



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
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DIN - 20250671MN000000BF78

क	फ़ाइल संख्या FILE NO.	S/49-316/CUS/AHD/23-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	AHD-CUSTM-000-APP-084-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 5/AR/ADC/SRT/2023-24 dated 05.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Moon Star Inc. Shop No. 1/A & 2, B- Rangrej Tower, Jada Khadi, Mahidharpura, Surat.

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.

4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-				
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or				
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.				



ORDER-IN-APPEAL

Appeal has been filed by M/s Moon Star Inc., Shop No. 1/A & 2B, Rangrej Tower, Jada Khadi, Mahidharpura, Surat., (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 5/AR/ADC/SRT/2023-24, dated 05.09.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that on the basis of information received that a person was carrying foreign origin smuggled Gold without Invoice and going to sell that gold to CRV Jewels, G4, Maitri Building, Lambe Hanuman Road, Varachha, Surat, Gujarat, a search was conducted at M/s CRV Jewels, G4, Maitri Building, Lambe Hanuman Road, Varachha, Surat (herein after referred as 'M/s CRV Jewels') on 21.04.2022 in presence of independent Panchas against a Search Authorization dated 20.04.2022 (CBIC-DIN202204DDZ100000BCAD) issued by the Deputy Director, DRI, Regional Unit, Surat and Panchnama dated 21.04.2022 was drawn in presence of Shri Chetan Katharotiya & Shri Rambhai Suhagiya, both partners of M/s CRV Jewels. During panchnama, at around 10:15 Hrs., a person wearing black T-shirt along with Navy Blue Colour Bag entered in to the said shop; thereafter at 10:25 Hrs., the Panchas along with the DRI officers entered into the said shop. During panchnama, four other persons were present in the shop, and on being asked, Shri Chetan Katharotiya introduced those persons as Shri Vijaykumar Gandubhai Vekariya, Shri Shaileshkumar Parshotambhai Korat, Shri Vipulbhai Dhirubhai Borad and Shri Rambhai Maganbhai Suhagiya. On being asked, Shri Rambhai Maganbhai Suhagiya informed that he is Partner of M/s. CRV Jewels. The officers, in presence of Panchas, Shri Chetan Katharotiya & Shri Rambhai Suhagiya, started systematic search of the shop and noticed that some pieces of yellow metal wrapped in transparent plastic packing which appeared to be of foreign origin (based on the markings on them) were lying on the floor of the locker room. The officers in the presence of Panchas and Shri Chetan Katharotiya & Shri Rambhai Suhagiya counted the yellow metal pieces and found them 135 in number and noted the details of marking on those yellow metal pieces.

2.1 Thereafter, the officers in presence of Panchas, Shri Chetan Katharotiya & Shri Rambhai Suhagiya removed packing of all 135 pieces of yellow metal, allotted marking from ' 1 ' to ' 135 ' sequentially, and carried weighment of the same by using weighing scale available in the shop. The total weight of all 135 pieces of yellow metal was found as 15745.02 Gms.; and on being asked, Shri Rambhai Suhagiya informed that these yellow metal pieces were brought by Shri Vipul Borad. On being asked regarding documents such as Bill of Entry, Packing List etc. as all these yellow metals contain foreign mark viz., 'Tigris Gold' and ARG UAE, Shri Vipul Borad and Shri Rambhai Suhagiya informed that they did not possess any documents relating to procurement of those gold, as the same were smuggled from UAE. On being asked, Shri Vipul Borad



informed that he had brought the 135 pieces of Gold biscuit, weighing 10 tolas each of UAE, in his Navy Blue bag, and handed it over to Shri Rambhai Suhagiya of M/s. CRV Jewels on 21.04.2022. On being asked, Shri Rambhai Suhagiya informed that 135 pieces of Gold biscuits were meant for sale as it was, to the buyers in Bullion Market including M/s Moon Star Inc. on commission basis. On being asked, Shri Rambhai Suhagiya informed that foreign origin Gold biscuits were not used by his firm M/s CRV Jewels for manufacturing of the jewellery.

2.3 On being asked, Shri Chetan Katharatiya and Shri Rambhai Suhagiya informed that they did not have facility for verification of purity and valuation of the said yellow metals pieces. The officers in presence of Panchas informed Shri Chetan Katharatiya, Shri Rambhai Suhagiya and Shri Vipul Borad that since they were not in possession of any documents relating to yellow metal appearing to be gold, the said 135 pieces of yellow metal totally weighing 15745.02 Gms., recovered from them were liable for detention under the provisions of Customs Act, 1962 under reasonable belief that the same were smuggled into India, and are liable for confiscation. The Navy Blue color bag having marking of HAIBOWY belonging to Shri Vipul Borad was also detained under the provisions of Customs Act, 1962 under the reasonable belief that the same is used for carrying the smuggled gold biscuits, and hence are liable for confiscation. The officers, in presence of Panchas seized a DVR of make 'alhua technology 16 Ch Penta-brid 1080N/720p Compact 1U DVR DH-XVR4B16 12V-2A S/N: 5FC8B077PA505375 MAC:9C:14.63:8E:E9:D0 MADE IN INDIA' attached to CCTV installed in said shop as the same was useful in further investigation of the case.

