



सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर (गुजरात) – 361001

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 – 20241071MM0000017536

1.	फाइल क्रमांक/ File Number	F. No. CUS/2002/2024-ADJN
2.	मूल आदेश क्रमांक/ Order-in-Original No.	08/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	हरकिरपाल खटाना/ Harkirpal Khatana अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	28.10.2024
	Date of issue / आदेश जारी किया	28.10.2024
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	ADC-03/2024-25 dated 10.04.2024
6.	नोटिसी का नाम/ Name of Noticee	M/s R L Jewels , Floor - 1/ 19, 10, Mawala House, Popalwadi 1 st Lane/ Near Cotton Exchange, Bhuleshwar/ Kalbadevi, Mumbai (Maharashtra) – 400 002.

01.	इस आदेश की मूल प्रति संबन्धित 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 व्यक्ति सीमा शुल्क अधिनियम, 1962 की धारा 128A(1)(a), सीमा शुल्क (अपील) नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के 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)।	
	आयुक्त अपील 7 वी मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद – 380 009	Commissioner (Appeals), 7 th Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380 009
	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).
03.	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 पर रुपये 0.50 (पचास पैसे केवल) का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची – I, मद 6 के तहत निर्धारित किया गया है। 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 paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	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। 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.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है। While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के 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। 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.

Brief facts of the case:

Acting on a specific intelligence, the officers of the 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 the Panchnama dated 04.10.2023. The approved Valuer submitted a Certificate under his letter head that he in-person inspected the gold and silver articles and has ascertained the market value, origin and weight during Panchnama on 04.10.2023. Detailed inspection of total 48 articles in possession of Shri Sonu were recorded under Panchnama dated 04.10.2023 which includes parcel Sr. No. A-30 of 406.54 grams of Imported Gold Bar Valued at Rs. 23,78,259/- and parcel Sr. No. A-36 of 204.3 grams of Imported Gold Pieces valued at Rs. 11,95,155/-.

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 Paras Bhai of M/s. Swami Narayan Parcel Services, Rajkot. Accordingly, Summons was issued to Shri Paras Bhai, under Section 108 of the Customs Act, 1962. Statement of Shri Parth Singh (Paras Bhai), Proprietor of M/s. Swaminarayan 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 (Paras Bhai), Proprietor of M/s. Swaminarayan Parcel Services, Rajkot, was recorded on 10.10.2023 wherein he *inter alia* 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 the following details in respect of parcels detained on 04.10.2023 and marked as Sr. No. A-30 of 406.54 grams of Imported Gold Bar and Sr. No. A-36 of 204.3 grams Imported Gold Pieces:

22	Gold Bar	R L Jewels, Mumbai	Josimuddin Biswas, Rajkot		IH-63	03.10.2023
	Bullion Purchase	Kaka Gold LLP, Mumbai	R L Jewels, Mumbai	SG-7226		29.09.2023
23	Gold Bar	R L Jewels, Mumbai	Sekh Badruddin, Rajkot		IH-62	03.10.2023
	Gold Coin	SPN Gold & Previous Metal India Pvt Ltd, Mumbai	R L Jewels, Mumbai	4899		27.09.2023

4. Shri Parth Singh, Proprietor of M/s. Swaminarayan Parcel Services, Rajkot and receiver of the goods from Shri Sonu could not provide the legitimate documents evidencing the origin of goods and/ or the import documents evidencing the payment of import duty on the said goods. The said goods were detained on 04.10.2023 on the 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 were placed under seizure on 16.10.2023 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 the Customs Act, 1962. The seized goods were kept at Go-down of the Customs Division, Jamnagar, at Room No. 236, 2nd floor, Seema Shulk Bhavan, Jamnagar-Rajkot Highway, Near Victoria Bridge, Jamnagar. The seizure includes parcel bearing Sr. No. A-30 of 406.54 grams of Imported Gold Bar Valued at Rs.23,78,259/- and parcel Sr. No. A-36 of 204.3 grams of Imported Gold Pieces valued at Rs. 11,95,155/-. Copy of the Image of the same are reproduced as follows:





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 on 07.11.2023 and 28.11.2023, to M/s. R L Jewels (GSTIN: 27ANCPP9164H1ZM), Floor-1/ 19, 10, Mawawala House, Pophalwadi 1st Lane/ Near Cotton Exchange, Bhuleshwar/ Kalbadevi, Mumbai, Maharashtra, 400 002 (hereinafter referred to as "**the Noticee**").

