

OIO No: 46/ADC/SR/O&A/2025-26
F. No: VIII/10-201/DRI-AZU/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

सीमाशुल्कभवन ,”पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380009.

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DIN: 20250671MN000000F48C

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-201/DRI-AZU/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-02/ENQ-02/2024/Glorious/I dated 06.08.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	46/ADC/SR/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	10.06.2025
E	जारी करने की तारीख/ Date of Issue	:	10.06.2025
F	द्वारा पारित/ Passed By	:	Shravan Ram, Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	<p>(i) Unknown passenger(s)/ person(s),</p> <p>(ii) Shri Dinesh Hiran M/s. Glorious Silver Ornaments, 215, 2nd Floor, Kanak Chamber, Gandhi Road, Ahmedabad – 380001</p> <p>(iii) Shri Bal Kishan Soni, M/s B.K. Jewellers, Barabazar, Kolkata</p> <p>(iv) Shri Kamal Soni M/s B.K. Jewellers, Barabazar, Kolkata</p>
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे 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 मंजिल, 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।		

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(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।
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Brief facts of the case:

A specific intelligence was received that a gold smuggling syndicate is smuggling into India, substantial quantity of gold from Indo-Bangladesh border. Intelligence further indicated that this smuggled gold then melted at clandestine melting facility at Kolkata, then converted into crude jewellery form gold and then being sent to different part of India by air route by domestic flights from Kolkata. Intelligence indicated that mis-declared or prohibited goods were scheduled to arrive in Ahmedabad Air Cargo via Indigo Flight 6E-245 under Airway Bill Number 312-98794640 on February 15,2024 at 0800 hrs, potentially linked to gold smuggling across the Indo-Bangladesh Border. The Intelligence further suggested that the smuggled gold, disguised by defacement to obscure its true nature, was being transported within domestic air courier consignment originating from Kolkata.

2. Examination of the consignment covered under Airway Bill No. 312-98794640 under Panchnama dated 15.02.2024 (RUD 1 to SCN)

2.1 Acting on the said information, the DRI officers approached the office counter of Indigo Airlines at Domestic Cargo Terminal, SVPI Airport Ahmedabad. The officers then requested Shri Anup Nair, Manager (Cargo), Indigo Airlines to submit the Cargo manifest of Flight No. 6E-245 (RUD 2 to SCN) arriving from Kolkata to Ahmedabad.

2.2 Ongoing through the Cargo Manifest, the DRI officers informed the Manager (Cargo), Indigo Airlines that they need to examine the cargo in Airway bill (AWB) No. 312-98794640 that arrived in Flight No.6E245 from Kolkata to Ahmedabad as they may contain some mis-declared/prohibited goods. The Manager (Cargo), Indigo Airlines then introduced, the officers with the Supervisor of Bangalore Airport Terminal Services Pvt. Ltd. (BATS) and the Custodian of Domestic Cargo Terminal and further informed that he would provide the access to the said cargo.

2.3 The main Cargo details of the AWB as shown in Cargo Manifest are as under: -

Cart	AWB	Comm Desc	Shipper	Consignee	Mft Wt	Ch Wt (Kg)
Bulk	312-98794640	Gold Ornaments	AKGNI Global Logistics LLP	AKGNI Global Logistics LLP	7.10	7.10

2.4 The officers then examined the cargo of AWB No. 312-98794640 in the presence of Custodian Cum Executive authorized person of AKGNI Global Logistics LLP. The said consignment was inside a sealed aluminium trunk with a light blue security seal of AKGNI bearing no. 'CCU000854'. The

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aluminium trunk was opened by breaking the seal and inside the trunk there were white transparent plastic box wound with brown-coloured plastic tapes. The officers then opened the plastic boxes by tearing the brown tapes and observed that there was a total of 97 gold bangles, (includes cut pieces of various sizes) in the boxes. The officers also recovered some documents from the trunk such as an original Tax Invoice No.102 dated 14.02.2024(RUD 3 to SCN) of M/s B.K. Jewellers, Kolkata-700007 with buyer details as M/s Glorious Silver Ornaments, Ahmedabad-380001 and description of goods as '916 Unfinished Jewellery (HSN 7113)' having Gross weight as 3598.24 grams and Net weight as 359.24 grams and total invoice amount of Rs 2,27,04,102/- (Two Crore Twenty-Seven Lakhs Four Thousand One Hundred Two Only).

2.5 The Custodian Cum Executive authorized person of AKGNI Global Logistics LLP informed the officers that Shri Dinesh Hiran, Owner of Glorius Silver Ornaments was the buyer of cargo concerning AWB No. 312-98794640. The officer then conducted the weighment of 97 gold bangles (includes cut pieces of various sizes) and noticed that the net weight of 97 gold bangles (included cut pieces of various sizes) was 3384 grams. Thereafter, DRI officers, detained the entire 97 gold bangles (includes cut pieces of various sizes) vide Detention Memo No. DRI/AZU/GI-01/Misc/2024 dated 15.02.2024 (RUD 4 to SCN) under the reasonable suspicion that the cargo does not carry any authentic documents to show the valid purchase/sale of goods.

3. SEARCH AT SENDER'S PREMISE- M/S B.K. JEWELLERS, 6, BANSTOLLA LANE, BARABAZAR, KOLKATA-700007

As per the details mentioned in Invoice No. 102 dated 14.02.2024 of M/s B.K. Jewellers recovered during the examination, the enquiry was extended to M/s B.K. Jewellers, Kolkata. The officers of DRI Kolkata Zonal Unit visited the premises of M/s B.K. Jewellers at 6, Banstolla Lane, Barabasar, Kolkata 700007, However, as per the incident report dated 15.02.2024 (RUD 5 to SCN), the said shop could not be found at the given address. Despite the information provided on the recovered invoice, the initial attempt to locate M/s B.K. Jewellers at the stated address in Kolkata was unsuccessful, indicating potential discrepancies or deliberate obfuscation by the sender.

4. SEARCH AT M/S GLORIOUS SILVER ORNAMENTS, 215, KANAK CHAMBER, OPP. CHANDER VILAS HOTEL, GANDHI ROAD, AHMEDABAD - 380001

Search was conducted at M/s Glorious Silver Ornaments under panchnama dated 16.02.2024 (RUD-6 to SCN). In the said search, nothing relevant to the inquiry was found in the premises, however, some documents including some bank account statements and other old documents were recovered.

5. STATEMENT OF THE BUYER, SHRI DINESH HIRAN:

5.1 Statement of Shri Dinesh Hiran, owner of M/s Glorious Silver Ornaments (consignee of the Consignment received through AWB No.

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31298794640 through M/s AKGNI Global Logistics LLP) was recorded under Section 108 of the Customs Act, 1962 on 15.02.2024 (RUD 7 to SCN) & 16.02.2024 (RUD 8 to SCN), wherein he inter-alia stated that:

5.1.1 M/s Glorious Silver Ornaments deal in trading of unfinished ornaments made of Gold.

5.1.2 He had received order of Gold (Unfinished in bangles form) from Mehul Bullion, Manek Chowk, Ahmedabad and a person namely Ranjeet, owner of Gold Shop in Ratanpur and accordingly he ordered Gold from M/s B K Jewellers, Kolkata.