2.4 A follow-up, search was conducted at the Appellant, situated at Shop No.1/A &2, B Rangrej Tower, Jada Khadi, Mahidharpura, Surat against Search Authorization dated 21.04.2022 (CBIC DIN- 202204DDZ10000222C1F) issued by the Deputy Director, DRI, Surat and panchnama dated 21.04.2022 was drawn in presence of independent Panchas and Shri Sagar M. Shah, Proprietor of the Appellant. During the search, Smt. Ekta S. Shah, Smt Nishaben Patel, Shri Hiren Patel, Shri Shailesh Savaliya, Shri. Piyushbhai Navsariwala and Shri Saumit Shah were present at the Appellant's firm. Shri Sagar M Shah informed the officers that Smt Ekta S Shah is his wife and she helped in his business, and other five persons i.e. Smt Nishaben Patel, Shri Hiren Patel, Shri Shailesh Savaliya, Shri Piyushbhai Navsariwala and Shri Saumit Shah were employees of his firm, i.e., the Appellant. Shri Sagar M Shah also informed that the Appellant was involved in trading of precious metals like Gold and Silver; and that the Appellant was dealing in Indian Origin and Foreign Origin Gold Bar/ Biscuit/ Piece; that gold and silver were present in the office premises in various shapes and sizes. The officers, in presence of Panchas and Shri Sagar M Shah, segregated Foreign Origin Gold Full Piece / Cut Piece from the stock available; and made a detailed list of all the 27 Foreign Origin Gold Full Piece / Cut Pieces, totally weighing 2466.45 Grams and the officers marked running Sr. No. 1 to 27 to each of Foreign Origin Gold Full Piece / Cut Piece. The officers prepared the details of 27 Foreign Origin Gold Full Piece / Cut Piece totally weighing 2466.45

A.3

Grams and annexed it as per Annexure ' A ' to the Panchnama. On being asked to produce valid documents such as Purchase Bills, Packing List, Bills of Entry etc. in respect of the above said 27 Foreign Origin Gold Full Piece/Cut Piece, Shri Sagar M Shah, in presence of Panchas, produced photocopy of certain documents in respect of 11 Foreign Origin Gold Full Piece/Cut Piece bearing Marking 1 to 10 & 27 of Annexure 'A'.

2.5 Thereafter, the DRI officers in presence of panchas and Shri Sagar M Shah detained the said 27 Foreign Origin Gold Full Pieces / Cut Pieces, totally weighing 2466.45 Grams as detailed in Annexure-A to the Panchnama, on a reasonable belief that the same were smuggled goods, and hence are liable for confiscation under the provisions of Customs Act, 1962; and in the absence of original documents, the genuineness of the documents produced were required to be verified. Shri Salim Jafarbhay Daginawala, Gold Assayer, examined the detained Yellow Metal in presence of independent Panchas and Shri Rambhai Suhagiya and Shri Vipul Borad under panchnama dated 22.04.2022 drawn at DRI office situated at 2nd floor, Avalon Building, Above Indian Bank, Piprod - Vesu, Surat, Shri Salim Jafarbhay Daginawala, Gold Assayer, certified the purity of Gold, weight, rate of gold vide his Valuation Report Sr. No. 17 dated 22.04.2022 and arrived weight 2466.450 Gms., of 27 full cut pieces of foreign origin Gold detained from the premises of the Appellant and its fair value as per Market Rate (as on 22.04.2022) at Rs. 1,34,42,154/- in total. The Appellant vide letter dated 03.05.2022 addressed to the Deputy Director, DRI, Surat requested to release the detained goods and submitted relevant documents. He stated that he had already submitted the supporting documents for items mentioned at S. No. 1 to 10 and 27 Annexure ' A ' to the panchnama dated 21.04.2022. Further, the Appellant submitted that they had procured the goods mentioned at Sr. No. 11 to 23, 25 and 26 from M/s Augmont Enterprises Pvt. Ltd, Surat vide Invoice No. SISURG22230038 dated 18.04.2022. It was further submitted that the goods at Sr. No. 24 was a cut piece of the full piece purchased from M/s Augmont Enterprises Pvt. Ltd during the routine course of business vide invoice No. SISURG22230055 dated 21.04.2022.

2.6 During the course of investigation, statements of various persons were recorded as under:

- a. Shri Vijaykumar Gandubhai Vekariya (Employee of M/s CRV Jewels) - Statement recorded on 21.04.2022, wherein, he, inter-alia, stated that:
 - He confirmed the recovery of 135 foreign origin yellow metal biscuits (Gold) from the locker of M/s CRV Jewels during the DRI search.
 - He stated that Shri Vipulbhay D. Borad visited M/s CRV Jewels to hand over parcels containing Gold Biscuits to Shri Rambhai Maganbhay Suhagiya.
 - He mentioned that Shri Vipulbhay D. Borad had visited M/s. CRV Jewels about 3 times in the previous 2 months, each time handing over Gold Biscuits.

- He stated that Shri Rambhai Maganbhai Suhagiya sold these foreign origin Gold Biscuits to M/s Moon Star Inc. and M/s Harikala Bullion.

b. Shri Shaileshkumar Parshottambhai Korat (Sales Commission Agent of M/s CRV Jewels) - Statement recorded on 21.04.2022, wherein, he, inter-alia, stated that

- He confirmed the recovery of 135 yellow metal pieces (Gold) during the search at M/s CRV Jewels.
- He stated that Shri Vipulbhai Borad came with a navy-blue bag and handed over gold biscuits to Shri Rambhai Suhagiya in the cabin.
- He knew Vipulbhai Borad for about 2 months and stated that Vipulbhai supplied gold biscuits to Rambhai Suhagiya 3-4 times in the past 2 months.
- He stated that Rambhai Suhagiya sold these gold biscuits to M/s Moon Star Inc. or M/s Harikala Bullion, and received cash for them, which was then given to Vipulbhai Borad.

c. Shri Chetanbhai R Katharotiya (Partner of M/s CRV Jewels) - Statement recorded on 21.04.2022, wherein, he, inter-alia, stated that:

- He confirmed that M/s CRV Jewels is a partnership firm engaged in selling gold/silver jewellery and trading in gold/silver bars/biscuits.
- He stated that 135 pieces of foreign origin yellow metal were recovered.
- He identified Shri Vipul D. Borad as the maternal cousin brother of Shri Rambhai M. Suhagiya, who visited the premises around 10:00 AM on 21.04.2022 to hand over the 135 gold metal biscuits to Shri Rambhai M. Suhagiya.
- He stated that he and Shri Rambhai M. Suhagiya used to sell these gold biscuits (brought by Vipul D. Borad) to M/s Moon Star Inc. and Harikala Bullion to earn commission.
- He stated that Vipul D. Borad had handed over gold biscuits to Rambhai M. Suhagiya 3 or 4 times in the past 2 months.

d. Shri Rambhai Maganbhai Suhagiya (Partner of M/s CRV Jewels) - Statement recorded on 21/22.04.2022, wherein, he, inter-alia, stated that:

- He confirmed the recovery of 135 UAE Origin Smuggled Gold Biscuits from M/s CRV Jewels on 21.04.2022.
- He stated that Shri Vipulbhai D. Borad handed over the 135 UAE origin Gold Biscuits to him.
- He admitted that prior to this, Vipulbhai D. Borad had delivered three consignments of 144, 115, and 130 Gold biscuits of Dubai/UAE Origin on 11.04.2022, 14.04.2022, and 18.04.2022 respectively.
- He stated that Shri Baldev Sakhreliya (Vipul's friend) contacted him on mobile to negotiate rates for Gold Biscuits.