5.1. Statement of Shri Laxmchandra J Parai, Proprietor of M/s. R L Jewels i.e. the Noticee was recorded under Section 108 of the Customs Act, 1962, on 12.12.2023, wherein he, *inter alia*, stated that he was the Proprietor of M/s. R L Jewels (GSTIN: 27ANCPP9164H1ZM); that his firm purchases gold bar from suppliers of gold bullion and thereafter, send the same for making gold ornaments to the suppliers located in Mumbai and Rajkot, as per the customers requirement and also trade in the gold ornaments; that as per the Seizure Memo dated 16.10.2023 only two parcels i.e., A-30 of 406.54 grams of Gold Bar and parcel No. A-36 of 204.3 grams of Gold Pieces belongs to his firm; that he claimed to be the owner of the parcel No. A-30 of 406.54 grams of Gold Bar and parcel No. A-36 of 204.3 grams that was seized as per Seizure Memo dated 16.10.2023;

5.2 As regards Parcel No. A-30 of 406.54 grams Gold Bar, Shri Parai stated that he had purchased Gold Bar of 500 grams under Tax Invoice No. SGMPL/2324/4899 dated 27.09.2023 from M/s. SPN Gold & Precious Metal India Pvt. Ltd. (GSTIN: 27AAAYCS5396J1Z8); further M/s. SPN Gold & Precious Metal India Pvt. Ltd. has purchased 8000 grams of Gold Coins from M/s Auro Metal Refinery Pvt. Ltd., Ahmedabad (GSTIN: 24AASCA6334J1ZE) vide Tax Invoice No. SG/23-24/001 dated 27.09.2023. M/s Auro Metal Refinery Pvt. Ltd., Ahmedabad has purchased 100 Nos. of Gold Coins vide Tax Invoice ref. no. OD23100AHD99 dated 22.09.2023 from M/s Yes Bank, Ahmedabad, (Address of the Vault- Sequel Logistics Pvt. Ltd., Ahmedabad); that out of that 500 grams of Gold, he had cut a piece weighing 406.54 grams and sent to M/s. Sekh Badruddin of Rajkot for making Gold ornaments;

5.2.1 As regard Parcel No. A-36 of 204.3 grams two Gold pieces, he stated that he had purchased 300 grams of Gold Articles vide Tax Invoice No. SG-7226 dated 29.09.2023 from M/s. Kaka Gold LLP, Mumbai (GSTIN: 27AAZFK3711H1ZZ); that M/s. Kaka Gold LLP, Mumbai has purchased 5000 grams of Gold vide Tax Invoice No. MH/2324/G/631 dated 29.09.2023 from M/s. CAPSGOLD Pvt Ltd., Mumbai (GSTIN: 27AADCC6581E1ZN).

5.3 On being asked about the documents with regard to its legitimate purchase and/ or Customs duty paid documents, Shri Parai stated that he had purchased 500 grams of Gold Bar under Tax Invoice No. SGMPL/2324/4899 dated 27.09.2023 from M/s. SPN Gold & Precious Metal India Pvt. Ltd. (GSTIN: 27AAYCS5396J1Z8) and 300 grams of Gold Articles vide Tax Invoice No. SG-7226 dated 29.09.2023 from M/s. Kaka Gold LLP, Mumbai (GSTIN: 27AAZFK3711H1ZZ) wherein no customs duty are involved. On being shown provisions of Section 123(1)(b) of the Customs Act, 1962 and on being asked that the documents submitted by him did not prove that the said Gold Bar/ piece of parcel No. A-30 of 406.54 grams of Gold Bar and parcel No. A-36 of 204.3 grams of Gold Pieces, are not smuggled goods, to which he stated that the said parcel No. A-30 of 406.54 grams of Gold Bar and parcel No. A-36 of 204.3 grams of Gold Pieces, are 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, on the person, if any, who claims to be the owner of the goods, so seized. It appears that Shri Laxmchandra J Parai, Proprietor of M/s. R L Jewels has admitted in his statement dated 12.12.2023 that he is the owner of the goods under parcel No. A-30 consisting of 406.54 grams of one gold bar/ piece and parcel No. A-36 consisting of 204.3 grams of two gold pieces and that the said gold articles 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 one gold bar/ piece of 406.54 grams wrapped in parcel No. A-30 and two gold pieces of 204.3 grams wrapped in parcel No. A-36 (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 articles (one gold bar/ piece of 406.54 grams and two gold pieces of 204.3 grams) are not smuggled.