5.1.3 The parcel received vide AWB 312-98794640 through M/s AKGNI Global Logistics LLP was meant for him, as he had placed the order to M/s B K Jewellers, Kolkata over a phone call for unfinished gold Jewellery (In Bangles form approx. 3.5 Kgs).

5.1.4 He had sent the payment of Rs. 2,20,42,818/- to M/s B.K. Jewellers, Kolkata for the said consignment through different angadiyas. He had managed payment of Rs 2,20,42,818/- in cash from his family, market and various angadiyas.

5.1.5 He started purchasing Gold Bangles/Kada from M/s B K Jewellers, Kolkata from August 2023 and informed about the recent purchases of Gold Bangles/Kada made from M/s B.K. Jewellers, Kolkata as under:

Date	Quantity	Buyer in Ahmedabad
15.2.2024	3380 Gram	
14.2.2024	2900 Gram	Mehul Thakkar
12.2.2024	2400 Gram	
11.2.2024	1900 Gram	
9.2.2024	2100 Gram	
8.2.2024	817 Gram	
6.2.2024	1600 Gram	Mehul Thakkar
3.2.2024	2200 Gram	Mehul Thakkar
2.2.2024	650 Gram	Mehul Thakkar
1.2.2024	1120 Gram	Mehul Thakkar
29.1.2024	750 Grams	Mehul Thakkar
28.1.2024	1500 Gram	
26.1.2024	2100 Gram	
25.1.2024	1200 Gram	
21.1.2024	1855 Gram	

5.1.6 Tax Invoices were raised by M/s B K Jewellers, Kolkata in all the past consignments, which were manual invoices and not e-tax invoices.

5.1.7 Shri Bal Kishan was the owner of M/s B.K. Jewellers, Kolkata and his son Shri Kamal Soni was carrying out the business activities of M/s B K Jewellers. He had visited M/s B.K. Jewellers, Kolkata around in the month of August-2023 and recently on 7th Feb 2024.

5.1.8 M/s B.K. Jewellers provided him the best competitive rate of gold i.e. normally around Rs. 50 to 70 per Tola less than the prevailing market rate, hence he had procured Gold from M/s B K Jewellers, Kolkata. He further

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informed that he used to place the order for gold on phone mainly to Shri Kamal Soni and did not have any idea that from where did M/s B K Jewellers used to procure the gold.

The statement of Shri Dinesh Hiran, owner of M/s Glorious Silver Ornaments raise significant concerns regarding the legitimacy of his gold transactions with M/s B.K. Jewellers. His account of receiving orders from Mehul Bullion and a person named Ranjeet, followed by his placement of a substantial order for unfinished gold jewellery with M/s B.K. Jewellers, seems to lack sufficient corroboration. Moreover, his claim of having paid a considerable sum of Rs. 2,20,42,818/- in cash to M/s B.K. Jewellers through various 'angadiyas (informal couriers), coupled with his inability to provide concrete evidence of these transactions, raises further doubts about the legality of the funds involved. The frequency and volume of his purported gold purchases from M/s B.K. Jewellers, as detailed in his statement, along with his admission of receiving only manual invoices without proper tax documentation, also contribute to the suspicion surrounding his activities. His explanation for choosing M/s B.K. Jewellers as his supplier, solely based on their competitive pricing without any inquiry into their gold sourcing, further adds to the dubious nature of these transactions. In light of these inconsistencies and the lack of verifiable documentation, Shri Dinesh Hiran's statement appears to indicate a pattern of potentially illicit dealings, potentially linked to the smuggling of gold across the Indo-Bangladesh border.

6. SEIZURE OF GOODS UNDER PANCHNAMA DATED 20.02.2024 DRAWN AT DOMESTIC CARGO TERMINAL, (T3) SVPI AIRPORT, AHMEDABAD (RUD 9 to SCN):

6.1 On 20.02.2024, the DRI officers again visited Domestic Cargo Terminal (T3), Sardar Vallabhbhai Patel Airport, Ahmedabad along with Shri Soni Kartikey Vasantrai, Govt. Approved Valuer for seizure of the goods under Section 110 of the Customs Act, 1962 that arrived in Air-Way Bill (AWB) 312-98794640 from Kolkata to Ahmedabad and were detained vide detention Memo dated 15.02.2024. At Domestic Cargo Terminal, the officers requested the Supervisor of Bangalore Airport Terminal Services Pvt. Ltd. (BATS), the custodian of Domestic Cargo Terminal, to bring the detained consignments in respect to the Air-Way Bill (AWB) No. 312-98794640, which was handed over to them for safe custody under panchnama proceedings dated 15.02.2024. The officers further requested him to call for the representatives in respect to each of the said consignments.

6.2 After some time, the Supervisor of Bangalore Airport Terminal Services Pvt. Ltd. (BATS), the custodian of Domestic Cargo Terminal introduced the officers with Ms Amruta Dinesh Dalchand Hiran as a representative for consignment covered under Air-Way Bill (AWB) No. 312-98794640. The officers then verified the seal number as AKGNI001353 in respect to the consignment covered under Air-Way Bill (AWB) No. 312-98794640 and find it to tally.

6.3 The officers then verified and examined the consignment covered under Air-Way Bill (AWB) No. 312-98794640 by physically counting the 97 gold bangles which included the cut pieces of various sizes. The officers

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then carried out the weighment of the said 97 gold bangles on the weighing scale that was used at the time of detention of the goods.

Sr. No.	Description of the Cargo	No. of Piece	Net Weight
1	97 gold Bangles (Including Cut Pieces of various sizes)	97	3598 Grams of Gold Bangles (Includes cut pieces of various sizes)

Weighment of consignment covered under AWB 312-98794640

6.4 The officers then handed over the said consignment to Shri Soni Kartikey Vasantrai for weighment, testing of purity and valuation purpose. Shri Soni Kartikey Vasantrai weighed all the items/substances using an electronic weighment scale brought by him and informed the weighment of the goods in the said consignment as under:



6.5 The officers then observed difference in the weighment carried out by Shri Soni Kartikey Vasantrai and in the weighment carried out by DRI. The

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officers then enquired with Shri Soni Kartikey Vasantrai for the difference in weight noticed using two different weighing scales, to which Shri Soni Kartikey Vasantrai informed that his electronic weighing scale was properly calibrated and the weight shown in his weighing scale was the correct one. The officer then considered the weighment carried out by Shri Soni Kartikey Vasantrai as the final one, as he being the authorized person for weighment and valuation.

6.6 Shri Soni Kartikey Vasantrai then submitted his valuation report vide Certificate No. 1398/2023-24 dated 20.02.2024 (RUD 10 to SCN) as per the Notification No. 12/2024-Customs (N.T.) dated 15.02.2024 (gold) and Notification No. 13/2024- Customs (N.T.) dated 15.02.2024 (exchange rate). The details and weighment of the said consignment submitted by Shri Soni Kartikey Vasantrai are as under:-

Sr. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bangles (Includes Cut Pieces of Various Sizes (1682.800 + 1915.600 Grams) in White Transparent Box	97	3598.400	995.0 24Kt	22972186	19291778
	Total	97	3598.400		22972186	19291778

6.7 The officers then seized the consignment covered under AWB No. 312-98794640 vide order No. DRI/AZU/GI-01/Misc./2024 dated 20.02.2024 (RUD 11 to SCN) under section 110 of the Customs Act, 1962 on the reasonable belief that said gold was liable to confiscation under Section 111/120 of the Customs Act 1962, considering that the said crude jewellery or jewellery was made from smuggled gold and the same was being sent from Kolkata to other places by air route in domestic flights. Further, no legitimate documents to show valid purchase/sale/transfer of the said goods were produced by the representatives of the consignees till that date.

