

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
 “सीमाशुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-83/ DRI-AZU /O&A/HQ/2024-25 Dated 04.06.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	244/ADC/SRV/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	29.01.2025
E	जारी करनेकी तारीख/ Date of Issue	:	29.01.2025
F	द्वारापारित/ Passed By	:	SHREE RAM VISHNOI, ADDITIONAL COMMISSIONER
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	1) M/S. V.S. GOLD, 705,1ST FLOOR, SHOP NO. 2, 54, 55, TAJ JEWELLERY COMPLEX, UDAIPUR 2) M/S. ROYAL BULLION, 705, 7TH FLOOR, AURAM MALL, SHAIKH MEMON STREET, KALBADEVI, MUMBAI 3) M/S. SWISS BULLION, 307, KRISHNA NIWAS, 3RD FLOOR, OFFICE NO-69, YUSUF MEHRALI ROAD, NEXT TO DHANJI STREET CORNER, PYDHANIE, MUMBAI-4000003 4) M/S. DIYA BULLION AND JEWELLERY, SHANTI NAGAR, B BLOCK, JALORE, RAJASTHAN - 343001 5) M/S. SHREE NEMINATH JEWELLERS, 2/3, MAHETA MANOR, B.P.T. COLONY, SANOR, 146 VARAVATHI VILLAGE, MUMBAI- 400030 6) SHRI LAKHPATRAJ HEMRAJ SINGHVI, ROOM NO. 103, HEENA RESIDENCY, DAULAT NAGAR, ROAD NO. 9, BORIVALI EAST, MUMBAI, MAHARASHTRA- 400066 7) M/S. POOJA GOLD, SHOP NO-28, SARDIWALA MARKET, BUNDELAWAD, BHAGAL SURAT. M. NO.9825630400 8) SHRI DALPATBHAI K. DODIYA, EMPLOYEE OF M/S. ASHOKKUMAR AMBALAL & COMPANY 18, ZAVERI CHAMBER, VAGANPOLE, RATANPOLE, ZAVERIWAD, AHMEDABAD, GUJARAT;

		9) SHRI KAILASHKUMAR DODIYA, MANAGER OF M/S. ASHOKKUMAR AMBALAL & COMPANY, 18, ZAVERI CHAMBER, VAGANPOLE, RATANPOLE, ZAVERIWAD, AHMEDABAD, GUJARAT. 10) M/S. ASHOKKUMAR AMBALAL & COMPANY, 18, ZAVERI CHAMBER, VAGANPOLE, RATANPOLE, ZAVERIWAD, AHMEDABAD, GUJARAT.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 %(अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या झूठी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

BRIEF FACTS OF THE CASE

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

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

3. Accordingly, the examination of the baggage of the passengers was done in separate rooms of the DRI, Ahmedabad office under respective Panchnamas dated 07/08.06.2023. During examination of the baggage of one of the passenger, who identified himself as Shri Dalpatbhai K. Dodiya, Employee of M/s. Ashokkumar Ambalal & Company, and produced his train ticket of Train Number 22945 for travelling from

Mumbai to Ahmedabad on 06.06.2023. During the examination, the officers found that his bag contain various parcels. The officers opened each and every parcel contained in the bags and prepared inventory of all the goods found during the examination of baggage as attached to the said panchnama.

4. During the examination of the baggage, the officers found that there were certain parcels containing gold which appeared to be of foreign origin. Further, the passenger could not produce any documents showing legitimate import of the said goods and these goods appears to be of the nature of smuggled goods. The details of said gold, as identified vide the markings on the gold and labels of the parcels are as per Table-I below:

TABLE- I

Sl. No.		Item description	Sender Name	Receiver Name	Quantity	Weight (in gms.)	Insurance value (value of goods in Rs.)	Markings on the gold
1	i	Cut Piece Gold Bar	Mayur Chain Pvt. Ltd.	Kundan Kaku	1/2 cut piece	296.98	1840000	No bill
2	i	Gold bars (foreign origin)	S.P.J Mumbai	Shankesh Raj Singhwi	2 Bars	200	1850000	No bill (Valcambi Suisse 100 grams gold 999.0, Sr. No. AJ797532 and second no. is stricked-off)
	ii	Gold bars (Indian)			1 bar	100		No bill (BRPL 100 grams fine gold 999.0 BR2456)
3	i	Cut piece gold Bar (Indian origin)	Palm Jewels Ltd	Madhudus han Jewellers Surat	Cut piece gold bar and dust	15.54		No bill
4	i	Two cut pieces ofGold bars (foreign origin)	Rajat	Sudhirbhai	2 cut piece	113.99	810000	No bill (shape of gold bars suggest it is foreign origin nature)
	ii	Gold bars (Indian)			1 bar	20		
5	i	Gold coin (5 gram + Gold buiscut 5 grams + Gold Pieces + 1200 cash)	SAZ Jewelles	VikashJi			60,000	No bill
6	i	Gold bars (foreign origin)	RD	Alpesh Shantilal	1 Bars & 1/3rd Pieces	1200.70 Grams	1850000	No bill (Al Eithad Gold Dubai UAE gold 995.0, Sr. No. A378402 Melter Assayer and and secound cut pieces NO. Numbers)
7	i	Gold bars (foreign origin)	RD	Shakar Das Veshanav	1 Bars	500 Grams	Not available	No Bills VN or NV Gold - 500m Grams Fineness 99.50

8	i	Gold bars (foreign origin)	V.S.Udaipur	Shakar Das Veshanav	1 Bars + Particle s	600 Gram s	3700000	No bill (Al Eithad Gold Dubai UAE gold 995.0, Sr. No. A979750 Melter Assayer and and two small pieces/particle s)
9	i	Gold bars (foreign origin)	Chagan	Vishunu Ji	1 Cut pieces	56 Gram s	350000	

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

5. Under the reasonable belief that these goods are liable for confiscation under the provisions of the Customs Act, 1962, the officers placed the above mentioned goods under detention for further investigation while releasing the remaining goods(with legitimate documents) to Shri Kailashkumar Dodiya, Manager, M/s. Ashokkumar Ambalal & Company under Panchnama dated 20.06.2023.

6. STATEMENT OF SHRI KAILSHKUMAR DODIYA, MANAGER OF M/S. ASHOKKUMAR AMBALAL & COMPANY UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 14.06.2023

6.1. Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company voluntarily presented himself on 14.06.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 14.06.2023, wherein *interalia* he stated that:-

- Their firm specializes in courier services of precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. and that they pay GST @18% as per the CGST Rules and regulations.
- That they pick up the parcels from the office or business premises of the customer and also deliver the parcels at the address and details provided by the sender and is mentioned by them on the parcel.
- On being asked he stated that their company’s pick up vehicles generally go to the customs’ office to collect the goods in majority of the cases. In case of precious parcels, the same are sealed by the sender and they do not know the exact description of goods. That they act on the basis of invoice and description mentioned on the parcel by the sender.
- On being asked about the type of goods which they may transport to which he stated that any legitimate goods with proper invoice can be transported but they mainly accept parcels related to precious metals and valuable goods, documents, gems and jewellery, diamonds.
- On being asked as to whether they can accept the parcels related to foreign currency, foreign origin gold, to which he stated that they cannot accept the parcels related to foreign currency, foreign origin gold in bars or in any other

form. However, the customer may sometimes mis-declare the correct description and nature of the goods in the parcel.

- He was shown the panchnama dated 07/08.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence vide which the examination of the parcel carried by Mr. Dalpatbhai K. Dodiya was conducted. And in token of having seen and in agreement of the said panchnama dated 07/08.06.2023 he put his dated signature on the same. He stated that the some of their company’s parcels are detained as per Annexure- B to the panchnama dated 07/08.06.2023 under reasonable belief that the same are liable for confiscation under the provisions of the Customs Act, 1962.
- He produced the documents/ details in respect of the gold detained vide Panchnama dated 07.06.2023 as per Table-II below:-

TABLE- II

Sl. No.	Item Description	Details of Sender	Details of Recipient	Documents submitted
1	Cut Piece Gold Bar	Mayur Chains Pvt Ltd. Add :13, Bhatt Bldg,shop no-4,1st floor, 2nd AGYARI LANE, Zaveri Bazar, Mumbai-400003, M. No.9930193989	M/s Jaina Jewels (Kundan Kaku) Address:- 84/86, Zaveri Mansion Dhanji Street, Zaveri Bazar, Mumbai-400003 M. No. 9898311375	Invoice and Karigar issue voucher
2.	Gold bars (foreign origin)	Shree Neminath Jewellers (S.P.J. Mumbai), Add : 2/3, Maheta Manor, B.P.T. colony samor, 146 Varavthi village, Mumbai- 30	Singhvi Vikas (Shankhesh Raj Singhvi) & L. R. Singhvi Address:- 104, Heena Residency, Daulat Nagar, borivali E, Mumbai. M. No. 9461343871/82	Invoice and ledger details
	Gold bars (Indian)			
3.	Cut piece gold Bar (Indian origin)	Madhusudan Jewellers Surat, Add : Shop no. 210, 2nd floor, Silver spring complex, Opp Parekh jewellers, Chiksi Bazar, Bhagal, Surat, 9879886040	Palm Jewels Limited Address:- 37, of super mall, C G road, Ahmedabad M. No. 7575009844	Invoice
4.	Two cut pieces of Gold bars (foreign origin)	Pooja Gold (Rajat) Add :Shop no-28, Sardiwala Market, Bundelawad, Bhagal Surat. M. No.9825630400	AnarsanSudhirbhai Ramchandra Sudhirbhai) Address:- Shop no- S F 441, Kalupur Shajanad Market, Beside Vrundavan Shopping center, Pankornaka, Ahmedabad. M. No. 8128158049	Invoice
	Gold bars (Indian)			
5.	Gold coin (5 gram + Gold buiscut 5 grams + Gold Pieces + 1200 cash)	SAZ Jewels, Add :Plot no- J-17, Gem and Jewellery park, Gujarat Hira Bourse, Nr RJD IND. Ichchhapor, GIDC Surat-394510	Annd Magal Abhushan (Vikashji) Address:- 21A OPP Kamala College Rai Ka Bagh, jodhpur-342001	Invoice
6.	Gold bars (foreign origin)	Swiss Bullion (RD) Add : 307, Krishna Niwas, 3rd floor, office no-69, Yusuf meharali road, next to Dhanji st. corner, pydhanio, Mumbai-400003	Diya Bullion and Jewellery (Alpesh shantilal) Address:- Shanti nagar, b block, Jalore-343001 M. No. 9414350330	Invoice
7.	Gold bars (foreign origin)	Swastik Bullion (RD) Add : Jn-1/49/B-a, Nakshatra Apartment, Sector No. 09, Near Shabri Restaurant, Vashi, Navi Mumbai – Thane	V. S. Gold (Shakar Das Veshnav) Address:- 1st Floor, Shop No-2, 54, 55 Taj Jewellery Complex, Opp. Kalpol, Bada Bazar, Udaipur M. No. 9680071836	Invoice

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8.	Gold bars (foreign origin)	Royal Bullion (V. S. Udaipur), Add : 705, Auram Mall, Shaikh Memon Street, Kalbadevi, Zaveri Bazar, Mumbai - 400 002 M. No. 9833258397	V. S. Gold (Shakar Das Veshnav) Add : 1st Floor, Shop No-2, 54, 55 Taj Jewellery Complex, Opp. Kalpol, Bada Bazar, Udaipur - 313 001 M. No. 9680071836	Invoice
9.	Gold bars (foreign origin)	Mamta Jewellers (Chagan) Add : Kisan Kharat road, Nityanand Nagar, Police Bit No. 3, Jawal, Gatkopar (W), Mumbai - 400 086 M. No. 8268856184, 9224267469	Vishnukumar Soni (Vishunu Ji) Address:- Om Namo Nikhilam Art, Gul Mandi, Sarafa Bazar, Vasant Bhavan, Nagoli Gali, Bhilwada. M. No. 9587831669	Karigar issue voucher

6.2 On being asked to produce documents related to import of gold bars as mentioned at Sr. No. 2,4,6,7,8 and 9 of the above table, Shri Kailashkumar Dodiya, stated that the customers have submitted copies of invoices issued by their respective customers and he informed that he is having only these documents in relation to gold bars as mentioned at Sr. No. 2,4,6,7,8 and 9 of the above table.

6.3 He was shown the panchnama dated 07/08.06.2023 drawn at the premises of office of DRI, Zonal Unit, Ahmedabad. On perusing the same, he agreed with the contents of the panchnama and appended his dated signature on the same. On being asked as to whether they can accept the parcels related to foreign currency, foreign origin gold, to which he stated that they cannot accept the parcels related to foreign currency, foreign origin gold in bars or in any other form. However, the customer may sometimes mis-declare the correct description and nature of the goods in the parcel.

RELEASE OF THE INDIAN ORIGIN GOLD

7. M/s. Ashokkumar Ambalal & Company submitted certain documents as detailed at TABLE-II above pertaining to their parcels, i.e., detained gold indicating the genuine procurement of the same by DRI under Panchnama dated 07/08.06.2023. Accordingly, the representative of the said Aangadiya firm, M/s. Ashokkumar Ambalal & Company was called to the DRI office and the Indian Origin gold, as mentioned at Sl. No. 1(i), 2(ii), 3(i), 4(ii) and 5(i) in the TABLE-I herein above was released to the Aangadiya firms after verification with the respective necessary documents in respect of some of the parcels while detaining the foreign origin gold for further investigation as mentioned below. The proceedings thereof were recorded under Panchnama dated 20.06.2023 in the presence of the independent panchas. The receipt of the parcels is duly acknowledged by Shri Kailashkumar Dodiya vide panchnama dated 20.06.2023, which were detained vide as per Annexure –B to the panchnama dated 07/08.06.2023, as per Table-III below:-

TABLE- III

Sl. No.	No. of items	Weight	Item description	Corresponding Sl. No. of Annexure-B to the panchnama dated 07.06.2023
1	½ cut piece	296.98 gm	Cut Piece Gold Bar	Sl. No. 1(i)
2	1	100 gm	Gold Bars(Indian)	Sl. No. 2(ii)
3	Cut pieces	15.54 gm	Cut piece Gold Bar (Indian origin)	Sl. No. 3(i)
4	1	20 gm	Gold Bars (Indian) of 20 grams	Sl. No. 4(ii)
5	pieces	-	Gold Coin (5 gm) + Gold Biscuits (5 grams) + Gold Pieces + Rs. 1200/-	Sl. No. 5(i)

7.1 The remaining parcels as mentioned at Sl. No. 2, 4, 6, 7, 8 & 9 as detailed in Annexure –B attached to the panchnama were again resealed and detained for further investigation, details of which are as per Table-IV below:-

TABLE- IV

Sl. No.	Item Description	Details of Sender	Details of intended recipient
1	Gold bars (foreign origin) (2 bars -200 grams)	Shree Neminath Jewellers (S.P.J. Mumbai), Add: 2/3, Maheta Manor, B.P.T. Colony Samor, 146, Varavthi Village, Mumbai -30	Singhvi Vikas (Shankhesh Raj Singhwi) & L. R. Singhvi, Add: 104, Heena, Residency, Daulat Nagar, Borivali (E), Mumbai. M. No. 94613439871/82
2	Two cut pieces of Gold bars (foreign origin) (113.99 grams)	Pooja Gold (Rajat) Address: Shop no-28, Sardiwala Market, Bundelawad, Bhagal Surat. M. No.9825630400	Anarsan Sudhirbhai Ramchandra Sudhirbhai) Add : Shop no- S F 441, Kalupur Shajanad Market, Beside Vrundavan Shopping center, Pankornaka, Ahmedabad. M. No. 8128158049
3	Gold bars (foreign origin) (1 Bars & 1/3 rd pieces- 1200.70 grams)	Swiss Bullion (RD) Address: 307, Krishna Niwas, 3rd floor, office no-69, Yusuf meharali road, next to Dhanji st. corner, Pydhanie, Mumbai-400003	Diya Bullion and Jewellery (Alpesh shantilal) Add : Shanti nagar, b block, Jalore-343001 M. No. 9414350330
4	Gold bars (foreign origin)(1 Bars-500 grams)	Swastik Bullion (RD) Address: Jn-1/49/B-a, Nakshatra Apartment, Sector No. 09, Near Shabri Restaurant, Vashi, Navi Mumbai – Thane	V. S. Gold (Shakar Das Veshnav) Add : 1st Floor, Shop No-2, 54, 55 Taj Jewellery Complex, Opp. Kalpol, Bada Bazar, Udaipur M. No. 9680071836
5	Gold bars (foreign origin) (1 bars + particles- 600 grams)	Royal Bullion (V.S. Udaipur), Address: 705, Auram Mall, Shaikh Memon Street, Kalbadevi, Zaveri Bazar, Mumbai - 400 002 M. No. 9833258397	V. S. Gold (Shakar Das Veshnav) Add : 1st Floor, Shop No-2, 54, 55 Taj Jewellery Complex, Opp. Kalpol, Bada Bazar, Udaipur - 313 001 M. No. 9680071836
6	Gold bars (foreign origin) (1 Cut pieces-56 grams)	Mamta Jewellers (Chagan) Address: Kisan Kharat road, Nityanand Nagar, Police Bit No. 3, Jawal, Gatkopar (W), Mumbai - 400 086 M. No. 8268856184, 9224267469	Vishnukumar Soni (Vishunu Ji) Add : Om Namo Nikhilam Art, Gul Mandi, Sarafa Bazar, Vasant Bhavan, Nagoli Gali, Bhilwada. M. No. 9587831669

8. STATEMENT OF SHRI CHINTAN SAGARMAL JAIN, PARTNER OF M/S. SHREE NEMINATH JEWELLERS, 2 & 3, MEHTA MANOR, 146, WORLI VILLAGE, MUMBAI-400030, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 11.07.2023.

8.1 Summons dated 07.07.2023 under Section 108 of Customs Act, 1962 was issued to M/s Shree Neminath Jewellers and accordingly, statement of Shri Chintan Sagarmal Jain, Partner of M/s. Shree Neminath Jewellers, was recorded on 11.07.2023 in connection with investigation with respect to 2 foreign origin gold bars of 200 grams wherein *interalia* on being asked about his work profile in the firm M/s. Shree Neminath Jewellers, Mumbai, he stated that he is partner of the said firm M/s. Shree Neminath

Jewellers, Mumbai, and looks after the sale purchase of Gold Bars and Gold Jewellery. On being asked he stated that his firm deals in the work related to trading of foreign gold and Gold Jewellery in the retail market. He also stated that they give raw gold in the form of Bars or cut pieces to various goldsmiths to make jewellery for them on job work basis. He also stated that he is handling all the day to day work, work related to sale and purchase of gold bars and gold jewellery, accounts etc.

8.2 During the recording of statement, he was shown the Panchnama dated 07/08.06.2023 drawn at the premises of office of DRI, Ahmedabad Zonal Unit, Ahmedabad. On perusal of the same, he appended his dated signature on the last page of the panchnama dated 07/08.06.2023 in token of having seen and agreed with the contents of the said panchnama. He also stated that goods detained as per Annexure-B of the said panchnama were parcel belonging to Shri Lakhpat Raj Singhvi was detained under reasonable belief that these were liable for confiscation under the provisions of the Customs Act, 1962. He was also shown the panchnama dated 20.06.2023 drawn at the premises of Office of DRI, Ahmedabad Zonal Unit, Ahmedabad.

8.3 He further stated about the detained two gold bars having total weight of 200 grams of 999 purity, that the same is of foreign origin and the same was purchased by them from M/s. Shree Mandev Bullion LLP, Mumbai. He further stated about the mode of purchase that M/s. Shree Mandev Bullion LLP has an application namely Shree Mandev Bullion LLP and web page in their name. On the page of application, they mention gold under various categories. One of such category is Gold 9990 Imported. They had booked the gold under the said category and purchased the imported gold from M/s. Shree Mandev Bullion LLP, Mumbai. The said gold is further sold in retail market out of which 200 grams was sold to Shri Lakhpat Raj Singhvi. He stated that he does not have import dockets for the import of the said foreign origin 2 gold bars of 200 grams, they were not supplied any Import dockets for the import of the said foreign origin 2 gold bars of 200 grams by the supplier M/s. Shree Mandev Bullion LLP, Mumbai. However, he would seek the documents from the supplier and undertake to submit the same once it is received from the supplier. He submitted the documents related to sale, purchase, details of payment for the said gold vide his letter dated 11.07.2023.

9. STATEMENT OF SHRI LAKHPATRAJ HEMRAJ SINGHVI, INTENDED RECIPIENT OF GOODS, VIZ., 2 FOREIGN ORIGIN GOLD BAR OF 200 GRAMS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 on 11.07.2023.

9.1 A statement of Shri Lakhpatraj Hemraj Singhvi, the recipient of foreign origin gold bars weighing 200 grams seized under panchnama dated 07/08.06.2023 was recorded on 11.07.2023 under Section 108 of Customs Act, 1962 wherein interalia he stated that he has done B.Com. in the year 1997 and after completion of his studies worked as Chartered Accountant.

9.2 During the recording of his statement he was shown the panchnama dated 07/08.06.2023, and in token of perusal and in agreement of the said panchnama, he

put his dated signature on the same. On being asked he stated that the goods detained vide Annexure- B to the panchnama dated 07/08.06.2023, viz. 2 gold bars of foreign origin were purchased by him and handed over by him to M/s. Ashokkumar Ambalal & Company to deliver the same to his nephew Mr. Sankhesh Singhvi. The said Foreign Origin Gold bars were purchased from M/s. Shree Neminath Jewellers, Mumbai.

9.3. He was shown the statement dated 11.07.2023 of Shri Chintan Sagarmal Jain, Partner of M/s. Shree Neminath Jewellers, Mumbai and in token of agreement of the statement dated 11.07.2023 he put his dated signature on the same.

10. STATEMENT OF SHRI MUKESH S. JAIN, PROPRIETOR OF M/S. POOJA GOLD SENDER AND BENEFICIAL OWNER OF TWO GOLD CUT PIECES WEIGHING 113.98 GRAMS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 on 14.07.2023.

10.1 Summons dated 07.07.2023 under CBIC DIN 202307DDZ1000000A765 was issued to M/s. Pooja Gold, Shop No – 28, Sardiwala Market, Bundelawad, Bhagal, Surat, Gujarat. Accordingly, a statement of Shri Mukesh S. Jain, Proprietor of M/s. Pooja Gold, was recorded on 14.07.2023 under Section 108 of the Customs Act, 1962 wherein *interalia* he stated that he started the firm M/s. Pooja Gold is operating from Surat and is engaged in the business of Gold bars and Gold Jewellery sale and purchase. He stated that he handles all the day to day work, work related to sale and purchase of Gold Bars and Gold Jewellery, accounts etc.

10.2 He was shown the panchnama dated 07/08.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence, Zonal Unit Ahmedabad vide which the examination of our goods/parcels intercepted from M/s. Ashokkumar Ambalal & Company, was conducted. He perused the said panchnama and in agreement of the panchnama he put his dated signature on the last page of panchnama wherein vide annexure-B attached to the panchnama dated 07/08.06.2023, a parcel belonging to M/s. Pooja Gold was detained with a reasonable belief that these goods are liable for confiscation under the provisions of the Customs Act, 1962. He was also shown the panchnama dated 20.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence, Zonal Unit Ahmedabad and in token of having seen he put his signature on the same.

10.3 On being asked specifically about the detained two Gold Cut pieces having total weight of 113.98 grams of 999 purity he stated that the said two Gold Cut pieces having total weight of 113.98 grams of 999 purity is of foreign origin and the same was purchased by them from some retailers who sometimes visits to their shop to sell Gold. Further, on being asked about as to whether the said cut piece of gold bar was smuggled in India, he state that they had purchased the said gold from a person aged about 30-35 years in Surat. The said person had come to or shop in around May' 2023 saying that he was in urgent requirement of funds for some social function and that he needs to sell his gold to earn some money. He stated that taking pity on his condition, he had

purchased the gold from him and had paid him by cash. He also admitted that he had not made the entry of payment made in cash in our accounts.

10.4 He stated that he was not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. He stated that it is possible that the said person had smuggled the gold through Surat Airport from abroad. He further stated that the person offered him the gold at a cheaper rate, and therefore he purchased the gold based on its purity and rate.

10.5 He further stated that he does not have any import documents for their seized two Gold Cut pieces having total weight of 113.98 grams of 999 purity as it was not provided by the person from whom they had purchased the said gold. On being asked as to why they did not seek any import documents from that person as he offered him the gold on a cheaper rate, he stated that they do not have any legal knowledge of the Customs Act or rules. On being asked he admitted that he himself had handed-over the parcel to M/s. Ashokkumar Ambalal & Company to deliver the same to Shri Sudhir Bhai Ramchandra Anarsan, Ahmedabad. He provided a copy of the invoice issued to Shri SudhirBhai Ramchamchandra Anarsan.