7. Shri Laxmchandra J Parai, Proprietor of M/s. R L Jewels, stated in his voluntary statement dated 12.12.2023 that the seized one gold bar/ piece of 406.54 grams under parcel No. A-30 was cut from the Gold Coin of 500 grams that had been purchased by them from M/s. SPN Gold & Precious Metal India Pvt Ltd (GSTIN:-27AAYCS5396J1Z8) under Tax Invoice No. SGMPL/2324/4899 dated 27.09.2023; that M/s. SPN Gold & Precious Metal India Pvt Ltd had purchased 8000 grams of Gold Coins from M/s Auro Metal Refinery Pvt Ltd, Ahmedabad (GSTIN:- 24AASCA6334J1ZE) vide tax invoice No. SG/23-24/001 dated 27.09.2023; that M/s. Auro Metal Refinery Pvt Ltd, Ahmedabad has purchased 100 Nos of Gold (in unwrought or in semi-manufactured forms) vide Tax invoice ref No. OD23100AHD99 dated 22.09.2023 from Yes Bank, Ahmedabad, Address of the Vault- Sequel Logistics Pvt Ltd, Ahmedabad.

8. On perusal of the documents/ invoices submitted by Shri Laxmchandra J Parai in support of legal possession of above said seized one gold bar/ piece of 406.54 grams under parcel No. A-30, it appears that M/s. SPN Gold & Precious Metal India Pvt Ltd (GSTIN:-27AAYCS5396J1Z8) had purchased 160 GOLD COINS (weighing 50 Grams each), weighing in total 8000 Grams from M/s. Auro Metal Refinery Pvt. Ltd., Ahmedabad under Tax Invoice No. SG/23-24/001 dated 27.09.2023 out of which M/s. R L Jewels had purchased 10 GOLD COINS (weighing 50 Grams each), weighing in total 500 Grams from M/s. SPN Gold & Precious Metal India Pvt Ltd (GSTIN:-27AAYCS5396J1Z8) under Tax Invoice No. SGMPL/2324/4899 dated 27.09.2023. The seized one gold bar/ piece of 406.54 grams under parcel No. A-30 apparently appears to be cut from a gold bar of 1 Kg bearing Sr.No.AD70532, however Shri

Laxmanchandra J Parai stated that the said seized one gold bar/ piece of 406.54 grams under parcel No. A-30 had been cut from the 500 grams of GOLD COIN purchased from M/s. SPN Gold & Precious Metal India Pvt Ltd. It appears to be incorrect and not convincing that to cut a gold bar/ piece of 406.54 Grams from 10 GOLD COINS (weighing 50 Grams each), weighing in total 500 Grams. Therefore, the submissions made by Shri Laxmanchandra J Parai in his voluntary statement dated 12.12.2023 appears to be incorrect, inconsistent, not matching with the seized gold bar and non-convincing with the documents/ invoices submitted by him during his statement. Thus, it appears that he purposefully submitted the above said documents/ invoices bills with intention to establish the seized goods as genuine domestic purchase gold. But actually it appears to be incorrect as per documentary evidences produced by them.

8.1 Further in respect of 204.3 grams of two gold pieces under parcel No. A-36, he stated in his voluntary statement dated 12.12.2023 that the seized two gold pieces weighing in total 204.3 Grams were cut from 300 Grams of Gold Articles that had been purchased by them from M/s. Kaka Gold LLP under Invoice No. SG-7226 dated 29.09.2023; that M/s. Kaka Gold LLP had purchased 5000 grams of Gold from M/s. CAPSGOLD Pvt. Ltd. Vide tax invoice No. MH/234/G/631 dated 29.09.2023.