7. STATEMENT RECORDING OF THE ASSOCIATED PERSONS OF THE TRANSACTIONS:

7.1 Statement of **Shri Bal Kishan Soni, Proprietor of M/s B.K. Jewellers, Kolkata** was recorded on 26.02.2024 (RUD 12 to SCN) under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

7.1.1 He was the proprietor of M/s BK Jewellers, Kolkata. He managed the whole business of M/s BK Jewellers, such as procurement, sales and preparation of jewellery on order basis. He knew the hand work and machine work for making jewellery. They manufactured rings, bangles, gold chain, etc. and other articles as per the received orders and their majority of the sale was in Kolkata itself.

7.1.2 His son Shri Kamal Soni sometimes helped him in the business work at shop. However, Shri Kamal was not familiar to the process of making jewellery.

7.1.3 The invoice no. 102/14.02.2024 of M/s B.K. Jewellers raised in the name of M/s Glorious Silver Ornaments was of his firm.

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7.1.4 He had received a call from Shri Dinesh Dalchand Hiran on 12.02.2024 on his shop mobile number (8585050646) wherein Shri Dinesh inquired to him about the Gold Rate. He offered the gold rate of that day to Shri Dinesh which was 6126 per gram (22 Carat). Shri Dinesh wanted to purchase gold jewellery in unfinished form (Bangles) having weight of around 3 to 3.5 Kg. He informed Shri Dinesh that it would be ready within two three days.

7.1.5 Shri Dinesh further informed that when the jewellery would get ready, he (Dinesh) would send the courier person to collect the jewellery from him and as soon as he would receive his items, he would pay the amount through RTGS. He did not take any advance from Shri Dinesh for the said order. He was getting profit of Rs. 10000/- approx., accordingly, he sold around 3500 grams of gold to Shri Dinesh on credit.

7.1.6 He had not made any such big transactions with M/s Glorious Silver Ornaments earlier. He knew Shri Dinesh for the last one year and prior to this order, Shri Dinesh had purchased some small gold articles such as nose pin (value around Rs. 1500/-) from him. He produced the copy of sales invoices/ledger, Purchase ledger/Voucher/Balance Sheet of M/s B.K. Jewellers for the period 01.04.2023 to 14.02.2024. (RUD 13 to SCN)

7.7.7 He had not verified the KYC of Shri Dinesh or M/s Glorious Silver Ornaments and neither he nor any of his representatives had ever visited M/s Glorious Silver Ornaments, Ahmedabad.

7.1.8 He did not have any specific reply to the question as to why the transaction with Shri Dinesh was done without taking any security amount/advance.

7.1.9 He did not have any specific reply to the question as to why he took the risk of around Rs 2.25 Crores, for the sake of Rs. 10000/-.

7.1.10 He had prepared the bangles that were sent to Shri Dinesh in Ahmedabad. Around 20-25 bangles were readily available with him and the remaining bangles i.e. around 70 bangles were prepared by him after receiving the order from Shri Dinesh.

7.1.11 One bangle in the said order weighed around 40-42 grams and total 97 pieces of bangles were sent to Shri Dinesh in 4-5 types of design. It took him around half an hour or 45 minutes to prepare one bangle in unfinished form.

7.1.12 He had prepared bangles for the order of Shri Dinesh from the gold available with his family. His father had expired around 12-13 years ago and his elder brother expired around 4 years ago. His father and his brother had around 2900-3000 grams of ancestral gold with them. Further, he was also having around 1500 grams of ancestral gold with him. He utilized the said gold for making of bangles for the order of Shri Dinesh.

7.1.13 He purchased gold from the customers that came to his shop for selling the same and utilized that gold in making of jewellery for daily orders. He had never purchased any gold from anyone other than the above means.

7.1.14 He had one Samsung mobile phone with SIM 1: 9836451941 and SIM 2: 8585050646 that was lost during the marriage of his daughter. He did not file any police complaint for my lost mobile phone.

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The statement of Shri Bal Kishan Soni, proprietor of M/s B.K. Jewellers raise several concerns regarding the legitimacy of the transaction involving the seized gold. While he claims to have received an order for unfinished gold bangles from Shri Dinesh Hiran, his account of the terms of the sale, particularly the lack of any advance payment or security for a transaction valued at approximately Rs. 2.25 Crores, appears unusual for a business relationship established only a year prior. Additionally, Shri Soni's explanation for the source of the gold used to fulfil the order, namely ancestral gold inherited from deceased family members appears to be an afterthought and raises many questions about the documentation for the same. In addition, his submission contradicts with the submission given by Shri Hiran in his statement dated 15.02.2024, wherein he informed about multiple similar purchase transactions with M/s B.K. Jewellers in the past. Furthermore, his inability to provide a satisfactory explanation for the loss of his mobile phone, which could potentially contain communication records related to the transaction, further adds to the suspicion surrounding the events.

Overall, the inconsistencies and unanswered questions within Shri Soni's statement, combined with the lack of robust documentation for the transaction and the unusual circumstances surrounding the shipment, cast significant doubt on the legality of the seized gold's origin and transport.

7.2 Statement of Shri Dinesh Hiran, owner of M/s Glorious Silver Ornaments (consignee of the Consignment received through AWB No. 31298794640 through M/s AKGNI Global Logistics LLP) was recorded under Section 108 of the Customs Act, 1962 on 05.03.2024 (RUD 14 to SCN), wherein he inter-alia stated that:

7.2.1 He had received the order of gold from Shri Mehulbhai of Mehul Bullion either on 14.02.2024 or 13.02.2024 for gold of purity of 23.5 Kt wherein no specific design was demanded by Shri Mehulbhai. He quoted price of around Rs. 63350/- per 10 grams of gold having 23.5 Kt purity to Shri Mehulbhai and then he placed order for the said gold to M/s B.K. Jewellers, Kolkata.

7.2.2 He confirmed that his transactions made with M/s B.K. Jewellers, Kolkata as stated by him in his statement dated 16.02.2024 were genuine and he had purchased the said quantity of gold as stated from B.K. Jewellers earlier. Further, he informed that he tried to locate the file containing the invoices of gold purchased from M/s B.K. Jewellers, however he could not trace the same.

7.3.3 He differed from the reply of Shri Bal Kishan Soni that he (Dinesh) sent the courier person to M/s B.K. Jewellers for collection of jewellery. Shri Dinesh stated that M/s B.K. Jewellers had managed the courier service as per their convenience and he did not send any courier person to collect Jewellery from M/s B.K. Jewellers.

7.2.4 M/s B.K. Jewellers, Kolkata used to send the gold through air courier only and mainly through the courier company AKGNI GLOBAL Logistics LLP. The courier were received on COD basis and the payment was to be made at the receivers end, either through Cash or RTGS.

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7.2.5 He differed from the reply of Shri Bal Kishan Soni that he (Shri Bal Kishan Soni) had sent the said order of gold on credit basis and the payment was to be made through RTGS. Shri Dinesh confirmed that he had made the payment of the said gold to M/s B.K. Jewellers in cash.