- He admitted selling the foreign origin gold biscuits received from Vipulbhai D. Borad to M/s Moon Star Inc. and M/s Harikala Bullion.
 - He produced his mobile phone, and WhatsApp chats with "Baldev (Vipul)" showed orders for 135, 130, 115, and 144 pieces of gold biscuits with corresponding prices.
 - He stated that he earned approximately Rs. 20-30 commission per tola.
 - He admitted that he never asked for documents for the gold biscuits supplied by Baldev Sakhreliya/Vipul D. Borad.
 - He stated that Baldev informed him the gold was of foreign origin but did not disclose the procurement method. He was aware that dealing with smuggled gold is a punishable offense.
- e. Shri Vipulbhai Dhirubhai Borad - Statement recorded on 21/22.04.2022, wherein, he, inter-alia, stated that:
- He accepted bringing 135 Gold Biscuits of UAE origin in his bag and handing them over to Shri Rambhai Suhagiya.
 - He confirmed that Rambhai Suhagiya is his cousin.
 - He admitted to having previously handed over 144, 115, and 130 Gold Biscuits of UAE origin to Shri Rambhai Suhagiya on 11.04.2022, 14.04.2022, and 18.04.2022 respectively.
 - He stated that he planned to smuggle Gold Biscuits from Sharjah due to financial crisis and enquired with Rambhai Suhagiya about sale opportunities.
 - He managed 3-4 persons/carriers, booked their tickets to Sharjah, and upon return, collected gold biscuits from them outside the airport and delivered them to Rambhai Suhagiya the next morning.
 - He presumed that the gold pieces with "Tigris" and "ARG UAE" markings found at Moon Star Inc. might pertain to the consignment he supplied to Rambhai Suhagiya on 18.04.2022.
 - He confirmed that he purchased gold in UAE on cash basis and handed it over to Rambhai Suhagiya without invoice or challan. No passengers/carriers filed any declaration at Surat Airport Customs.
- f. Shri Sagar Manubhai Shah (Proprietor of M/s Moon Star Inc.) - Statement recorded on 22.04.2022, wherein, he, inter-alia, stated that:
- He is the proprietor of Moon Star Inc., engaged in trading Gold & Silver Bullions since 2019.
 - He confirmed the panchnamas drawn at M/s CRV Jewels and Moon Star Inc.
 - He stated that out of 2466.45 gm of detained gold, he purchased 1100 gm of Rand Refinery 999.0 Fine Gold from Rupali Gold, Surat, which was originally imported by RBL Bank.
 - He admitted to trading 130 pieces of UAE origin Gold Biscuits (10 tolas each) from



Shri Rambhai Suhagiya on 18.04.2022.

- He stated he received 40 pieces of gold biscuits (10 tola each) on 11.04.2022 and 130 pieces on 18.04.2022 from Shri Rambhai Suhagiya and sold them on cash basis to various customers without retaining their details.
- He had no idea how Rambhai Suhagiya procured the gold.
- He accepted that the cut pieces of Gold mentioned in Sr. No. 23, 25 & 26 (with "Tigris" & "ARG" markings) were part of UAE origin Gold supplied to him by Shri Rambhai Suhagiya on 18.04.2022.

g. Shri Ramesh Bhawarlal Mehta (Delivery Head, Augmont Enterprises Pvt Ltd) - Statement recorded on 23.05.2022, wherein, he, inter-alia, stated that:

- He is the delivery head of Augmont Enterprises Pvt Ltd, engaged in trading gold bullion.
- He confirmed selling 20 gold bars of 100 grams each (Sr. No. AU740487 to AU740506) to M/s Moon Star Inc. vide Invoice No. SISURG22230038 dated 18.04.2022. These were manufactured in Augmont's refinery in Uttarakhand.
- He confirmed selling 20 gold bars of 100 grams each (Sr. No. AK810201 to AK810220) to M/s Moon Star Inc. vide Invoice No. SISURG22230055 dated 21.04.2022. These were originally imported by RBL Bank.
- He stated that Augmont Enterprises Pvt Ltd never dealt with "Suissee 100g 999 Essayeur Fondeur", "ARG Melter Assayer", and "Tigris Gold" brand Gold Bars and never sold these brands to M/s Moon Star Inc.
- He explained the manufacturing process of gold bars in their refinery, including melting, purification, casting, polishing, stamping (with BIS Hallmark, weight, purity, and Augmont name), and serial numbering.
- He stated that remarking would cause overwriting, and re-casted/re-stamped gold bars could not be ascertained as manufactured in their refinery.

h. Shri Sagar Manubhai Shah (Proprietor of M/s Moon Star Inc.) - Statement recorded on 21.09.2022, wherein, he, inter-alia, stated that:

- He confirmed his earlier statement dated 22.04.2022 as true and correct, except for the fact that he received 40 pieces and 130 pieces of UAE origin Gold Biscuits from Shri Rambhai Suhagiya. He clarified that he had contracted for these quantities but denied delivery due to a rise in gold rates.
- He confirmed that out of 2466.45 gm detained gold, 1149.15 gm was released to his brother.
- He admitted that due to demand for foreign origin gold biscuits and higher value, he usually melted gold biscuits purchased from Augmont Enterprises Pvt Ltd and embossed them with foreign brands like Suisse, ARG Melter Assayer, Tigris, etc., and serial numbers. He stated he had the facility for melting and a computerized numbering machine, which he has since disposed of.