8.2 On perusal of the documents/ invoices submitted by Shri Laxmanchandra J Parai in support of legal possession of above said seized two gold pieces weighing in total 204.3 grams under parcel No. A-36, it appears that M/s. Kaka Gold LLP had purchased 100 GOLD MEDALLIONS (weighing 50 Grams each), weighing in total 5000 Grams from M/s. CAPSGOLD Pvt. Ltd. Vide tax invoice No. MH/234/G/631 dated 29.09.2023, bearing Sr. No. M01078 to M01157 and Sr. No. M01178 to M01197 out of which M/s. R L Jewels had purchased 6 GOLD MEDALLIONS (weighing 50 Grams each), weighing in total 300 Grams from M/s. Kaka Gold LLP under Invoice No. SG-7226 dated 29.09.2023, bearing Sr. No. M01131 to M01136. Therefore, the submissions made by Shri Laxmanchandra J Parai in his voluntary statement dated 12.12.2023 appears to be incorrect, inconsistent, not matching with the seized gold bar and non-convincing with the documents/ invoices submitted by him during his statement. Thus, it appears that he purposefully submitted the above said documents/ invoices bills with intention to establish the seized goods as genuine domestic purchase gold. But actually it appears to be incorrect as per documentary evidences produced by them.

8.3 Therefore, it appears that Shri Laxmanchandra J Parai has intentionally submitted both the bills to show the seized gold articles i.e., one gold bar/ piece of 406.54 grams under parcel No. A-30 and two gold pieces of 204.3 grams under parcel No. A-36, as a domestic purchase. Since, the nature of the said gold articles being domestic as claimed by Shri Laxmanchandra J Parai, Proprietor of M/s. R L Jewels is not established from the documents/ evidences submitted by them, therefore, the said parcel A-30 containing ONE GOLD PIECE/ BAR weighing 406.54 (Four hundred and six point five four) grams and parcel A-36 containing two gold pieces weighing 204.30 (Two hundred and four point three zero) grams appears 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, and liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962, was conscious and intentional.

8.4 In view of the above, Shri Laxmanchandra J Parai appeared to have 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, have rendered the subject smuggled one gold bar/ piece of 406.54 grams under parcel No. A-30 valued at Rs. 23,78,259/- and two gold pieces of 204.3 grams under parcel No. A-36 valued at Rs.11,95,155/- liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962, appears to have rendered themselves liable to penalty under Section 112 of the Customs Act, 1962.

9. Therefore, a Show Cause Notice No. ADC-03/2024-25 dated 10.04.2024 was issued to the Noticee i.e. M/s. R L Jewels (GSTIN: 27ANCPP9164H1ZM), Floor-1/ 19, 10, Mawawala House, Pophalwadi 1st Lane/ Near Cotton Exchange, Bhuleshwar/ Kalbadevi, Mumbai, Maharashtra, 400002, as to why:-

- i. The recovered and seized foreign origin smuggled one gold bar/ piece of 406.54 (Four hundred and six point five four) grams under parcel No. A-30 valued at Rs. 23,78,259/- (Rupees twenty three lakh, seventy eight thousand and two hundred fifty nine only) and two gold pieces totally weight of 204.30 (Two hundred and four point three zero) grams under parcel No. A-36 valued at Rs. 11,95,155/- (Rupees eleven lakh, ninety five thousand, one hundred and fifty five 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.

Defense Reply:

10. The Noticee vide their letter dated 12.07.2024 received by this office on 18.07.2024, had submitted their defense reply, wherein alongwith the following documents, stated *inter alia* as follows:-

- i. Tax Invoice No. SGMPL/2324/4899 dated 27-09-2023 from S P N Gold and Precious Metal India Pvt. Ltd, for gold bar weighted 500.000 gms.
- ii. Tax Invoice No. SG/23-24/001 dated 27-09-2023 from Auro Metal Refinery Pvt. Ltd. In name of SPN Gold and Precious Metal India Pvt. Ltd, for gold bar weighted 8000.000 gms.
- iii. Tax Invoice No. OD23100AHD99 dated 22-09-2023 from Yes Bank, Ahmedabad In name of Auro Metal Refinery Pvt. Ltd, for gold bar weighted 100.000 gms. of 100 pcs.
- iv. Issue Voucher No. IH-62 dated 03-10-2023 in name of job worker named Sekh Badruddin.
- v. Tax Invoice No. SG-7226 dated 29-09-2023 from Kaka Gold LLP, Mumbai, for gold bar weighted 300.000 gms.
- vi. Tax Invoice No. MH/2324/G/631 dated 29-09-2023 from CAPSGOLD Pvt. Ltd. In name of Kaka Gold LLP, Mumbai, for gold bar weighted 5000.000 gms.
- vii. Issue Voucher No. IH-63 dated 03-10-2023 in name of job worker named Josimuddin Biswas.