11. VALUATION OF THE DETAINED GOODS BY GOVT. APPROVED VALUER

11.1 Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer, examined the detained gold in presence of independent pancha witnesses and Shri Kailashkumar Dodiya of M/s. Ashokkumar Ambalal & Company and examination of the same is recorded under panchnama dated 11.09.2023 drawn at DRI office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad. Shri Kartikey Vasantraai Soni, Gold Assayer certified the purity of Gold, weight, rate of gold vide his valuation report dated 18.09.2023. As per the valuation report dated 18.09.2023, the details of the detained gold in respect of parcels detained vide panchnama dated 07/08.06.2023 i.r.o. M/s. Ashokumar Ambalal & Company are as per Table-V below:-

TABLE-V

Par cel No.	Sender Name on parcel	Intended Recipient	Weight (g)	Purity	Marking	Indian/ Imported Marking	Rate Per Gram	Value (Rs.)
8	VS Udaipur	Sahnkarji	598.30	995.0	PAMP	Imported	6050	36,19,715/-
2	SPJ Mumbai	Shakhesh Raj Singhvi	200.00	999.0	VALCAMBI	Imported	6050	12,10,000/-
6A	RD Mumbai	Alpeshbhai Shantilal Soni	1000.00	995.0	AL ETIHAD	Imported	6050	60,50,000/-
6B			200.00	995.0	Finess 99.50	Indian	6050	12,10,000/-
4	Rajat	Sudhirbhai Ahmedabad	114.200	999.0	CHI & MG	CHI- Imported MG- Indian	6050	6,90,910/-
7	RD Mumbai	Shakar Das Veshnav	500.000	995.0	VN Gold	Indian	6050	30,25,000/-
9	Chagan Mumbai	Vishnuji	56.200	995.0	Fine Gold 99.50	Indian	6050	3,40,010/-

12. STATEMENT OF SHRI ALPESH KUMAR OF M/s. DIYA BULLION AND JEWELLERY (INTENDED RECIPIENT OF 1000 GRAMS OF GOLD SENT BY 'RD') RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 RECORDED ON 29.09.2023.

12.1 A summons dated 25.09.2023 bearing DIN202309DDZ 1000077955 was issued to M/s. Diya Bullion and Jewellery in connection with the detained foreign origin gold of purity 995 having weight 1 Kg. Accordingly a statement of Shri Alpesh Kumar, Proprietor of M/s. Diya Bullion and Jewellery was recorded under Section 108 on 29.09.2023, wherein *inter alia* he stated that he is proprietor of M/s. Diya Bullion and Jewellery, Shanti Nagar, B- Block, Jalore, Rajasthan- 343001. He was shown panchnamas dated 07.06.2023 along with Annexure-B to the said panchnama wherein the parcel meant for M/s. Diya Bullion and Jewellery was detained by DRI. He was also shown the panchnamas dated 20.06.2023 and 11.09.2023. In token of perusal of the same, he put his dated signature on the same. He stated that he had purchased 1200 grams gold from Shri Sushil of M/s. Swiss Bullion and on perusal of report it is observed that 1000 grams of gold is having foreign marking and is thus imported and 200 grams is having Indian marking in parcel 6B. On being asked, he stated that he placed an order of 1200 grams of Gold to M/s. Swiss Bullion, Mumbai and has no information as to whether the said gold is of foreign origin and had not asked for foreign origin gold. On being asked about the invoice, he submitted a copy of Invoice No. SB/27 dated 07.06.2023. On being asked that the gold was sent on 06.06.2023 and invoice date is of 07.06.2023, he stated that Shri Sushil of M/s. Swiss Bullion, Mumbai may be able to explain the reason for the same. On being asked he stated that he has not been provided any import documents i.r.o. 1000 grams of foreign origin gold by the supplier. He also informed that he was not provided actual tax invoice at the time of handing over the goods to M/s. Ashokumar Ambalal & Company.

13. SEIZURE OF THE DETAINED GOODS

13.1 From the valuation report dated 18.09.2023, it was determined that the detained gold as mentioned at Parcel No. 8, 6A in the TABLE-V above are of foreign origin. In absence of the import related documents of such goods with the Angadiya firm, the detained goods, detailed as follows, were placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962.

- (i) One Gold Bar and particle of foreign origin totally weighing 598.30 grams valued at Rs. 36,19,715/- (Rupees Thirty Six Lakhs Nineteen Thousand Seven Hundred and Fifteen Only) having marking AL Etihad Gold Dubai UAE Gold 995, Sr. No. A979750 Melter Assayer and two small pieces/ particles sent by SENDER- 'M/s. Royal Bullion, 705, Auram mall, Shaikh Memon Street, Kalbadevi, Zaveri Bazar, Mumbai- 400002' to RECIPIENT- 'M/s. V.S. Gold, 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur- 313001' placed under seizure vide Seizure Memo (DIN- 202310DDZ1000022952A) dated 12.10.2023.

- (ii) One Gold Bar of foreign origin, weighing 1000 grams (1Kg) valued at Rs. 60,50,000/- (Rupees Sixty Lakhs and Fifty Thousand Only) having marking AL Etihad Gold Dubai UAE Gold 995, Sr. No. A378402 Melter Assayer sent by *SENDER*- M/s. Swiss Bullion (RD) 307, Krishna Niwas, 3rd Floor, Office No-69, Yusuf Mehrali Road, Next to Dhanji Street Corner, Pydhanie, Mumbai-4000003 to *RECIPIENT*- M/s. Diya Bullion and Jewellery, Shanti Nagar, B Block, Jalore, Rajasthan -343001 placed under seizure vide Seizure Memo (DIN- 202310DDZ10000999FD7) dated 12.10.2023.

14. STATEMENT OF SHRI VISHAL BHOPAWAT, PROPRIETOR OF M/s. V S GOLD 1st FLOOR, SHOP NO. 2, 54, 55, TAJ JEWELLERY COMPLEX, OPP. KOLPOL, BADA BAZAR, UDAIPUR, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 RECORDED ON 17.10.2023

14.1 A summons dated 25.09.2023 was issued to Shri Vishal Bhopawat, Proprietor of M/s. V S Gold, 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur, and accordingly a voluntary statement dated 17.10.2023 was recorded, wherein *inter alia* he stated that he has done B. Tech and had started his firm M/s. V. S. Gold for retail sale of gold and silver bars at 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur. The panchnama dated 07/08.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence, Zonal Unit Ahmedabad vide which the examination of their goods/parcels intercepted from M/s. Ashokkumar Ambalal & Company, was conducted. He perused the said panchnama and put his dated signature on the last page of panchnama in the token of having seen and in agreement of the panchnama. He further stated that vide annexure-B attached to this panchnama dated 07/08.06.2023, parcels containing gold and belonging to M/s. Royal Bullion and M/s. Swastik Bullion were detained with a reasonable belief that these goods are liable for confiscation under the provisions of the Customs Act, 1962. He was shown the Panchnama dated 11.09.2023 and valuation report dated 18.09.2023 and in token of having seen and in agreement with the same, he put his dated signature on last page of the same wherein the verification of the detained gold bars was done by Shri Kartikey Vasantray Soni, Govt. approved valuer. He perused the report of Shri Kartikey Vasantray Soni, Govt. Approved Valuer vide dated 18.09.2023 and also put a dated signature on the same in the token of being seen, wherein 598.30 gram gold pertaining to M/s. Royal Bullion and mentioned as Parcel No. 8 is of foreign origin and 500 gram gold pertaining to M/s. Swastik Bullion and mentioned as Parcel No. 7 is of Indian origin.

14.2 On being asked specifically about the detained parcels belonging to M/s. Royal Bullion as given in the Panchnama dated 07/08.06.2023, he stated that he had given the order of 600 gm of 995 purity gold to M/s. Royal Bullion. Further, he stated that he received Invoice No. RB/119/23-24 dated 06.06.2023 by M/s. Royal Bullion. He also stated that he was also given verbal communication by M/s. Royal Bullion that they are sending 598.30 gram of gold by Angadiya and further 1.70 gram of gold would be sent by them later on. On being asked about the mode of delivery, he stated that they

generally receive the gold bars by Angadiya firm. He stated that the gold bars were generally dispatched by their suppliers through Angadiya after confirmation of the order over phone.

14.3 Further on being asked he stated that he was informed on 07.06.2023 by M/s. Ashokkumar Ambalal & Company - Angadiya firm that the said gold being sent over by M/s. Royal Bullion was detained by DRI at Ahmedabad on the grounds that same might be of foreign origin being smuggled into India illegally. On being asked about Shri Shakar Das Vaishnav or Shankarji, whose name was written as recipient on the detained parcels, he stated that Shri Shankar Das Vaishnav is an employee at their firm M/s. V.S. Gold. He admitted that he had given order of gold to M/s. Royal Bullion of 995 purity of said gold and had made no specific order for Indian or foreign origin gold. On being asked about the import documents pertaining to the seized gold bar of foreign origin of 598.30 gram gold sent by M/s. Royal Bullion, he stated that he does not have any import documents pertaining to the said gold bars, nor he was provided any import documents by the supplier.

14.4 On being asked, he stated that they have not received the said consignment as the same was intercepted by DRI. On being asked, he stated that he released payment to M/s. Royal Bullion in parts on various days of June' 2023. He stated that he had made payment to M/s. Royal Bullion partly online through RTGS and partly by means of payment by 200 Gram gold bar piece to M/s. Royal Bullion based on the terms of their verbal agreement.

15. STATEMENT OF SHRI CHAMAN JAIN, PARTNER OF M/s. ROYAL BULLION, 705, 7TH FLOOR, AURAM MALL, SHAIKH MEMON STREET, KALBADEVI, MUMBAI -400002 RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 RECORDED ON 18.10.2023

15.1 A summons dated 25.09.2023 bearing CBIC DIN 202309DDZ100005505C7 was issued to M/s. Royal Bullion, 705, 7th Floor, Auram Mall, Shaikh Memon Street, Kalbadevi, Mumbai in connection with the investigation of 598.30 grams of gold. A voluntary statement of Shri Chaman Jain, Partner of M/s. Royal Bullion 705, 7th Floor, Auram Mall, Shaikh Memon Street, Kalbadevi, Mumbai was recorded on 18.10.2023 wherein *interalia* he stated that he is partner of the firm, M/s. Royal Bullion, Mumbai and his firm is engaged in the trading of gold and silver bullion. On being asked about his work profile in the said firm, he stated that he is handling all the day to day work, work related to sale and purchase of Gold Bars and Gold Jewellery, accounts etc. He stated that they procure gold domestically and sell these bars in the retail market to various customers and there are no specific customers.

15.2 He was shown the panchnama dated 07/08.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence, Zonal Unit Ahmedabad vide which the examination of our goods/ parcels intercepted from M/s. Ashokkumar Ambalal & Company, was conducted and recorded. He perused the said panchnama and put his dated signature on the last page of panchnama in the token of having seen and in

agreement of the panchnama. He further stated that vide annexure-B attached to the panchnama dated 07/08.06.2023 wherein a parcel sent by M/s. Royal Bullion was detained with a reasonable belief that these goods are liable for confiscation under the provisions of the Customs Act, 1962. He was also shown the Panchnama dated 11.09.2023 and in token of being seen and in agreement with the same, he put his dated signature on last page of the same. He was also told that the verification of the detained gold bars was done by Shri Kartikey Vasantry Soni, Govt. approved valuer. He perused the report of Shri Kartikey Vasantry Soni vide dated 18.09.2023 wherein it is mentioned that 598.30 grams gold pertaining to M/s. Royal Bullion at Parcel No. 8 is of foreign origin and he put his signature on the same in token of having seen the same.

15.3 On being asked about the detained gold pertaining to M/s. Royal Bullion, he stated that M/s. V.S. Gold had informed him on 06.06.2023 over phone to purchase 600 grams of gold by cash from a person called Shri Posha Bhai and that the cash for the same would be handed over by a person of M/s. V. S. Gold. Also, M/s. V. S. Gold had asked to hand over the said gold to M/s. Ashokkumar Ambalal & Company-Angadiya to deliver to Shri Shankarji, V.S. Udaipur. On being further asked, he stated that a person of M/s. V.S. Gold had given him cash for 600 grams of gold on 06.06.2023 afternoon. He stated that he does not know the exact identity of that person. He further stated that Shri Posha Bhai had come to his shop in the evening of 06.06.2023 to deliver the said gold. On being asked about the weight of the detained gold, he stated that on receipt of gold from Shri Posha Bhai, he weighed the said gold in their shop and it weighed only 598.30 gram and he had informed the same to M/s. V.S. Gold, Udaipur over phone and they had asked him (Chaman Jain) to hand over the cash corresponding to 598.30 grams of gold and the cash for the remaining 1.70 grams of gold would be collected by some person of M/s. V.S. Gold afterwards. Subsequently, he handed over the cash to Shri Posha Bhai for 598.30 grams of gold. On being asked, he stated that he does not know any identity detail of Shri Posha Bhai. Further, he admitted that as per the instructions of M/s. V.S.Gold, he handed over the said gold to M/s. Ashokkumar Ambalal & Company- Angadiya firm at their Mumbai office to be delivered to M/s. V.S.Gold, Udaipur. On being asked as to why M/s. V.S. Gold did not purchase and take the delivery of the detained gold on their own and why did they involve M/s. Royal Bullion, he stated that M/s. V.S. Gold are their regular customers. Therefore, to maintain their business relations, they took the said job for them on their request.

15.4. He was shown a copy of the invoice No. RB/119/23-24 dated 06.06.2023 issued by M/s. Royal Bullion in the name of M/s. V.S. Gold for 600 grams of gold of 99.5 purity and on perusal of the said invoice, he put his dated signature on it in the token of having seen the same. On being asked, he stated that he had received a call from M/s. V.S. Gold on 07.06.2023 to issue him a back dated invoice for 600 grams gold as their gold that was handed over a day before to M/s. Ashokkumar Ambalal & Company, Mumbai had been detained by DRI at Ahmedabad. Further, he stated that to adjust the gold and payments corresponding to the said invoice in books of account, they made payment for 200 grams gold by RTGS on 07.06.2023 and then for another 200 grams gold by RTGS on 08.06.2023. He stated that a person of M/s. V.S. Gold had come to take the delivery

of the gold on 07.06.2023 and 08.06.2023 to whom he delivered the said gold accordingly. He further stated that for the remaining 200 gram gold as per the invoice No. RB/119/23-24 dated 06.06.2023, M/s. V.S. Gold had not made a payment for the said gold and so they issued an invoice for 200 grams gold afterwards in around 2nd week of June'2023.

15.5. On being asked, he further state that the gold pertaining to the invoice No. RB/119/23-24 dated 06.06.2023 issued by M/s. Royal Bullion was issued by them for a separate delivery on being asked by M/s. V.S. Gold and it does not pertain to the gold detained by DRI on 07.06.2023 which was later adjusted against the gold supplied through the parcel and detained by DRI.

15.6. On being asked about the contact details of M/s. V.S. Gold, he stated that he has contact no of M/s. V.S. Gold, i.e., 9413830539 on which the correspondence for booking of gold etc. were being done. He stated that Shri Vishal and Shri Shubham of M/s. V.S. Gold used to talk from the said phone no. for the business transactions.

15.7. On being asked to submit the documents related to the import of the said gold, he stated that he does not have any import documents pertaining to the said gold bars as he was not provided any import documents by either M/s. V.S.Gold or the supplier, i.e. Shri Posha Bhai.

16. SEIZURE OF THE DETAINED GOODS OF FOREIGN ORIGIN NOT SUPPORTED BY LEGITIMATE DOCUMENTS:

16.1 From the valuation report, it is determined that the detained gold as mentioned at Parcel No. 2 and 4 in the TABLE-V above are of foreign origin. In absence of the import related documents of such goods with the Angadiya firm, the detained goods, detailed as follows, were placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Section 111 of the Customs Act, 1962.

- (i) Two Gold Bars of 100 grams each having Valcambi Marking of foreign origin totally weighing 200 grams, having purity 999, valued at Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousands Only) having marking 'VALCAMBI' sent by SENDER- M/s. Shree Neminath Jewellers to RECIPIENT- Shankhesh Raj Singhvi placed under seizure vide Seizure Memo (DIN- 202310DDZ1000083528A) dated 25.10.2023.
- (ii) Two Cut Pieces and gold dust of purity 999 of foreign origin and without cover of any import invoice/ documents, weighing 114.20 grams valued at Rs. 6,90,910/- (Rupees Six Lakhs and Ninety Thousands Nine Hundred and Ten Only) sent by SENDER- Shri Rajat of M/s. Pooja Gold, Surat to RECIPIENT- Shri Anarsan Sudhirbhai Ramchandra, Ahmedabad placed under seizure vide Seizure Memo (DIN- 202310DDZ10000999F4C) dated 25.10.2023.

17. RELEASE OF THE INDIAN ORIGIN GOLD

17.1 The box containing parcel no. 2,4,6,7,8 & 9 (as per Annexure – B of the panchnama dated 07.06.2023) and detained during panchnama dated 07.06.2023 and 20.06.2023 were examined and valuation report dated 18.09.2024 was provided by Shri Kartikey Vasantraai Soni, Govt. approved Valuer. As per the said valuation report, the parcels no. 6B, 7 & 9 (as per Annexure –B) to the panchnama dated 07.06.2023 were of Indian Origin and as supported by the documents submitted by the respective parties. The parcel No. 8, 2, 6A, 4 were of foreign origin. Accordingly, the representative of the said Aangadiya firm, M/s. Ashokkumar Ambalal & Company was called to the DRI office and the Indian Origin gold, as mentioned at Sl. No. 6B, 7 & 9 in the TABLE-V mentioned above was released to the Aangadiya firms after verification with the respective necessary documents in respect of some of the parcels while detaining the foreign origin gold for further investigation as mentioned below. The proceedings thereof were recorded under panchnama dated 07.12.2023 in the presence of the independent panchas. The receipt of the parcels is duly acknowledged by Shri Kailashkumar Dodiya vide panchnama dated 07.12.2023, which were detained vide as per Annexure –B to the panchnama dated 07/08.06.2023, as per Table-VI below:-

TABLE-VI

Parcel No.	Sender Name	Intended recipient’s name	Weight of the gold
6B	M/s. Swiss Bullion	Shri Alpesh Shantilal M/s. Diya Bullion & Jewellery, Jalore	200.00
7	M/s. Swastik Bullion	Shri Shankar Dev Vaishnav (M/s. V.S. Gold, Udaipur)	500.00
9	M/s. Mamta Jewellers	Vishnuji (Shri Vishnukumar Soni (Om Namo Nikhilam Art)	56.20

17.2 The remaining parcels as mentioned at Sl. No. 2(i), 4, 6A & 8 as detailed in Annexure –B attached to the panchnama dated 07.06.2023 were again resealed and detained for further investigation, details of which are as per Table- VII below:-

TABLE-VII

Sl. No.	Item Description	Details of Sender	Details of intended recipient
1	Gold bars (foreign origin) (2 bars -200 grams)	Shree Neminath Jewellers (S.P.J. Mumbai), Add: 2/3, Maheta Manor, B.P.T. Colony Samor, 146, Varavthi Village, Mumbai - 30	Singhvi Vikas (Shankhesh Raj Singhwi) & L. R. Singhvi, Add: 104, Heena, Residency, Daulat Nagar, Borivali (E), Mumbai. M. No. 94613439871/82
2	Two cut pieces of Gold bars (foreign origin) (114.20 grams)	Pooja Gold (Rajat) Address: Shop no-28, Sardiwala Market, Bundelawad, Bhagal Surat. M. No.9825630400	Anarsan Sudhirbhai Ramchandra Sudhirbhai) Add : Shop no- S F 441, Kalupur Shajanad Market, Beside Vrundavan Shopping center, Pankornaka, Ahmedabad. M. No. 8128158049
3	Gold bars (foreign origin) (1 Bars 1000 grams)	Swiss Bullion (RD) Address: 307, Krishna Niwas, 3rd floor, office no-69, Yusuf meharali road, next to Dhanji st. corner, pydhanio, Mumbai-400003	Diya Bullion and Jewellery (Alpesh shantilal) Add : Shanti nagar, b block, Jalore-343001 M. No. 9414350330
4	Gold bars (foreign origin) (1 bars + particles weighing 598.30 grams (as per valuation report dated 18.09.2023)	Royal Bullion (V.S. Udaipur) Address: 705, Auram Mall, Shaikh Memon Street, Kalbadevi, Zaveri Bazar, Mumbai - 400 002 M. No. 9833258397	V. S. Gold (Shakar Das Veshnav) Add : 1st Floor, Shop No-2, 54, 55 Taj Jewellery Complex, Opp. Kalpol, Bada Bazar, Udaipur - 313 001 M. No. 9680071836

18. STATEMENT OF SHRI SUDHIRBHAI RAMCHANDRA ANARSAN (INTENDED RECIPIENT OF GOLD SENT BY SHRI MUKESH S. JAIN, M/S. POOJA GOLD RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 15.02.2024

18.1 A summons dated 25.09.2023 was issued to Shri Anarsan sudhirbhai Ramchandra, Shop No. – S F 441, Kalupur Shajand Market, Beside Vrudavan Shopping Center, Pamkornaka, Ahmedabad. A voluntary statement of Sudhirbhai Ramchandra Anarsan was recorded on 15.02.2024 in connection with one piece of gold weighing 114.20 grams was carried by employee of Angadiya – M/s. Ashokumar Ambalal & Company wherein *interalia* he stated that he is 9th standard pass and deals in jewellery making for different retailers in Gujarat and do artisan work of jewellery making as per the designs provided by the customers. He stated that they take the gold in raw form and deliver jewellery as per the designs provided by them. He stated that he get his commission cut of 0.5% of the Gold and is not in trading or retail business.

18.2 He was shown the panchnama dated 07/08.06.2023 drawn at the premises of the Office of Directorate of Revenue Intelligence, wherein the examination of baggage of employee of Angadiya, i.e. M/s. Ashokkumar Ambalal & Company was recorded and one parcel mentioned as from M/s. Pooja Gold, Surat (Party from) and to Shri Anarsan Sudhirbhai Ramchandra (Party to) as mentioned vide Annexure –B of the said panchnama dated 07/08.06.2023 was detained under the said panchnama. He was also shown the panchnama dated 11.09.2023 wherein the examination carried out in respect of the detained gold and valuation is done by Govt. Approved Valuer was recorded. He was also shown the report dated 18.09.2023 of Shri Kartikey Vasantraai Soni, Govt. Approved Valuer. On perusal he noticed that the 114.20 grams gold pertaining to M/s. Pooja Gold, Surat is having imported marking and is of foreign origin. On being asked he stated that the said gold bar/ piece of 114.20 grams was meant to be sent by M/s. Pooja Gold, Surat to them for making gold rings.

18.3. He stated that he was informed by one person of Angadiya- M/s. Ashokkumar Ambalal & Company that the said parcel had been detained by DRI. On being asked he stated that he had never seen the gold of 114.20 grams sent by M/s. Pooja Gold, Surat. On being asked about the origin of the said gold, he stated that he is not aware of the origin of the said gold and it was not informed by M/s. Pooja Gold, Surat to them. After going through the report of the Valuer dated 18.09.2023, he stated that the said gold appeared to be of foreign origin. He further stated that he had not received any advance payment from M/s. Pooja Gold, Surat for desired job work, neither have made any payment to M/s. Pooja Gold. On being asked further, he stated the M/s. Pooja Gold, Surat had also not issued any invoice to them. On being asked about the ownership of the said gold of 114.20 grams, it is stated that it lies with M/s. Pooja Gold, Surat.

19. DETAILS SUBMITTED BY M/S. SHREE MANDEV BULLION LLP

19.1 As per the statement dated 11.07.2023 of Shri Chintan Sagarmal Jain, Partner of M/s. Shree Neminath Jewellers, 2&3, Mehta Manor, 146, Worli village Mumbai-400030, they stated about the detained two gold bars having total weight of 200 grams

of 999 purity, that the same is of foreign origin and the same was purchased by them from M/s. Shree Mandev Bullion LLP, Mumbai. They had booked the gold under the said category and purchased the imported gold from M/s. Shree Mandev Bullion LLP, Mumbai. In view of the same, Summons dated 20.02.2024 under Section 108 of Customs Act, 1962 were issued to M/s. Shree Mandev Bullion LLP to tender statements and submit details of import of gold or purchase of foreign origin gold with reference to the foreign origin gold sold to M/s. Shree Neminath Jewellers, Mumbai.

19.2 M/s. Shree Mandev Bullion LLP, Office No. 7, 2nd Floor, 57/59 Madan Mansion, S.M. Street, Zaveri Bazar, Mumbai-400002 in response to the said Summons submitted certain documents vide their letter dated 27-02-2024, i.e. (i) Sales Bills issued to M/s. Shree Neminath Jewellers from 01.04.2023 to 06.06.2023; (ii) Purchase Bills related to delivered gold to M/s. Shree Neminath Jewellers from 01-04-2023 to 06-06-2023; (iii) Bank Statement related to M/s. Shree Neminath Jewellers from 01-04-2023 to 06-06-2023.

20. STATEMENT OF SHRI CHINTAN SAGARMAL JAIN, PARTNER OF M/S. SHREE NEMINATH JEWELLERS, 2 & 3, MEHTA MANOR, 146, WORLI VILLAGE, MUMBAI-400030, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 18.03.2024

20.1 Summons dated 07.03.2024 having CBIC DIN 202403DDZ10000777CF2 under Section 108 of Customs Act, 1962 was issued to M/s Shree Neminath Jewellers and accordingly, statement of Shri Chintan Sagarmal Jain, Partner of M/s. Shree Neminath Jewellers, was recorded on 18.03.2024 wherein he *interalia* stated that:-

20.2 He has perused the letter dated 27.02.2023 of M/s. Shree Mandev Bullion LLP and the attached sales invoices, i.e. invoice no. SML/2479/23-24 dated 05.06.2023 issued for sale of 500 grams gold and SML/1822/23-24 dated 19.05.2023 issued for sale of 100 grams of gold to M/s. Shree Neminath Jewellers and he was specifically asked to peruse the details of the invoices SML/2479/23-24 dated 05.06.2023 and SML/1822/23-24 dated 19.05.2023 issued that mentions the Gold Bar Nos. as B0022834 and YL5625 respectively. He in token of agreement of the said letter along with the attached invoices put his dated signature on each page of the letter and attached documents.

