i.e 25 kgs) has been purchased from Yes Bank through M/s. Brink's India Private Limited and the Serial Number AL 462271 to AL 462287 is mentioned in delivery challan dated 03.10.2023 having MAWB No. 17682779244

15.1 It is noticee's contention that the seized Gold in question was purchased by the M/s. Mahalaxmi Jewellers, Andhra Pradesh vide the above invoice and delivered to them for job work to make Gold Ornaments. It is also their contention that out of Gold bars received by them, they further sent cut piece of 336.6 grams Gold to M/s. Bhavin Jewellers, Rajkot (GSTIN 24AAQFB6168C1ZG) for making Gold Balls to use it in making of Gold Chain.



15.2 I observe from the above invoices that M/s. Arihant Bullion and Jewels LLP procured imported Gold Bar from through M/s. Brink's India Pvt Ltd and sold further to M/s. Mahalxmi Jewels for delivery to the Noticee M/s. R C Jain. I also took note of the submission made by the noticee that in the case of detention of various parcels of Gold covered under Panchnama dated 04.10.2023 and also under seizure memo dated 16.10.2023, the tax invoice reference No. OD23100MUM358 dated 29.09.2023 issued to M/s. Arihant Bullion And Jewels LLP for sale of 250 No.s (Serial Number AL 462271 to AL 462287) of 100 grams of Gold Bar (i.e 25 kgs) by Yes Bank through M/s. Brink's India Private Limited, is verified by the department. The same is recorded under Release Order GEN/ OMT/INTL/11/2023 dated 19.12.2023 issued by the Deputy Commissioner, Customs Preventive, Jamnagar in respect of inquiry pertaining to M/s. Hreenkar Jewellery, Mumbai. On perusal of the Release Order dated 19.12.2023 reveals that in that case of Imported Gold Bar, M/s. Arihant Bullion and Jewels LLP, Mumbai has supplied one Gold Bar having Sr No. AL-462324 to the buyer M/s. Hreenkar Jewellery, Mumbai. The department has got verified the same tax Invoice No. OD23100MUM 358 dated 29.09.2023 issued by Yes Bank to M/s. Brink's India Private Ltd which is also the invoice under reference in the present case in hand and the same invoice is produced by the Noticee for procurement of Gold Bars by M/s. Arihant Bullion and Jewels LLP Mumbai. Therefore, purchase of Gold bar under this invoice stands verified by the department.

15.3 It therefore transpires from the above documents that the first burden of proof has been discharged by the Noticee in support of legitimate possession of the said four piece of Gold. The Show Cause Notice alleges that serial number are not appearing on those cut pieces and hence Noticee failed to produce supporting evidence. Thus the issue involved is co-relation of this seized Gold with the Invoice. In case of whole piece of Gold Bar, serial numbers would have been identified and co relation can be established. However, cut piece of Gold bar may or may not contain the number originally engraved on the bar. It is nobody's case that each and every cut piece of the Gold Bar must have number while in Trade and in use for manufacture purpose. Therefore, since the Invoices contains serial number and cut piece does not, it can not be said that the gold is not covered by it. Thus, noticee's argument has force and very logical that if the gold is being sent in 3 Gold bar with serial number and 36 gram in a cut piece (Total 336 gms), how department can ask/ insist for 36 gram piece of gold be identified with serial number. No prudent person will deny this argument unless investigation has brought on record concrete evidence establishing mismatch in



gold covered under an invoice produced by the party with the gold seized or for that matter a piece of evidence indicating that the gold is smuggled one. It is not always possible to have serial number on cut piece of a Gold Bar and hence on this count alone, the cut piece of gold bar cannot be said de-linked with purchase invoice produced by the Noticee. Further no other incriminatory material obtained either from the Angadia person or in course of interrogation is before me that would indicate that the said goods were sourced from outside India by the Noticee. Therefore, I find it a plausible explanation by the Noticee about cut piece of Gold bar without having serial numbers noticed during the investigation as alleged in the Show Cause Notice. I am therefore of the view that the Noticee justified in establishing their local purchase in absence of other independent evidence against them.