10.1 The point wise reply to the view of the department as raised in point no. 10 of the subject Show Cause Notice is as follows:

- **Parcel No. A-30: Gold Bar Cut Pieces, whereas purchase bill mentioned Gold Coin of 50 gms. each:** - In this regard, they submitted that M/s Yes Bank has sold Gold of 100.000 gms. each of 100 pcs. in unwrought form or semi manufactured form to M/s

Auro Metal Refinery Pvt. Ltd.; that M/s Auro Metal Refinery Pvt. Ltd is a Refinery, which purchases fine gold, recycled gold and mined dore, refine it and then sale it in different form from coin to bullion category, here in this case they have purchased unwrought gold from M/s Yes Bank and refined it and formed 50gms coins from it then sold it, amongst it 50 gms of gold coin total in 160 pcs. (Total weighted 8000.000 grams) were sold to M/s SPN Gold and Precious Metal India Pvt. Ltd., which is mentioned in their tax invoice; that M/s SPN Gold and Precious Metal India Pvt. Ltd. is bullion traders from which purchaser can purchase full piece of gold bar or coin or can purchase fraction of gold in form of cut piece of gold bar or coin, as per their requirement; that there is no binding circulars, norms or rule which restricts selling of cut piece of gold bar or coin; that M/s SPN Gold and Precious Metal India Pvt. Ltd. sold gold coins of 500.000 gms. in many small pieces, some of them were in cut pieces, to M/s R L Jewels, which were difficult to handle and if any small piece gone missing then it would cost in thousands so M/s R L Jewels had melted all such pieces and casted 500.000 gms gold bar and stamped their identification mark AD70532 to trace their purchase history if there is any further question on; that Identification mark is alfa-numeric form in 7 digit, whereas Imported Gold Bar are generally of alfa-numeric form in 8 digit, which can be confirmed from Tax Invoice as submitted for Parcel No. A-48; that Imported Gold Bar contains Dot Matrix stamp print of serial no. on gold bar, whereas Gold Bar seized in parcel no. A-30 contains Conventional Pressure Punch Stamped Serial No.; that another marking seen on gold piece of parcel A-30 is of local testing firm, every time gold melted, casted and changed its form, seller has to get tested it in local touch lab and provide touch lab report showing purity of gold, to purchaser for their confirmation of purity, as purity marking on casted gold piece is not there after melting and buy - sell rate is decided on the basis of touch lab purity report of such gold, so there is not any other branch logo or marking on such gold piece; that they stand on their statement and confirm that the above mentioned details are correct; that accordingly, they had fulfilled their burden of proof on identity for Parcel No. A-30; that every gold jewellery manufacturer and job worker are equipped with gold melting machines and equipment, as melting process is normal activity in every step of manufacturing and distribution; that 24k gold are melted and mixed with silver and other alloys to cast gold to achieve 22k, 18k, 16k and other purity measures as required for manufacturing of gold ornaments; that melting of gold and changing its forms is normal in day-to-day activity in gold industry and any person can perform it in his premises and it does not require any special permission or license for the same.