20.3 On being specifically asked about the seized gold having total weight of 200 grams of 999 purity, he stated that the said Gold bars having total weight of 200 grams of 999 purity are of foreign origin and he does not remember exactly from whom they have purchased this gold bar. On being asked, he stated that he had not verified the purity of gold and he had just purchased the said gold from the person based on rates. He stated that he is not aware of the name or identity of the said person from whom he had purchased the said gold as sometimes such type of persons come to their shop for sale of gold in small quantity. On being asked, he state that it is possible that the said person had smuggled or brought in the said gold through Mumbai Airport from abroad as the

gold bar is of foreign origin. He further stated that such person offered them the gold on a cheaper rate, therefore they purchased the gold based on its purity and rates.

20.4 He admitted that he does not have any import documents for their seized gold pieces of 200 grams as it was not provided by the person from whom they had purchased the said gold. On being asked about the reason for the same, he stated that that person had offered him gold at a cheaper rate and he does not have any legal knowledge of Customs Act or Rules.

20.5 On being asked he stated that he had sold the said gold to Shri Lakhpatriaj Hemraj Singhvi as asked by him for his personal use and therefore, he had handed over the said gold to Shri Lakhpatriaj Hemraj Singhvi. On being asked about the ownership of the detained gold bars of 200 grams, he admitted that he claims ownership of the said gold. He further stated that he was aware that the said gold was of foreign origin before it was sold by them to Shri Lakhpatriaj Hemraj Singhvi and it might have been smuggled through Mumbai or any other airport.

21. STATEMENT OF SHRI LAKHPATRAJ HEMRAJ SINGHVI, INTENDED RECIPIENT OF GOODS, VIZ., 2 FOREIGN ORIGIN GOLD BAR OF 200 GRAMS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 on 18.03.2024

21.1. A further statement of Shri Lakhpatriaj Hemraj Singhvi was recorded on 18.03.2024 under Section 108 of the Customs Act, 1962 wherein *inter alia* he was shown the statement dated 18.03.2024 of Shri Chintan Sagarmal Jain, Partner of M/s. Shree Neminath Jewellers, 2 & 3, Mehta Manor, 146, Worli Village, Mumbai-400030 and was in agreement with the correctness of the statement dated 18.03.2024 of Shri Chintan Sagarmal Jain, Partner of Shree Neminath Jewellers, 2 & 3, Mehta Manor, 146, Worli Village, Mumbai-400030.

21.2. On being asked about the said seized gold weighing 200 grams, he stated that the said gold was purchased by him on 04.06.2023 from M/s. Shree Neminath Jewellers, Mumbai and also provided copy of the invoice issued to him i.e. invoice No. 1639 dated 04.06.2023 for the same. He stated that he made payment for the same and handed over the said gold bars weighing 200 grams to the Angadiya on 06.06.2023 to get the same delivered to his nephew. He also stated that he was not provided any import documents for the said gold. He admitted during the recording of his statement that he was aware that the said gold bars were of foreign origin but did not inquire much about its source. He admitted that he is owner of the said foreign origin gold weighing 200 grams.

22. NON APPEARANCE AND NON COOPERATION OF M/s. SWISS BULLION IN RESPECT OF SEIZURE OF 1 KG OF GOLD HAVING VALUE OF Rs. 60,50,000/-

22.1 Summons dated 07.07.2023, 25.09.2023, 17.05.2024 were issued to M/s. Swiss Bullion, 307, Krishna Niwas, 3rd Floor, Office No- 69, Yusuf Mehrali Road, Next to Dhanji St. Corner, Pydhonie, Mumbai- 400003 in connection with the instant investigation

related to 1 Kg Foreign origin gold detained vide Panchnama dated 07/08.06.2023, wherein production of following documents were sought:-

1. Sales and Purchase of Gold Bars from 01.04.2023 to 06.06.2023
2. Details of payment received
3. Details of import of gold or purchase of foreign origin gold.

22.2 M/s. Swiss Bullion, Mumbai was issued summons dated 07-07-2023, 25-07-2023, 17-05-2024, but they did not appear before the investigating agency, DRI, Ahmedabad. It appears that by not appearing before the investigating agency, DRI, they did not cooperate during the investigation. They resorted delay tactics, with an intent to stall the investigation pertaining to 1000 grams of Foreign Origin Gold, having fair market value of Rs. 60,50,000/- seized by DRI, Ahmedabad vide seizure memo (DIN-202310DDZ10000999FD7) dated 12.10.2023. The investigating agency reserves its right to issue of an addendum or Supplementary Show Cause Notice or Separate Show Cause Notice, to bring on record further evidence as may be gathered against the noticees of this Show Cause Notice and also to issue Show Cause Notice to any person/persons not covered included in this Show Cause Notice, who may be found to be involved.

23. SEARCH CARRIED OUT AT THE PREMISES OF M/s. SWISS BULLION, 307, KRISHNA NIWAS, 3RD FLOOR, OFFICE NO- 69, YUSUF MEHRALI ROAD, NEXT TO DHANJI ST. CORNER, PYDHONIE, MUMBAI- 400003

23.1 A search was carried out at the premises of M/s. Swiss Bullion, 307, Krishna Niwas, 3rd Floor, Office No. 69, Yusuf Mehrali Road, Next to Dhanji St. Corner, Pydhonie, Mumbai -400003 which is recorded under Panchnama dated 28.05.2024. During the search proceedings, Shri Dhruv Porwal, son of Prop. Of M/s. Swiss Bullion and the other employees of M/s. Swiss Bullion, i.e. Shri Ketan Jain and Shri Samit Kumar Yadav denied about having given any parcel to M/s. Ashokkumar Ambalal & Company on the said date. Shri Ketan Jain later informed the DRI officers that Shri Alpesh Shantilal Soni, proprietor of M/s. Diya Bullion & Jewellery, Jalore had asked them on 07.06.2023 that he wishes to buy 1200 grams of gold, therefore, in good faith, they had made a Tax invoice, bearing no. SB/127 dated 07.06.2023 for 1200 grams of gold before the payment for the said gold. Shri Ketan Jain further informs that Shri Alpesh Kumar later did not make payment for the 1200 grams gold mentioned in the invoice and also, they got to know from some acquaintances that one parcel of M/s. Diya Bullion and Jewellery containing 1200 grams of gold had been detained by DRI, Ahmedabad Zonal Unit in the morning of 07.06.2023. Shri Ketan Jain informed that in view of the same, they had subsequently cancelled the invoice and did not deliver the gold to M/s. Diya Bullion and Jewellery, Jalore. During the search, they also submitted copy of the said cancelled invoice bearing no. SB/127 dated 07.06.2023. Thereafter officer of DRI, enquires about purchase or sale of Gold Bar Having Sr. No A378402 Melter Assayer in FY 2023-24; to which Shri Ketan Jain informs that their firm M/s Swiss Bullion have not made purchase or sale of said Gold Bar. Further on being enquired if such gold bar was purchased or sold from accounts of M/s RD Bullion; to which Shri Ketan Jain informs

that they have examined their accounts in M/s RD Bullion as well and their account has no sale or purchase details of the above said Gold Bar.

23.2 During the search proceedings, Shri Dhruv Porwal and Shri Ketan Jain were asked about whether they had done any business with M/s. Diya Bullion and Jewellery in the past to which Shri Ketan Jain informed that M/s. Swiss Bullion had never done any business with M/s. Diya Bullion and Jewellery. Shri Ketan Jain further informed that M/s. RD Bullion, the proprietorship firm of Shri Vansh Porwal, had done business with M/s. Diya Bullion and Jewellery in the past but after the parcel of M/s. Diya Bullion and Jewellery was detained by DRI, Ahmedabad on 07.06.2023, they had stopped doing business with them. On being asked with regard to the documents they take from the suppliers while purchasing the foreign origin gold, Shri Ketan Jain informed that their suppliers only provide them the GST invoices and no import documents are provided to them by the supplier firms of foreign origin gold. Shri Ketan Jain informed that they themselves also do not ask for the import related documents from the suppliers and their purchase decisions are only guided by the purity and price of the gold.

24. STATEMENT OF SHRI KAILSHKUMAR DODIYA, MANAGER OF M/S. ASHOKKUMAR AMBALAL & COMPANY UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 29.05.2024

Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company voluntarily presented himself on 29.05.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender his voluntary statement. His statement was thus recorded on 29.05.2024, and he was shown the following documents, i.e, his previous statement dated 14.06.2023 and panchnama dated 28.05.2024 drawn at the premises of M/s. Swiss Bullion, 307, Krishna Niwas, 3rd Floor, Office No. 69, Yusuf Mehrali Road, Next to Dhanji St. Corner, Pydhonie, Mumbai -400003. During the recording of statement on 29.05.2024, he stated that:-

- He has perused his previous statement and panchnama dated 29.05.2024 and put his dated signature on the same;
- He stated that the parcel bearing marking as '**RD**' and intended for Mr. Alpesh as per Annexure - B to the panchnama dated 07.06.2023 was booked by M/s. RD Bullion and meant to be delivered to Shri Alpesh of M/s. Diya Bullion and Jewellery, Jalore.
- He stated that he had inquired about the parcel with marking RD, detained by DRI under panchnama dated 07.06.2023 from his Mumbai office and employees at their Mumbai office had informed that the said parcel was booked by M/s. RD Bullion for delivery to Shri Alpesh of M/s. Diya Bullion and Jewellery, Jalore and the said parcel was handed over by them for delivery at the Mumbai office of M/s. Ashokkumar Ambalal & Company.
- He further stated that 'RD' mentioned on the parcel also indicates that the parcel was booked by M/s. RD Bullion. On being asked as to who had attached the slip to the parcel which mentioned sender's and recipient's name, he stated that the

concerned parties themselves attach these slips on their parcels and in this case, M/s. RD Bullion had attached the said slip.

- On being asked about the booking slip issued by them while booking of the said parcel at Mumbai, he stated that they do not maintain booking slips at their offices and they work only on trust basis.
- On being about the identity of the person who had booked the said parcel, he stated that they do not remember the identity of the person as a lot of persons come for booking of parcels and it is difficult to remember the identity of every person and had not taken any KYC documents of the person who had booked the parcel as it is not a practise in the Aangadiya firms to take the KYC of the sender of the parcels and therefore, they had not taken any KYC of the person who had done the booking. He stated that they work only on trust basis, however, they insist on invoice or delivery challan pertaining to the goods.
- He was asked to peruse the copy of the Invoice No. SB/127 dated 07.06.2023 issued for the sale of 1200 grams gold by M/s. Swiss Bullion, Mumbai in the name of M/s. Diya Bullion and Jewellery, which was submitted by them to the DRI, Ahmedabad, on being asked as to who had handed over the said invoice to them, he stated that after the said parcel was detained under Panchnama dated 07.06.2023, they had contacted Shri Alpesh of M/s. Diya Bullion and Jewellery, Jalore to communicate about the same and he had given them the copy of the said invoice, which was submitted to during his earlier statement dated 14.06.2023.
- On being pointed out that the parcel was booked by M/s. RD Bullion, while the invoice submitted by Shri Alpesh Shantilal Soni mentions the supplier's name as M/s. Swiss Bullion. On being asked about the same, he stated that as informed by their employees at the Mumbai office of M/s. Ashok Ambalal & Company, M/s. RD Bullion is a firm of Shri Sushil Porwal and Shri Sushil Porwal and his family/relatives also have other firms in their name which also include M/s. Swiss Bullion. He further stated that the same employees perform the tasks like booking of parcels for both M/s. RD Bullion and M/s. Swiss Bullion. He stated that as informed by their employees at Mumbai office, the firm M/s. Swiss Bullion is the proprietorship firm of Shri Sushil Kumar Porwal while M/s. RD Bullion is the proprietorship firm of M/s. RD Bullion and the employees at their firms work for both the firms.
- On being asked about the documents they collected while booking the said parcel, he stated that the concerned party, i.e. M/s. RD Bullion or M/s. Swiss Bullion had not given any invoice at the time of booking. He further stated that they insist to take the copy of invoice or delivery challan from the senders of the parcel to which majority of the customers inform them that the same is kept inside the parcel.
- He was asked to specifically peruse the fact mentioned in the panchnama dated 28.05.2024 that Shri Ketan Jain of M/s. Swiss Bullion had denied about handing over the said parcel of 1200 grams, which was subsequently detained under Panchnama dated 07.06.2023, he stated that it does not seem possible as the

parcel was booked by the name of 'RD' as also mentioned on the parcel of the said gold.

25. It appeared that the burden of proof in case of 'Gold' in terms of Section 123(1) of Customs Act, 1962 that they are not smuggled goods shall be laid on M/s. Pooja Jewellers, M/s. Royal Bullion & M/s V.S. Gold, M/s. Shree Neminath Jewellers, Shri Lakhpatraj Hemraj Singhvi, M/s. Swiss Bullion and M/s. Diya Bullion & Jewellery, Jalore. And during the course of investigation they could not provide legitimate documents of import of said foreign origin gold seized vide 4 seizure memos dated 12.10.2023 and 25.10.2023 respectively.

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

27. LEGAL PROVISIONS:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.”

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

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

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

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

“In this Act, unless the context otherwise requires,

...

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

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

...

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

...

(22) "goods" includes-

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

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

...

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

...

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

...

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

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

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

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

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

m) Section 77 of the Customs Act 1962:

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

n) Section 110 of Customs Act, 1962:

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

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

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

.....

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

.....

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

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

.....

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

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

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

Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act,

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he

knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

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

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

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

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.”

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

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

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

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

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

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

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

-

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

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

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

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

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

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

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

a) *Metals and Minerals Trading Corporation Limited (MMTC);*

b) *Handicraft and Handloom Export Corporation (HHEC);*

c) *State Trading Corporation (STC);*

d) *Project and Equipment Corporation of India Ltd. (PEC);*

e) *STC Ltd.;*

f) *MSTC Ltd.;*

g) *Diamond India Ltd. (DIL);*

h) *Gems and Jewellery Export Promotion Council (G & J EPC);*

i) *A star Trading House or a Premier Trading House under Paragraph 3.10.2 of the Foreign Trade Policy and*

j) *Any other authorized by Reserve Bank of India (RBI).*

Hence, the import of gold by any other persons/agencies other than the above mentioned is restricted in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion and the same appeared to be liable for confiscation under the Customs Act, 1962. Further, CBIC's instructions issued vide F.

No. 495/6/97-Cus. VI dated 06.05.1996 and reiterated in letter F. No. 495/19/99-Cus VI dated 11.04.2000 clearly states that the import of goods in commercial quantity would not be permissible within the scope of the Baggage Rules, even on payment of duty.

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

28. SUMMARY OF THE INVESTIGATION

28.1 From the investigation it appeared that:

- (a) During the search of the baggage of the passengers intercepted outside Kalupur Railway Station on 07.06.2023, a passenger working for Aangadiya firm - M/s. Ashokkumar Ambalal & Company were found in possession of certain amount of foreign origin gold. The said gold was subsequently detained on the reasonable belief that the same are liable for confiscation under the provisions of the Customs Act, 1962.
- (b) As per the labels present on the parcels of the gold detained on 07.06.2023, details as per Table-VI below:-

TABLE-VIII

Aangadiya firm from which the gold was recovered	Party/Parties concerned with the said gold as gathered during inquiry	Qty. of the gold in grams	Purity of the gold	Value of the gold in Rs.	Date of Seizure Memo
M/s. Ashokkumar Ambalal & Company	M/s. V.S.Gold, Udaipur	598.30	995.0	36,19,715	12.10.23
	Shri Lakhpatraj Hemraj Singhvi	200.00	999.0	12,10,000	25.10.23
	The said parcel containing the gold was sent by M/s. Swiss Bullion, Mumbai for delivery to M/s. Diya Bullion & Jewellery, Jalore	1000.0	995.0	60,50,000	12.10.23
	M/s. Pooja Gold, Surat	114.20	999.0	6,90,910	25.10.23

And as per the documents submitted by Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company during his statement, it was held that:-

- (i) Two(02) Gold Bars having total weight of 200 grams having **VALCUMBI SUISSE** marking-foreign was being sent by M/s. Neminath Jewellers, Mumbai to deliver to Shri Shankhesh Raj Singhvi and produced invoice dated 04.06.2023 issued by M/s. Neminath Jewellers in the name of Shri L. R. Singhvi, Mumbai in support of the same. Further, he could not provide import related documents w.r.t. said foreign origin gold;
- (ii) Two(02) cut pieces of gold and gold dust having total weight 114.20 grams having **CHI** markings –foreign origin markings were being sent by M/s. Pooja Gold, Surat to deliver the same to Shri Sudhirkumar Ramchandra Aanarsan, Ahmedabad. Further, he could not provide import related documents w.r.t. said foreign origin gold;
- (iii) One Gold Bar having total weight 1000 grams having **AL-ETIHAD GOLD DUBAI UAE**- marking – foreign markings were sent by M/s. Swiss Bullion (RD) to deliver the same to M/s. Diya Bullion and Jewellery, Jalore, Rajasthan. He could not provide import related documents w.r.t. said foreign origin gold bar;
- (iv) One Gold Bar having total weight 598.30 grams having foreign markings were sent by M/s. Royal Bullion to deliver the same to M/s. V. S. Gold, Udaipur, Rajasthan. Further, he could not provide import related documents w.r.t. said foreign origin gold bar; which were intercepted by DRI, Ahmedabad while in transit through Ahmedabad Railway Station and were being transported the employees of the their Angadiya firm- M/s. Ashokkumar Ambalal & Company and seized by DRI, Ahmedabad vide Seizure Memos dated 12.10.2023 and 25.10.2023 respectively.

(c) Shri Kartikey Vasantray Soni, Govt. Approved Gold Assayer, examined the said gold in presence of independent panchas and the representative of the Angadiya firm and certified the purity of Gold, weight, rate of gold vide his valuation report dated 18.09.2023. As per the said valuation report, it is ascertained that

- (i) Two(02) Gold Bars having total weight of 200 grams having Valcumbi Suisse marking-foreign pertaining to Shri L.R. Singhvi was having fair market value of Rs. 12,10,000/-. Shri L.R. Singhvi purchased the said gold from M/s. Shree Neminath Jewellers, Mumbai and they could not provide legitimate import related documents w.r.t. said foreign origin gold.
- (ii) Two(02) cut pieces of gold and gold dust having total weight 114.20 grams having CHI markings –foreign origin markings pertaining to M/s. Pooja Gold, Surat, was having fair market value of Rs.6,90,910/-. Further, M/s. Pooja Gold Surat could not provide import related documents w.r.t. said foreign origin gold.
- (iii) One Gold Bar having total weight 1000 grams having Al-EtiHAD Gold Dubai UAE- marking – foreign markings pertaining to M/s. Diya Bullion and Jewellery, Jalore, Rajasthan and were sent by M/s. Swiss Bullion (RD) was having fair market value of the Rs. 60,50,000/-. Further, M/s. Swiss Bullions (sender) didnot join the

investigation and M/s. Diya Bullion and Jewellery (recipient) could not provide import related documents w.r.t. said foreign origin gold bar and provided a post-dated invoice when the goods were intercepted by DRI.

- (iv) One Gold Bar having total weight 598.30 grams having Al Etihad Gold Dubai-UAE-foreign markings pertaining to M/s. V S Gold and were sent by M/s. Royal Bullion, were having fair market value of Rs. 36,19,715/-. Further, both M/s. Royal Bullion (sender) or M/s. V.S. (Recipient) could not provide import related documents w.r.t. said foreign origin gold bar.

Shri Kartikey Vasantray Soni, Gold Assayer, examined the said gold in presence of independent panchas and the representative of Aangadiya M/s. Ashokumar Ambalal & Company and certified the purity of Gold, weight, rate of gold vide his valuation report dated 18.09.2023. Accordingly, the details of foreign origin gold is as per Table IX below:-

TABLE-IX

Parcel No.	Sender Name	Intended Recipient's Name	Weight (g)	Purity	Marking	Indian/ Imported Marking	Rate Per Gram	Value (Rs.)
8	VS Udaipur	Sahnkarji	598.30	995.0	PAMP	Imported	6050	36,19,715/-
2	SPJ Mumbai	Shakhesh Raj Singhvi	200.00	999.0	Valcambi	Imported	6050	12,10,000/-
6A	RD Mumbai	Alpeshbhai Shantilal Soni	1000.00	995.0	AL Etihad	Imported	6050	60,50,000/-
4	Rajat	Sudhirbhai Ahmedabad	114.200	999.0	CHI & MG	CHI- Imported MG- Indian	6050	6,90,910/-
Parcel No. 8,2 From visual inspection of the gold bars, it can be ascertained that they have an Imported Marking & they are of foreign origin.								
Parcel No. 6A From visual inspection of the gold bars, it can be ascertained that they have an Imported Marking & they are of foreign origin.								
Parcel No. 4 From visual inspection of the gold bars it can be ascertained that they have an Imported Marking and they are of foreign origin(CHI)								

d) The investigation carried out by way of recording of statements of Shri Vishal Bhopawat, Proprietor of M/s. V.S. Gold,1st Floor, Shop No.-2, 54, 55, Taj Jewellery Complex Opp. Kolpol, Bada Bazar, Udaipur (intended recipient) with respect to parcel No. 8 of TABLE-IX above, i.e., 598.30 grams of foreign origin gold (purity 995) having market value of Rs. 36,19,715/-(Rupees Thirty Six Lakhs Nineteen Thousand Seven hundred and Fifteen only). During the recording of his statement, he stated that he placed order of gold to M/s. Royal Bullion, Mumbai and was issued invoice no. RB/119/23-24 dated 06.06.2023. He stated that he does not have any import documents in respect of 598.30 grams of foreign origin gold.

e) A statement of sender of the said goods, i.e. Shri Chaman Jain, Partner of M/s. Royal Bullion, 705, 7th Floor, Auram Mall, Shaikh Memon Street, Kalbadevi, Mumbai-400002 (sender of the said foreign origin gold weighing 598.30 grams of gold) was recorded under section 108 of Customs Act, 1962 wherein it was stated that he was

informed by M/s. V.S. Gold to take delivery of the 600 grams of gold on their behalf of M/s. V S Gold, Udaipur from one person named, Shri Poshabhai. He stated that he received the said gold from Shri Poshabhai and weighed in his shop which weighed 598.30 grams, which was informed to M/s. V.S. Gold. During the statement he admitted that he issued a back dated invoice no. RB/119/23-24 dated 06.06.2023 on being shown the invoice no. RB/119/23-24 dated 06.06.2023. He stated he was asked by M/s. V.S. Gold over phone to issue a back dated invoice for 600 grams as their gold that was handed over a day before to M/s. Ashokumar Ambalal & Company had been detained by DRI at Ahmedabad. He stated that to adjust the gold and payments corresponding to the said invoice in books of account, they made payment for 200 grams RTGS on 07.06.2023 and for another 200 grams gold on 08.06.2023.

e) Investigations carried out by way of recording of statements of Shri Chintan Sagarmal Jain, Proprietor of M/s. Shree Neminath Jewellers and Shri Lakhpat Hemraj Singhvi with respect to parcel no. 2 of the TABLE-IX above, it appears that the said foreign origin gold, i.e. 200 grams pertaining to M/s. Shree Neminath Jewellers and their fair value as per the market rate is Rs. 12,10,000/-.Statement of Shri Lakhpat Hemraj Singhvi the buyer of the said gold, who intended to send the same to his nephew for personal use did not enquire about the source of the foreign origin gold at the time of purchase and also made payment to purchase the said foreign origin gold weighing 200 grams. Statement of proprietor of M/s. Shree Neminath Jewellers was recorded under Section 108 of Customs Act, 1962 wherein it is stated that they donot have import documents for the said foreign origin gold weighing 200 grams and does not remember from whom they got this foreign origin gold. Therefore, the said foreign origin gold, i.e. 200 grams pertaining to M/s. Shree Neminath Jewellers and Shri Lakhpat Hemraj Singhvi was seized vide seizure memo dated 25.10.2023. From the aforementioned, it appears that the same is smuggled goods in terms of Section 2(39) of the Customs Act, 1962. Therefore, it appears that the said gold pertaining to Shri Lakhpat Hemraj Singhvi and M/s. Shree Neminath Jewellers is liable for confiscation under Section 111 of the Customs Act, 1962.