The statements of Shri Dinesh Hiran, owner of M/s Glorious Silver Ornaments reveal the inconsistencies and contradictions regarding the origin, procurement, and payment for the seized gold. His account of receiving an order from Shri Mehulbhai of Mehul Bullion for 23.5 Kt gold, with no specific design requested indicates that it was gold without formal transactions that mattered. It required no banking transactions in order to remain untraceable. Subsequently placing an order with M/s B.K. Jewellers in Kolkata against the cash payment raise questions about the legitimacy of the gold being procured.

Furthermore, Shri Hiran's inability to provide documentation supporting his previous purchases from M/s B.K. Jewellers, coupled with his differing account of the courier arrangements and payment method cast doubt on the credibility of his claims. His assertion that he paid for the gold in cash appears to contradict Shri Bal Kishan Soni's statement that the order was on credit with payment expected via RTGS.

These discrepancies, along with the lack of verifiable documentation and the suspicious circumstances surrounding the shipment, strongly suggest that the seized gold may have been illicitly obtained and transported, potentially in connection with gold smuggling activities across the Indo-Bangladesh border

8. FURTHER INVESTIGATION CARRIED OUT TO GATHER EVIDENCE:

8.1 Search conducted at the residential and business premises of Shri Bal Kishan Soni, Proprietor of M/s B.K. Jewellers, Kolkata

8.1.1 Search proceedings were conducted the residential premises of Shri Bal Kishan Soni at 9, Pratap Ghosh Lane, Burrabazar, Kolkata – 700007 as well as at their business premises at M/s B.K. Jewellers, 6, Banstolla Lane, Barabazar, Kolkata under panchnama dated 07.03.2024 (RUD 15 to SCN). During the said search, multiple manual tax invoices were recovered that were issued by M/s B.K. Jewellers in the name of M/s Glorious Silver Ornaments with goods description as “916 Unfinished Jewellery’. Further, two shipping notes issued by M/s AKGNI Global Logistics LLP (Courier Company) for courier of Gold Ornaments/Jewellery were also recovered, wherein the Shipper and Consignee are mentioned as M/s B.K. Jewellers and M/s Glorious Silver Ornaments respectively.

Sr. No.	Invoice No. & Date	Description of Goods	Weight in Grams	Total Invoice Amount in Rs.
1.	12/18.10.2023	916 Unfinished Jewellery	448.040	27,46,274/-
2.	13/18.10.2023	916 Unfinished Jewellery	488.760	29,95,868/-
3.	14/20.10.2023	916 Unfinished Jewellery	719.200	44,66,232/-
4.	15/27.10.2023	916 Unfinished Jewellery	721.150	45,04,616/-
5.	NIL/03.11.2023	916 Unfinished Jewellery	2434.650	1,52,83,113/-
6.	24/04.11.2023	916 Unfinished Jewellery	2242.150	1,40,87,428/-
7.	25/07.11.2023	916 Unfinished Jewellery	752.440	46,65,579/-
8.	47/29.11.2023	916 Unfinished Jewellery	2323.450	1,49,57,209/-
9.	49/30.11.2023	916 Unfinished Jewellery	1434.330	92,15,770/-

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10.	50/04.12.2023	916 Unfinished Jewellery	2332.550	1,51,14,294/-
11.	51/06.12.2023	916 Unfinished Jewellery	Cancelled Invoice mentioning 2151.110 grams of jewellery.	
12.	52/06.12.2023	916 Unfinished Jewellery	2151.110	1,37,87,947/-
13.	14/NIL	916 Unfinished Jewellery	1378.970	87,20,882/-
Total			17426.8	11,05,45,212/-

A. Details of Tax Invoices issued by M/s B.K. Jewellers to M/s Glorious Silver Ornaments (RUD-16 to SCN)

Sr. No.	Shipping Note No. & Date	Shipper	Consignee	Description of Goods	Weight in Grams	Invoice Value in Rs.
1.	CCU-AKGL-220154/28.01.2024	M/s B.K. Jewellers	M/s Glorious Silver Ornaments	Gold Ornaments	1944.940	1,25,20,551/-
2.	CCU-AKGL-220155/30.01.2024	M/s B.K. Jewellers	M/s Glorious Silver Ornaments	Gold Jewellery	2087.390	1,34,59,072/-

B. Details of Shipping Notes issued by M/s AKGNI Global Logistics LLP (RUD 17 to SCN)

8.1.2. From the above said invoices and shipping Notes, it appears that M/s Glorious Silver Ornaments used to purchase gold in Unfinished Jewellery form from M/s B.K. Jewellers regularly.

8.1.3 Statement of Shri Bal Kishan Soni was recorded on 07.03.2024 (RUD 18 to SCN) under Section 108 of the Customs Act 1962. During the said statement, he was shown the invoices and shipping notes recovered during the search carried out at his home and shop under panchnama dated 07.03.2024. Further, he was shown his statement dated 26.02.2024, wherein he had stated that he had not made any such big transaction with M/s Glorious Silver Ornaments earlier. On perusal of the same, he stated that the above said invoices were issued by him i.e. M/s B.K. Jewellers, Kolkata and the courier receipt/shipping note pertained to the gold jewellery consignments that were prepared and sent by him to Shri Dinesh Dalchand Hiran through air courier. He further stated that Shri Dinesh had not ordered for any specific jewellery design. He himself had prepared the order in the form of bangles and sent it to Shri Dinesh. Further, on being asked regarding the source of the gold that was ultimately sent to M/s Glorious Silver Ornaments by M/s B.K. Jewellers, he had no answer to the above said question.

From the above statements, it may be concluded that the recovered invoices and shipping notes, along with the subsequent statement of Shri Bal Kishan Soni, confirm a pattern of regular gold transactions between M/s B.K. Jewellers and M/s Glorious Silver Ornaments. However, the lack of a clear explanation regarding the source of the gold used in these transactions, despite being presented with evidence of the shipments, raises serious questions about the legitimacy of these dealings. This unexplained origin of the gold, especially when considered alongside the consistent pattern of transactions and the lack of specific customer-requested designs, suggests potential involvement in illicit gold trade activities.

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8.2 Search conducted at the M/s C.S.K Jewellers, 39, Shivtala Street, Daccapatty, Kolkata – 700007 and at 142/1B, Nimu Gossain Lane, Kolkata – 700005

8.2.1 Upon analysing the forensic data of Shri Dinesh Hiran's mobile phone, search was conducted at M/s C.S.K Jeweller sand at their residential premises under panchnama dated 08.03.2024 (RUD 19 to SCN). Shri Shyam Sunder Soni was the proprietor of M/s C.S.K Jewellers and his son Shri Vineet Soni used to assist him in their ancestral jewellery business.

8.2.2 Statement of Shri Vineet Soni was recorded on 08.03.2024 (RUD 20 to SCN) under Section 108 of Customs Act, 1962 wherein he inter-alia stated that he knew Shri Dinesh Hiran. Shri Dinesh had come from Ahmedabad to Kolkata in the month of July-August 2023 via one jewellery businessman Shri Kamal Soni. Shri Dinesh wanted to do trading of gold with him, however due to disagreement in the price being offered, no business took place between them. Shri Dinesh again came to Kolkata to attend the marriage of daughter of Shri Bal Kishan Soni and also visited M/s CSK Jewellers for business purpose at around 06-07.02.2024. Further, he stated that Shri Bal Kishan Soni is the father of Shri Kamal Soni and 9836825670 was the contact number of Shri Kamal Soni. Shri Kamal used to deal in trading of raw gold.