- **Parcel No. A-36: Gold Bar Cut Pieces, whereas purchase bill mentioned Gold Coin of 50 gms each and no serial no. on seized gold piece:** - In this regard, they submitted that M/s CAPSGOLD PVT LTD. has sold Gold of 50.000 gms each of 100 pcs in (Medallion) Medal or Pendent form to M/s Kaka Gold LLP vide Tax Invoice No. MH/2324/G/631 dated 29-09-2023; that M/s Kaka Gold LLP has sold Gold of 50.000 gms each of 6 pcs, total of 300.000 gms in (Medallion) Medal or Pendent form to M/s RL Jewels vide Tax Invoice No. SG-7226 dated 29-09-2023, which was originally purchased from CAPSGOLD PVT LTD.; that M/s CAPSGOLD PVT LTD is bullion Merchant and sells Casted Gold bars, coins and various other products; that M/s CAPSGOLD PVT LTD does not sell imported gold which contains HS Code 71081200, which confirms that

the gold pieces seized in parcel no. A-36 are of domestic in nature; that M/s Kaka Gold LLP has sold Gold of 50.000 gms each of 6 pcs total of 300.000 gms in (Medallion) Medal or Pendent to M/s RL Jewels, which again are not generally accepted in bullion form in gold industry and job worker does not accept it as inward supply; that they does not treat it as 24k pure gold, so M/s RL Jewels had melted it and casted gold in bar form of 300.000 gms. and from such casted gold bar they have issued gold cut pieces to several job workers according to their requirement and 2 gold cut pieces from that weighted 204.290 gms. in total was issued to Josimuddin Biswas located at Rajkot for job work purpose to manufacture gold ornaments according to order received; that they have issued 18k gold chain of weighted 31.370 gms to attach it as 'hanging latkan/jumka' as per order received as mentioned in Issue Challan No. IH-63 dated 03-10-2023; that for the confirmation of serial no. casted on the gold bar piece (i.e. picture shown in show cause notice for parcel no. A-30), it is Conventional Pressure Punch Stamped Serial No., which means it is an identification mark punched by them to trace its purchase history and its purity report; that it is not a serial no. of gold bar as it should be on Imported Gold bar; that the punched identification mark is in alfa-numeric form of 7 digit, whereas Imported Gold Bars are generally of alfa-numeric form of 8 digit, which can be confirmed from the Tax Invoice as submitted for Parcel No. A-48; that the Imported Gold Bar contains Dot Matrix stamp print of serial no., whereas Gold Bar seized in parcel no. A-36 contains the Conventional Pressure Punch Stamped Serial No.; that from the image provided in the show cause notice, several cuts on both gold pieces may be noticed, which are due to various gold cut pieces issued to several job workers according to their requirement; that there is no foreign mark on any pieces which confirms it Foreign Mark Gold (Imported) in nature; that in respect of Serial No. M01131 to M01136 mentioned in the sale bill of M/s Kaka Gold LLP which does not verify with the serial no. on gold pieces seized in parcel no. A-36, is due to gold purchased from M/s Kaka Gold LLP was melted and casted in single piece, therefore, the Serial No. M01131 to M01136 could not be verified; that they stand on their statement and confirm that the above mentioned details are correct and gold pieces are of domestic in nature and accordingly, they had fulfilled their burden of proof in respect of Parcel No. A-36 as required under Section 123 of the Customs Act, 1962.

- The Noticee further submitted that as the instant case is related to Town Seizure and in view of the liberalized policy of Central Government, it cannot be held that all the foreign marked gold being bought and sold in India are of smuggled nature.

10.2. The Noticee further relied upon the following case laws:

- M/s DI Gold Designer Jewelry Vs Commr. of Customs (Preventive), Delhi,
- Shri Nitya Gopal Biswas Vs Commr. Of Customs (Prev), Kolkata
- Jitendra Bhanuprasad Soni Vs Ahmedabad Customs
- Ashokkumar Agarwal Vs Commissioner of Customs (Preventive), Kolkata [2017(348) ELT 555 Tri. Kolkata]
- SK Chains Vs Commr. of Customs (Preventive), Mumbai [2001(127) ELT 415 Tri. Mum.]
- Giridhari Dubey Vs Commr. of Customs (Prev.) Kolkata [2002(149) ELT 427 Tri. Kol.]
- Dhanistha Gold Vs Commr. Of Customs, Ahmedabad [2019(369) ELT 688 Tri. Ahmd]

10.2.1 The Noticee further submitted that the gist of the above mentioned case laws are as follows:

- a) All the foreign marked gold being bought and sold in India is not of smuggled nature.
- b) 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 is not sufficient for confiscation under Section 125 of the Customs Act, 1962
- c) Merely because the foreign marked gold is involved, the same is wrongly held to be smuggled one.
- d) Serial No. not mentioned in Invoice does not lead to confiscation of seized gold bar.
- e) A case cannot be held to be established on the basis of assumptions, presumptions and summaries