f) Investigation were carried recorded by way of recording of the statements of Shri Alpesh Kumar M/s. Diya Bullion and Jewellers w.r.t parcel no. 6A of the TABLE-IX. During the recording of the Statement of Shri Alpesh Kumar, Proprietor of M/s. Diya Bullion and Jewellers on 29.09.2023, he stated that he started his firm M/s. Diya Bullion and Jewellery in year 2021 and started purchasing Gold from Mumbai sale at Jalore. He stated the parcel containing 1000 grams foreign origin gold 995 purity and 200 grams of 995 purity was sent by Shri Sushil of M/s. Swiss Bullion, Mumbai through Angadiya- M/s. Ashokkumar Ambalal & Company and was given on the basis of his purchase order. He stated that he placed order of 1200 grams gold of purity 995 and is not aware whether the said sent gold was including foreign origin gold of 1000 grams. The copy of invoice no. SB/127 dated 07.06.2023 submitted indicated that the same is a post-dated invoice and the goods were sent on 06.06.2023 from Mumbai to Jalore. No legitimate documents related to import of the foreign origin gold weighing 1000 grams (1Kg) were provided by M/s. Swiss Bullion to M/s. Diya Bullion & Jewellery.

g) Further, M/s. Swiss Bullion, Mumbai was issued summons dated 07-07-2023, 25-07-2023, 17-05-2023, for recording of their statement w.r.t. parcel no. 6A of TABLE-IX, but they did not appear before the investigating agency, DRI, Ahmedabad. It appears that by not appearing before the investigating agency, DRI, they did not cooperate during the investigation. They resorted delay tactics, with an intent to stall the investigation pertaining to 1000 grams of Foreign Origin Gold, having fair market value of Rs. 60,50,000/- seized by DRI, Ahmedabad vide seizure memo (DIN-202310DDZ10000999FD7) dated 12.10.2023. Accordingly, search was conducted at the premises of M/s. Swiss Bullion, 307, Krishna Niwas, 3rd Floor, Office No. 69, Yusuf Mehrali Road, Next to Dhanji St. Corner, Pydhonie, Mumbai -400003 which is recorded under Panchnama dated 28.05.2024. During the search proceedings, Shri Dhruv Porwal, son of Prop. Of M/s. Swiss Bullion and the other employees of M/s. Swiss Bullion, i.e. Shri Ketan Jain and Shri Samit Kumar Yadav denied about having given any parcel to M/s. Ashokkumar Ambalal & Company on the said date. Shri Ketan Jain later informed the DRI officers that Shri Alpesh Shantilal Soni, proprietor of M/s. Diya Bullion & Jewellery, Jalore had asked them on 07.06.2023 that he wishes to buy 1200 grams of gold, therefore, in good faith, they had made a Tax invoice, bearing no. SB/127 dated 07.06.2023 for 1200 grams of gold before the payment for the said gold. Shri Ketan Jain further informs that Shri Alpesh Kumar later did not make payment for the 1200 grams gold mentioned in the invoice and also, they got to know from some acquaintances that one parcel of M/s. Diya Bullion and Jewellery containing 1200 grams of gold had been detained by DRI, Ahmedabad Zonal Unit in the morning of 07.06.2023. Shri Ketan Jain informed that in view of the same, they had subsequently cancelled the invoice and did not deliver the gold to M/s. Diya Bullion and Jewellery, Jalore. Thereafter on being asked about purchase or sale of Gold Bar Having Sr No A378402 Melter Assayer in FY 2023-24; Shri Ketan Jain informed that their firm M/s Swiss Bullion have not made purchase or sale of said Gold Bar. Further on being enquired if such gold bar was purchased or sale from accounts of M/s RD Bullion; to which Shri Ketan Jain informed that they have examined their accounts in M/s RD Bullion as well and their account has no sale or purchase details of the above said Gold Bar.

h) During the search proceedings, Shri Dhruv Porwal and Shri Ketan Jain informed that M/s. Swiss Bullion has never done any business with M/s. Diya Bullion and Jewellery. Shri Ketan Jain further informs that however, M/s. RD Bullion, the proprietorship firm of Shri Vansh Porwal, had done business with M/s. Diya Bullion and Jewellery in the past but after the parcel of M/s. Diya Bullion and Jewellery was detained by DRI, Ahmedabad on 07.06.2023, they had stopped doing business with them. On being asked about the documents they collect from the suppliers while purchasing the foreign origin gold. Shri Ketan Jain informed that their suppliers only provide them the GST invoices and no import documents are provided to them by the supplier firms of foreign origin gold. Shri Ketan Jain informed that they also do not ask for the import related documents from the suppliers and their purchase decisions are only guided by the purity and price of the gold. The proprietor of M/s. Swiss Bullion was not available at the said premises. The investigating agency reserves its right to

issue of an addendum or Supplementary Show Cause Notice or Separate Show Cause Notice, to bring on record further evidence as may be gathered against the noticees of this Show Cause Notice and also to issue Show Cause Notice to any person/persons not covered included in this Show Cause Notice, who may be found to be involved.

i) Investigation carried out by way of recording statements of Shri Mukesh S. Jain, proprietor of M/s. Pooja Gold, Shop No – 28, Sardiwala Market, Bundelawad, Bhagal, Surat, Gujarat and Shri Sudhirbhai Ramchandra Anarsan w.r.t. parcel no. 4 of TABLE-IX i.e., 114.2 grams of foreign origin gold pertaining to M/s. Pooja Gold, he admitted that the two gold cut pieces of purity 999 are of foreign origin and had purchased from a person who came to his shop for selling the same, and purchased in cash. They did not have any entry of payment made in their accounts. The said foreign origin gold was sent to Shri Sudhirbhai Ramchandra Anarsan, for job work. As per the statements recorded, the ownership of the said foreign origin gold appears to lie with M/s. Pooja Gold, Surat, Gujarat.

j) From the above, it thus appears that the gold as per Table-IX above being of foreign origin are smuggled goods in terms of Section 2(39) of the Customs Act, 1962.

28.2 The burden of proving that the Gold seized from the Aangadiya- M/s. Ashokkumar Ambalal & Company under Panchnama dated 07.06.2023 are not smuggled goods, lies on below entities:-

- (i) M/s. Swiss Bullion & M/s. Diya Bullion w.r.t seizure of 1000 grams of Foreign origin gold having purity 999;
- (ii) M/s. Royal Bullion and M/s. V.S. Gold, 1st Floor, Shop No.-2, 54, 55, Taj Jewellery Complex Opp. Kolpol, Bada Bazar, Udaipur w.r.t. seizure of 598.30 grams of foreign origin gold having purity 995;
- (iii) M/s. Pooja Gold w.r.t. seizure of 114.20 grams of foreign origin gold having purity 999;
- (iv) M/s. Shree Neminath Jewellers and Shri Lakhpatriaj Hemraj Singhvi w.r.t. seizure of 200 grams of foreign origin gold having purity 999.
- (v) M/s. Ashokkumar Ambalal & Company

28.3 It appeared that during the investigation, all the respective beneficial owner or the Angadiya Firm, i.e. M/s. Ashokkumar Ambalal & Company have failed to provide documents indicating any legitimate import of the said Gold Bars or any proof that the said foreign origin gold bars as mentioned above. Thus, it appeared that the aforementioned foreign origin gold stands liable for confiscation under the provisions of Section 111 (d), 111 (j), 111(l) and 111(m) of Customs Act, 1962.

29. Thereafter, the Show Cause Notice was issued vide F. No. VIII/10-83/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 to – (1) M/s. V.S. Gold, Udaipur; (2) M/s. Royal Bullion, Mumbai; (3) M/s. Swiss Bullion, Mumbai; (4) M/s. Diya Bullion and Jewellery, Jalore, Rajasthan; (5) M/s. Shree Neminath Jewellers, Mumbai; (6) Shri Lakhpatriaj Hemraj Singhvi, Mumbai; (7) M/s. Pooja Gold, Surat; (8) Shri Dalpatbhai K. Dodiya, Employee of M/s. Ashokkumar Ambalal & Company; (9) Shri Kailashkumar

Dodiya, Manager of M/s. Ashokkumar Ambalal & Company and (10) M/s. Ashokkumar Ambalal & Company, Ahmedabad were hereby called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:-

- i)** The foreign origin gold under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962, as detailed below should not be confiscated absolutely:
- a) One Gold Bar and particle of foreign origin totally weighing 598.30 grams valued at Rs. 36,19,715/- (Rupees Thirty Six Lakhs Nineteen Thousand Seven Hundred and Fifteen Only) having marking AL Etihad Gold Dubai UAE Gold 995, Sr. No. A979750 Melter Assayer and two small pieces/particles sent by SENDER- 'M/s. Royal Bullion, 705, Auram mall, Shaikh Memon Street, Kalbadevi, Zaveri Bazar, Mumbai- 400002' to RECIPIENT- 'M/s. V.S. Gold, 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur- 313001' placed under seizure vide Seizure Memo (DIN- 202310DDZ1000022952A) dated 12.10.2023.
 - b) One Gold Bar of foreign origin, weighing 1000 grams (1Kg) valued at Rs. 60,50,000/- (Rupees Sixty Lakhs and Fifty Thousand Only) having marking AL Etihad Gold Dubai UAE Gold 995, Sr. No. A378402 Melter Assayer sent by SENDER- M/s. Swiss Bullion (RD) 307, Krishna Niwas, 3rd Floor, Office No-69, Yusuf Mehrali Road, Next to Dhanji Street Corner, Pydhonie, Mumbai-4000003 to RECIPIENT- M/s. Diya Bullion and Jewellery, Shanti Nagar, B Block, Jalore, Rajasthan -343001 M.No.9414350330 placed under seizure vide Seizure Memo (DIN- 202310DDZ10000999FD7) dated 12.10.2023.
 - c) Two Gold Bars of 100 grams each having Valcambi Marking of foreign origin totally weighing 200 grams, having purity 999, valued at Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousands Only) having marking 'VALCAMBI' sent by SENDER- M/s. Shree Neminath Jewellers to RECIPIENT- Shankhesh Raj Singhvi placed under seizure vide Seizure Memo (DIN- 202310DDZ1000083528A) dated 25.10.2023.
 - d) Two Cut Pieces and gold dust of purity 999 of foreign origin and without cover of any import invoice/ documents, weighing 114.20 grams valued at Rs. 6,90,910/- (Rupees Six Lakhs and Ninety Thousands Nine Hundred and Ten Only) sent by SENDER- Shri Rajat of M/s. Pooja Gold, Surat to RECIPIENT- Shri Anarsan Sudhirbhai Ramchandra, Ahmedabad placed under seizure vide Seizure Memo (DIN- 202310DDZ10000999F4C) dated 25.10.2023.
- ii)** Penalty should not be imposed under Sections 112(a), 112(b) and 117 of the Customs Act, 1962 on the following entities:-

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25

Entity name & address	w.r.t seizure of goods
<div>1) M/s. V.S. Gold,705,1st Floor, Shop no. 2, 54, 55, Taj Jewellery Complex, Udaipur &</div> <div>2) M/s. Royal Bullion,705, 7th Floor, Auram Mall, Shaikh Memon Street, Kalbadevi, Mumbai</div>	<div>One Gold Bar and particle of foreign origin totally weighing 598.30 grams valued at Rs. 36,19,715/- (Rupees Thirty Six Lakhs Ninteen Thousand Seven Hundred and Fifteen Only) having marking AL Etihad Gold Dubai UAE Gold 995, Sr. No. A979750 Melter Assayer and two small pieces/ particles sent by SENDER- ‘M/s. Royal Bullion, 705, Auram mall, Shaikh Memon Street, Kalbadevi, Zaveri Bazar, Mumbai- 400002’ to RECIPIENT- ‘M/s. V.S. Gold, 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur- 313001’ placed under seizure vide Seizure Memo (DIN- 202310DDZ1000022952A) dated 12.10.2023.</div>
<div>3) M/s. Swiss Bullion, 307, Krishna Niwas, 3rd Floor, Office No-69, Yusuf Mehrali Road, Next to Dhanji Street Corner, Pydhanie, Mumbai-4000003 &</div> <div>4) M/s. Diya Bullion and Jewellery, Shanti Nagar, B Block, Jalore, Rajasthan - 343001</div>	<div>One Gold Bar of foreign origin, weighing 1000 grams (1Kg) valued at Rs. 60,50,000/- (Rupees Sixty Lakhs and Fifty Thousand Only) having marking AL Etihad Gold Dubai UAE Gold 995, Sr. No. A378402 Melter Assayer sent by SENDER- M/s. Swiss Bullion (RD) 307, Krishna Niwas, 3rd Floor, Office No-69, Yusuf Mehrali Road, Next to Dhanji Street Corner, Pydhanie, Mumbai-4000003 to RECIPIENT- M/s. Diya Bullion and Jewellery, Shanti Nagar, B Block, Jalore, Rajasthan - 343001 M.No.9414350330 placed under seizure vide Seizure Memo (DIN- 202310DDZ10000999FD7) dated 12.10.2023.</div>
<div>5) M/s. Shree Neminath Jewellers, 2/3, Maheta Manor, B.P.T. Colony, Sanor, 146 Varavathi Village, Mumbai- 400030, &</div> <div>6) Shri Lakhpatraj Hemraj Singhvi, Room No. 103, Heena Residency, Daulat Nagar, Road No. 9, Borivali East, Mumbai, Maharashtra- 400066</div>	<div>Two Gold Bars of 100 grams each having Valcambi Marking of foreign origin totally weighing 200 grams, having purity 999, valued at Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousand Only) having marking ‘VALCAMBI’ sent by SENDER- M/s. Shree Neminath Jewellers to RECIPIENT- Shankhesh Raj Singhwi placed under seizure vide Seizure Memo (DIN- 202310DDZ1000083528A) dated 25.10.2023.</div>
<div>7) M/s. Pooja Gold, Surat, Shop no-28, Sardiwala Market, Bundelawad, Bhagal Surat. M. No.9825630400</div>	<div>Two Cut Pieces and gold dust of purity 999 of foreign origin and without cover of any import invoice/ documents, weighing 114.20 grams valued at Rs. 6,90,910/- (Rupees Six Lakhs and Ninety Thousand Nine Hundred and Ten Only) sent by SENDER- Shri Rajat of M/s. Pooja Gold, Surat to RECIPIENT- Shri Anarsan Sudhirbhai Ramchandra, Ahmedabad placed under seizure vide Seizure Memo (DIN- 202310DDZ10000999F4C) dated 25.10.2023.</div>
<div>8) Shri Dalpatbhai K. Dodiya, Employee of M/s. Ashokkumar Ambalal & Company;</div> <div>9) Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company , &</div> <div>10) M/s. Ashokkumar Ambalal & Company, 18, Zaveri Chamber, Vaganpole, Ratanpole, Zaveriwad, Ahmedabad, Guj.</div>	<div>Foreign origin gold, as mentioned in the preceding rows of this table, i.e. 598.30 grams of gold pertaining to M/s. Royal Bullion, Mumbai, 200 grams foreign origin gold pertaining to M/s. Shree Neminath Jewellers, Mumbai, 1000 grams foreign origin gold pertaining to M/s. Swiss Bullion and 114.20 grams of foreign origin gold pertaining to M/s. Pooja Gold, Surat, the gold being subsequently seized vide Seizure Memos dated 12.10.2023 and 25.10.2023</div>

30. WRITTEN SUBMISSIONS & PERSONAL HEARINGS:-**M/S. V. S. GOLD:**

30.1 In response to the show cause notice, M/s. V. S. Gold have submitted a reply dated 26.07.2024 through their authorised representative Shri R. S. Mangal, CA, interalia he stated:-

1. The SCN dated 04.06.2024 is not legally correct. It contains ambiguous narrations and incorrect facts. There is deliberation to prove seized gold as smuggled without any reasonable belief. The SCN is prejudicial and lethal for the noticee. The SCN reveal biased attitude. There was poor investigation and there is lot of carelessness in framing allegations. The seized gold is not smuggled and seizure is invalid. The basis of seizure is that "The seized gold by visual examination of the markings on the gold appears to be of foreign origin". No effort has been made to prove that the gold is smuggled. Rather legal handle of Section 123 of Customs Act, 1962 has been used without any proof that the markings on the gold are of foreign. The gold was purchased from Mumbai on payment of IGST under the cover of proper invoice and the gold is of Indian origin. The marks on the gold do not indicate any foreign origin. The markings on the gold would have correlated with any foreign manufacturer/bullion/firm. The SCN is bad in law and the noticee defend his case on the following legal arguments.
2. The noticee has not seen the gold seized and markings on it. Despite this fact, he has been asked to prove that the gold is not smuggled inasmuch as the basis of seizure is marking on the gold found on visual inspection.
3. Neither colored photographs were taken nor made available to the noticee to exactly know the markings on the primary gold.
4. There is mention of gold as "one bar and two pieces" in all the documents associated with the SCN but no separate weight, purity, value and markings have been given separately for them. This makes the allegations fake as the renowned gold refineries of the world make the bars in standard measures/weight and not tailor made.
5. The chronology of documents fabricated by DRI make them legally unsustainable. Sh. Dalpatbhai K. Dodiya carried 9 (as given in annexure A & B of Panchnama) parcels whereas no basis has been given for considering 9 parcels including of the noticee as of foreign origin. Reason for creating "reasonable belief" for detention under Customs law is not clear. Even otherwise all gold of foreign origin are not smuggled as legal channel for import of gold and sale thereof within India is permitted.
6. Statement of Sh. Kailash Kumar Dodiya, Manager of Angadiya firm dated 29.05.2024, nothing was asked about the noticee firm and so this RUD is irrelevant.
7. Panchnama dated 11.09.2023 of valuation is devoid of details to ascertain how the gold was examined? It is not clear whether the weight was taken, whether purity was tasted on "Kasoti" or by another purity testing mechanical instrument and what was the basis of examination? The gold was sealed on 11.09.2023 itself

after so called examination and report was submitted after 7 days i.e. on 18.09.2023. Both panchnamas with respect to details of the gold are doubtful. There is a lot of difference between description of gold in Panchnama dated 07.06.2023 and 11.09.23023 which makes the SCN lacking in legality as markings are given different.

8. Govt. registered valuer can only comment on quantity, purity and value of the gold. He is not the proper person to comment on smuggled nature or foreign origin of gold. The valuation report is not legally correct as purity and weight cannot be measured by visual inspection. Market survey and market information do not hold good for preparing valuation report.

9. Order for purchase of 600gms of gold of purity 995 was given to M/s Royal Bullion, Mumbai but they sent 598.30 gms of gold. It was told that they will send 1.70 gms of gold later on. Invoice number RB/1 19/23-24 dated 06.06.2023 was received for purchase of 600 gms of gold. It was confirmed that gold was sent through Angadiya firm. It was also confirmed that Sh. Shankarji is employee of his firm and he has given order for purchase of gold of 995 purity. No specific order for Indian or foreign gold was given. The noticee has made payment partly online through RTGS and partly by means of giving 200gms. gold bar. There is nothing on record to dis-belief or to negate the version of the noticee. In fact as per the knowledge of the noticee, the purity of gold is 994 and not 995.

10. Sh. Chaman Jain of m/s Royal Bullion fabricated a new theory of giving of 598.3 gms of gold by one Sh. Posha Bhai and that the invoice of 600 gms. of gold is of another consignment. The DRI did not like to verify the contents of the statement of Sh. Chaman. This statement was recorded just one day after the statement of the noticee but no cross question was made to Sh. Chaman on the statement of the noticee.

11. The basis of seizure is that "The seized gold by visual examination of the markings on the gold appears to be of foreign origin", which is not correct. The SCN and related seizure documents are not sure that marking of Al Eithad and PAMP both are present on the gold and the SCN has been issued for both markings and any one of them. It is certain from all the documents that there was no marking on two small pieces of gold and it's seizure was unwarranted based on markings. Moreover, the documents are mis-leading with respect to separate weight, markings, purity, value etc. of each piece of gold. Presence of two types of markings as Al Eithad Gold Dubai UAE gold 995.0, Sr. No. A979750 Melter Assayer" and PAMP suggest that the marking on one bigger piece of gold is fake and it does not indicate foreign nature of gold and in turn smuggled nature of gold. The decision of foreign origin gold by registered valuer based on marking of "PAMP" by his report dated 18.11.2023 is also not convincing.

12. The seized gold has no connection with "Al Etihad gold Dubai UAE" of United Arab Emirates or PAMP Company of Switzerland. It is on the record of the official website of the PAMP that they manufacture and sale primary gold of 999.9 purity only and not of 995 purity. Separate details of weight, purity markings and value of all three pieces of gold were not given in panchnama valuation report or the

SCN. This makes the SCN ambiguous and prejudicial to the interest of the noticee. Collective weight of all three pieces of gold was given as 598.3 gms. The seized gold is of 995.0 purity but PAMP produce and sell gold of purity 999.9 fine gold bars. There are no marks of "Al Etihad gold DUBAI, UAE" and the SCN & supporting documents are fake to this effect. In that circumstances, the DRI has failed to discharge their onus how they form an opinion that they have a reasonable belief that the gold is of foreign origin and smuggled one.

13. The seized gold weighing 598.3 gms. do not bear the marking of "Al Etihad Dubai UAE ". As per valuation report, it is 995 gold with marking PAMP. Since the gold does not contain marking of "Al Etihad Dubai UAE ", the gold is not of Dubai, UAE. PAMP gold sell gold with brand name "SISSE GOLD" or "SISSE FINE GOLD" of purity of 999. 9 fine. But seized gold is not of suisse brand. So the seizure based on markings on Gold is fake. In support for their defence, they attached several photos from Al Etihad and PAMP websites and chat with PAMP company. the information available with website of AL Etihad and PAMP compared with markings on the gold , it is clear that the gold seized contain fake markings and the markings on the gold do not refer the gold as of foreign origin. In fact, gold is indigenous and the SCN is not legal.

14. The present seizure is not made in Customs area and its ownership is duly claimed which is not refuted by the Department. Further seized goods alleged to have been imported or belonging to PAMP, Switzerland or Al Etihad gold UAE has no legal leg to stand as argued hereinabove. It is a case of town-seizure.

15. The Invoice No. RB/119/23-24 dated 06.06.2023 for Rs 36,92,303/- is now submitted as proof of purchase of gold.

16. Investigation was bad and panchnama proceedings seems fabricated and As the valuation report is doubtful, the noticee may be allowed to cross examine the valuer as the method adopted for valuation is not declared in Panchnama or valuation report.

17. No statement of Sh. Shankarji who was to receive gold and sh. Shubham of noticee's firm were recorded whereas names of both persons appeared on record. Statement of Sh. Dalpat Singh I carrier of gold was also not recorded.

18. There are many officers signing different documents during investigation and it appears that the department has not appointed any enquiry officer and the investigation was left for the grace of god.

19. The noticee was provided the photo copies of relied upon documents. It was found that a number of pages were unsigned by any person from department, witness or any other side. Legacy of signing last page has been appears to be adopted in the investigation but this is bad in law. Such unsigned pages are subject to change and not acceptable in legal proceedings.

20. Panchnama is a secondary evidence and is not valid in law unless supported by primary evidence. Therefore, the statement based on panchnama is not legally correct.

21. The SCN contains a lot of incorrect or mis-leading facts. The statement of noticee was recorded on 17.10.2023 and statement of Sh. Chaman Jain was

recorded on 18.10.2023. How it is possible to show statement of Sh. Chaman Jain was recorded on 18.10.2023 on 17.10.2023 to the noticee?

22. Neither any statement of noticee was recorded on 18.10.2023 nor is part of the RUDs. There is no narration of any statement of noticee recorded on 18.10.2023 in the SCN under the facts of the case.

23. Findings in this para are arbitrary and contrary to version recorded in referred statements. The noticee nowhere told that he was aware about foreign origin of gold. The import documents were not there as it was purchased from Mumbai. The gold is of Indian origin and whims of DRI intelligence officer expressed in panchnama of detention dated 07.06.2023 has made the gold of foreign origin.

24. The absolute confiscation of the questioned seized gold cannot be made, Reliance is placed in case of

- Aadil Majeed Banday Versus Commissioner of Customs, Amritsar 2021 (378) E.L. T. 540 (Tri. - Chan.)

- Shri Ravindra Soni and Shri Laxman Soni Versus Commissioner of Customs (Preventive) I Kolkata 2024 (4) TMI 698 - CESTAT Kolkata

25. There is Carelessness in dealing sensitive issues in the impugned SCN like spelling mistakes.

26. In the entire SCN the provisions of Customs Act contravened and manner of contravention has not been given. Without discussing Sections/ provisions of Customs Act contravened, it is illegal to propose confiscation under Section 111 of the Act. Contravention of Section 11(1) or any other provision of the Customs Act has not been discussed in the SCN without which confiscation is not possible. Simply reproducing text of certain provisions in the SCN is not sufficient to show provisions contravened. In summary of investigation, there are no details of provisions contravened. In fact, there is no contravention of law.

27. The gold is neither liable to confiscation under section 111 nor the Penalty is not imposable under Section 112/ Section 117.

28. CESTAT Kolkata has determined that gold cannot be confiscated without concrete proof of foreign marking or proof of smuggling in case of M/s M.M. Jewelers, Kolkata decided in July, 2024. In such cases Section 123 cannot be invoked.

29. The noticee request to examine the gold seized physically. The gold may be weighed in his presence and purity may be tested as per norms of bullion market.

30. The noticee request to allow cross examination of the following:-

- a) Panchas, carrier of angadiya firm and seizing officer of panchnama of detention of Gold dated 07.06.2023,
- b) Panchas, officer of DRI and approved valuer of panchnama of valuation dated 11.09.2023,
- c) Seizing officer of seizure memo dated 12.10.2023 and
- d) Sh. Chaman Jain of M/s Royal Bullion.