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- He admitted that the procedure adopted by him for remarking on gold is "not legally correct."
- He stated that he had not maintained any records for melting and remarking on Gold Biscuits purchased from M/s Augmont Enterprises Pvt Ltd.

2.7 Therefore, a Show Cause Notice dated 12.10.2022 was issued to the Appellant proposing as to why:-

- The 15 pieces of foreign origin Gold Full/Cut pieces weighing 1317.30 grams in total valued at Rs 71,79,286/- (Rupees Seventy One Lakh, Seventy Nine Thousand, Two Hundred Eighty Six only) should not be confiscated under the provisions of Section 111(d), 111(j), 111 (l) and 111(m) of the Customs Act, 1962;
- Penalty should not be imposed on Shri Sagar M Shah, Proprietor of the Appellant under the provisions of Section 112 of the Customs Act, 1962;

2.8 The adjudicating authority vide the impugned order has passed the order as detailed below: -

- He ordered for absolute confiscation of the 15 pieces of foreign origin Gold Full/Cut Pieces weighing 1317.30 grams under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- He imposed a penalty of Rs. 71,79,286/- (Rupees Seventy-One Lakh Seventy-Nine Thousand Two Hundred Eighty-Six only) upon Shri Sagar M. Shah, Proprietor of the Appellant under the provisions of Section 112(i) of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under: -

3.1 The Adjudicating Authority has failed to appreciate that the officers of DRI while conducting search of the premises of the Appellant on 21.04.2022 itself formed the "reasonable belief" that the goods taken into custody by them are "foreign origin" and are "smuggled" in nature as is forthcoming from the records of the Panchnama dated 21.04.2022. The Adjudicating Authority has also failed to appreciate that once the goods are taken into possession by the officers, de facto "seizure" of the goods takes place, as the owner is dispossessed the custody of the goods. In the instant case it is on record that on the date of seizure, the DRI officers took into custody all the Gold bars which were present in the premises of the Appellant and having seemingly "foreign" mark without ascertaining or without having any "reasonable belief" that the same are "liable for confiscation" or "smuggled" in nature. It is also on record that subsequently out of 2466.45 Grams of Gold bars which were taken into custody, 1149.15 Grams were released on 20.09.2022, which removes all iota of doubt that taking into custody of Gold Bars on



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21.04.2022 was not on "reasonable belief" that the goods are "smuggled", rather it was an indiscriminate action based on surmises and presumption and on some hearsay information. Thus, taking into custody of goods by the DRI officers was itself in violation of procedural safeguards provided under Section 110 of the Customs Act, 1962 and also violative of Article 14, 19 and 21 of the Indian Constitution. The Adjudicating Authority has also failed to appreciate that as per Section 110 of the Customs Act, 1962 the evaluation of "reason to believe" has to be done by the "proper officer" at the "time of seizure" only and not subsequent to that and once it is found that the conduct of the officers while disposing the property of any person was "reckless", the seizure cannot be said in accordance with the provisions of Section 110 of the Customs Act, 1962.

3.2 The Adjudicating Authority has also failed to appreciate that once illegality strikes at the root, the legal maxim "Sublato Fundamento Cadit Opus" connoting thereby "if initial action is not in consonance with the law, all the subsequent proceedings would fall" would be applicable. Further, the Ld. Adjudicating Authority has also failed to appreciate that the "burden to prove" under Section 123 of the Customs Act, 1962 would be applicable only when the seizure of the specified goods is under the "reasonable belief" that the goods are liable for confiscation. In the instant case, the indiscriminate actions of the DRI officers on the day of conduct of search on 21.04.2022 vitiates the seizure proceedings itself and as such the provisions of Section 123 of the Customs Act, 1962 would not be applicable in the instant case. The Adjudicating Authority has also failed to appreciate that there is no provision under the Customs Law which mandates that the possessor of the notified goods should carry the documents of import in domestic transaction. The Adjudicating Authority has also failed to appreciate the definition of "imported goods" given at Section 2 (25) of the Customs Act, 1962 which means any goods brought into India from a place outside India but does not include goods which have been "cleared for home consumption". The Adjudicating Authority has failed to appreciate that once the goods are cleared for home consumption, the same seizes to be "imported goods" and hence there is no requirement under law to prove one to one correlation of the goods with the import document as held by him while deliberating on the facts of stock in hand of the Appellant and also while deliberating on the issue of stamping of goods in the domestic market to fetch some premium of the domestic goods.

3.3 The Adjudicating Authority has also failed to appreciate that the information which on which follow up searches were carried out by the DRI officers at the premises of the Appellant was in respect of smuggling of "Tigris" and "ARG" marking of Gold, but the officers indiscriminately seized all the Gold which seemingly had the "foreign markings", although there were only 119.31 Grams of Cut pieces of Gold Bar which was marked with "Tigris" marking and only 37.99 Grams with "ARG" markings. The description / marking of other bars in the list of seized goods as recorded in the Panchnama dated 20.09.2022 is "Suisse" and "AssayeurFondeur". The Adjudicating Authority has failed to appreciate that none of the Gold Refinery in Switzerland manufactures the Gold with marking as "Suisse AssayeurFondeur", which strengthens the submission of the



Appellant regarding marking of goods at his premises and the video of which was given to the Adjudicating Authority at the time of personal hearing. The Adjudicating Authority has also failed to appreciate that the very notion based upon which the impugned goods were termed as "foreign origin" at the initiation of proceedings and also after conclusion of investigations fails. Once the basis on which the impugned seized goods is termed as "foreign origin" goes, there cannot be any question of proving it to be "non-smuggled" in nature.