8.3 Statement of Shri Dinesh Hiran, owner of M/s Glorious Silver Ornaments was recorded on 17.04.2024(RUD 21 to SCN) under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

8.3.1 He submitted the copy of bank account statement of M/s Glorious Silver Ornaments for the period 01.04.2023 to 29.02.2024 and purchase/sales ledger/Trial Balance for the 01.04.2023 to 05.03.2024 (RUD 22 to SCN).

8.3.2 He was shown the invoices of '916 Unfinished Jewellery' issued by M/s B.K. Jewellers to M/s Glorious Silver Ornaments, Ahmedabad which were recovered during the search proceedings carried out at the residential premises of Shri Bal Kishan Soni. On perusal of the same, he stated that the said invoices pertained to the past orders of gold placed by him to Shri Kamal Soni of M/s B.K. Jewellers, Kolkata on mobile no. 9836825670 & 7044795194. He had received the said gold from M/s B.K. Jewellers, Kolkata, however he did not remember the exact quantity of gold ordered by him in the said orders. The said gold was sent through air courier from Kolkata to Ahmedabad and at Ahmedabad, he used to receive the parcel through AKGNI Courier after payment of courier charges.

8.3.3 He tried to locate the file containing the original copy of the said invoices, however he did not find the same.

8.3.4 He placed the said orders for gold to Shri Kamal Soni on call. Further, on receipt of the consignments in Ahmedabad, he made the payment for the said orders in cash through different Angadiyas.

8.3.5 On perusal of reply of Shri Bal Kishan Soni regarding managing courier company for orders, he stated that he had directed Shri Bal Kishan Soni to send the courier through AKGNI GLOBAL LOGISTICS LLP, as it was one of the safest courier company for sending any valuable items.

8.3.6 He agreed that the purchases made from M/s B.K. Jewellers did not reflect in the purchase register of M/s Glorious Silver Ornaments for the

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period 01.04.2023 to 05.03.2024, as the said purchases were made through cash transactions.

8.3.7 He knew Shri Vineet Soni of M/s CSK Jewellers and met him via Shri Kamal Soni of M/s B.K. Jewellers, Kolkata. He made a one-time purchase of gold in KADA form from M/s CSK Jewellers. Shri Kamal Soni (Mobile Number 9836825670, 7044795194), Shri Vineet Soni (Mobile Number-9051130881) and he used to talk on Whatsapp.

The statement of Shri Dinesh Hiran on April 17, 2024, appears to provide some additional information regarding his dealings with M/s B.K. Jewellers, but also introduces further inconsistencies and ambiguities. While he acknowledges the authenticity of invoices recovered from M/s B.K. Jewellers and admits to placing orders and making payments in cash, his inability to recall specific quantities or provide original copies of the invoices appears to be an afterthought and indicates manipulation of the invoices at both the ends.

His claim of directing the use of AKGNI GLOBAL LOGISTICS LLP for the sake of security seems to contradict his earlier statements about receiving parcels from AKGNI Courier after paying charges. The admission that purchases from M/s B.K. Jewellers were not recorded in the purchase register due to cash transactions indicate that source of gold was illegitimate and smuggled one.

8.4 SDR & CDR details of Contact Number 9836825670 and 8697962411 upon which Shri Vineet Soni and Shri Dinesh Hiran used to communicate with Shri Kamal Soni

SDR and CDR details of the contact number 9836825670 (RUD 23 to SCN) was called from the carrier. As per the SDR data, the said number was issued in the name of Molla Saidulla, Purandarpur, Pashchim Para, North Kashinagar 105, Roydighi, S24PGS, West Bengal-743349. As per the report received from the carrier, the said SIM card was activated on 18.12.2022 and got deactivated on 17.02.2024. Further, as per the SDR/CAF details of contact number 8697962411 (RUD 24 to SCN), it was issued in the name of Ms Mariyam Begam, 62, Tiljala Road, Kolkata-700046, West Bengal, India. It is important to mention that the said address was vague in nature as evident from the visit note dated 08.03.2024(RUD 25 to SCN).

8.5 Summons issued to Shri Kamal Soni

8.5.1 Summons dated 11.03.2024, 03.04.2024 & 10.04.2024 (RUD 26 to SCN) were issued to Shri Kamal Soni for recording of statement and further investigation in the matter. However, he dishonored the summons and did not present himself before the investigating officer/authority.

8.5.2 In response to Summons dated 11.03.2024 & 03.04.2024, Shri Kamal Soni vide letter dated 15.03.2024 & 08.04.2024 (RUD 27 to SCN) respectively informed that:

- a. He had no knowledge regarding the cargo which had been seized and he was in no way connected with the person, who was being intercepted with the goods.
- b. He requested to exonerate his absence on the scheduled date and not to issue him with any further summons.

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Despite being summoned multiple times, Shri Kamal Soni failed to appear before the investigating officer, hindering further investigation. His written responses (RUD to SCN), denying any involvement or knowledge of the seized cargo, raise questions about his potential connection to dubious gold transaction made by Shri Hiran.

8.6 Retraction filed by Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments & Rebuttal thereof (RUD 28 to SCN):

Vide his affidavit dated. 18.5.2024 received along with letter dated. 27.5.2024, Shri Dinesh Hiran of M/s Glorious Silver Ornaments submitted that he was not allowed to read and understand contents of the statements on which his signature was forcefully obtained during the inquiry. As the contentions made by him under the said affidavit appeared to be incorrect, baseless and devoid of truth, rebuttal letter dated 30.7.2024 was issued.

9. Summation of Investigation:

9.1 Intelligence suggested that gold smuggled through Indo-Bangladesh Border was transported from Kolkata to Ahmedabad by domestic Air Courier consignments after defacement of their original form.

9.2 Acting upon the said intelligence, the cargo arrived in the Flight No. 6E 245 from Kolkata to Ahmedabad vide Air way bill No. AWB 31298794640 was intercepted and examined under the panchnama dated 15.02.2024. During the said examination, 97 Gold Bangles (including cut pieces of various sizes) having net weight 3384 grams were recovered. In addition to the above, one Original Tax Invoice No. 102/14.02.2024 was also recovered which was issued by M/s B.K. Jewellers, 6, Banstolla Lane, Barabazar, Kolkata-700007 and buyer was shown as M/s Glorious Silver Ornaments, 215, 2nd Floor, Kanak Chamber, Gandhi Road, Ahmedabad - 380001 (GSTIN No. 24AISP HQ239C1ZM) with Goods description mentioned as "916 Unfinished Jewellery (HSN 7113)".

9.3 Detailed investigation in the form of search proceedings, examination of documents recovered during the course of search proceedings, recording of statements etc. have thrown up many factual contradictions as discussed below viz.