31. The gold should be allowed to be redeemed by the Noticee's on payment of redemption fine. They relied on the case of

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25

-Commissioner of Customs (Preventive), Jodhpur v. Shri Mehboob in D.B. Civil Writ Petition No. 5640/2019, order dated 22-2-2022, Hon'ble Rajasthan High Court

- Waqar Versus Commissioner of Customs (Preventive), Lucknow 2024 (387) E.L. T. 91 (Tri. - All.)

- Commr. of Customs (Prev.), Lucknow Versus Ibrahim Abdullah Rahiman 2018 (363) E.L.T. 534 (Tri. - All)

- Commissioner of Cus. Aliganj, Lucknow Versus Rajesh Jhamatmal Bhat 2022 (382) E.L. T. 345 (All.)

- Yakub Ibrahim Yusuf [2011 (263) E.L. T. 685 (Tribunal)]

32. It is prayed before the Hon'ble Adjudicating Authority to drop the proceedings initiated under SCN F.No. VII/10-83/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 issued for absolute confiscation of seized 598.3 gms. of gold under various provisions of Section 111 of the Customs Act 1962.

30.2 The personal hearing was held on 27.12.2024, which was attended by Shri R. S. Mangal, CA on behalf of M/s. V. S. Gold and he reiterated the written submission dated 26.07.2024 and also raised the contentions of foreign markings being mentioned different under different documents, and requested for physical verification of the same in presence of the adjudicating authority. He alternatively requested for redemption of the Gold in view of various case laws in their written submission.

M/S. ROYAL BULLION:

30.3 In response to the show cause notice, M/s. Royal Bullion have submitted a reply dated 03.07.2024 inter alia they stated:-

1. The Statement of Mr. Chaman Jain has been incorrectly interpreted in Para 29.4 of notice and such an incorrect interpretation has been misapplied and misconstrued to the facts of the present case.

2. Mr. Chaman Jain's in his statement as mentioned in the said notice (para 15.4 to 15.7) never admitted that he was aware that gold was of foreign origin and Further the gold was weighed by one of the office clerks to check the weight of the gold.

3. Mr. Chaman Jain in his statement has clearly mentioned that to maintain their business relations, they took the said job for them on their request. There was no business gain in the said transaction.

4. They were under no obligation to inquire with V.S. Gold about the import document, as we were not aware it was foreign origin gold. Therefore the question of informing the agency does not arise. They say that we had a limited role (to take the gold and give cash to posha bhai. Further the said gold was delivered by the office staff of Ms. Royal Bullion to M/s. Ashokkumar Ambalal & Company-Angadiya on the instructions of Mr. Shubham Bhopawat of M/s. V. S Gold, Udaipur.

5. They denied that they acquired possession of foreign origin gold or dealing in same and that they had done any act of omission and commission for smuggling of gold.

6. On 06.06.2023 over phone Mr. Shubham Bhopawat of M/s. V.S. Gold had informed Mr. Chaman Jain (Partner Royal Bullion) to purchase 600 grams of gold by cash from a person called Shri Posha Bhai and that the cash for the same would be handed over by a person of M/s. V. S. Gold. Also, M/s. V. S. Gold had asked to hand over the said gold to M/s. Ashokkumar Ambalal & Company-Angadiya to deliver to Shri Shankarji, V.S. Udaipur. One of the person of M/s. V.S. Gold had given cash for 600 grams of gold on 06.06.2023 afternoon. M/s. V.S. Gold are Royal Bullions regular customers. Therefore, to maintain their business relations, they took the said job for them on their request.

7. Shri Posha Bhai had visited Royal Bullion shop in the evening of 06.06.2023 to deliver the said gold. On receipt of gold from Shri Posha Bhai, the said gold was weighed in our shop and it weighed only 598.30 gram and the same was informed to M/s. V.S. Gold, Udaipur over phone, Where Mr. Chaman Jain was informed to hand over the cash for 598.30 grams of gold and the cash for the remaining 1.70 grams of gold would be collected by some person of M/s. V.S. Gold afterwards. Subsequently, Mr. Chaman Jain handed over the cash to Shri Posha Bhai for 598.30 grams of gold. Further, as per the instructions of M/s. V.S. Gold, Mr. Chaman Jain delivered the said gold to M/s. Ashokkumar Ambalal & Company-Angadiya from their Mumbai office to be delivered to M/s. V.S. Gold, Udaipur.

8. They presumed that the said transaction which was being done in a good faith on behalf of V.S Gold was legal and legitimate transaction. Further to the invoice referred in Mr. Chaman Jain statement has no relation with the foreign origin gold as the same as issued with respect to some other gold the specification of which has been particularly mentioned by Mr. Chaman Jain.

9. contention in the DRI of levying penalty under Section 112(a), 112(b) & 117 of the Act is bad in law and the show cause notice may be withdrawn in totality.

30.4 The personal hearing was held on 27.11.2024, which was attended by Shri Chaman Jain of M/s. Royal Bullion and he reiterated the written submission dated 03.07.2024 and requested to drop the proceedings initiated vide the SCN.

M/S. SWISS BULLION:

30.5 In response to the show cause notice, M/s. Swiss Bullion have submitted a reply dated 05.06.2024 inter alia they stated:-

1. They denied each and every allegation made in the notice.
2. It appears that the aforesaid allegation made is based on assumptions and presumptions. There is no statutory mandate, which requires any person to report to the Revenue Authority as regards sale and purchase of foreign origin gold bars. I cannot be penalized for not doing something, which has never been mandated by any statutory provision. The authority while issuing the Show Cause Notice was

duty bound to have cause verification and reproduced the relevant provision, whereby any such instruction has been issued to the local traders about reporting of trading activity being carried out in goods which are of foreign origin. Hence, the very basis of issuance of Show Cause Notice to my concern appears to be fictitious in nature. They are not concerned with the seized gold.

3. Section 124 does not empower authority to issue Show Cause Notice. The provision prescribes certain commandments in subsection (i) which have to followed in letter and spirit before passing of any order of confiscation or imposition of any penalty on any person under Chapter XIV of the Act. The inherent nature of the said commandments is representative of principles of natural justice particularly the doctrine of audi alter am partem which cannot be dispelled with while passing an order of confiscation or imposition of penalty in terms of Chapter XIV of the Act. The authority in whom the power to issue show cause in terms of the said provision is patently unclear. The authority in whom the power to adjudicate the purportedly issued show cause notice in terms of the said provision is also patently unclear. Employment of the word 'notice' in first proviso to subsection (1) is also not reflective/indicative of the power of issuance of a show cause notice envisaged under sub-section (1). Recognition of power of issuance of show cause notice, in terms of clause (a) to sub-section (1), in the second proviso is misplaced and not a true reflection of the legislative intent embedded in the warp and woof of the said provision; and Clause (a) of sub-section (1) of the said provision does not confer any power on any person to 'issue' a show cause notice inasmuch as the clear, unambiguous, and express language employed therein merely sets out the necessity to give a notice and the features/characteristics of such notice – fulfilment whereof would lend the said 'notice' necessary validity in the eyes of law. The Show Cause Notice which is without jurisdiction and/or authority of law inasmuch as the said provision do not confer any power of issuance of a 'show cause notice', which can be exercised by any officer of customs, let alone the proper officer. It is no more res integra that:

- a. Taxation statutes have to be strictly interpreted; and
- b. Fealty has to be pledged to the literal meaning of the statute in cases where the language of the statute is clear and unambiguous.

The only power vested under section 124 with the officer not below the rank of Assistant Commissioner is to grant approval for issuance of notice. Hence, no power vested with the Deputy Commissioner to issue Show Cause Notice. They relied upon judgment of Hon'ble Supreme Court's decision in M/s Canon India Private Limited v. Commissioner of Customs, [Civil Appeal No. 1827 of 2018]

4. When the examination of each of the passenger was carried out in separate rooms, then how and on what basis a common panchanama was prepared. Power to search amounts to invasion of rights of an individual and is therefore required to be carried out in the strictest manner complying with the provisions of the Act, which has not been done in the present case. Therefore, the search and recovery caused has become a document not having legal sanctity and the Show Cause

Notice being based upon such improper documents, vitiates the same and is liable to be dropped, in the interest of justice.

5. They are not at all concerned with or has any relation to the gold seized by the DRI and that they are sought to be falsely implicated in a bogus and concocted case.

6. the invoice was issued to M/s. Diya Bullion on 07.06.2023, since it intended to purchase gold, however, as no payment was received, the bill was cancelled. It appears that the bill was obtained by M/s. Diya Bullion from their concern by making false representation and tendered in the office of the DRI.

7. They have no relation to the gold seized by the DRI, and are not claimant of the same. No role has been assigned to them and hence the person whose statements are relied upon is therefore required to be examined. The allegation qua them rest on such statements only. Hence, examination of such person/s whose statements are specifically relied upon, are required to be tested by conducting examination / cross-examination in terms of section 138B of the Customs Act, 1962. They relied upon:

- Hon'ble Supreme Court in the case of A. Tajudeen vs. UOI, (2015) 4 SCC 435
- Hon'ble SC in the case against Noor Aga v/s State of Punjab (2008) 16 SCC 417
- Hon'ble High Court of Chhatisgarh in TAXC 54/2017 filed by Hi Tech Abrasives Ltd Vs. CCE, Raipur
- Jindal Drugs Pvt. Ltd. & Am Vs Uoi, reported in 2016-TIOL- 1230-HC-P&H-CX, Hon'ble Punjab and Haryana High Court
- Andaman Timber (Infra) , reported in 2015 (324) E.L.T. 641 (S.C.)
- Krishan Kishore Agarwal, reported in 2019 (366) ELT 970 (Del)
- CC Ex., Lucknow Vs Premier Alloys Ltd., reported in 2019 (366) E.L.T. 659 (All.)
- AADIL MAJEED BANDAY Versus COMMISSIONER OF CUSTOMS, AMRITSAR, reported in 2021 (378) E.L. T. 540 (Tri. - Chan.)

8. Entire allegations are based on assumptions and presumptions only. It is a known fact that suspicion however grave cannot be substitute of proof in the present case the entire allegations are based merely on conjectures and surmises, there is no corroborative evidence produced as regards the allegation made in the Show Cause Notice and in absence of the same, the Show Cause Notice is improper and illegal and deserves to be dropped in the interest of justice.

9. Provisions of section 112 do not stand attracted in the present case. section 112 postulates penalty for improper importation of goods under clause (a) and clause (b). 112 (i) relates to case of goods in respect of which prohibition is in force. Gold is not a prohibited item and can be freely imported. Hence, generic allegation for imposition of penalty is vague and improper in nature.

10. In the present case, when penal provision of section 112 has already been invoked, then section 117 could not have been invoked and goes beyond the very concept of imposing penalty under section 117.

30.6 Opportunities to be heard in person were given thrice to M/s. Swiss Bullion on 14.11.2024, 27.11.2024 and 27.12.2024 in compliance with Principle of Natural

Justice and the letter for personal hearing was sent to the following addresses/emails available with the office, however, noticees did not attend any of the Personal Hearing. Further, letters of Personal Hearing were pasted on the Notice Board of the Office of Principal Commissioner of Customs, Ahmedabad-380009 as per the provisions of Section 153(1)(e) of the Customs Act, 1962.

M/S. DIYA BULLION AND JEWELLERY:

30.7 In response to the show cause notice, M/s. Diya Bullion and Jewellery have submitted a reply dated 02.07.2024 inter alia they stated:-

1. They established this business under the name and style of M/s Diya Bullions & Jewellery on 26th of April 2021 and it was owned wholly and solely by Shri Alpesh Kumar Soni which was coined as sole proprietorship at Shantinagar, Block-B, Jalore, Rajasthan. His business was only buying and selling of fine gold bullions. He used to do B2B as well as B2C as their business policy. They used to purchase gold majorly from Mumbai and sometimes from Ahmedabad. He used to order frequently from RD bullions which is sister concern of Swiss Bullion Mumbai. Sometimes He used to go and collect parcel himself or used to send anyone from his side either at Ahmedabad or at Mumbai and sometimes they used to send the parcels through Angadiya.
2. Sr. No. 06 was the parcel sent by R.D Bullions to Diya Bullions and Jewellery weighing 1200g of Foreign Origin Gold. While remaining present before DRI and upon asking for the invoice of the said gold, manager of angadiya firm was not able to produce invoice of - gold parcel lying with him as the tax invoice was not given on the date of delivery and further the gold was seized by DRI. As per the valuation report dated 18/09/2023 of the detained Gold 1000 gms Gold was ascertained to be imported based on foreign marking, while 200 gms were declared of Indian origin. He has placed an order of 1200g of Gold to R.D. Bullion / M/s Swiss Bullion and had no information as to whether the said Gold is of foreign origin and he has never asked for foreign origin Gold. On' being asked about the invoice, he submitted a copy of Invoice No. SB/27 dated 07/06/2023. 'No import documents were provided by the supplier I.R.O in relation of 1000g of foreign origin Gold. After seizure of the said gold, upon his request, invoice was sent to him through whatsapp but unfortunately said invoice/whatsapp message came to be deleted.
3. Summons dated 07/07/2023, 25/09/2023, 17/05/2023 were issued to the M/S. Swiss Bullion but they didn't cooperate with DRI which shows their Malafide intentions. In the impugned show cause notice, the department have specifically observed noncooperation on the part of M/S Swiss Bullion (Joint venture firm of R.D Bullion). Above conduct of M/S Swiss Bullion/ R.D. Bullion speaks a lot which may kindly be taken into consideration at the time of making decision. At this juncture it is needless to state that though he did not place an order of Foreign Gold, R.D. Bullion/ M/s Swiss Bullion sent foreign gold with an ulterior motive for which he should not suffer.

4. After delivering the said goods, upon request made by him, R.D. Bullion/ M/s Swiss Bullion sent invoice to him through whatsapp and thereafter having come to know about the fact of seizure by DRI, said whatsapp invoice came to be deleted by the concern. Said approach and conduct of R.D. Bullion/ M/s Swiss Bullion shows their malafides.

5. It also appears that both the firms are hand in gloves and trying to shift their burden on the shoulder of him smartly. It is further pointed out that it is impossible to believe that without making payment to the firm, they issue invoices. On the contrary after making payment and upon our request, invoice was sent on his mobile and thereafter when they came to know about the fact that said goods delivered by them have been seized, the immediately deleted invoices from their mobile, which also shows the malafides on their part. He has sufficient evidences to prove the fact that he has been purchasing Indian gold from them since long and more than 100 times.

6. They used to have purchased foreign gold without asking for the import documents regarding the same, which shows their malafide conduct. Statement of Angadiya agency clarifies and specifies the fact that this gold was supplied by R.D. Bullion/ M/s Swiss Bullion only. By denying the said fact, R.D. Bullion/ M/s Swiss Bullion cannot shift burden from their shoulder to the noticee's shoulder.

7. Statement Dated 29/05/2024 of Shri Kailash Kumar Dodiya, Manager of M/s. Ashok Kumar Ambalal and Company clearly contradicts the statement of Shri Ketan Jain, Shri Dhruv Porwal, Shri Samit Kumar yadav recorded on 28/05/2024 at the premises of M/s Swiss bullion stating that they did not hand over the said parcel to M/s. Ashokkumar Ambalal and company vide Kailash Kumar Dodiya specifically mentions that the parcel was booked by M/s. R.D. Bullion and was handed over by M/s. R.D. Bullion and also had the marking of "R.D." on the parcel which clearly shows the conduct of M/s. Swiss Bullion / M/s. R.D. Bullion that they are Hand in Gloves in pursuance of this matter. Hence, statement of Shri Kailashkumar Dodiya, being a neutral witness is very relevant and important rather the statement of interested witnesses of M/S Swiss Bullion and R. D. Bullion. It is further stated that there is no reason to disbelieve the statement of Shri Kailsahkumar Dodiya. On the contrary, on the basis of the said statement, whole picture has become clear.

8. Though not demanded by him, Foreign Origin Gold was sent by R.D. Bullion/ M/s Swiss Bullion. It's a clear case that he order gold from R.D. Bullion M/s Swiss Bullion and upon placing order, they used to supply the same. In view of the above it is crystal clear that R.D. Bullion/ M/s Swiss Bullion are the suppliers and the noticee are the receiver. So, the burden of proof should first lie on R.D. Bullion/ M/s Swiss Bullion.

9. It is needless to state that looking to the earlier transactions, the noticee never ordered for any foreign origin gold and he always place an order for Indian gold only. By sending foreign origin gold, M/S Swiss Bullion/ R.D. Bullion committed not only mischief but the fraud with exchequer of state. I crave leave to produce

all the relevant papers/documents like earlier invoices, GST details, Business documents if required or as and when it is called for.

10. In the Show cause notice, the value of 1 kg Gold Bar is shown as Rupees 01,21,00,000.00 which is wrong as per the market value of said gold bar is Rupees 60,50,000.00 only.

11. The noticee requested to drop the penalties against him and release the Gold in favour of Diya Bullion and Jewellery and to impose penalties on Swiss Bullion/RD Bullion.

30.8 The personal hearing was held on 14.11.2024, which was attended by Shri Alpesh Soni of M/s. Diya Bullion and Jewellery and he reiterated the written submission dated 03.07.2024 and requested to drop the proceedings initiated vide the SCN.

M/S. SHREE NEMINATH JEWELLERS:

30.9 In response to the show cause notice, M/s. Shree Neminath Jewellers have submitted a reply dated 30.06.2024 through Shri Aayush S. Bhandari, Advocate interalia they stated:-

1. The SCN is not tenable under the eyes of law and their Client strictly refutes to the averments in toto as mentioned in the SCN.
2. With reference to Para No. 1 to 3 of the SCN, Our Client has no comments to offer as the same pertains to factual scenario being formal in nature.
3. With reference to Para No. 4 and 5 of the SCN, it is stated that the allegations made against Our Client are herein denied. That it is denied that these goods are liable for confiscation under the provisions of the Customs Act, 1962.
4. With reference to Para No. 6 of the SCN, it is stated that the said Para pertains to the statement of Shri. Kailashkumar Dodiya. Their Client is only concerned with Sr. No. 2 of 'Table -II'. That as mentioned in the statement of Shri. Kailashkumar Dodiya, their Client had provided all requisite documents as required under the law. That as mentioned in Para 6.2, their Client had provided requisite Invoices in relation to the Gold Bars mentioned at Sr. No.2 of Table-II.
5. With reference to Para 7 of the SCN, it is submitted that there is no dispute with respect to the Gold Bars of Indian Origin. Their Client is concerned with Sr. No. 1 of 'Table-IV' i.e. "Gold Bars- 200 gms each", which as per the SCN is of 'Foreign Origin'.
6. The gold in question was purchased by their client from M/s. Shree Mandev Bullion LLP, Mumbai. That the gold in question was purchased for selling it in the retail market, out of which 200 Grams were sold to Shri. Lakhpatraj Singhvi. However, at the time of purchase no import documents were supplied to Our Client. The Gold Bars were sold to Shri. Lakhpatraj Singhvi on 04.06.2023 bearing Invoice No. 1639.
7. With reference to Para 9 of the SCN, the same pertains to the statement of Shri. Lakhpat Raj Singhvi.

8. With reference to Para 10, 11, 12, 14, 15, 17, 18, 19, 21, 22, 23, 24 , 29.2 to 29.6 of the SCN, it is submitted that their Client has no comments to offer.

9. With reference to Para 13 of the SCN, it is submitted that their Client specifically denies the averment stating that the Goods were liable to be confiscated under the provisions of Customs Act, 1962.

10. With reference to Para 16 of the SCN, for the sake of brevity and repetition it is submitted that Our Client deny the allegations.

11. with respect to Para 19.2 it is evidently clear that the their Client had purchased the said Gold Bars from M/s. Mandev Bullion LLP.

12. With reference to Para 20. 1 to 20.5 of the SCN, it is submitted that their Client through their statement dated 18.03.2024 have already provided all requisite documents pertaining to the said Gold Bars. However, liberty may be granted to their Client to produce the same before the authority at the time of Personal Hearing.

13. With reference to Para 25 to 29.1 and Par 30 of the SCN, it is submitted'. that the allegations made on their Client are baseless, illegal and arbitrary. That the present Show Cause Notice lacks jurisdiction and is absolutely barred by limitation. That the SCN is issued after the prescribed period of Six Months as mentioned under the provisions of the Customs Act, 1962. That as per the Section 110 (2) of the Act, the said goods shall be returned to the person from whose possession they were seized. Therefore the said SCN is issued beyond the prescribed limitation period.

14. Mere fact that goods in question are of foreign origin is highly insufficient to prove any alleged smuggling. It is submitted that merely confiscation on the ground of seized gold to be smuggled one is held to be nothing but merely presumptive finding against their Client. It is stated that the confiscatory power based on imports 'reason to believe' shall be exercised only on the satisfaction based on certain objective material. Hence, mere fact that gold was having foreign engravings is opined to be highly insufficient a reason to believe that the gold was a smuggled one.

15. Their Client has sufficiently discharged his burden of proof in terms of Section 123 of the Customs Act, 1962 by proving that the said Gold Bars were purchased legally. That the present SCN fails to show any cogent reason to believe that the goods were the smuggled one.

16. With reference to Para 33 of the SCN, it is submitted upon careful consideration of the allegations made on their Client, that a personal hearing would be essential before the matter is adjudicated.

30.10 The personal hearing was held on 14.11.2024, which was attended by Shri Aayush S. Bhandari, Advocate and Shri Chintan Jain of M/s. Shree Neminath Jewellers and they reiterated the written submission dated 30.06.2024 and requested to drop the proceedings initiated vide the SCN.

SHRI LAKHPATRAJ HEMRAJ SINGHVI:

30.11 In response to the show cause notice, Shri Lakhpatraj Hemraj Singhvi have submitted a reply dated 30.06.2024 through Shri Aayush S. Bhandari, Advocate interalia they stated:-

1. The SCN is not tenable under the eyes of law and their Client strictly refutes to the averments in toto as mentioned in the SCN.
2. With reference to Para No. 1 to 3 of the SCN, Our Client has no comments to offer as the same pertains to factual scenario being formal in nature.
3. With reference to Para No. 4 and 5 of the SCN, it is stated that the allegations made against Our Client are herein denied. That it is denied that these goods are liable for confiscation under the provisions of the Customs Act, 1962.
4. With reference to Para No. 6 of the SCN, it is stated that the said Para pertains to the statement of Shri. Kailashkumar Dodiya. Their Client is only concerned with Sr. No. 2 of 'Table -II'. That as mentioned in the statement of Shri. Kailashkumar Dodiya, their Client had provided all requisite documents as required under the law. That as mentioned in Para 6.2, their Client had provided requisite Invoices in relation to the Gold Bars mentioned at Sr. No.2 of Table-II.
5. With reference to Para 7 of the SCN, it is submitted that there is no dispute with respect to the Gold Bars of Indian Origin. Their Client is concerned with Sr. No. 1 of 'Table-IV' i.e. "Gold Bars- 200 gms each", which as per the SCN is of 'Foreign Origin'.
6. The gold in question was purchased by their client from M/s. Shree Neminath Jewellers on 04.06.2023 bearing Invoice No. 1639. That the gold in question was purchased from M/s. Mandev Bullion for selling it in the retail market, out of which 200 Grams were sold to their client. However, at the time of purchase no import documents were supplied to their Client.
7. With reference to Para 9 of the SCN, the same pertains to the statement of their Client recorded u/s. 108 of the Customs Act, 1962 on 11.07.2023. That it is evidently clear from the statement of their Client that the said Gold Bars were purchased by Our Client from M/s. Shree Neminath Jewellers.
8. With reference to Para 10, 11, 12, 14, 15, 17, 18, 19, 20.1 to 20.4, 22, 23, 24, 29.2 to 29.6 of the SCN, it is submitted that their Client has no comments to offer.
9. With reference to Para 13 of the SCN, it is submitted that their Client specifically denies the averment stating that the Goods were liable to be confiscated under the provisions of Customs Act, 1962.
10. With reference to Para 16 of the SCN, for the sake of brevity and repetition it is submitted that Our Client deny the allegations.
11. With reference to Para 20.5 of the SCN, it is submitted that their Client had purchased the said Gold Bars from M/s. Shree Neminath Jewellers and had no knowledge in relation to the origin of the said bars. That their Client had purchased the said bars legally and with clean hands and therefore, their Client has no connection in relation to the smuggling of the said goods.

12. With reference to Para 21 of the SCN, it is submitted that their Client through their statement dated 18.03.2024 have already provided all requisite documents pertaining to the said Gold Bars. However, liberty may be granted to their Client to produce the same before the authority at the time of Personal Hearing.

13. With reference to Para 25 to 29.1 and Para 30 of the SCN, it is submitted that the allegations made on their Client are baseless, illegal and arbitrary. That the present Show Cause Notice lacks jurisdiction and is absolutely barred by limitation. That the SCN is issued after the prescribed period of Six Months as mentioned under the provisions of the Customs Act, 1962. That as per the Section 110 (2) of the Act, the said goods shall be returned to the person from whose possession they were seized. Therefore the said SCN is issued beyond the prescribed limitation period. Their Client had preferred Application dated 08.12.2023 u/s. 110A of the Provisional Release of the Goods. However, there is no reply/response to such application which is in clear violation of principles of natural justice and the statutory rights available with their Client.