3.4 The Adjudicating Authority has also failed to appreciate that the entire case against the Appellant is based upon the statement of Shri Vijaykumar Gandubhai Vekaria dated 21.04.2022; Shri Shaileshkumar Puroshottambhai Korat dated 21.04.2022; Shri Chetanbhai R Katharotiya dated 21.04.2022; Shri Rambhai Maganbhai Suhagiya dated 21.04.2021; Vipubhai Dhirubhai Borad dated 21.04.2022/22.04.2022. It is submitted that except Shri Rambhai Maganbhai Suhagiya, no other person has actually said that he has dealt with Sagar M. Shah, the Proprietor of M/s Moon Star Inc. It is submitted that as per Section 60 of the Indian Evidence Act, 1872 *"Oral Evidence must, in all cases whatever, be direct, that is to say, if it refers to a fact which could be seen, it must be the evidence of a witness, who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; If it refers to a fact which could be perceived by other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; If it refers to an opinion or to grounds on which that opinion is held, it must be the evidence of person who holds that opinion on those grounds."* In the instant case, no person has actually seen that the Gold brought at M/s CRV Jewels were actually sent or sold to M/s Moon Star Inc. At the most it can be said to be the opinion of these person and there is no ground for having that opinion and nobody ever said that Sagar M. Shah or Mr Suhagiya at any occasion has divulged them that these goods are being sold to M/s Moon Star Inc. As regards the statements of Shri Rambhai Maganbhai Suhagiya dated 21.04.2022, it is submitted that he has stated that as soon as the Gold arrived at his premises through Mr Vipulbhai Dhirubhai Borad, the employees of M/s Moon Star Inc. and M/s Harikala Bullion arrived at their premises to collect the goods within half an hour and subsequently cash was delivered. It is submitted that on the day of search, as per the records the Shri Vipulbhai Borad reached the premises of M/s CRV Jewels at around 10:10AM with the alleged smuggled Gold and the DRI officers entered for search of the said premises at around 10:25AM, which means that there must have been communication regarding reaching of Shri Borad at the premises, so that Shri Sagar M. Shah of M/s Moon Star Inc. must send his employees for receiving the Gold with cash. In the instant case, through the investigation has extracted the WhatsApp communication (though it is without any Certificate as prescribed under Section 65B of the Indian Evidence Act, 1872) between Baldev (allegedly Shri Borad) and Shri Suhagiya, but no such communication or even call record is forthcoming to show that any communication was made from the side of Shri Rambhai M. Suhagiya to Shri Sagar M. Shah regarding collection of Gold. Further, even though the deal for such Gold Bullion was done between Shri Suhagiya and Shri Sagar Shah on cash basis, but during the



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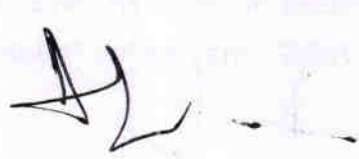
search of either premises, that is, the premises of M/s CRV Jewels and M/s Moon Star Inc. no cash was found even though the same was conducted on the same day. It is also submitted that the investigation has failed to gather any documents or records, may be of private nature to show that there was any transaction between M/s CRV Jewels and M/s Moon Star Inc. Thus, the statement of Shri Rambhai M. Suhagiya is doubtful and seems to be tutored and cannot be used as evidence against M/s Moon Star Inc. The Adjudicating Authority has failed to appreciate this and has deciphered his conclusion in purely selective manner with foreclosed mind to sustain the allegations contained in the show cause notice dated 12.10.2022, which is bad in law.

3.5 The Appellant humbly submits that the investigation conducted by the DRI has relied upon the statement of Shri Sagar M. Shah dated 22.04.2022. It is submitted that the copy of said statement was not provided immediately after recording the same, so Sagar M. Shah was not having any opportunity to verify what he has tendered and to provide any explanation to the same to the officers. It is submitted that one thing is noteworthy in the statement dated 22.04.2022 of Sagar M. Shah that after regular conclusion of the statement, there is specific remark that *"he has been given water, tea and snacks and also provided the same as per my desire"*. This remark is not found on all the statements; it can be seen only on a few statements recorded by the DRI officers. This indicates that the statements of Shri Sagar M. Shah were recorded under the promise of goods behaviour and allurements and hence the same cannot be relied as an evidence against him. Further, it is also submitted that as soon as Shri Sagar M. Shah tendered correct version of the statements regarding foreign marking on the Gold Bars on 23.09.2022, he was threatened for arrest and actually his arrest was got approved merely on seizure of Gold valued at less than Rs One Crore and he had to obtain Anticipatory Bail from the District and Sessions Court, Surat, wherein the Department contested the matter and assailed that his offence is non-bailable and he is involved in smuggling of Gold of more than Rs 1 Crore. From the circumstances of the case and specific remark being put on the statements, it is amply clear that the statements of Sagar M. Shah were obtained under allurements of good behaviour from the DRI officers and also from false protection from criminal liability. Thus, the statements involving self-incriminatory part cannot be relied as evidence against the Appellant. The Adjudicating Authority while deliberating upon this aspect has given a finding that remarking of Gold is not legally correct and no records of remarking has been maintained by the Appellant. The Appellant humbly submits that while considering the said statements and circumstances against the Appellant, the Adjudicating Authority has failed to determine his jurisdiction of the Customs Act, 1962 for proceedings against the Appellant merely for remarking of domestic goods and also has failed to specify any provision under the Customs Act, 1962 which mandates maintain of records for such an activity.