16. I further took note of the fact that the Gold bar was seized from the mainland area of the country and not from customs area to suggest indulgence of the Noticee themselves in smuggling activity. Also, the gold was in a 'cut piece' under Transit and seized from a person representing Registered Angadia firm (GSTIN:-27MUGPS9925L1ZF) and not from a random person who disown the act. These circumstantial facts in corroboration to chain of invoices supplied by the Noticee, in my view negates allegation of illegal procurement of imported gold by the Noticee. Therefore, the contention of the noticee that gold bar in question was purchased in the normal course of business under proper bills/invoices is justified and hence it can not be said that the Gold in form of cut pieces in question was smuggled. In absence of any evidence contradicting the submissions made by the Noticee leads to a view point that initial burden casted upon noticee is proved by them and hence the fact does not go against the Noticee at all. It therefore cannot be held that the goods were smuggled goods based on presumption and without independent evidence. I therefore, hold that the Noticee has discharged onus of burden of proof placed by virtue of Section 123 of the Customs Act, 1962 that the seized Gold is not smuggled one and procured locally with legitimate invoice. The only point before me was not having serial numbers on these cut pieces of Gold Bar which is only "a mere suspicion" to attribute it as smuggled one without there being any substantive proof and on this basis alone, the gold bar in question cannot be confiscated. I also find that in the absence of any independent evidence to bring home a charge of smuggling, the charges of smuggling and the seized gold being smuggled one does not sustain and survive.



17. The Noticee has vehemently relied upon the order of the Hon'ble CESTAT in an similar matter of M/s. Dhanishtha Gold Vs CC, Ahmedabad reported as 2019 (369) E.L.T. 688 (Tri. - Ahmd.). In this case a few parcel of Gold bars sent for making jewelry were seized from car en route from Mumbai to Ahmedabad. Subsequently, the seized gold was ordered for confiscation majorly on the ground of non co-relation of seized gold with invoices including on the basis of serial number and minor weight differences. Documents, including related to purchases, were produced before investigating officer as well as to adjudicating authority in respect of different transactions. In this case the Hon'ble CESTAT has held that in case of production of document showing legal procurement of gold, burden lies upon revenue to show that gold was procured from elsewhere or to show that documents / records produced are false/ fabricated. The Hon'ble CESTAT also held that gold can not be confiscated on the ground that the purchase invoice is not a foolproof evidence of legitimacy. The Relevant Para of the Order reads as under:-

"12. In respect of 100.001 gms of gold serial No. AG 190942 owned by Appellant Shri Satish Mehta and seized from M/s. PGP Joyeria, we find that the adjudicating authority has held that there was no correlation between the invoice of M/s. Raksha Bullion the supplier of goods and the seized gold bar and that the invoice does not mention the serial number of gold bar. That the invoice was issued by M/s. Raksha Bullion on 20-10-2016 whereas the gold was seized on 13-11-2016 and it would not be possible for jeweller to hold goods for so long period. We find that the above instance cannot be reason to hold that the goods are of smuggled nature. The Appellant has produced the invoice No. 1995, dated 20-10-2016 of M/s. Raksha Bullion. Out of this part quantity was handed over to Shri Prakash Duggar under Transfer voucher dated 12-11-2016 for giving delivery to M/s. PGP, Ahmedabad for manufacture of jewellery. There is no contrary evidence to this fact. Also the one month gap between the purchase of gold and sending it for manufacture of jewellery cannot be held to be basis of confiscation of gold on the ground of same being illegally procured. Thus we do not find any reason to confiscate the seized gold.

13. A quantity of 190.002 gms of gold said to be owned by Appellant Shri Satish Mehta and seized from PGP Joyeria has been ordered to be confiscated on the ground that there was no relation between the invoice of M/s. TBZ produced by the Appellant and said gold and that the transfer Voucher/challan Serial No. 17, dated 12-11-2016 mentions weight as 190.030 whereas the seized gold was 190.001 gms. We find that the Appellant had sent the gold through Shri Prakash Duggar to deliver it to PGP, Ahmedabad. The purchase invoice of gold issued by TBZ was addressed to Alma Jewels which is brand of PGP. Even if there is a meagre difference of some milligrams it cannot be said that the gold was procured illegally. Also the revenue has not shown otherwise procurement of goods from the statement of any persons. Thus the above grounds taken by the adjudicating authority cannot be ground for confiscation.