Records of Personal Hearing:

11. The personal hearing in the matter was held on 15.10.2024. Shri Chirag Dhanak, Chartered Accountant and authorized representative of the Noticee, attended the hearing on behalf of the Noticee. During the course of personal hearing, he re-iterated the earlier submissions made vide their letter dated 12.07.2024 and also submitted the copy of the “Refined Gold and Silver Bars for Good Delivery – Specification” issued by the Bureau of Indian Standards. He further requested to decide the case based on merits.

Discussions and findings:

12. I have carefully gone through the facts of the case records, Show Cause Notice, written defense submission dated 12.07.2024 as well as the verbal submission made by the authorized representative of the Noticee, during the course of personal hearing.

13. The issue to be decided in the matter is whether the seized gold consisting of one gold bar/ piece of 406.54 grams and another two gold pieces weighing 204.30 grams, are liable for absolute confiscation under Section 111 of the Customs Act, 1962 alongwith penalty under Section 112 of the Customs Act, 1962, or otherwise.

14. The crux of the matter is that it is the department's case that in absence of supporting import documents, the seized imported cut bar/pieces of Gold is restricted goods and therefore, is liable to confiscation under Section 111 of the Customs Act, 1962. However, I observe that the Noticee had contended that the said goods are not imported by them but have been purchased by them locally and accordingly, in support of their contention they had also produced the following purchase bills in respect of seized parcel no. A-30 and A-36:

- i. Tax Invoice No. SGMPL/2324/4899 dated 27-09-2023 from S P N Gold and Precious Metal India Pvt. Ltd, for gold bar weighted 500.000 gms.
- ii. Tax Invoice No. SG/23-24/001 dated 27-09-2023 from Auro Metal Refinery Pvt. Ltd. In name of SPN Gold and Precious Metal India Pvt. Ltd, for gold bar weighted 8000.000 gms.

- iii. Tax Invoice No. OD23100AHD99 dated 22-09-2023 from Yes Bank, Ahmedabad In name of Auro Metal Refinery Pvt. Ltd, for gold bar weighted 100.000 gms. of 100 pcs.
- iv. Issue Voucher No. IH-62 dated 03-10-2023 in name of job worker named Sekh Badruddin.
- v. Tax Invoice No. SG-7226 dated 29-09-2023 from Kaka Gold LLP, Mumbai, for gold bar weighted 300.000 gms.
- vi. Tax Invoice No. MH/2324/G/631 dated 29-09-2023 from CAPSGOLD Pvt. Ltd. In name of Kaka Gold LLP, Mumbai, for gold bar weighted 5000.000 gms.
- vii. Issue Voucher No. IH-63 dated 03-10-2023 in name of job worker named Josimuddin Biswas.

15. I observe that in the case on hand, there are two parcels of gold viz. A-30 of 406.54 grams and A-36 of 204.30 grams, which were seized by the department. I further observe that in this regard the Noticee's main contention is that both the said parcels are domestic in nature, as the same have been purchased from domestic market viz. M/s SPN Gold & Precious Metal India Pvt. Ltd., Mumbai and M/s Kaka Gold LLP, Mumbai respectively and at the time of seizure, the same were in transit for Job work to Rajkot through registered Angadia. Further, in support of their contention, the Noticee had submitted the chain of documents i.e. hierarchy of the supply chain invoices related to procurement of the said gold from their suppliers upto the issuance of "Issue Voucher" related to issuance of gold to the job worker for manufacturing of the ornaments. I observe that the said invoices submitted by the Noticee during the investigation are neither disputed nor challenged by means of any other evidence or revelations to negate the legitimate procurement of the said Gold. I am in consent with the view of the Noticee that gold used for different purposes requires different quantity and therefore, for the purpose they have to melt the gold and cast/cut it in the weight as required at each stage of supply and therefore, I find that the same cannot retain its original identity i.e. bearing the same identification of marks present at the time of purchase. Thus, each and every stage of such cutting and casting of gold of different sizes and weights are being stamped by conventional pressure punch stamp with some identification mark to trace their purchase history and therefore, the said cut piece of gold bar cannot be said to be de-linked with purchase invoice produced by the Noticee. I further observe that no other incriminatory material was obtained either from the Angadia person or in the course of interrogation/ investigation, as the same are not placed before me that would indicate that the said goods were sourced from outside India by the Noticee. Therefore, I find it a reasonable explanation to the discrepancy 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 any other evidence against them.