9.3.1 Contradiction on the basis of difference in Purity

9.3.1.1 As per Panchnama proceedings dated 20.02.2024, the Govt. Approved Valuer certified the quantity of gold as 3598.400 Grams and purity as **995/24 Kt.** However, original Tax Invoice No.102 dated 14.02.2024 of M/s B.K. Jewellers, Kolkata-700007 recovered from the said consignment suggest the description of goods as '**916** Unfinished Jewellery (HSN 7113)'

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B K JEWELLERS		TAX INVOICE	
6, Banstolla Lane Barabazar, Kolkata - 700 007 Mobile : 7044795194, 9836451941 Email : b.k.jewellers2021@gmail.com GSTIN : 19APLPS9787C1Z0			
Invoice No. : 102	Invoice Date : 14.2.24	Original For Buyer / Duplicate For Transporter / Triplicate For Supplier	
Due Date : 16.2.24	Payment Mode : RTGS	Delivered :	
BUYER DETAILS :			
Name : GLORIOUS SILVER ORNAMENTS			
Address : 215, 2nd Floor, KANAK CHAMBER, GANDHI ROAD AHM - 380001			
GSTIN : 24AISP0229C1ZM			
Telephone :			
S. No	Description of Goods	Rate (Per Gram)	Amount (INR)
1	916 Unfinished Jewellery (HSN 7113)	6126	2,20,42,818
Total :			
Amount in Words : Two crore Twenty Seven Lakh four thousand one hundred two		Total Amount Before Tax	
		Add : CGST @ 1.5%	
		Add : SGST @ 1.5%	
		Add : IGST @ 3%	
		Total Tax Amount	
		Total Invoice Amount	
BANK DETAILS :		For B. K. JEWELLERS	
Bank : HDFC Bank, Branch : C. R. Avenue		Proprietor	
A/c. : 50200059573678		E. & O. E.	
IFS Code : HDFC0001924			
> Total Amount Inclusive of Gold and Labour Charge. > Terms & Conditions Subject To Change without Prior Notice. > Subject To Kolkata Jurisdiction.			
Buyer's Signature			

Image depicting Invoice No. 102/14.2.2024 issued by M/s B K Jewellers, 6, Banstolla Lane Barabazar, Kolkata-700007 to M/s Glorious Silver Ornaments having description of Goods as “916 Unfinished Jewellery (HSN 7113)”

9.3.1.2 It is important to mention that Gold is a precious metal and rate of gold is directly in proportion to its purity. However, upon observance of above said discrepancy in respect to purity, it appears that the said tax invoice was issued for name sake only, to make the transaction look genuine, so as to avoid any intervention by any agency during its transit, thereby, misleading the authority.

9.3.1.3 M/s B.K. Jewellers took more than 11 days to produce their books of account/computerized invoice. If the manual tax invoice No. 102/14.02.2024 was genuine in nature then the supplier would not have produced the computerized invoice.

9.3.2 Contradictions observed from the depositions made by Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments, Ahmedabad & Shri Bal Kishan Soni of M/s B K Jewellers, Kolkata

9.3.2.1 Shri Dinesh Dalchand Hiran in his statement dated 15.02.2024 & 16.2.2024 deposed that he received order of around 3.5 Kgs of gold from his clients on **14.02.2024**. Accordingly, he contacted to M/s B K Jewellers of Kolkata on phone and placed order of Gold for the said quantity to them. He also sent **Rs. 2,20,42,818/- to M/s B K Jewellers of Kolkata in cash** through different angadiyas. He managed the cash amount for purchase of gold from the below mentioned persons:

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	Amount in Rs.	Terminology used as Kg= 1 lacs
Shri Mehul Tahkkar of Mehul Bullion, Manek Chowk	10,00,000	10 kg.
K.V.Angadia	20,00,000	20 Kg.
D.Babu Angadia	25,00,000	25 kg
Mayur Kanti	10,50,000	10.50 kg
From market@8% per month	42,50,000	42.50 kg
Self	95,00,000	95 Kg
Family	17,00,000	17 Kg.

9.3.2.2 Further, he used to procure Gold from M/s B K Jewellers, Kolkata as M/s B K Jewellers had always provided him the best competitive rate i.e. normally around Rs. 50 to 70 per Tola less than the prevailing market rate. Further in the statement dated 05.03.2024, Shri Dinesh Dalchand Hiran deposed that he had received the order for gold from his client either on 14.02.2024 or 13.02.2024 for gold of Quantity around 3.5 kg and purity of 23.5 KT and above. Further, the client did not demand any specific design for the said gold order. Upon completion of the said order at M/s BK Jewellers, he did not send any courier boy to collect the said gold from M/s B K Jewellers, Kolkata.

9.3.2.3 Shri Bal Kishan Soni of M/s B. K. Jewellers, Kolkata, in his statement dated 26.02.2024 deposed that Shri Dinesh Dalchand Hiran had inquired about the requirement of 3 to 3.5 Kg-Gold Jewellery in unfinished form (Bangles) and placed the order on 12.02.2024. Shri Dinesh informed him that that he would pay the amount through RTGS and no advance was given for the execution of the above said order. He sold 3500 grams of gold to Shri Dinesh on credit. Around 20-25 bangles were readily available with him and the remaining bangles i.e. around 70 bangles were prepared by him after receiving the order from Shri Dinesh. One bangle in the said order weighed around 40-42 grams and a total of 97 pieces of bangles were sent to Shri Dinesh having 4-5 types of design. He took around half an hour or 45 minutes to prepare one bangle in unfinished form. Shri Dinesh was to send the courier person to collect the jewellery from M/s B K Jeweller, Kolkata. It is important to mention that as per the deposition of Shri Bal Kishan Soni, Shri Dinesh Dalchand Hiran had informed him that that on completion of jewellery order, Shri Dinesh Dalchand Hiran would send his courier person to collect the same and upon receiving the said order Shri Dinesh Dalchand Hiran would pay the amount through RTGS, which appears to be quiet contrary to the deposition of Shri Dinesh Dalchand Hiran, wherein he stated that he sent Rs. 2,20,42,818/- cash to M/s B.K. Jewellers through angadiya. The said fact is also corroborated by the fact that Shri Bal Kishan Soni was not having any specific reply to the question as to why the transaction with Shri Dinesh was done without taking any security amount/advance and why he took the risk of around Rs 2.25 Crores, for the sake of profit/earning of Rs. 10000/- only.

9.3.2.4 It is worthy to mention that even for a moment, if it is accepted that the order for gold was placed on 13.02.2024 by Shri Dinesh Dalchand Hiran and 70 bangles were to be prepared by Shri Bal Kishan Soni and Shri Bal Kishan Soni had himself had prepared the same, then it was not possible for Shri Bal Kishan Soni to get it ready by 14.02.2024 considering

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the fact that preparation time taken by Shri Bal Kishan Soni for preparing each bangle was around 30 to 45 minutes and the shop timings of M/s B K Jewellers are 11.30 AM to 8.00 PM. The said order was delivered to the Courier person on 14.02.2024, which arrived at Ahmedabad via flight 6E-245 on 15.02.2024 from Kolkata. Further, the purchaser of gold from Shri Dinesh Hiran, had placed the order for 23.5 Kt gold & above and no specific designs were demanded by them, then the requirement of both Shri Dinesh Dalchand Hiran and Shri Bal Kishan Soni to convert the gold in bangles form and that too of 5 to 6 types and cut pieces is not justified.