14. A quantity of 4 half cut pieces weighing 505 grams recovered from possession of Smt. Seema devi and said to be owned by Shri Satish Jain has been ordered to be confiscated on ground that the



purchase invoice No. 19110964, dated 11-11-2016 issued by M/s. TBZ is not fool proof evidence of legitimacy and the travel voucher shows the weight of gold pieces as 505.470 gms whereas the seized gold pieces 505 gms. We find that M/s. Prakash Gold Palace, Mumbai had purchased four gold pieces from TBZ, Mumbai under invoice and the same was addressed to Alma Jewels the brand name of M/s. PGP, out of this a quantity of 505.470 has been given to Shri Nitin Jain to deliver to PGP Ahmedabad for manufacture of jewellery. **The travelling documents i.e. Travelling Voucher and transfer note were issued for such transfer which shows that the gold was legally acquired. There is no statement of any person that the gold is of smuggled nature and hence there is no reason to confiscate the same.**

15. We thus hold that the confiscation of seized gold and the skoda car in which some of the gold was carried is not correct. We therefore set aside the confiscation of seized goods. For the same reason we hold that the penalty imposed upon all the Appellants is also not sustainable and the same is also set aside. **We thus set aside the impugned order and allow the appeals with consequential reliefs, if any arise, in accordance with law."**

17.1 The Noticee relied upon decision of the Hon'ble CESTAT in the matter of Ashok Kumar Agarwal reported as 2017 (348) E.L.T. 555 (Tri. - Kolkata). In this case the Hon'ble CESTAT has held that once purchase bills are produced before the department, then the burden under Section 123 of the Customs Act, 1962 stands discharged. Relevant portion of the Para 4 of the order is reproduced here for ease of reference:

"4. Heard both sides,.....

.....Once respondent has produced such a bill then the burden under Section 123 of the Customs Act, 1962 stands discharged. It has also been observed by Hon'ble Calcutta High Court in second last Para of order dated 22-2-2016, quoted above, that department is required to do something more to demonstrate that the gold bars confiscated were not purchased by the respondent under the documents produced. Revenue is not able to demonstrate with documentary evidence that the seized gold bars were procured from any other source, except raising some suspicion. It is a well settled legal proposition that a case cannot be held to be established on the basis of assumptions, presumptions and surmises. In view of the above observations there is nothing wrong in the findings of first appellate authority, as contained in Para 10 of OIA dated 10-8-2001 and no interference is called for to set aside the same.

17.2 The Noticee further placed reliance on the case law of M/s. S. K. Chains [2001 (127) ELT 415 (Tri-Mum)] wherein the Hon'ble CESTAT has held that in the era of liberalized policy once source of acquisition is declared and transaction is not challenged, burden of proof stands discharged. The relevant part of the judgment reads as under:—

"6. As a result of such liberalisation there was ample availability of foreign marked gold in the market. In the absence of any serial numbers

on the gold bars it became impossible to distinguish the gold imported legally and that imported illegally.


7. Thus, today there exists a very peculiar situation. On the one hand the Customs Act considers it necessary to ask a person to establish the legality of the origin of the gold seized from him while on the other hand in pursuance of the relaxations made in the Import Policy and the Baggage Rules framed under that very Act, there is a flood of foreign marked gold in the town. Such gold changes hands several times on importation. Since the repeal of the Gold (Control) Act in 1968, there is no legal requirement for the buyers and sellers of gold to maintain any registers nor is there any requirement to issue invoices under any Central Act.

8. The defence of the present Appellants is that they had acquired foreign marked gold during normal course of trade. The gold was raw material for manufacture of gold chain. Gold jewellery is excisable under sub-heading 7101.40 of the Central Excise tariff but is exempted from payment of duty in terms of Notification No. 167/86-C.E. dated 1-3-1986 as amended when made without aid of power. Where it is made with power it enjoys exemption under Sr. No. 191 of Notification No. 4 of 99 dated 28-2-1999 as amended. Under the earlier Notifications also such benefit was available. Such manufacturers are exempt from licensing controls and are not required to maintain any registers or to issue invoices under the Central Excise Act also.