16. I further took note of the fact that the Gold pieces/ bar was seized from the mainland area of the country and not from the customs area or at any entry point in

India to suggest the indulgence of the Noticee themselves in the smuggling activity. Also, the gold was in a 'cut piece' under Transit and seized from a person representing Registered Angadia firm 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, goes in favour of the Noticee and against the allegation of illegal procurement of imported gold by the Noticee. Therefore, the contention of the Noticee that gold pieces/bar in question was purchased in the normal course of business under proper bills/invoices is justified and hence, it cannot be said that the cut piece of a gold bar 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 has been proved by them and hence, the facts does not goes against the Noticee at all. It therefore, cannot be held that the seized 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 on them by the virtue of Section 123 of the Customs Act, 1962, that the seized Gold piece/ bar is not smuggled one and has been procured locally with legitimate invoice. I further observe that the department was of the view that as the marking available on the gold does not match with the purchase invoice, the inference was drawn that the same does not relate to the documents submitted by the Noticee. I find that such discrepancy in markings is only "a mere suspicion" without there being any substantive proof and on this basis alone, the gold bar in question cannot be confiscated. I find also 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. Further, I observe that the Noticee has vehemently relied upon the order of the Hon'ble CESTAT in a similar matter of M/s. Dhanishtha Gold Vs CC, Ahmedabad reported as 2019(369) ELT 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-correlation of seized gold with invoices including on the basis of serial number and minor weight differences. Documents, including related to purchases, were produced before the investigating officer as well as to the 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 cannot be confiscated on the ground that the purchase invoice is not a foolproof evidence of legitimacy. The relevant para of the Order reads as follows:

"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 meager 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 had also relied upon the decision of the Hon'ble CESTAT in the matter of Ashok Kumar Agarwal reported as 2017(348)ELT555(Tri. - Kolkata). In this case the Hon'ble CESTAT has held that once the purchase bills are produced before the department, then the burden under Section 123 of the Customs Act, 1962 stands discharged. The relevant portion of the para 4 of the Order are reproduced as follows 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)ELT415(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 said judgment reads as follows:

“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 I further observe that the Noticee has also relied on the case law of Giridhari Dubey Vs Commissioner of Customs (Prev.) Kolkata reported as [2002(149) ELT 427 Tri. Kol.], wherein the Hon'ble CESTAT, in the matter of co-relation of the seized foreign marked gold (brands) with the invoice has held as follows:

“3. The matter was heard. After considering the statements made in the materials, we find

(a)

(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 consider 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, hence not sustainable and survive 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 i.e. M/s. R L Jewels, Mumbai. As a consequence, no question arises for imposition of penalty upon Section 112 of the Customs Act, 1962.

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

ORDER

I drop the proceedings initiated vide the Show Cause Notice No. ADC-03/2024-25 dated 10.04.2024 against M/s. R L Jewels (GSTIN:-24ANCPP9164H1ZM), 1/19, 10, Mawala House, Popalwadi 1st Lane, Bhuleshwar/ Kalbadevi, Mumbai.

F. No. CUS/2002/2024-Adjn.

(Harkirpal Khatana)
Additional Commissioner
Date: 28.10.2024

By Email/ Hand Delivery/ Speed Post –

To

M/s. R L Jewels, (GSTIN: 27ANCPP9164H1ZM),
Floor - 1/ 19, 10, Mawala House,
Popalwadi 1st Lane/ Near Cotton Exchange,
Bhuleshwar/ Kalbadevi, Mumbai (Maharashtra) – 400 002.

Copy to:

1. The Additional Commissioner, Customs (Prev.), RRA Section, Hqrs., Jamnagar.
2. The Deputy Commissioner (Prev.), Customs (Preventive) HQ, Jamnagar.
3. The Deputy Commissioner, Customs Division, Jamnagar.
4. Guard File.