3.6 It is submitted that even Shri Rambhai M. Suhagiya and Shri Vipul D. Borad, when asked about the Gold seized from the premises of Sagar M. Shah have tendered that the said Gold bearing marks of "Tigris" and "ARG" "may be" or "might be" one from

the lot allegedly smuggled by them, but no one has said that these are the same gold which were smuggled. From the Seizure Memo dated 23.09.2022 issued by the DRI officers, it can be seen that 119.34 Grams of Gold Bars were having marking "Tigris Gold" (that too Cut Pieces) and only 37.99 Grams of Gold Bar was of "ARG Melter Assayer", the markings which have been alleged to be smuggled by Shri Vipulbhai D. Borad and said to have been sold by Shri Rambhai M. Suhagiya to M/s Moon Star Inc., but the officers have tended to seize the entire 2466.45 Grams of Gold which are of other markings for which no prudent person could believe that the same can be called as "smuggled" in nature. It is submitted that the Gold bars seemingly having "foreign markings" does not even cast "suspicion" of smuggling for a Bullion Trader, the formation of "reason to believe" is a farfetched connotation. Thus, the seizure in this case is not in accordance with law, hence there is no question of passing the burden of proof under Section 123 of the Customs Act, 1962 to prove that the goods are of "non-smuggled" nature. It is also submitted that no investigation has been carried out by the DRI officers to verify the statements of Sagar M. Shah dated 23.09.2022 regarding purchase of Gold Bars and the Stock lying in his Books and no scrutiny of Book of Accounts have been undertaken. Thus, in absence of detailed investigation, the Department has failed to discharge the initial burden of proof which is indeed required for shifting the burden in quasi-criminal proceedings like that under the Customs Act, 1962. Thus, the allegation of illegal import on the part of the DRI in respect of Gold seized from the premises of M/s Moon Star Inc. cannot be allowed to survive.

3.7 It is submitted that there is nothing on record to show that the goods seized from the premises of the Appellant was imported illegally or without declaration or by resorting to mis-declaration or out rightly smuggled as baggage. From the allegations levelled, it is also not forthcoming as to whether the impugned Gold are alleged to be smuggled as baggage or through other mode or cargo. It is further submitted that the show cause notice has described all the legal provision related to prohibition of Goods under the Customs Act, 1962 or the Foreign Trade Policy to support their say without justifying any "law" for time being in force to support the same. For example, it has mentioned about powers of the Central Government under Section 3 (3) of the Foreign Trade Policy to prohibit import or export, but has failed to cite any Order which prohibits import of Gold. Similarly, it has cited Section 11 (3) of the Customs Act, 1962 which again is a power to the Central Government to notify prohibitions, but no notification has been cited to justify the allegation of prohibition. Similarly, the Circulars of RBI referred under the show cause notice prescribes certain conditions for import of Gold by the nominated agencies and does not per se prohibits it's import. It is further submitted that DGEP or the Board does not have any power to "prohibit" import of any goods under the provisions of the Customs Act, 1962. It is only the Central Government who is empowered to do so by exercising the powers under Section 11. It is further submitted that the show cause notice dated 12.10.2022 has cited a Notification No. 50/2017-Cus dated 20.06.2017 to justify prohibition, which is a notification for exemption of duty and is issued under Section 25 of the Customs Act, 1962 and not under Section 11. The show cause notice has not cited



any law or notification under Section 11 of the Customs Act, 1962 which prohibits import of Gold. Also since there is no proof that the seized Gold have been imported as "baggage", hence, the provisions related to baggage would not apply. While dealing with the aspect of "prohibition" for import of goods, the Adjudicating Authority has relied upon various judicial pronouncements, but failed to specify any provision of law which "prohibits" the import of Gold. It is submitted that the adjudication of confiscation and penalties under the provisions of the Customs Act, 1962 cannot be done under vague assertions, hence the order to confiscate the goods under Sections 111(d), 111(j), 111(1) and 111(m) of the Customs Act, 1962 cannot be allowed to sustain.

3.8 It is further submitted that the definition of "imported goods" at Section 2 (25) of the Customs Act, 1962 means any goods brought into India from a place outside India, but does not include goods which have been cleared for home consumption. A plain reading of the said provision makes it amply clear that once the goods are cleared for home consumption, the same cannot be treated as "imported goods", which means that such goods which are cleared from Customs frontier, cannot be later treated as "improperly imported" goods within the meaning of Section 111 of the Customs Act, 1962 because they cease to be "imported goods" and in that case such goods cannot be held liable for confiscation under the aforesaid provision. Further, there is no provision under the Customs law, which requires any goods to be accompanied by proof of import and it's one to one correlation, when the same is being transited within the territory of India in normal course of business and commerce. Even in respect of goods notified under Section 123 of the Customs Act, 1962 there is no such requirement of the law. In such a scenario, the contention of the Adjudicating Authority that the goods cannot be one to one correlated with the import documents does not only casts a burden not sanctioned by law, but also commands to do something which is almost impossible because once the goods are imported and processed (that is cut into pieces for sale etc.) it is not possible for establishing their identity with one-to-one documents in normal course of business. The Adjudicating Authority has failed to appreciate that that the "burden of proof" under Section 123 of the Customs Act, 1962 is not an irrefutable burden, when the Appellant is able to show the purchase details of the Gold and such Gold is lying in the stock, the "burden of proof" under Section 123 gets discharged.

3.9 Further while dealing the case of cross-examination of witnesses and oral evidences relied upon by the DRI Authorities, the Adjudicating Authority has relied upon a plethora of judicial pronouncements, but has failed to appreciate that there is neither any direct oral evidence to support that the goods seized in this case are of "smuggled" nature and also that there is no corroborative primary documentary evidence to support this contention. The Adjudicating Authority has failed to appreciate that the evidences of other witnesses of the case which pint towards dealing of M/s CRV Jewels with the Appellant are taken at the back of the Appellant and are doubtful as already submitted and in such a scenario, in order to establish the truth and to comply with natural justice, cross-examination of such witnesses are vital. Further, the Adjudicating Authority has also

lost sight of Section 138B of the Customs Act, 1962 which indeed lays down the principles for admissibility of statements recorded under Section 108 of the Customs Act, 1962 in quasi-judicial proceedings.