9.3.2.5 Further, as per the deposition of Shri Bal Kishan Soni, he had never dealt with Shri Dinesh Dalchand Hiran earlier for such huge quantity of gold and the same is evident from his own sales invoices/ledger produced by him during his statement dated 26.02.2024. Accordingly, the consignment covered under the present investigation was the first transaction between Shri Dinesh Dalchand Hiran and Shri Bal Kishan Soni for such huge quantity of gold. The fact stated by Shri Bal Kishan Soni that he sold around 3.5 Kgs of gold to Shri Dinesh Dalchand Hiran on credit in the first transaction itself does not appear genuine. The said conclusion is supported by the deposition of Shri Dinesh Hiran wherein he stated that he had made the payment of Rs 2,20,42,818/- to M/s B K Jewellers for the said order in cash through different angadiyas. Further, Shri Dinesh had simply placed the order of gold to M/s B.K. Jewellers. Shri Bal Kishan Soni on his own decided to choose the design of bangles without discussing it with Shri Dinesh Dalchand Hiran on the same issue.

9.3.2.6 Further, the gold that was converted into the form of bangles in 4-5 designs was ultimately meant to be sold to the purchaser, who had not demanded any specific design for gold. The purchaser was going to make the payment on the basis of its quality i.e. Fineness, irrespective of its designs. In converting the raw gold into bangles, making charges would also have been added to the cost, which would have ultimately increased the final price of the gold. Even then also, the gold was made available to Shri Dinesh Dalchand Hiran by M/s B K Jewellers at a cheaper price i.e. Rs. 50 to Rs. 60 per Tola less than the market price. If Shri Dinesh Dalchand Hiran had chosen to purchase the gold in the same state as available with Shri Bal Kishan Soni or vice versa, Shri Dinesh Dalchand Hiran could have purchased the same quantity of gold at further cheaper rate and accordingly the said transaction would have been more beneficial for Shri Dinesh Dalchand Hiran and his buyers.

9.3.2.7 Shri B.K. Jewellers had dispatched some cut-pieces of gold along with the said seized bangles. However, as per his deposition, he had received order from Dinesh Dalchand Soni for gold in the form of bangles.

9.3.2.8 The discrepancies in the statement provided by Shri Dinesh Dalchand Hiran and Shri Bal Kishan Soni, coupled with unusual business practices like the credit sale of a large quantity of gold in the first transaction and the conversion of gold into bangles without the buyer's specific request, raise serious doubts about the legitimacy of the transaction. The lack of a plausible explanation for these discrepancies, along with the cash payment and the inclusion of cut-pieces of gold in the

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consignment, strongly suggest that the gold was smuggled and intentionally disguised to obscure its origin.

9.3.3 Contradictions observed from the depositions made by Shri Dinesh Dalchand Hiran & Shri Bal Kishan Soni in respect to the past transactions

9.3.3.1 As evident from the statement dated 26.02.2024 of Shri Bal Kishan Soni, he had never made any big transactions with M/s Glorious Silver Ornaments prior to this current consignment. Shri Dinesh Dalchand Hiran had purchased some small gold articles such as nose pin valued around Rs.1500 from him. Shri Bal Kishan Soni also produced the sales ledger of M/s B K Jewellers pertaining to the period from 01.04.2023 to Feb-2024 in support of his claim.

9.3.3.2 However, during the search operation conducted at the residential and business premises of Shri Bal Kishan Soni, multiple manual tax invoices issued in the month of October, November, December - 2023 were recovered which were issued by M/s B.K. Jewellers in the name of M/s Glorious Silver Ornaments with goods description as “916 Unfinished Jewellery’. Also, two shipping notes issued by M/s AKGNI Global Logistics LLP (Courier Company) for courier of Gold Ornaments/Jewellery were also recovered, wherein the Shipper and Consignee are mentioned as M/s B.K. Jewellers and M/s Glorious Silver Ornaments respectively.

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Details of Shipping Notes issued by M/s AKGNI Global Logistics LLP

9.3.3.3 It is important to mention that Shri Dinesh Dalchand Hiran upon perusal of the said invoices confirmed that the above said invoices pertained to the order for gold placed by him in the past to Shri Kamal Soni of M/s B.K. Jewellers, Kolkata. Further, Shri Dinesh also confirmed the receipt of the said quantity of gold. Further, it is observed that writing on the said tax invoices and on the tax invoice No. 102/14.02.2024 pertaining to the current consignment are identical and it appears that the same are prepared by a single person. Some of the said invoices are unsigned and some are signed. Upon analysis of the signatures available on the Tax invoice No. 13/18.10.2023, 15/27.10.2023 & 24/04.11.2023, it appears that the said invoices had been signed by Shri Kamal Soni.

9.3.3.4 As per the deposition dated 15.02.2024 & 16.02.2024 of Shri Dinesh Dalchand Hiran, he started purchasing the Gold Bangles/Kada from M/s B. K. Jewellers since August 2023 and manual invoices were raised by M/s B K Jewellers, Kolkata for their past clearances. Shri Dinesh shared the purchase details of his past orders to M/s B.K. Jewellers as below:

Date	Quantity	Buyer in Ahmedabad
15.2.2024	3380 Gram	
14.2.2024	2900 Gram	Mehul Thakkar
12.2.2024	2400 Gram	
11.2.2024	1900 Gram	
9.2.2024	2100 Gram	
8.2.2024	817 Gram	
6.2.2024	1600 Gram	Mehul Thakkar
3.2.2024	2200 Gram	Mehul Thakkar
2.2.2024	650 Gram	Mehul Thakkar
1.2.2024	1120 Gram	Mehul Thakkar
29.1.2024	750 Grams	Mehul Thakkar
28.1.2024	1500 Gram	
26.1.2024	2100 Gram	
25.1.2024	1200 Gram	
21.1.2024	1855 Gram	

9.3.3.5 It is important to mention that Shri Dinesh Dalchand Hiran stated that he would produce the manual invoices issued by M/s B. K. Jewellers, Kolkata, however for the said purchases, however he failed to produce the same before the investigating authority till now. Further, the copies of hand written pages/Kachha Hisab (Page from 1-27) which were recovered during the search proceedings dated 16.02.2024 at M/s Glorious Silver Ornaments, Manek Chowk, Ahmedabad, shows Rough Calculations mentioning the details such as Date of Transactions, quantity, purity as well as rate of gold, which also confirms about the gold transactions made by M/s Glorious Silver Ornaments in the past i.e. during the period from October, November, December - 2023.

9.3.3.6 Further, upon reconciling the details available in the Sales invoices(Computerised)produced by Shri Bal Kishan Soni with the invoices/Shipping Notes (Manual) recovered under the panchnama

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proceedings from Shri Bal Kishan Soni, the following major discrepancies were observed:

Sr. No.	Invoice Number	Date of Invoice		Weight in Grams		Total Invoice Amount in Rs.		IGST (Rs.) shown	
		Manual	Computerised	Manual	Computerised	Manual	Computerised.	Manual	Computerised.
1	12	18.10.2023	9.12.2023	448.04	2.4591	27,46,274/-	16658	79988	NIL, But CGST/SGST is referred
2	13	18.10.2023	11.12.2023	488.76	2.5991	29,95,868/-	17607.14	87258	NIL,But CGST/SGST is referred
3	14	20.10.2023	12.12.2023	719.2	2.1191	44,66,232/-	14355	133987	NIL,But CGST/SGST is referred
4	15	27.10.2023	13.12.2023	721.15	2.3191	45,04,616/-	15710	131201.885	NIL,But CGST/SGST is referred
5	NIL	3.11.2023	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	2434.65	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	1,52,83,113/-	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	445138	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023
6	24	4.11.2023	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	2242.15	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	1,40,87,428/-	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	410313	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023
7	25	7.11.2023	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	752.44	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	46,65,579/-	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	135890	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023
8	47	29.11.2023	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	2323.45	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	1,49,57,209/-	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	435646.875	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023
9	49	30.11.2023	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	1434.33	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	92,15,770/-	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023	268420	No Invoice exists as the Invoice No. 1 is of 2nd of December-2023