14. Mere fact that goods in question are of foreign origin is highly insufficient to prove any alleged smuggling. It is submitted that merely confiscation on the ground of seized gold to be smuggled one is held to be nothing but merely presumptive finding against their Client. It is stated that the confiscatory power based on imports 'reason to believe' shall be exercised only on the satisfaction based on certain objective material. Hence, mere fact that gold was having foreign engravings is opined to be highly insufficient a reason to believe that the gold was a smuggled one.

15. Their Client has sufficiently discharged his burden of proof in terms of Section 123 of the Customs Act, 1962 by proving that the said Gold Bars were purchased legally. That the present SCN fails to show any cogent reason to believe that the goods were the smuggled one.

16. With reference to Para 33 of the SCN, it is submitted upon careful consideration of the allegations made on their Client, that a personal hearing would be essential before the matter is adjudicated.

30.12 The personal hearing was held on 14.11.2024, which was attended by Shri Aayush S. Bhandari, Advocate and Shri Lakhpatraj Hemraj Singhvi and they reiterated the written submission dated 30.06.2024 and requested to drop the proceedings initiated vide the SCN.

M/S. POOJA GOLD:

30.13 Opportunities to be heard in person were given thrice to M/s. Pooja Gold on 14.11.2024, 27.11.2024 and 27.12.2024 in compliance with Principle of Natural Justice and the letter for personal hearing was sent to the following addresses/emails available with the office, however, noticees did not attend any of the Personal Hearing nor they did not submit any submission till date. Further, letters of Personal Hearing were pasted on the Notice Board of the Office of Principal Commissioner of Customs,

Ahmedabad-380009 as per the provisions of Section 153(1)(e) of the Customs Act, 1962.

M/S. ASHOKKUMAR AMBALAL & COMPANY:

30.14 Shri Rohan Thakkar, CA submitted written submission on behalf of M/s. Ashokkumar Ambalal & Company on 26.11.2024 as under:-

1. The Noticee reject all the allegations casted upon him under the said SCN. In the present case, the Noticee is into the business of the Angadiya, and he has not imported the goods, rather he was transporting the goods, from one place to another place. Further Noticee is also in possession of the legitimate invoice of goods transported by him.
2. From the statements given by the partner of the Noticee and also the supplier of the goods and recipients of the goods, it is nowhere going to established that the Noticee was aware that the goods are that transported are smuggled goods, hence, it is spick and span that the noticee has no idea that the Gold Bars, which has been detained by the DRI officer, are Foreign origins and the same are smuggled goods. Further, they receive the goods in the packed seal hence, they are not in position to check whether the Gold bars that has been transported by the Noticee are the Foreign Origin or not. Noticee is simply doing the business of the transport of the goods which he has been asked to it, he has no authority to check the legality of the goods, Noticee has to rely on the documents given by the supplier and information provided by the Supplier. It is the supplier who has to check the goods and the onus remain on the supplier only.
3. Your department of the goodself has stated that the burden of the proof lies on the suppliers of the goods that the goods which are being detained are not smuggled goods. As stated above the Noticee is not in the position to verify the goods which are being transported are smuggled goods. Additionally, it is submitted that the goods which has been carried by the Noticee have the proper legitimate documents issued from the Suppliers. Hence, the Noticee has to rely on the invoices issued by the suppliers. Noticee has no jurisdiction neither he has authority to unearth that from where the supplier has procured the impugned Goods.
4. The Noticee is not only carrying the goods which department has believed to be the foreign goods, they are also transporting other goods like Ornaments, jewellery, Indian origin Bars, etc. which has the legitimate documents and the same has also been verified by the DRI officer, if the Noticee has the illicit intention then they will be transporting only goods of the smuggled goods and the Noticee is into the business since 2002 and he is genuinely doing his business. Which clearly indicates that the noticee was completely unaware about the origin of the impugned Goods.
5. The noticee is not aware of the fact the goods that are being transported by noticee is the foreign origin gold. They believed that it is a gold which they are transporting in the business of courier in the normal course of business.
6. The opening para of the Section 123(1) which clearly states that; "Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods". The words "in the reasonable belief" means the

person who is in the possession of the goods is knowing that the goods which he is possessing are the smuggled goods. In the present case the goods which has been transported are smuggled or not that has been not known to the Noticee this can also be established from the Statements given by the supplier recipients and the Noticee. Hence, burden of casting onus in terms of section 123 of the Customs Act, should not be casted on the Noticee, rather it is encumbrance of the suppliers.

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

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

- i. Js. Oberoi Versus Commissioner Of Customs, Chandigarh (2014) 308 ELT 526 = (2014) 12 TMI 985 (Tri-Delhi).
- ii. M/S. Panjra Road Carriers, M/S. Gill Randhawa Roadlines, M/S. Akal Transport Company, M/S. Dd Khosla Transport Pvt. Limited, M/S. Arisudana Industries Limited And M/S. Karam Freight Movers Versus Commissioner Of Customs, Ludhiana (2017) 10 TMI 1264 (Tri- Chandigarh).
- iii. Akbar Badrudin Jiwani vs Collector of Customs 1990 AIR 1579, 1990 SCR (1) 369
- iv. CC v. Amin Chandrakant 2010 (258) E.L.T 36 (Guj)
- v. Sonam International v. CC, 2012 (279) E.L.T. 572 (Tri. - Del.)
- vi. Peico Electronics & Electricals Ltd v. CC
- vii. CC v. Pawan Kumar Gupta

9. The above adjudication clearly portrays that noticee could not be penalized under section 112 (a) and (b) of the act, 1962 as he was merely doing his duty in the capacity of 'Courier'. Further, it is also to be noted that the Noticee has no knowledge that the goods has been carrying by him was foreign origin and/ or smuggled goods, that has not been disclosed by the suppliers as well as the recipients of the goods,

he has relied on the documents and statement produced by the Suppliers which the Noticee do in the normal course of the business, Further, the Noticee has not gained any pecuniary benefits neither he has any intention to gain, single penny from the disputed goods except otherwise the service charge for the service which he supposed to provide in the due course of the business. the '*mens rea*' is not established in the present case, hence section 112 should not be pressed against the noticee,

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

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

- i. Gujarat Borosil v CCE (2007) 217 ELT 367 (CESTAT)
- ii. Suren International Limited v CC 2006 (203) ELT 597 (CESTAT)
- iii. Rammaica (India) Limited v. CCE 2006 (198) ELT 379 (CESTAT)
- iv. O P Agarwal v CC (2005) 185 ELT 387 (CESTAT)
- v. Vinod Kumar v. CCE (2006) 199 ELT 705 (CESTAT)
- vi. Carpenter Classic Exim v CC (2006) 200 ELT 593 (CESTAT)
- vii. Farwood Industries v. CCE (2005) 185 ELT 401 (CESTAT)
- viii. Subhash Gupta v. CCE (2007) 10 STT 411 (CESTAT)
- ix. Commissioner of Central Excise Versus M/s. Goodwill Electricals 2010 - TMI - 202550 - BOMBAY HIGH COURT
- x. Cipla Coated Steel v. CCE 1999 (113) ELT (490) (CEGAT)
- xi. M Hariraju v. CCE1998 (100) ELT (203) (CEGAT);
- xii. Jalmadhu corporation v. CCE 1999 (114) ELT 883 (CEGAT);
- xiii. Bindu S Mehta v. CCE2000 (121) ELT 281 (CEGAT);
- xiv. A K Tantia v. CCE 2003(158)ELT 638 (CESTAT SMB);
- xv. Bellary steel v. CCE 2003(157) ELT 324(CESTAT);
- xvi. Poonam Sparkv v. CCE 2004(164) ELT (282) (CESTAT)
- xvii. HMTD Engineering v. CC 2000(122) ELT 749(CEGAT)
- xviii.SM Zschimmer & Scharwz v. CCE 2000 (126) ELT 729(CEGAT);
- xix. CCE v. New Tobacco Co. 2001(134) ELT 176 (CEGAT);
- xx. Concorde Overseas v. CCE 2003 (156) ELT 287 (CESTAT);
- xxi. Nusli Davar v. CCE 2003 (156) ELT 1022 (CEGAT);
- xxii. L P Desai v. UOI 2004 (165) ELT (151) (Del HC);
- xxiii. Standard Pencils v. CCE 2006 (197) ELT 346 (CESTAT);
- xxiv. P V Malhotra v. CCE 2006 (194) ELT 89 (CESTAT);
- xxv. Hindustan Lever v. CCE(2007) 210 ELT 60 (CESTAT SMB)
- xxvi. Caltron Instruments v. CCE 2004 (165) ELT 174 (CESTAT)

xxvii. Dayaram Agarwal v. CCE(2007) 218 ELT 33 (CESTAT)
xxviii. applied electronics v. CCE 2001(130) ELT 500=40RLT 409 (CEGAT)
xxix. Arebee Star Maritime Agencies v. CCE 2004 (173) ELT 185 (CESTAT)
xxx. Shrikant Processors v. CCE2006 (203) ELT 98 (CESTAT SMB)
xxxi. Chowbey Sugandhit v. CCE 2001 (131) ELT 222 (CEGAT)
xxxii. Metro Appliances v. CCE(2001) 137 ELT 554 (CEGAT);
xxxiii. Laurel Organics v. CCE 2002(140) ELT 151 (CEGAT);
xxxiv. Mewar Bottling v. CCE 2002(140) ELT 237 (CEGAT);
xxxv. Keshav Kumar Tharad v. CCE 2003 (156) ELT 211 (CESTAT SMB);
xxxvi. Nirmal metal fabricators v. CCE (2004) 169 ELT 168 (CESTAT SMB);
xxxvii. Mettaco Engineering v. CC2005 (182) ELT 210 (CESTAT);
xxxviii. S K & Co. v. CCE 2006 (203) ELT 137 (CESTAT).

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

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

30.16 Shri Rohan Thakkar, CA attended personal hearings on behalf of M/s. Ashokkumar Ambalal & Company on 27.11.2024, through Video-conferencing. Shri Rohan Thakkar reiterated the written submissions and requested to drop the proceedings initiated in the SCN.

SHRI DALPATBHAI K. DODIYA:

30.17 Shri Rohan Thakkar, CA submitted written submission on behalf of Shri Dalpatbhai K. Dodiya on 26.11.2024 similar to reply as given in Para 30.15 above.

30.18 Shri Rohan Thakkar, CA attended personal hearings on behalf of Shri Dalpatbhai K. Dodiya on 27.11.2024, through Video-conferencing. Shri Rohan Thakkar reiterated the written submissions and requested to drop the proceedings initiated in the SCN.

SHRI KAILASHKUMAR DODIYA:

30.19 Shri Rohan Thakkar, CA submitted written submission on behalf of Shri Kailashkumar Dodiya on 26.11.2024 similar to reply as given in Para 30.15 above.

30.20 Shri Rohan Thakkar, CA attended personal hearings on behalf of Shri Kailashkumar Dodiya, on 27.11.2024, through Video-conferencing. Shri Rohan Thakkar reiterated the written submissions and requested to drop the proceedings initiated in the SCN.

31. DISCUSSION AND FINDINGS:-

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

31.2 I find that while acting upon specific intelligence, the officers of DRI intercepted 15 passengers outside Kalupur Railway Station, Ahmedabad at around 04:50 hrs. on 07.06.2023. During the examination of the baggage of the passengers at the office of DRI, Ahmedabad Zonal Unit (“AZU”), bags of one passenger, Shri Dalpatbhai K. Dodiya, an employee working for Aangadiya firm- M/s. Ashokkumar Ambalal & Company (“the aangadia firm”), the officers found that certain parcels were containing gold which appeared to be of foreign origin. A detailed investigation conducted and the Gold was seized under the provisions of Section 110 of Customs Act, 1962 as detailed under:-

Description of the Gold	Pertaining to	Markings	Qty. of the gold in grams	Value of the gold in Rs.	Date of Seizure Memo
One Gold Bar and two small pieces/ particles	M/s. V. S. Gold, Udaipur	PAMP MMTC 995.0	598.30	36,19,715	12.10.23
Two Gold Bars	Shri Lakhpatraj Hemraj Singhvi	VALCUMBI SUISSE 999.0	200.00	12,10,000	25.10.23
One Gold Bar	M/s. Diya Bullion & Jewellery, Jalore	AL-ETIHAD GOLD DUBAI UAE 995.0	1000.0	60,50,000	12.10.23
Two Cut Pieces and gold dust	M/s. Pooja Gold, Surat	CHI 999.0	114.20	6,90,910	25.10.23

Statements of all noticees and others were recorded u/s 108 of the Customs Act, 1962 and the aforesaid show cause notice was issued proposing confiscation of said gold bars under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 and penalties on all the noticees under Section 112(a), 112(b) & 117 of the Customs Act, 1962. Thus, I find that the issue before me to decide as to:

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

Before deciding on above issues, I proceed to discuss the authority of the Additional Commissioner of Customs, Ahmedabad to issue the aforesaid Show-cause notice under Section 124 of the Customs Act, 1962. I find that the said goods were placed under

seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962 by the departmental officers and the power of adjudicate all the cases of confiscation and penalties are governed by Section 122 of the Customs Act, 1962,

“Section 122. Adjudication of confiscations and penalties. -

In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged, -

*(a) **without limit**, by a ¹[Principal Commissioner of Customs or Commissioner of Customs]or a ²[**Joint Commissioner of Customs**];*

³[(b) up to such limit, by such officers, as the Board may, by notification, specify.]”

In view of the above, it is to clear that the Show Cause Notice was issued by the proper officer as prescribed by the Customs Act, 1962 and now, I proceed to decide the issues before me as proposed by the aforesaid SCN.

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

ONE GOLD BAR AND TWO SMALL PIECES/ PARTICLES TOTAL 598.30 GRAMS PERTAINING TO M/S. V. S. GOLD

31.3.1 I find that One Gold Bar and Two Small Pieces/ Particles having total weight 598.30 Grams pertaining to M/s. V. S. Gold were recovered from the employee of M/s. Ashokkumar Ambalal & Company. I find that in the Show Cause Notice the markings on the said Gold Bar was alleged to be “AL Etihad Gold Dubai UAE Gold 995, Sr. No. A979750 Melter Assayer” and “PAMP” in the Government Approved Valuer’s Report. I find that the investigating officers clarified the actual markings on the said Gold is as per valuation report which is “**PAMP**” and the mention of “AL Etihad Gold...” in the charging Para is due to typographical error/oversight.

30.3.2 I further find that the Gold Bar was further examined by Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer (“Assayer”), in presence of independent panchas and Shri Kailashkumar Dodiya under panchnama dated 11.09.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 18.09.2023. I find that the assayer in his valuation report clearly mentioned that the bar is of foreign origin based on visual inspection and his expertise. In this connection, I reject the contention of the noticee M/s. V. S. Gold that the Gold assayer has made his report based on visual inspection only, as I find that Shri Kartikey Vasantrai Soni is a registered valuer with Reg. no. CAT-VIII/104/2003-2004 (Approved by Govt. of India) and also empaneled by Commissioner of Customs Ahmedabad vide

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25

Public Notice No. 03/2022 dated 24.01.2023. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** wherein the Hon’ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking, as quoted under:-

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

In view of the above, I held that the said Gold Bar and pieces, bearing foreign marking “**PAMP**” and being examined by the Government approved Assayer/Valuer, is of the foreign origin based on the Valuation Report dated 18.09.2023. I reject the contentions of the noticee regarding foreign origin of the Gold Bar and pieces as the same are found to be cut from a gold bar of standard size and weight.

30.3.3 Having markings as “PAMP” on the seized Gold, I find on the open source domain that the said markings are found on the gold of foreign origin as under:



33

Go to lot
33

45000 - 50000 EUR

Un lingot d'or PAMP Essayeur fondeur, Titre 995 - Lot 33

Un lingot d'or PAMP Essayeur fondeur, Titre 995

N°C283461

MY ORDERS

SALE INFORMATION

SALES CONDITIONS

RETURN TO CATALOGUE

I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** as quoted under:-

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

*35. The four gold biscuits recovered from the drawer of the appellant were of foreign origin. The appellant produced receipt no. 170, dated 6-7-1994 from Khairati Ram Desraj Delhi for purchase of five biscuits out of which one was stated to have been melted. The appellant thus proved the valid possession of these four biscuits. Regarding 16 pieces of gold comprising of eight gold biscuits recovered from beneath the grass of the lawn attached to the premises, the suspicion of the authorities cannot be doubted. **The concealment of these gold pieces with foreign markings were sufficient to create reasonable believe that the gold being of foreign origin, in the absence of any evidence of their valid import was smuggled gold.** The burden thus under Section 123(1) was on the appellant to prove that the goods were either non-foreign origin or were validly purchased. Shri Faiyaz Ahmad tried to retract his statement that he had not purchased the gold recorded, on 10-8-1994, which was not accepted by the Adjudicating Officer. Shri Zaki Ishrati, however, did not retract his statement.”*

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

30.3.4 I further find from the statement of noticee no. 1 i.e. Shri Chaman Jain, Partner of M/s. Royal Bullion given under Section 108 of the Customs Act, 1962 on 18.10.2023 that:-

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also put a dated signature on the same in the token of being seen. In the said valuation report, it appears that the 598.30 gram gold pertaining to M/s. Royal Bullion and mentioned as Parcel No. 8 is of foreign origin.

On being asked to submit the documents related to the import of the said gold, I state that I do not have any import documents pertaining to the said gold bars as I was not provided any import documents by either M/s. V.S.Gold or the supplier, i.e. Shri Poshha Bhai. Further, I state it may be possible that the detained gold may be smuggled through Mumbai airport. I also state that I would try to retrieve the details of Shri Poshha Bhai some of my acquaintance, and I would inform you accordingly on knowing the same.

I find that in his statement, Shri Chaman Jain admitted that the said Gold Bar is of the foreign origin and he did not have any import document in respect of it. I also reject the contentions that Gold bar cannot be held as foreign due to different marking given in Panchnama and valuation report. I find as clarified by the investigating officers, there was typographical error in the panchnama. However, it is an undeniable fact that the seized Gold is of foreign origin which is without any supporting documents of legal import of the same.

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

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

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

30.3.6 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of Gold Bar and pieces weighing 598.30 gms having markings "**PAMP**" was found in the

possession of employees of Aangadia firm M/s. Ashokkumar Ambalal & Company. The sender of the said gold bar is M/s. Royal Bullion and the recipient is M/s. V. S. Gold, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bar is prohibited and the burden of proof that "it is not smuggled gold" lies on M/s. Royal Bullion and M/s. V. S. Gold under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold.

30.3.7 I find that M/s. V. S. Gold has contended that they have legally purchased the said Gold vide invoice No. RB/119/23-24 dated 06.06.2023 and made payments through banking channel, however, I find from the statement of Shri Chaman Jain, Proprietor of M/s. Royal Bullion dated 18.10.2023 that:

Now, I am being asked to peruse the copy of the invoice No. RB/119/23-24 dated 06.06.2023 issued by M/s. Royal Bullion in the name of M/s. V.S. Gold for 600 grams of gold of 99.5 purity. I perused the said invoice and put a dated signature on it in the token of being seen. On being asked, I state that I had received a call from M/s. V.S. Gold on 07.06.2023 to issue me a back dated invoice for 600 grams gold as their gold that was handed over a day before to M/s. Ashokkumar Ambalal Company, Mumbai had been detained by DRI at Ahmedabad. Further, I state that to adjust the gold and payments corresponding to the said invoice in books of account, they made payment for 200 grams gold by RTGS on 07.06.2023 and then for another 200 grams gold by RTGS on 08.06.2023. I state that a person of M/s. V.S. Gold had come to take the delivery of the gold on 07.06.2023 and 08.06.2023 to whom I delivered the said gold accordingly. I state that for the remaining 200 gram gold as per the invoice No. RB/119/23-24 dated 06.06.2023, I state that M/s. V.S. Gold had not made a payment for the said gold and so they issued a invoice for 200 grams gold afterwards in around 2nd week of June'2023. I undertake to submit a copy of the said invoice issued by M/s. V.S. Gold for 200 grams of gold within 2 days' time.

On being asked, I state that the gold pertaining to the invoice No. RB/119/23-24 dated 06.06.2023 issued by M/s. Royal Bullion, I state that the said invoice was issued by us for a separate delivery on being asked by M/s. V.S. Gold and it does not pertain to the gold detained by DRI on 07.06.2023 which was later adjusted against the gold supplied through the parcel and detained by DRI.

I find that Shri Chaman Jain categorically stated that M/s. V. S. Gold has instructed them to make a backdated invoice for the said 598.30 gms Gold. I further find from the statement of Shri Chaman Jain, Proprietor of M/s. Royal Bullion dated 18.10.2023 that he admitted the Gold Bar might have been smuggled through Mumbai Airport. The relevant portion is quoted under:-

On being asked to submit the documents related to the import of the said gold, I state that I do not have any import documents pertaining to the said gold bars as I was not provided any import documents by either M/s. V.S. Gold or the supplier, i.e. Shri Posha Bhai. Further, I state it may be possible that the detained gold may be smuggled through Mumbai airport. I also state that I would try to retrieve the details of Shri Posha Bhai some of my acquaintance, and I would inform you accordingly on knowing the same.

30.3.8 I find that in consequence of the provisions of Section 123, that noticee M/s. V. S. Gold was owner of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee were found owning the gold, the form in which gold was being carried namely Gold bar/pieces, all these circumstances establish beyond a shadow of doubt that the noticee M/s. V. S. Gold was possessing the gold knowingly and with the intention of evading the prohibition that was in force with

respect to the import of gold into the country. As observed by the Madras High Court in ***Malabar Diamond Gallery P. Ltd. vs. Additional Director General, Directorate of Revenue Intelligence, Chennai - 2016 (341) E.L.T. 65 (Mad.)***:-

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

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

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

I find that unlike the case of *Aadil Majeed Bandy* (submitted by the noticee) and *Shri Ravindra Soni and Shri Laxman Soni* (submitted by the noticee), in present case, the Gold Bars were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold Bars by the Government approved Assayer. In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the said Gold has been smuggled into India and reject all the contentions/case laws submitted in defence of the legal purchase of the said Gold.

02 GOLD BARS HAVING TOTAL WEIGHT 200 GRAMS PERTAINING TO SHRI LAKHPATRAJ HEMRAJ SINGHVI

30.3.9 I find that two gold bars having total weight of 200 grams recovered from the employees of M/s. Ashokkumar Ambalal & Company have markings as “**VALCAMBI SUISSE**” being sent to Shri Shankhesh Raj Singhvi. I find that the intended recipient of the said Gold bars is Shri Lakhpatraj Hemraj Singhvi, which was purchased from M/s. Shree Neminath Jewellers. I find that Shri Chintan Sagarmal Jain, partner of M/s. Shree Neminath Jewellers stated in his statement dated 11.07.2023 given under Section 108 of the Customs Act, 1962, that:-

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25

On being asked specifically about the detained two Gold bars having total weight of 200 grams of 999 purity I state that the said two Gold bars having total weight of 200 grams of 999 purity is of Foreign origin and the same was purchased by us from M/s Shree Mandev Bullion LLP, Mumbai.

On being asked about the mode of purchase of foreign origin gold M/s Shree Mandev Bullion LLP, Mumbai I state that M/s Shree Mandev Bullion LLP, Mumbai has an application namely Shree Mandev Bullion LLP and web page in their name. On the page of application they mention gold under various categories. One of such category is **Gold 9990 Imported**. We have booked the gold under this category and purchased imported gold from M/s Shree Mandev Bullion LLP, Mumbai. The said gold is further sold in retail market out of which 200 gms sold to Shri Lakhpat Raj Singhvi and Shri Vikas Singhvi.

In this connection, I find that Shri Chintan Sagarmal Jain, partner of M/s. Shree Neminath Jewellers changed his version in his statement dated 18.03.2024 that:

Now, I am also asked to peruse the letter dated 27.02.2023 of M/s. Shree Mandev Bullion LLP and the attached sales invoices, i.e. invoice no. SML/2479/23-24 dated 05.06.2023 issued for sale of 500 grams gold and SML/1822/23-24 dated 19.05.2023 issued for sale of 100 grams of gold by them to M/s. Shree Neminath Jewellers along with the said letter and accordingly, I put my dated signature on the same in token of perusing and in agreement with the same.

Now, I am asked to specifically peruse the fact in the invoices SML/2479/23-24 dated 05.06.2023 and SML/1822/23-24 dated 19.05.2023 issued by M/s. Shree Neminath Jewellers that mention the Gold Bar Nos. as B0022834 and YL5625 respectively.

Now on being once again asked about seized gold bars having total weight of 200 grams of 999 purity I state that the said Gold bars, having total weight of 200 grams of 999 purity are of foreign origin and we are not remembering exactly from whom we have purchased this gold bar.

I find from the above statements of Shri Chintan Sagarmal Jain that they could not provide the source of the legal purchase of the seized Gold. Further, in his both statements dated 11.07.2023 and 18.03.2024, Shri Chintan Sagarmal Jain, partner of M/s. Shree Neminath Jewellers stated that:

On being asked about the Import dockets for the import of the said foreign origin 2 gold bars of 200 gms I state that we have not been supplied any Import dockets for the import of the said foreign origin 2 gold bars of 200 gms by the

*Before me
11/07/23*

18/03/2023

On being asked I state that I do not have any import documents for our seized gold pieces of 200 grams as it was not provided by the person from whom we had purchased the said gold and also we are not remembering exactly from whom we have purchased the said gold bar. On being asked as to why we did

I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** para supra, where, Hon'ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statements of Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company and Shri Chintan Sagarmal Jain, partner of M/s. Shree Neminath Jewellers, I find that no evidence of valid import of the said Gold Bars was produced before the departmental officers.