9. In this background we would examine the discharge of the burden placed upon the Appellants. Shri Kothari in his statement claimed that foreign marked gold under seizure was duly recorded in the firm's stock register. He named two sources of acquisition. One was a gold dealer's firm by the name, Sanghavi Dandrup Devji & Co., and the other was one passenger by the name of Dilip Bhulchandani. The representative of the dealers deposed that 33 foreign marked gold pieces were sold by them under four invoices to the Appellants. Although the Show Cause Notice says no documents were produced by M/s. Sanghavi D. Devji & Co., to show the legal import of this gold sold to the present Appellants, curiously they have not been made the noticees to the Show Cause Notice. The Show Cause Notice does not allege that the transaction between the appellant and the dealer was fake or questionable. However, the allegation is made that the appellant, Shri Kothari failed to produce the licit importation of this gold purchased by him from M/s. Sanghavi. Therefore, it has to be held that as far as this quantity is concerned the burden of proof on the appellants stands discharged."

17.3 In the case of Giridharai Dubey, [2002 (149) E.L.T. 427 (Tri. - Kolkata)] the Hon'ble CESTAT in the matter relating to co relating seized foreign marked gold (brands) with the invoice has held as under:-

"3.
(c) In view of our findings we would set aside the order of confiscation of 32 pcs. of gold also relying at the findings of this Tribunal in the case of S.K. Chains reported in 2001 (127) E.L.T. 415 wherein in Para 10 of the reported decision the Tribunal has considered the effects of the liberalized policy as regards import and dealing in gold and thereafter concluded that that onus as placed under Section 123 was discharged in the facts of that case. We would also considering the onus under Section 123 has been discharged in the facts of this case by the



appellants. If the Revenue wants that the gold dealers indulging in sale and purchase of foreign marked gold in India, should indicate the brand names and that discharge under Section 123 shall be only with respect to each brand then foreign marked gold should have been declared as one of the items under Chapter IVA of the Customs Act. We find that no such notification of placing foreign marked gold exists. Therefore the confiscation of the foreign marked gold for non satisfactory brandwise accounting as arrived at in the facts of this case was not called for."

18. Thus, in my considered view, the entire case on hand is fully factual and, in my opinion, has no substantial evidence on record for absolute confiscation of the Gold in question. My views are well supported by the above case laws and therefore, taking guidance from the orders of the Hon'ble CESTAT discussed as above, I left with no option except to drop the charges leveled against the Noticee M/s. R C Jain, Mumbai. As a consequence no question arises for imposition of penalty upon Shri Vikram Rameshkumar Jain, Authorized Power of Attorney of M/s. R C. Jain, Mumbai.

19. In view of the above, I pass the following order:

ORDER

I drop the proceedings initiated vide the Show Cause Notice No. ADC-04/2023-24 dated 10.04.2024 against (1) M/s. R C JAIN (GSTIN:27AFEPJ6310B1Z1), Ground Floor, Shop No 4, 16 HO Building, Anantawadi, Bhuleshwar, Mumbai, Maharashtra and also against (2) Shri Vikram Rameshkumar Jain ., Authorized Power of Attorney of M/s. R C JAIN (GSTIN:27AFEPJ6310B1Z1), Mumbai.


(चुना राम / Chuna Ram)
अपरआयुक्त/Additional Commissioner

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

Date: 13.08.2024

TO

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

Copy to:

1. The Commissioner, Customs (Preventive), Jamnagar.
2. The Additional Commissioner of Customs (Prev.), Jamnagar.

3. The Deputy Commissioner (Prev.), Customs (Preventive) HQ, Jamnagar.
4. The Deputy Commissioner, Customs Division, Jamnagar.
5. The Superintendent (RRA), Customs (Prev.) HQ, Jamnagar.
6. The Superintendent (Recovery), Customs (Prev.) HQ, Jamnagar
7. The Superintendent (Systems) Customs (Prev.) HQ, Jamnagar
8. Guard File.