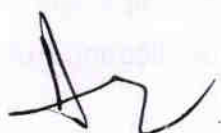
3.10 Without prejudice to the submissions made on merits of the case, it is submitted that in the instant case, there is neither any proof that the seized Gold was imported in the form of bullion, nor any specific provision for their prohibition for import have been quoted. Thus, the question of its absolute confiscation does not arise as Section 125 of the Customs Act, 1962 does not vest any discretion for not allowing redemption of goods, if the goods are not prohibited. Without prejudice, it is also submitted that in the instant case there is nothing on record that the Appellant has imported these goods in violation to the provisions of the Customs Act, 1962, nor there is any proof to show that the Appellant had any knowledge that the Goods are "smuggled". It is submitted that the Appellant is the bona fide owner of the goods and his possession was also bona fide. Thus, even if the goods are presumed to be prohibited for import, but are not prohibited for trade in the domestic market, it can be released upon payment of redemption fine under Section 125 of the Customs Act, 1962 as the said provision gives ample discretion to release even the prohibited goods upon payment of fine, which of course has to be exercised reasonably. Having bona fide possession is one of the circumstances under which such discretion can be exercised.

3.11 While levying a penalty under Section 112 of the Customs Act, 1962, the Ld. Adjudicating Authority has failed to specify the exact provision or clause or act of omission or commission for which he is levying the penalty. He has simply levied the penalty under Section 112 (i), without specifying the nature of any prejudice that the offence has caused or whether it falls under clause (a) or (b) of Section 112. The Adjudicating Authority has failed to appreciate that penalty cannot be levied by penalty under the quasi-criminal proceedings on by basis of vague ascertainment of act(s) of omission or commission leading to imposition of such penalty. Further it is submitted, since there is no role of the Appellant in the act in the illegal import and also since the Appellant is in bonafide possession of the goods, the penalty imposed by the adjudicating authority to the tune of Rs 71,42,786/- equivalent to the value of the seizure of the goods seized under is absolutely harsh and liable to be set aside and be quashed.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 04.06.2025 following the principles of natural justice wherein Shri Ashwini Kumar, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum. Besides, the Appellant also relied upon the below mentioned decisions in support of their claim:

- (i) *Shanti Lal Mehta vs. UOI – 1983 (14) ELT 1715 (Del);*
- (ii) *Commissioner of Customs (Prev) Kolkata vs. Ashok Kumar Agarwal – 2017*



- (348) ELT 555 (Tri. – Kolkata);
 (iii) *Dhanishtha Gold vs. Commissioner of Customs, Ahmedabad – 2019* (369) ELT 688 (Tri. – Ahmd.);
 (iv) *Tulsi Das Agarwal vs. Commissioner of Customs, Kanpur – 2003* (158) ELT 725 (Tri. – Delhi);
 (v) *UOI vs. Imtiaz Iqbal Pothiawala – 2019* (365) ELT 167 (Bom.);

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Ahmedabad and the defense put forth by the Appellant in their appeal. On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- (i) Whether the seizure of gold was legal and whether the burden of proof shifted to the Appellant under Section 123 of the Customs Act, 1962;
- (ii) Whether the seized gold is "smuggled goods" liable for confiscation under Section 111 of the Customs Act, 1962;
- (iii) Whether the imposition of penalty under Section 112 of the Customs Act, 1962, on Shri Sagar M. Shah is justified.

5.1 Being aggrieved, the Appellant has filed the present appeal on 06.11.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 05.09.2023 has been shown as 09.09.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has submitted self-certified copy of the T.R.6 Challan No. 1/2023 dated 06.11.2023 for Rs. 5,38,447/- towards payment of pre-deposit calculated @7.5% of the disputed amount of penalty of Rs. 71,79,286/-, under the provisions of Section 129 E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. The Appellant's contention that the seizure was illegal due to a lack of "reasonable belief" at the time of seizure is not persuasive. Section 110 of the Customs Act, 1962, allows a proper officer to seize goods if he has "reason to believe" they are liable to confiscation. The panchnama dated 21.04.2022 clearly records that the officers had information about smuggled gold and found foreign-marked gold biscuits at M/s CRV Jewels, leading to the search at the Appellant's premises. The initial belief was formed based on specific intelligence and immediate findings. The subsequent release of some gold does not retroactively invalidate the initial "reasonable belief" for the remaining goods.

6.1 Moreover, gold is a "specified good" under Section 123 (2) of the Customs Act, 1962. This section explicitly 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 burden of proving that they are not smuggled goods shall be..... on the person from whose possession the goods were seized." Since the initial seizure was based on a reasonable belief, the burden of proving the non-smuggled nature of the remaining 15 pieces of gold clearly shifted to the Appellant. The Appellant failed to discharge this burden by providing legitimate import documents or satisfactory evidence of duty-paid procurement for these specific pieces.

6.2 The Appellant's argument that once goods are cleared for home consumption, they cease to be "imported goods" and cannot be confiscated under Section 111 is misplaced in the context of smuggled goods. Smuggled goods, by definition under Section 2 (39) of the Customs Act, 1962, are goods that render themselves liable to confiscation under Section 111 or 113. If goods are smuggled, they are never "cleared for home consumption" in the legal sense, as they bypass proper customs procedures. The very act of smuggling makes them liable to confiscation. The statements of Shri Vipulbhai Dhirubhai Borad and Shri Rambhai Maganbhai Suhagiya, clearly indicate a well-orchestrated smuggling operation of gold from UAE. Shri Sagar M. Shah's admission in his statement dated 22.04.2022 that he "had done trading of 130 pieces of UAE origin Gold Biscuits... from Shri Rambhai Suhagiya... on 18.04.2022" and his later admission in the questionnaire to melting and re-marking duty-paid gold with foreign brands like "Suisse," "ARG Melter Assayer," and "Tigris" (which Augmont Enterprises Pvt Ltd confirmed they never sold) are crucial. This conduct, especially the re-marking, strongly suggests an attempt to pass off legitimately imported gold as smuggled foreign gold, or to conceal the origin of smuggled gold, thereby creating a false trail. His admission that the re-marking procedure was "not legally correct" and that he maintained no records for it further strengthens the department's case. In the present case, the chain of events, from the initial seizure at M/s. CRV Jewels to the statements of the individuals involved and Shri Sagar M. Shah's own admissions, establishes a strong case for the seized gold being smuggled goods.