30.3.10 I further find from the statement of Shri Chintan Sagarmal Jain, partner of M/s. Shree Neminath Jewellers on 25.01.2024 that:-

On being asked, I state that we had sold the said gold to Shri Lakhpatraj Hemraj Singhvi as asked by him for his personal use and therefore, I had handed over the said gold to Shri Lakhpatraj Hemraj Singhvi. On being asked about the ownership of the detained gold bars of 200 grams, I state that the ownership lies with Shri Lakhpatraj Hemraj Singhvi as we have handed over the gold to him and received the payment. I further state that I was aware that the said gold was of foreign origin before it was sold by us to Shri Lakhpatraj Hemraj Singhvi. I also state that though I did not inquire much into it as I was not aware of the legal provisions of the Customs Act and Rules.

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

30.3.11 I further find that the Gold Bars was further examined by Shri Kartikey Vasantrai Soni, Govt. Approved Gold Assayer ("Assayer"), in presence of independent panchas and Shri Amrutbhai Harjivandas Patel under panchnama dated 11.09.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 18.09.2023. I find that the assayer in his valuation report clearly mentioned that the bar is of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar, bearing foreign marking "**VALCAMBI SUISSE**" and being examined by the Government approved Assayer or Valuer, is of the foreign origin based on the Valuation Report dated 18.09.2023.

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

30.3.12 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of 02 Gold Bar of 200 gms having markings "**VALCAMBI SUISSE**" were found in the possession of employees of Aangadia firm M/s. Ashokkumar Ambalal & Company. The seller of the said gold bar is M/s. Shree Neminath Jewellers and the buyer is Shri Lakhpatraj Hemraj Singhvi, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bar is prohibited and the burden of proof that "it is not smuggled gold" lies on the

noticees under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar.

30.3.13 I find that in consequence of the provisions of Section 123, that noticees were concerned with the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticees were found owning the gold, the form in which gold was being carried namely Gold bars, all these circumstances establish beyond a shadow of doubt that the noticees were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in ***Malabar Diamond Gallery P. Ltd. (supra)***, *“If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited.”*

30.3.14 I further find from the statement of Shri Lakhpatraj Hemraj Singhvi dated 18.03.2024 that he admitted about the origin of the Gold but not aware about it being genuinely imported of smuggled. The relevant portion is quoted under:-

On being asked about the origin of the detained gold bars of 200 grams, I state that I am aware that the said gold bars are of foreign origin but I was not sure at the time of purchasing the said gold that whether the said gold bars were genuinely imported in India or smuggled. I state that I did not inquire much

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

01 GOLD BAR HAVING WEIGHT 1000 GRAMS PERTAINING TO M/S. DIYA BULLION AND JEWELLERY

30.3.15 I find that one Gold Bar having weight of 1000 grams recovered from the employees of M/s. Ashokkumar Ambalal & Company have markings as **“AL-ETIHAD GOLD DUBAI UAE”** being sent to Shri Alpesh Kantilal Soni of M/s. Diya Bullion and Jewellery, and which was purchased from M/s. Swiss Bullion. I like to rely on the judgment in the case of ***ZAKI ISHRATI vs. COMM. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)*** para supra, where, Hon’ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statements of Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company, I find that no evidence of valid import of the said Gold Bar was produced before the departmental officers.

30.3.16 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer (“Assayer”), in presence of independent panchas and Shri Amrutbhai Harjivandas Patel under panchnama dated 11.09.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 18.09.2023. I find that the assayer in his valuation report clearly mentioned that the bar is of foreign origin based on visual inspection and his expertise.

In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar, bearing foreign marking "**AL-ETIHAD GOLD DUBAI UAE**" and being examined by the Government approved Assayer or Valuer, is of the foreign origin based on the Valuation Report dated 18.09.2023.

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

30.3.18 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of 01 Gold Bar of 1000 gms having markings "**AL-ETIHAD GOLD DUBAI UAE**" were found in the possession of employees of Aangadia firm M/s. Ashokkumar Ambalal & Company. The seller of the said gold bar is M/s. Swiss Bullion and the buyer is Shri Alpesh Kantilal Soni, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bar is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticees under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar. I also find neither of the noticees namely M/s. Swiss Bullion and M/s. Diya Bullion and Jewellery disputed the foreign origin of the said Gold.

30.3.19 I find that in consequence of the provisions of Section 123, that noticees were concerned with the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticees were found owning the gold, the form in which gold was being carried namely Gold bar, all these circumstances establish beyond a shadow of doubt that the noticees were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in **Malabar Diamond Gallery P. Ltd. (supra)**, "*If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited.*"

30.3.20 I find that unlike the case of *Aadil Majeed Banday* (submitted by the noticee) in present case, the Gold Bars were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold Bars by the Government approved Assayer. In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the said Gold has been smuggled into India and reject all the contentions/case laws submitted in defence of the same.

02 CUT PIECES OF GOLD BARS AND GOLD DUST HAVING TOTAL WEIGHT 114.20 GRAMS PERTAINING TO M/S. POOJA GOLD

30.3.21 I find that two cut pieces of Gold bars and Gold Dust having total weight of 114.20 grams recovered from the employees of M/s. Ashokkumar Ambalal & Company have markings as “**CHI**” pertaining to M/s. Pooja Gold. I find that Shri Mukesh S. Jain, Proprietor of M/s. Pooja Gold stated in his statement dated 14.07.2023 given under Section 108 of the Customs Act, 1962, that:-

On being asked the verification of Foreign origin gold purchased from M/s K G Jewellers, M/s. Kodiyar Jewellers I state that I was not aware that the gold was of foreign origin as the same was cut in pieces. I further state that it was of 999 purity gold.

On being asked about the Import dockets for the import of the said foreign origin 2 gold pieces of 113.98 gms I state that we have not been supplied any Import dockets for the import of the said foreign origin 2 gold pieces of 113.98 gms by the supplier and neither we are in possession of any import dockets. I also state that in this matter our supplier is also not having any documents related to import therefore, it will not be possible for us to produce documents related to import of these two pieces of gold having 113.980 gms weight.

[Signature]
14/7/2023

Mukesh Jain
14/7/23

I find from the above statement of Shri Mukesh S. Jain that they could not provide the source of the legal import of the seized Gold. I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMMR. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** para supra, where, Hon’ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statements of Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company and Shri Mukesh S. Jain, I find that no evidence of valid import of the said Gold was produced before the departmental officers.

30.3.22 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer (“Assayer”), in presence of independent panchas and Shri Amrutbhai Harjivandas Patel under panchnama dated 11.09.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 18.09.2023. I find that the assayer in his valuation report clearly mentioned that the bar is of foreign origin based on visual inspection and his expertise.

In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bar, bearing foreign marking "CHI" and being examined by the Government approved Assayer or Valuer, is of the foreign origin based on the Valuation Report dated 18.09.2023.

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

30.3.24 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of seized Gold of 114.20 gms having markings "CHI" were found in the possession of employees of Aangadia firm M/s. Ashokkumar Ambalal & Company. The sender of the said gold bar is M/s. Pooja Gold, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticees under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold.

30.3.25 I find that in consequence of the provisions of Section 123, that noticees were concerned with the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticees were found owning the gold, the form in which gold was being carried namely cut pieces of Gold bars, all these circumstances establish beyond a shadow of doubt that the noticees were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in **Malabar Diamond Gallery P. Ltd. (supra)**, "If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited." In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the Gold Bars have been smuggled into India.

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

30.4.1 I find that that the Show Cause Notice proposed absolute confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 of following goods as per Table-X:-

Description of the Gold	Pertaining to	Markings	Qty. of the gold in grams	Value of the gold in Rs.	Date of Seizure Memo
One Gold Bar and two small pieces/ particles	M/s. V. S. Gold, Udaipur	PAMP MMTC 995.0	598.30	36,19,715	12.10.23
Two Gold Bars	Shri Lakhpatraj Hemraj Singhvi	VALCUMBI SUISSE 999.0	200.00	12,10,000	25.10.23
One Gold Bar	M/s. Diya Bullion & Jewellery, Jalore	AL-ETIHAD GOLD DUBAI UAE 995.0	1000.0	60,50,000	12.10.23
Two Cut Pieces and gold dust	M/s. Pooja Gold, Surat	CHI 999.0	114.20	6,90,910	25.10.23

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

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

-
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
-
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*
-
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;”*

30.4.3 From the discussion in foregoing paras, I find that said Gold as per Table-X above, recovered from employees working for Aangadiya firm- M/s. Ashokkumar Ambalal & Company, were seized vide Seizure Memos dated 12.10.2023 and 25.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the said gold were smuggled into India with an intention to evade payment of Customs duty. From the Valuation Report and statements of the noticees, it was found that the same were of foreign origin and had been brought into India without any valid import documents which made them smuggled Gold as defined under Section 2(39) of the Customs Act, 1962.

30.4.4 I also find that the except M/s. V. S. Gold, other noticees did not controvert the facts detailed in the Panchnama during the course of recording their statements recorded under section 108 of the Customs Act, 1962. The contentions of M/s. V. S. Gold regarding typographical error in Panchnama has been dealt in foregoing paras.

30.4.5 I find that the noticees have stated that they are not aware of the Customs Laws and Rules. since ignorance of law is no excuse as held by **HON'BLE HIGH COURT OF CALCUTTA IN THE CASE OF PROVASH KUMAR DEY V. INSPECTOR OF CENTRAL EXCISE AND OTHERS REPORTED AT 1987 (31) E.L.T. 13 (CAL.)**, therefore, I find that therefore statement of the noticees may be taken as evidence. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passengers/owner of the Aangadia Firm. The said smuggling of Gold thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

30.4.5 I find that as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized or the person who was taking the ownership of the said Gold bars. In the present case, neither M/s. V. S. Gold nor M/s. Royal Bullion provided the documents for legal import of the said Gold. The excerpt is from the statement of Shri Vishal Bhopawat of M/s. V. S. Gold dated 18.10.2023:

by M/s. Royal Bullion, I state that I do not have any import documents pertaining to the said gold bars, nor I was provided any import documents by the supplier. I further state that I will urge M/s. Royal Bullion to provide the import documents for the seized gold bars.

The excerpt is from the statement of Shri Chaman Jain of M/s. Royal Bullion dated 17.10.2023:

On being asked to submit the documents related to the import of the said gold, I state that I do not have any import documents pertaining to the said gold bars as I was not provided any import documents by either M/s. V.S.Gold or the supplier, i.e. Shri Posha Bhai. Further, I state it may be possible that the detained gold may be smuggled through Mumbai airport. I also state that I would try to retrieve the details of Shri Posha Bhai some of my acquaintance, and I would inform you accordingly on knowing the same.

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25

Similarly, neither M/s. Shree Neminath Jewellers nor Shri Lakhpatraj Hemraj Singhvi provided the documents for legal import of the said Gold.

Excerpt from statement of Shri Chintan Sagarmal Jain:-

On being asked I state that I do not have any import documents for our seized gold pieces of 200 grams as it was not provided by the person from whom we had purchased the said gold and also we are not remembering exactly from whom we have purchased the said gold bar. On being asked as to why we did not seek any import documents from that person, I state that we do not have any legal knowledge of the Customs Act or rules that it is necessary to obtain documents.

Excerpt from statement of Shri Lakhpatraj Hemraj Singhvi:-

On being asked about the origin of the detained gold bars of 200 grams, I state that I am aware that the said gold bars are of foreign origin but I was not sure at the time of purchasing the said gold that whether the said gold bars were genuinely imported in India or smuggled. I state that I did not inquire much into it as I am not aware of the legal provisions of the Customs Act or Rules. Further, I state that I have never visited abroad.

Further, in the case of M/s. Swiss Bullion and M/s. Diya Bullion and Jewellery, neither M/s. Diya Bullion nor Jewellery provided the documents for legal import of the said Gold, nor M/s. Swiss Bullion took the responsibility of the seized Gold.

Also, I find that Shri Mukesh S. Jain, Proprietor of M/s. Pooja Gold stated in his statement dated 14.07.2023 given under Section 108 of the Customs Act, 1962, that:-

On being asked the verification of Foreign origin gold purchased from M/s K G Jewellers, M/s. Kodyar Jewellers I state that I was not aware that the gold was of foreign origin as the same was cut in pieces. I further state that it was of 999 purity gold.

On being asked about the Import dockets for the import of the said foreign origin 2 gold pieces of 113.98 gms I state that we have not been supplied any Import dockets for the import of the said foreign origin 2 gold pieces of 113.98 gms by the supplier and neither we are in possession of any import dockets. I also state that in this matter our supplier is also not having any documents related to import therefore, it will not be possible for us to produce documents related to import of these two pieces of gold having 113.980 gms weight.

[Signature]
14/7/2023

Mukesh Jain
14/7/23

30.4.6 From the facts discussed above, it is evident that said gold are liable for confiscation, under the provisions of Sections 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By owning the said gold without valid import documents made the impugned goods fall within the ambit of ‘smuggling’ as defined under Section 2(39) of the Act.

30.4.7 I find that as per Section 2(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the

Act. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the Gold Bars were smuggled into India. In view of the above discussions, I hold that the said gold bars are liable for absolute confiscation. I rely on the case decided by the Hon'ble High Court of Madras in respect of **MALABAR DIAMOND GALLERY PVT LTD**, where the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

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

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

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

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating

authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.”

30.4.9 Given the facts of the present case before me and the judgments and rulings cited above, I hold the said gold placed under seizure would be liable to absolute confiscation under Section 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962. I also reject the contentions of noticees regarding confiscation and option for redemption.

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

M/S. V. S. GOLD:

30.5.1 I find that Shri Vishal Bhopawat, Proprietor of M/s. V. S. Gold, has stated in his statement dated 18.10.2023, that he had given order of 600 grams of gold to M/s. Royal Bullion and M/s. Royal Bullion sent the gold bars through Angadiya and issued an invoice No. RB/119/23-24 dated 06.06.2023 and said invoice was received by him on WhatsApp on 07.06.2023 and a verbal communication by M/s. Royal Bullion that they are sending 598.30 gram of gold by Angadiya and further 1.70 gram of gold would be sent by them later on. However, his statement is contradicted by the backdated invoice in the case and a denial of these facts by Shri Chaman Jain, proprietor of M/s. Royal Bullion. Further Shri Chaman Jain stated:

I state that a person of M/s. V.S. Gold had given me cash for 600 grams of gold on 06.06.2023 afternoon. I state that I do not know the exact identity of that person.

I state that Shri Posha Bhai had come to my shop in the evening of 06.06.2023 to deliver the said gold. On being asked about the weight of the

I find that that Shri Vishal Bhopawat, Proprietor of M/s. V. S. Gold has purchased the said gold at a cheaper rate for his personal enrichment. Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that he had no idea about the origin. However, I find from the statement of Shri Chaman Jain, that Shri Vishal Bhopawat of M/s. V. S. Gold was aware that the said gold is of foreign origin and he failed to provide proof of valid importation of the said Gold.

30.5.2 I find that the noticee has contended that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from his statement that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold.

30.5.3 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that M/s. V. S. Gold had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation

under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who **acquires possession of** or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that M/s. V. S. Gold are culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered them liable for penalty under Section 112 of the Customs Act, 1962.

30.5.4 I find that the M/s. V. S. Gold have requested for the cross-examination of the Government Approved Gold Assayer Shri Kartikey Vasantrai Soni, however the request of noticee could not be exceeded to due to the reason that The Assayer is not a witness or co-noticee in the matter, but he factually and scientifically verified the nature of goods, purity, and origin of the Gold bars. Further the request to cross-examine the officers of DRI cannot be exceeded as they were doing their statutory duties and their statements are not relied in the SCN. I like to rely on the case of **N.S. MAHESH VERSUS COMMISSIONER OF CUSTOMS, COCHIN [2016 (331) E.L.T. 402 (KER.)]**. I also reject their request to cross examine the panchas as held in **SURJEET SINGH CHHABRA V. UNION OF INDIA REPORTED IN 1997 (89) E.L.T. 646 (DC)**. Further I find that the cross-examine of the co-noticee cannot be granted as the noticee failed to provide any cogent or valid reason for the cross-examination in view of following judgments:-

- **UNION OF INDIA V. RAJENDRA BAJAJ REPORTED IN 2010 (253) E.L.T. (BOM.);**
- **JAGDISH SHANKAR TRIVEDI V. COMMISSIONER OF CUSTOMS, KANPUR REPORTED IN 2006 (194) E.L.T. 290 (TRI. DELHI);**
- **N.S.MAHESH V. CC, COCHIN (SUPRA)**
- **LAXMI V. COLLECTOR OF CUSTOMS, LUCKNOW, REPORTED IN 2001 (138) E.L.T. 1090;**
- **M/S. OM INTERNATIONAL V. CC, NEW DELHI REPORTED IN 2007 (217) E.L.T. 88 (TRI. DEL);**
- **LIYAKAT SHAH V. COMMISSIONER OF C.EX. INDORE-II (BHOPAL) REPORTED IN 2000 (120) E.L.T. 556;**
- **SHRI RANCHHODBHAI M. PATEL V. CENTRAL BOARD OF REVENUE, NEW DELHI REPORTED IN 2000 (125) E.L.T. 281 (PUNJ);**
- **HARINDER PAL SINGH SHERGILL V. COMMISSIONER REPORTED IN 2010 (259) E.L.T. A19 (SC);**
- **M/S. KANUNGO & CO. V. COLLECTOR OF CUSTOMS REPORTED IN 1983 (13) E.L.T. 1486 (SC);**
- **FORTUNE IMPEX V. COMMISSIONER OF CUSTOMS, CALCUTTA REPORTED IN 2001 (138) E.L.T. 556;**
- **M/S. ERODE ANNAI SPINNING MILLS (PVT.) LTD. REPORTED IN 2019 (366) E.L.T. 647 (T)**

30.5.5 I find that M/s. V. S. Gold have questioned reliance on the statements recorded under Section 108 of the Customs Act, 1972. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]** wherein it was held as under:

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

I also find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

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

30.5.6 I also rely on the judgment of **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI)** as held under:-

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

30.5.7 I find further that Shri Vishal Bhopawat, Proprietor of M/s. V. S. Gold is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

M/S. ROYAL BULLION:

30.5.8 I find that Shri Chaman Jain, Partner of M/s. Royal Bullion, has stated in his statement dated 17.10.2023, that he had received a delivery of the seized Gold of 598.30 gms on instructions of M/s. V. S. Gold from some Posha Bhai and paid him in cash as received from M/s. V. S. Gold. I further find that he stated that M/s. Royal Bullion issued a back dated invoice No. RB/119/23-24 dated 06.06.2023 on instructions of M/s. V. S. Gold for making the transaction look genuine. Shri Chaman Jain stated:

Now, I am being asked to peruse the copy of the invoice No. RB/119/23-24 dated 06.06.2023 issued by M/s. Royal Bullion in the name of M/s. V.S. Gold for 600 grams of gold of 99.5 purity. I perused the said invoice and put a dated signature on it in the token of being seen. On being asked, I state that I had received a call from M/s. V.S. Gold on 07.06.2023 to issue me a back dated invoice for 600 grams gold as their gold that was handed over a day before to M/s. Ashokkumar Ambalal Company, Mumbai had been detained by DRI at Ahmedabad. Further, I state that to adjust the gold and payments corresponding to the said invoice in books of account, they made payment for 200 grams gold by RTGS on 07.06.2023 and then for another 200 grams gold by RTGS on 08.06.2023. I state that a person of M/s. V.S. Gold had come to take the delivery of the gold on 07.06.2023 and 08.06.2023 to whom I delivered the said gold accordingly. I state that for the remaining 200 gram gold as per the invoice No. RB/119/23-24 dated 06.06.2023, I state that M/s. V.S. Gold had not made a payment for the said gold and so they issued a invoice for 200 grams gold afterwards in around 2nd week of June'2023. I undertake to submit a copy of the said invoice issued by M/s. V.S. Gold for 200 grams of gold within 2 days' time.

On being asked, I state that the gold pertaining to the invoice No. RB/119/23-24 dated 06.06.2023 issued by M/s. Royal Bullion, I state that the said invoice was issued by us for a separate delivery on being asked by M/s. V.S. Gold and it does not pertain to the gold detained by DRI on 07.06.2023 which was later adjusted against the gold supplied through the parcel and detained by DRI.

I find that that M/s. Royal Bullion has helped M/s. V. S. Gold in purchase of smuggled gold. I find that Shri Chaman Jain stated that he had no idea about the origin. However, I find from the statement of Shri Chaman Jain, that the said gold is of foreign origin and he failed to provide proof of valid importation of the said Gold.

On being asked to submit the documents related to the import of the said gold, I state that I do not have any import documents pertaining to the said gold bars as I was not provided any import documents by either M/s. V.S.Gold or the supplier, i.e. Shri Posha Bhai. Further, I state it may be possible that the detained gold may be smuggled through Mumbai airport. I also state that I would try to retrieve the details of Shri Posha Bhai some of my acquaintance, and I would inform you accordingly on knowing the same.

30.5.9 I find that the noticee has contended that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from his statement that he could not produce the legal import documents and did not tell the departmental

officers about the source of the said Gold. He did not inquire about the import documents neither informed any agency regarding sending foreign origin gold through Angadiya to M/s. Diya Bullion and Jewellery which was liable for confiscation under Section 111 of the Customs Act, 1962.

30.5.10 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that M/s. Royal Bullion had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who acquires possession of or is in any way **concerned in** carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or **in any other manner dealing with any goods** which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that M/s. Royal Bullion are culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered them liable for penalty under Section 112 of the Customs Act, 1962.

30.5.11 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I also find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

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

30.5.12 I also rely on the judgment of **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI)** as held under:-

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

30.5.13 I find further that M/s. Royal Bullion have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was their duty to comply, as they concerned themselves in purchase and possession of the smuggled gold. Further I find that Shri Chaman Jain admitted issuing a backdated invoice for making the transaction look genuine and therefore contravened the provisions of the Customs Act and other allied Acts and I hold them liable for penalty under Section 117 of the Customs Act.

M/S. DIYA BULLION AND JEWELLERY:

30.5.14 I find that Shri Alpesh Kantilal Soni, Proprietor of M/s. Diya Bullion and Jewellery, has stated in his statement dated 29.09.2023, that he had given order of 1200 grams of gold to M/s. Swiss Bullion, and M/s. Swiss Bullion sent the gold bars through Angadiya and issued an invoice No. SB/127 dated 07.06.2023. I find that out of said 1200 gms, 1000 gms are of foreign origin.

आप साहब द्वारा invoice की date के बारे में पूछे जाने पर मैं यह बताता हू कि invoice की date 07.06.2023 है जब कि गोल्ड date 06.06.2023 को मुंबई से जालोर के लिए भेजा गया था। invoice की date के बारे में श्री सुशील जी, M/s. Swiss Bullion, Mumbai ही आपको बता सकते हैं और आगे पूछे जाने पर मैं यह भी बताता हू की दूसरे राज्य में भेजने के लिए मुझे कोई e-way बिल नहीं मिला था।

उक्त विदेशी मूल के 1000 ग्राम के सोने की बार के आयात के लिए import documents के बारे में पूछे जाने पर, मैं बताता हू कि हमें supplier द्वारा उक्त विदेशी मूल के 1000 ग्राम के 1 सोने के बार के आयात के लिए कोई import documents की आपूर्ति नहीं की गई है और न ही हमारे पास कोई import documents हैं। मैं यह भी मानता हू की विदेशी मूल के गोल्ड के import documents होने चाहिए थे, और बिना import के विदेशी मूल का गोल्ड हमारे पास नहीं होना चाहिए था यह rules के against है। मैं

हमारे supplier से उक्त विदेशी मूल के 1000 ग्राम के 1 सोने के बार के आयात के import documents लेने की कोशिश करता हू और अगर वह जैसे ही मुझे import documents देता है मैं आपकी ऑफिस में जमा करवा देता हू।

I find that that Shri Alpesh Kantilal Soni, Proprietor of M/s. Diya Bullion and Jewellery has purchased the said gold at a cheaper rate for his personal enrichment without any invoice and a payment made in cash. I further find that on being asked about as to whether the said gold piece was smuggled in India, he stated that he had no idea about the origin. I find from the statement of Shri Alpesh Kantilal Soni that he could not provide any valid document of legal import of the seized Gold.

30.5.15 I find that the noticee has contended that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from his statement that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold.

30.5.16 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that M/s. Diya Bullion and Jewellery had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who **acquires possession of** or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that M/s. V. S. Gold are culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered them liable for penalty under Section 112 of the Customs Act, 1962.

30.5.16 I find that the M/s. Diya Bullion and Jewellery have raised various allegations against M/s. Swiss Bullion regarding their malafide intentions, however M/s. Swiss Bullion has also been made a co-noticee in this SCN for imposition of penalties. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I also find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

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

30.5.17 I also rely on the judgment of **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI)**.

30.5.18 I find further that Shri Alpesh Kantilal Soni, Proprietor of M/s. Diya Bullion and Jewellery is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

M/S. SWISS BULLION:

30.5.19 I find that Shri Alpesh Kantilal Soni, Proprietor of M/s. Diya Bullion and Jewellery, has stated in his statement dated 29.09.2023, that he had given order of 1200 grams of gold to M/s. Swiss Bullion, and M/s. Swiss Bullion sent the gold bars through Angadiya and issued an invoice No. SB/127 dated 07.06.2023. I also find that in this connection, M/s. Swiss Bullion, Mumbai was issued summons dated 07.07.2023, 25.07.2023 and 17.05.2024, for recording of their statement, but they did not appear before the investigating officers and resorted to delay tactics. Further, I find that a search was conducted at the premises of M/s. Swiss Bullion under Panchnama dated 28.05.2024. I find that during the search proceedings, Shri Dhruv Porwal, son of Proprietor of M/s. Swiss Bullion and the other employees of M/s. Swiss Bullion denied about having given any parcel to M/s. Ashokkumar Ambalal & Company.

The DRI officers then ask Shri Dhruv Porwal and the other employees of M/s. Swiss Bullion, i.e. Shri Ketan Jain and Shri Samit Kumar Yadav whether they had given some parcel of gold to M/s. Ashokkumar Ambalal & Company-Angadia on 06.06.2023. Shri Dhruv Porwal and the other employees of M/s. Swiss Bullion, i.e. Shri Ketan Jain and Shri Samit Kumar Yadav deny about having given any parcel to M/s. Ashokkumar Ambalal & Company on the said date. Shri Ketan Jain then informs the DRI officers that Shri Alpesh Shantilal Soni, proprietor of M/s. Diya Bullion & Jewellery, Jalore had asked them on 07.06.2023 that he wishes to

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28/05/24

Ketan Jain
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Taylor
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28/5/24

Dhruv
28/05/24

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buy 1200 grams of gold, therefore, in good faith, they had made a Tax invoice, bearing no. SB/127 dated 07.06.2023 for 1200 grams of gold before the payment for the said gold. Shri Ketan Jain further informs that Shri Alpesh Shantilal Soni later did not make payment for the 1200 grams gold mentioned in the invoice and also, they got to know from some acquaintances that one parcel of M/s. Diya Bullion and Jewellery containing 1200 grams of gold had been detained by DRI, Ahmedabad Zonal Unit in the morning of 07.06.2023. Shri Ketan Jain informs that in view of the same, they had subsequently cancelled the invoice and did not deliver the gold to M/s. Diya Bullion and Jewellery, Jalore. Thereafter officer of DRI, enquires about purchase or sale of Gold Bar Having Sr No A378402 Melter Assayer in FY 2023-24; to which Shri Ketan Jain informs that their firm M/s Swiss Bullion have not made purchase or sale of said Gold Bar. Further on being enquired if such gold bar was purchased or sale from accounts of M/s RD Bullion; to which Shri Ketan Jain informs that they have examined their accounts in M/s RD Bullion as well and their account has no sale or purchase details of the above said Gold Bar.

I find from the admissions of Shri Ketan Jain, employee of M/s. Swiss Bullion that they have issued an invoice on the name of Shri Alpesh Shantilal Soni, proprietor of M/s. Diya Bullion & Jewellery on 07.06.2023, bearing no. SB/127 dated 07.06.2023 for 1200 grams of gold before the payment for the said gold and they had subsequently cancelled the invoice and did not deliver the gold to M/s. Diya Bullion and Jewellery after hearing about seizure of the Gold. I find that the argument about issuing an invoice without sell and payment is illogical and M/s. Swiss Bullion have fabricated facts for saving them from penal actions. I find that M/s. Swiss Bullion have sold the foreign origin Gold to M/s. Diya Bullion and Jewellery without any valid import documents.

30.5.20 I find that the noticee has not discharged burden of proof under Section 123 of the Customs Act, 1962 as I find from their testimonials during search that they could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold.

30.5.21 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that M/s. Swiss Bullion had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who acquires possession of or is **in any way concerned in** carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that M/s. Swiss Bullion are culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered them liable for penalty under Section 112 of the Customs Act, 1962.

30.5.22 I find that the M/s. Swiss Bullion have requested for the cross-examination of such person/s whose statements are specifically relied upon. I find that cross-examination of the co-noticees cannot be granted as the noticee failed to provide any cogent or valid reason for the cross-examination. I like to rely on the case of

- ***N.S. MAHESH VERSUS COMMISSIONER OF CUSTOMS, COCHIN [2016 (331) E.L.T. 402 (KER.)]***
- ***SURJEET SINGH CHHABRA V. UNION OF INDIA REPORTED IN 1997 (89) E.L.T. 646 (DC).***
- ***UNION OF INDIA V. RAJENDRA BAJAJ REPORTED IN 2010 (253) E.L.T. (BOM.);***
- ***JAGDISH SHANKAR TRIVEDI V. COMMISSIONER OF CUSTOMS, KANPUR REPORTED IN 2006 (194) E.L.T. 290 (TRI. DELHI);***
- ***LAXMI V. COLLECTOR OF CUSTOMS, LUCKNOW, REPORTED IN 2001 (138) E.L.T. 1090;***

- **M/S. OM INTERNATIONAL V. CC, NEW DELHI REPORTED IN 2007 (217) E.L.T. 88 (TRI. DEL);**
- **LIYAKAT SHAH V. COMMISSIONER OF C.EX. INDORE-II (BHOPAL) REPORTED IN 2000 (120) E.L.T. 556;**
- **SHRI RANCHHODBHAI M. PATEL V. CENTRAL BOARD OF REVENUE, NEW DELHI REPORTED IN 2000 (125) E.L.T. 281 (PUNJ);**
- **HARINDER PAL SINGH SHERGILL V. COMMISSIONER REPORTED IN 2010 (259) E.L.T. A19 (SC);**
- **M/S. KANUNGO & CO. V. COLLECTOR OF CUSTOMS REPORTED IN 1983 (13) E.L.T. 1486 (SC);**
- **FORTUNE IMPEX V. COMMISSIONER OF CUSTOMS, CALCUTTA REPORTED IN 2001 (138) E.L.T. 556;**
- **M/S. ERODE ANNAI SPINNING MILLS (PVT.) LTD. REPORTED IN 2019 (366) E.L.T. 647 (T)**

30.5.23 I find that M/s. V. S. Gold have questioned reliance on the statements recorded under Section 108 of the Customs Act, 1972. I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I also find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

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

30.5.24 I also rely on the judgment of **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI)** as held under:-

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

customs officer is not a police officer as is defined under Evidence Act and Code of Criminal Procedure. Accordingly, appellant's plea that the exculpatory statement of the appellant has credence in evidences does not sound well when he had pre-meditated design to commit fraud against Revenue"

30.5.25 I find further that M/s. Swiss Bullion are liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was their duty to comply, by not appearing for statements and not co-operating with the investigation.

SHRI LAKHPATRAJ HEMRAJ SINGHVI

30.5.26 I find that Shri Lakhpatraj Hemraj Singhvi has stated in his statement dated 11.07.2023 and 18.03.2024, that he had purchased 200 grams of gold from M/s. Shree Neminath Jewellers under invoice number 1639 dated 04.06.2023 and made payment through banking channels. He handed over the gold to Aangadia firm M/s. Ashokkumar Ambalal & Company to deliver the same to his nephew.

On being asked, I state that the said gold bars of 200 grams were purchased by me on 04.06.2023 from M/s. Neminath Jewellers and I was also issued invoice no. 1639 dated 04.06.2023 for the same. I state that I have also made payment for the said gold to M/s. Neminath Jewellers and as I stated earlier, it was handed over by me to Aangadiya on 06.06.2023 to deliver to my nephew, Shri Sankesh Singhvi. I state that however, I was not provided any import documents in respect of the said gold.

I find that that Shri Lakhpatraj Hemraj Singhvi had himself seen the Gold bars which were found to be of foreign origin and smuggled in a purchased the said gold at a cheaper rate for his personal enrichment without any invoice and a payment made in cash. I further find that on being asked about as to whether the said gold piece was smuggled in India, he stated that he had no idea about the origin. I find from the statement of Shri Lakhpatraj Hemraj Singhvi that he could not provide any valid document of legal import of the seized Gold.

30.5.27 I find that the noticee has contended that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from his statement that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold.

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

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

30.5.29 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**.

30.5.30 I also find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

- **ROMESH CHANDRA MEHTA V. STATE OF WEST BENGAL, 1999 (110) E.L.T. 324 (S.C.)**
- **PERCY RUSTAM JI BASTA V. STATE OF MAHARASHTRA, 1983 (13) E.L.T. 1443 (S.C.),**
- **ASSISTANT COLLECTOR CENTRAL EXCISE, RAJAMUNDRY V. DUNCAN AGRO INDUSTRIES LTD & ORS. - 2000 (120) E.L.T. 280 (S.C.) AND**
- **GULAM HUSSAIN SHAIKH CHOUGULE V. REYNOLDS SUPDT. OF CUSTOMS MARMGOA - 2001 (134) E.L.T. 3 (S.C).**
- **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI).**

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

M/S. SHRI NENIMATH JEWELLERS

30.5.32 I find that Shri Lakhpatraj Hemraj Singhvi has stated in his statement dated 11.07.2023 and 18.03.2024, that he had purchased 200 grams of gold from M/s. Shree Neminath Jewellers under invoice number 1639 dated 04.06.2023 and made payment through banking channels. He handed over the gold to Aangadia firm M/s. Ashokkumar Ambalal & Company to deliver the same to his nephew.

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On being asked, I state that the said gold bars of 200 grams were purchased by me on 04.06.2023 from M/s. Neminath Jewellers and I was also issued invoice no. 1639 dated 04.06.2023 for the same. I state that I have also made payment for the said gold to M/s. Neminath Jewellers and as I stated earlier, it was handed over by me to Aangadiya on 06.06.2023 to deliver to my nephew, Shri Sankesh Singhvi. I state that however, I was not provided any import documents in respect of the said gold.

I find that that Shri Chintan Sagarmal Jain, Partner of M/s. Shree Neminath Jewellers had stated in his statement dated 18.03.2024 that they have purchased the said Gold bars from persons coming from retail sale/purchase. I further find that on being asked about as to whether the said gold piece was smuggled in India, he stated that he had no idea about the origin. I find from the statement of Shri Chintan Sagarmal Jain that he could not provide any valid document of legal import of the seized Gold.

Now on being once again asked about seized gold bars having total weight of 200 grams of 999 purity I state that the said Gold bars, having total weight of 200 grams of 999 purity are of foreign origin and we are not remembering exactly from whom we have purchased this gold bar.

On being asked I state that I do not have any import documents for our seized gold pieces of 200 grams as it was not provided by the person from whom we had purchased the said gold and also we are not remembering exactly from whom we have purchased the said gold bar. On being asked as to why we did not seek any import documents from that person, I state that we do not have any legal knowledge of the Customs Act or rules that it is necessary to obtain documents.

30.5.33 I find that the noticee has submitted that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from his statement that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold.

30.5.34 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that M/s. Shree Neminath Jewellers had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who **acquires possession of** or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that M/s. Shree Neminath Jewellers are culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered them liable for penalty under Section 112 of the Customs Act, 1962.

30.5.35 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound

to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I also find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

- **ROMESH CHANDRA MEHTA V. STATE OF WEST BENGAL, 1999 (110) E.L.T. 324 (S.C.)**
- **PERCY RUSTAMJI BASTA V. STATE OF MAHARASHTRA, 1983 (13) E.L.T. 1443 (S.C.),**
- **ASSISTANT COLLECTOR CENTRAL EXCISE, RAJAMUNDRY V. DUNCAN AGRO INDUSTRIES LTD & ORS. - 2000 (120) E.L.T. 280 (S.C.) AND**
- **GULAM HUSSAIN SHAIKH CHOUGULE V. REYNOLDS SUPDT. OF CUSTOMS MARMGOA - 2001 (134) E.L.T. 3 (S.C).**
- **T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI).**

30.5.36 I find further that M/s. Shree Neminath Jewellers are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as they purchased, sold and possessed the smuggled gold. I also find that they also did not discharge their burden under Section 123 truthfully.

M/s. POOJA GOLD:

30.5.37 I find that Shri Mukesh S. Jain, Proprietor of M/s. Pooja Gold has stated in his statement dated 14.07.2023 that he had purchased said seized Gold of foreign origin and 999 purity from various suppliers.

On being asked specifically about the detained two Gold Cut pieces having total weight of 113.98 grams of 999 purity I state that the said two Gold Cut pieces having total weight of 113.98 grams of 999 purity is of foreign origin and the same was purchased by us from M/s K G Jewellers, M/s. Kodiyar Jewellers.

I find that that Shri Mukesh S. Jain had stated in his statement dated 14.07.2023 that on being asked about as to whether the said gold piece was smuggled in India, he stated that he had no idea about the origin. I find from the statement of Shri Mukesh S. Jain Jain that he could not provide any valid document of legal import of the seized Gold.

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On being asked the verification of Foreign origin gold purchased from M/s K G Jewellers, M/s. Kodiyar Jewellers I state that I was not aware that the gold was of foreign origin as the same was cut in pieces. I further state that it was of 999 purity gold.

On being asked about the Import dockets for the import of the said foreign origin 2 gold pieces of 113.98 gms I state that we have not been supplied any Import dockets for the import of the said foreign origin 2 gold pieces of 113.98 gms by the supplier and neither we are in possession of any import dockets. I also state that in this matter our supplier is also not having any documents related to import therefore, it will not be possible for us to produce documents related to import of these two pieces of gold having 113.980 gms weight.

[Signature]
14/7/23

Mulcey/auy
14/7/23

30.5.38 I find from his statement that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold.

30.5.39 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that M/s. Pooja Gold had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who **acquires possession of** or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that M/s. Pooja Gold are culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered them liable for penalty under Section 112 of the Customs Act, 1962.

30.5.40 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, and **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]**. I also find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

- **ROMESH CHANDRA MEHTA V. STATE OF WEST BENGAL, 1999 (110) E.L.T. 324 (S.C.)**
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- ***ASSISTANT COLLECTOR CENTRAL EXCISE, RAJAMUNDRY V. DUNCAN AGRO INDUSTRIES LTD & ORS. - 2000 (120) E.L.T. 280 (S.C.) AND***
- ***GULAM HUSSAIN SHAIKH CHOUGULE V. REYNOLDS SUPDT. OF CUSTOMS MARMGOA - 2001 (134) E.L.T. 3 (S.C).***
- ***T. MANIVANNAN VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN REPORTED AT 2017 (348) E.L.T. 513 (TRI. - CHENNAI).***

30.5.41 I find further that M/s. Pooja Gold are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as they purchased, sold and possessed the smuggled gold. I also find that they also did not discharge their burden under Section 123 truthfully.

M/S. ASHOKKUMAR AMBALAL & COMPANY:

30.5.42 I find that in present case, an employee namely Shri Dalpatbhai K. Dodiya of M/s. Ashokkumar Ambalal & Company ("Aangadia Firm") was intercepted by the officers of DRI in the 'Pick up' area outside the Kalupur Railway Station, Ahmedabad and on the examination of the baggage of the those two employees, the officers of DRI found that certain parcels containing gold which appeared to be of foreign origin. I find that the employees of the Aangadia Firm could not produce any documents showing legitimate import of the said goods and these goods appeared to be of the nature of smuggled goods. I find from the statement of Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company recorded under section 108 of the Customs Act, 1962 on 14.06.2023, that M/s. Ashokkumar Ambalal & Company is specialized in courier services of Precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. and the said parcels were carried by their employees Shri Dalpatbhai K. Dodiya for delivery to concerned recipients. Further, as discussed in foregoing paras, the said Seized Gold seized under Seizure memos dated 12.10.2023 and 25.10.2023, were found to be smuggled Gold and found to be liable for confiscation under Section 111 of the Customs Act, 1962.

30.5.43 I find that M/s. Ashokkumar Ambalal & Company had concerned themselves into smuggling of Gold as they had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I find that Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company admitted in his statement dated 14.06.2023 that they cannot accept the parcels containing foreign origin gold for transport. The quoted texted is reproduced below:-

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On being asked that which type of goods we may transport in the parcels I state that any legitimate goods with proper invoice can be transported but we mainly accept parcels related to precious and valuable goods, documents, Gems and Jewellery, Diamonds. On being specifically asked whether we can accept foreign currency, Foreign origin gold I state that we cannot accept the parcels related to foreign currency, Foreign origin gold in bars or any other

[Signature]
14/6/23

[Signature]
9/8/2023

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

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

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

SHRI DALPATBHAI K. DODIYA:

30.5.47 I find that Shri Dalpatbhai K. Dodiya had concerned himself into smuggling of Gold as he had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I also find that Shri Dalpatbhai K. Dodiya was well aware of their company’s work as well as nature of his own job. He had to deal with delivery of precious and valuable goods, documents, jewellery, diamonds, cash etc. He was supposed to know the documents required with each type of goods mentioned above and the laws and rules governing their possession, carrying, selling, purchasing etc., ignorance of law is no excuse. I find that merely acting upon the directions of his employer M/s. Ashokkumar Ambalal & Company was not expected from him however while receiving

the parcels containing smuggled Gold, he should have checked the documents of legal purchase/import of the said smuggled Gold.

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

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

SHRI KAILASHKUMAR DODIYA:

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

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

30.5.52 I also find that Shri Kailashkumar Dodiya is liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act by not reporting to the concerned authorities about the smuggled gold.

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

ORDER

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

M/S. V. S. GOLD:

- a) I order absolute confiscation of One Gold Bar and two small Gold particles of foreign origin totally weighing 598.30 grams valued at **Rs. 36,19,715/- (Rupees Thirty Six Lakhs Nineteen Thousand Seven Hundred and Fifteen Only)** pertaining to M/s. V. S. Gold, 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur- 313001 placed under seizure vide Seizure Memo (DIN- 202310DDZ1000022952A) dated 12.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- b) I impose a penalty of **Rs. 4,50,000/- (Rupees Four Lakhs Fifty Thousand Only)** on M/s. V. S. Gold, 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur- 313001 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- c) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on M/s. V. S. Gold, 1st Floor, Shop No. 2, 54, 55, Taj Jewellery Complex, Opp. Kolpol, Bada Bazar, Udaipur- 313001 under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

M/S. ROYAL BULLION:

- d) I impose a penalty of **Rs. 4,50,000/- (Rupees Four Lakhs Fifty Thousand Only)** on M/s. Royal Bullion,705, 7th Floor, Auram Mall, Shaikh Memon Street, Kalbadevi, Mumbai under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- e) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on M/s. Royal Bullion,705, 7th Floor, Auram Mall, Shaikh Memon Street, Kalbadevi, Mumbai under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

M/S. DIYA BULLION AND JEWELLERY:

- f) I order absolute confiscation of One Gold Bar of foreign origin weighing 1000 grams (1Kg) valued at **Rs. 60,50,000/- (Rupees Sixty Lakhs and Fifty Thousand Only)** pertaining to M/s. Diya Bullion and Jewellery, Shanti Nagar, B Block, Jalore, Rajasthan -343001 placed under seizure vide Seizure

Memo (DIN- 202310DDZ10000999FD7) dated 12.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- g) I impose a penalty of **Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand Only)** on M/s. Diya Bullion and Jewellery, Shanti Nagar, B Block, Jalore, Rajasthan -343001 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- h) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on M/s. Diya Bullion and Jewellery, Shanti Nagar, B Block, Jalore, Rajasthan - 343001 under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

M/S. SWISS BULLION:

- i) I impose a penalty of **Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand Only)** on M/s. Swiss Bullion (RD) 307, Krishna Niwas, 3rd Floor, Office No-69, Yusuf Mehrali Road, Next to Dhanji Street Corner, Pydhonie, Mumbai-4000003 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- j) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on M/s. Swiss Bullion (RD) 307, Krishna Niwas, 3rd Floor, Office No-69, Yusuf Mehrali Road, Next to Dhanji Street Corner, Pydhonie, Mumbai-4000003 under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

SHRI LAKHPATRAJ HEMRAJ SINGHVI:

- k) I order absolute confiscation of Two Gold Bars of foreign origin weighing 200 grams valued at **Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousand Only)** pertaining to Shri Lakhpatraj Hemraj Singhvi, Room No. 103, Heena Residency, Daulat Nagar, Road No. 9, Borivali East, Mumbai, Maharashtra-400066 placed under seizure vide Seizure Memo (DIN-202310DDZ1000083528A) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- l) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only)** on Shri Lakhpatraj Hemraj Singhvi, Room No. 103, Heena Residency, Daulat Nagar, Road No. 9, Borivali East, Mumbai, Maharashtra- 400066 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing

paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;

m)I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Lakhpatrij Hemraj Singhvi, Room No. 103, Heena Residency, Daulat Nagar, Road No. 9, Borivali East, Mumbai, Maharashtra- 400066 under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

M/S. SHREE NEMINATH JEWELLERS:

n) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakhs Fifty Thousand Only)** on M/s. Shree Neminath Jewellers, 2/3, Maheta Manor, B.P.T. Colony, Sanor, 146 Varavathi Village, Mumbai- 400030 under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;

o) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Shree Neminath Jewellers, 2/3, Maheta Manor, B.P.T. Colony, Sanor, 146 Varavathi Village, Mumbai- 400030 under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

M/S. POOJA GOLD:

p) I order absolute confiscation of Two Cut Pieces and gold dust of foreign origin, weighing 114.20 grams valued at **Rs. 6,90,910/- (Rupees Six Lakhs and Ninety Thousand Nine Hundred and Ten Only)** pertaining to M/s. Pooja Gold, Surat, Shop no-28, Sardiwala Market, Bundelawad, Bhagal Surat placed under seizure vide Seizure Memo (DIN- 202310DDZ10000999F4C) dated 25.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

q) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. Pooja Gold, Surat, Shop no-28, Sardiwala Market, Bundelawad, Bhagal Surat under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;

r) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Pooja Gold, Surat, Shop no-28, Sardiwala Market, Bundelawad, Bhagal Surat under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

M/S. ASHOKKUMAR AMBALAL & COMPANY

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25

- s) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on M/s. Ashokkumar Ambalal & Company under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- t) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on M/s. Ashokkumar Ambalal & Company under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

SHRI KAILASHKUMAR DODIYA:

- u) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- v) I impose a penalty of **Rs. 25,000/- (Rupees Twenty-Five Thousand Only)** on Shri Kailashkumar Dodiya, Manager of M/s. Ashokkumar Ambalal & Company under section 117 of the Customs Act, 1962 as discussed in foregoing paras;

SHRI DALPATBHAI K. DODIYA:

- w) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Dalpatbhai K. Dodiya, employee of M/s. Ashokkumar Ambalal & Company under section 112 (b) of the Customs Act, 1962 as discussed in foregoing paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- x) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Dalpatbhai K. Dodiya, employee of M/s. Ashokkumar Ambalal & Company under section 117 of the Customs Act, 1962 as discussed in foregoing paras.

32. The Show-cause notice bearing no. VIII/10-83/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 is disposed of in terms of the para above.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

F. No. VIII/10-83/DRI-AZU/O&A/HQ/2024-25
DIN-20250171MN000041994A

Dated: **29.01.2025**

BY SPEED POST

F. No. VIII/10-83/ DRI-AZU /O&A/HQ/2024-25
OIO No. 244/ADC/SRV/O&A/2024-25

To,

1) **M/S. V.S. GOLD,**
705,1ST FLOOR, SHOP NO. 2, 54, 55,
TAJ JEWELLERY COMPLEX, UDAIPUR

2) **M/S. ROYAL BULLION,**
705, 7TH FLOOR, AURAM MALL,
SHAIKH MEMON STREET, KALBADEVI,
MUMBAI

3) **M/S. SWISS BULLION,**
307, KRISHNA NIWAS, 3RD FLOOR,
OFFICE NO-69, YUSUF MEHRALI ROAD,
NEXT TO DHANJI STREET CORNER,
PYDHANIE, MUMBAI-4000003

4) **M/S. DIYA BULLION AND JEWELLERY,**
SHANTI NAGAR, B BLOCK, JALORE, RAJASTHAN -343001

5) **M/S. SHREE NEMINATH JEWELLERS,**
2/3, MAHETA MANOR, B.P.T. COLONY,
SANOR, 146 VARAVATHI VILLAGE,
MUMBAI- 400030

6) **SHRI LAKHPATRAJ HEMRAJ SINGHVI,**
ROOM NO. 103, HEENA RESIDENCY,
DAULAT NAGAR, ROAD NO. 9, BORIVALI EAST,
MUMBAI, MAHARASHTRA- 400066

7) **M/S. POOJA GOLD,**
SHOP NO-28, SARDIWALA MARKET,
BUNDELAWAD, BHAGAL
SURAT. M. NO.9825630400

8) **SHRI DALPATBHAI K. DODIYA,**
EMPLOYEE OF M/S. ASHOKKUMAR AMBALAL & COMPANY
18, ZAVERI CHAMBER, VAGANPOLE,
RATANPOLE, ZAVERIWAD,
AHMEDABAD, GUJARAT;

9) **SHRI KAILASHKUMAR DODIYA,**
MANAGER OF M/S. ASHOKKUMAR AMBALAL & COMPANY,
18, ZAVERI CHAMBER, VAGANPOLE,
RATANPOLE, ZAVERIWAD,
AHMEDABAD, GUJARAT.

10) **M/S. ASHOKKUMAR AMBALAL & COMPANY,**
18, ZAVERI CHAMBER, VAGANPOLE,
RATANPOLE, ZAVERIWAD, A
HMEDABAD, GUJARAT.

Copy to:

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