6.3 The various clauses of Section 111 are applicable:

- Section 111(d): Goods imported contrary to any prohibition. Gold import is restricted and regulated, and non-compliance with these regulations can amount to a prohibition. The SCN refers to various RBI circulars and DGFT notifications that regulate gold import, and any import outside these channels is prohibited. The argument that no specific prohibition notification under Section 11 was cited is weak, as Section 11(3) clarifies that prohibitions under "any other law" are executed under the Customs Act if notified. The various regulations cited by the adjudicating authority, even if not direct prohibitions under Section 11, create a regulatory framework that, if violated, renders the goods liable.
- Section 111(j): Dutiable or prohibited goods removed from a customs area or warehouse without permission. This applies to the initial act of smuggling.



- Section 111(l): Dutiable or prohibited goods not included or in excess of those included in the entry or declaration. This is directly applicable if the gold was smuggled without proper declaration.
- Section 111(m): Goods not corresponding in value or other particulars with the entry / declaration. Shri Sagar M. Shah's admission of re-marking foreign brand names on domestically purchased gold, and the fact that the seized gold had markings of brands that Augmont did not sell, indicates a clear mis-description / mis-declaration, making this section applicable.

6.4 Section 112 of the Customs Act, 1962, imposes a penalty on any person who does or omits to do any act that would render goods liable to confiscation under Section 111, or who acquires possession of or deals with goods knowing or having reason to believe they are liable to confiscation. Shri Sagar M. Shah's own admissions about trading in UAE origin gold from Shri Rambhai Suhagiya (who was directly involved in smuggling) and his practice of re-marking gold with foreign brands, coupled with his admission that this practice was "not legally correct" and that he maintained no records, clearly demonstrate his active involvement and knowledge (or at least reason to believe) that he was dealing with goods liable to confiscation. His attempt to retract his earlier statements regarding receipt of gold from Suhagiya, while admitting to contracting for it, appears to be an afterthought to evade liability. The WhatsApp chats recovered from Rambhai Suhagiya's phone, showing orders for specific quantities of gold biscuits with prices, further corroborate the transactions.

6.5 The argument that the penalty is vague is not sustainable. The impugned order clearly imposed the penalty under Section 112 (i) of the Customs Act, 1962, which applies to goods in respect of which any prohibition is in force. The acts of omission and commission on the part of Shri Sagar M. Shah, including dealing in smuggled gold and engaging in deceptive re-marking practices, directly contribute to the goods being liable for confiscation. Therefore, the penalty imposed is justified.

6.6 The Appellant's challenge to the reliability of the statements recorded under Section 108 of the Customs Act, 1962, is not sustainable. Statements recorded under Section 108 are admissible in evidence and carry a high probative value, as they are not recorded by police officers. The Appellant's claim that statements were obtained under allurements or threat is a common defense mechanism and needs to be substantiated with concrete evidence, which is lacking here. The fact that Shri Sagar M. Shah sought anticipatory bail does not automatically invalidate his earlier statements. The corroborative evidence, including the recovery of gold, the consistent statements of other individuals involved in the smuggling chain (Vipulbhai Borad and Rambhai Suhagiya), and the WhatsApp chats, lends strong support to the veracity of the statements. The Appellant's own admission of re-marking gold further corroborates the department's findings.

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6.7 The argument regarding Section 60 of the Indian Evidence Act, 1872, is misapplied. The statements are not hearsay; they are direct admissions of facts by the persons involved in the chain of events. Section 138B of the Customs Act, 1962, lays down conditions for admissibility of statements, and the adjudicating authority has considered these by relying on the statements that were not retracted or were corroborated.

7. Based on the comprehensive analysis of the facts and legal provisions, it is evident that the adjudicating authority's findings are well-founded. The seizure of gold was legal, and the burden of proof shifted to the Appellant, which they failed to discharge for the confiscated goods. The evidence, including the consistent statements of multiple individuals involved in the smuggling syndicate and the Appellant's own admissions regarding trading in foreign origin gold and deceptive re-marking practices, conclusively establishes that the seized gold was smuggled. Consequently, the confiscation of the goods under Section 111 and the imposition of penalty on Shri Sagar M. Shah under Section 112 of the Customs Act, 1962, are fully justified. The Appellant's contentions are rebutted by the factual matrix and established legal precedents.

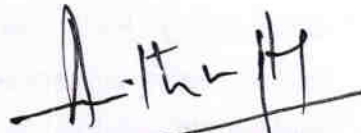
8. Further, I have gone through the case laws relied upon by the Appellant, however, I find that none of the case law is squarely applicable to the facts of the present case. The facts of the instant case is outright smuggling of subject seized foreign origin gold inasmuch as Shri Sagar Shah was unable to produce any documents to prove the legitimate import or purchase of the subject seized goods. Thus, the case laws relied upon by the Appellant do not come to their rescue.

9. In view of the above findings, I hereby order as under:

- (i) I uphold the absolute confiscation of the 15 pieces of foreign origin Gold Full / Cut pieces weighing 1317.30 Grams valued at Rs. 71,79,286/- under the provisions of Sections 111(d), 111(j), 111(l), and 111(m) of the Customs Act, 1962;
- (ii) I uphold the imposition of penalty of Rs. 71,79,286/- (Rupees Seventy One Lakh Seventy Nine Thousand Two Hundred Eighty Six Only) upon Shri Sagar M. Shah, Proprietor of the Appellant under the provisions of Section 112 (i) of the Customs Act, 1962;

10. Accordingly, the appeal filed by the Appellant is hereby rejected.




(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-316/CUS/AHD/2023-24 1611

Date: 19.06.2025

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

By Registered post A.D/E-Mail

To,

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Shop No. 1/A & 2B,
Rangrej Tower, Jada Khadi,
Mahidarpura,
Surat- 395003



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2. The Principal Commissioner of Customs, Ahmedabad.
3. The Additional Commissioner of Customs, Custom, Surat.
4. Guard File.