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10	50	4.12.2023	1.1.2024	2332.55	2.411	1,51,14,294 /-	15726	440222	NIL,But CGST/SG ST is referred
11	51	6.12.2023	2.1.2024	Cancelled	2.66	Cancelled	17390	401590	NIL,But CGST/SG ST is referred
12	52	6.12.2023	3.1.2024	2151.11	2.741	1,37,87,947 /-	17879	401590	NIL,But CGST/SG ST is referred
13	14	NIL	12.12.2023	1378.97	2.1191	87,20,882 /-	14355	254006	NIL,But CGST/SG ST is referred
Total				17426.8		11,05,45,212 / -			

Discrepancy observed with respect to details of Consignee

Consignee	
Manual	Computerized
M/s Glorious Silver Ornaments	No details are given

Discrepancy observed with respect to details of payment mode

Payment Mode	
Manual	Computerized
RTGS	CASH

Discrepancy observed with respect to details in Shipping Notes

S. No	Shipping Note No. & Date	Shipper	Consignee	Description of Goods	Weight in Grams	Invoice Value in Rs.
1.	CCU-AKGL-220154/28.01.2024	M/s B.K. Jewellers	M/s Glorious Silver Ornaments	Gold Ornaments	1944.940	1,25,20,551/-
2.	CCU-AKGL-220155/30.01.2024	M/s B.K. Jewellers	M/s Glorious Silver Ornaments	Gold Jewellery	2087.390	1,34,59,072/-

With reference to the above said shipping Notes, it is observed that no invoice is found to be issued in between 17.01.2024 to 01.02.2024 as per the sales ledger submitted by Shri Bal Kishan Soni. Also, the quantity and value of gold mentioned in the said shipping notes does not match with either of the invoices submitted by Shri Bal Kishan Soni.

9.3.3.7 In view of the above, it appears that deposition made by either of the persons i.e. Shri Dinesh Dalchand Hiran and Shri Bal Kishan Soni was to mislead/ digress the authority and to present the said transaction as genuine.

The evidence gathered during investigation strongly suggests What the transactions between Shri Dinesh Dalchand Hiran and M/s B. K. Jewellers were not genuine. The discrepancies in the invoices, the lack of supporting documentation for past transactions, and the contradictory statements made by both parties point to a deliberate attempt to deceive

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the authorities. The discovery of manual invoices and shipping notes further corroborates this, indicating a pattern of fabricated invoicing used by the gold smuggling syndicate involving Shri Hiran and M/s B. K. Jewellers.

9.3.4 SDR & CDR details of Contact Number 9836825670 and 8697962411 upon which Shri Vineet Soni and Shri Dinesh Hiran used to communicate with Shri Kamal Soni

9.3.4.1 As per the SDR data of Contact Number 9836825670, it was issued in the name of Molla Saidulla, Purandarpur, Pashchim Para, North Kashinagar 105, Roydighi, S24PGS, West Bengal-743349. It was also observed that the said SIM card was activated on 18.12.2022 and got deactivated on 17.02.2024. As per the submission of Shri Vineet Soni, the contact number 9836825670 belonged to Shri Kamal Soni. It is important to mention that in the present case, consignment of sent by M/s Glorious Silver Ornaments, Ahmedabad was detained on dated 15.02.2024 and the above said sim card got deactivated on 17.02.2024, which shows the wrong intent on the part of the user, that he did not want to be tracked back in any investigation carried out by the agency.

9.3.4.2 As per the deposition of Shri Dinesh Hiran, he used to communicate/talk with Shri Kamal Soni on 8697962411, whereas from the SDR details it was revealed that the said mobile number was issued in the name of Ms Mariyam Begam, 62, Tiljala Road, Kolkata-700046, West Bengal, India. Further, the said address was found to be vague in nature.

9.3.5 Non-cooperation on the part of Shri Kamal Soni, son of Shri Bal Kishan Soni of M/s B K Jewellers, Kolkata.

9.3.5.1 It is evident from the deposition of Shri Dinesh Dalchand Hiran dated 15.02.2024 that he was in touch with Shri Kamal Soni, who used to communicate with him for all the business dealings with M/s B.K. Jewellers, Kolkata. Shri Dinesh further informed that Shri Kamal Soni was the son of Shri Bal Kishan Soni, Proprietor of M/s B.K. Jewellers, Kolkata. Further, as evident from the statement dated 15.02.2024 & 16.02.2024 of Shri Dinesh Dalchand Hiran, Shri Bal Kishan Soni alias Bal Kishanji is the owner of M/s B K. Jewellers, Kolkata and his son Shri Kamal Soni (Mobile No.7044795194) being called as Kamalji was carrying the business activities of M/s B K Jewellers, Kolkata. Shri Dinesh Dalchand Hiran used to place the order on phone mainly to Shri Kamalji.

9.3.5.2 Further, the manual hand written tax invoices issued in the name of M/s Glorious Silver Ornaments, which were recovered during the search proceedings at the residential premises Shri Bal Kishan Soni were observed and the writing on the said tax invoices and on the tax invoice no. 102/14.02.2024 appeared to be identical i.e. the same were prepared by a single person. Further, upon observing the signature available on the Tax Invoice No. 13/18.10.2023, 15/27.10.2023 & 24/04.11.2023, it appeared that they were signed by Shri Kamal.

9.3.5.3 Further, as per the deposition dated 08.03.2024 of Shri Vineet Soni of M/s CSK Jewellers, Kolkata, he came in contact with Shri Dinesh Dalchand Hiran through Shri Kamal Soni i.e. son of Shri Bal Kishan Soni. Further, he informed that Shri Kamal dealt in trading of raw gold.

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9.3.5.4 Accordingly, Shri Kamal Soni was issued summons dated 11.03.2024, 03.04.2024 & 10.4.2024 for his appearance before the investigating agency, however, on none of the occasions he presented himself before the authority, but submitted his letter dated 15.03.2024 & 08.04.2024 stating that he had no knowledge regarding the seized cargo.

9.3.5.6 It appears that Shri Kamal Soni tried to flee from the investigation for saving himself from the clutches of law. Accordingly, appropriate action under Section 174 and Section 175 of the Indian Penal Code, 1860 has been initiated against him.

9.3.6 Books of Account/invoices etc.

9.3.6.1 As per the deposition dated 26.02.2024 of Shri Bal Kishan Soni, he had never made any big transactions with M/s Glorious Silver Ornaments earlier. Shri Dinesh Dalchand Hiran had earlier purchased some small gold articles such as nose pin Valued around Rs. 1500 from him. Shri Bal Kishan Soni also produced the sales ledger of M/s B K Jewellers pertaining to the period from 01.04.2023 to Feb-2024 in support of his claim.

9.3.6.2 Whereas, as per the deposition dated 15.02.2024 & 16.02.2024 of Shri Dinesh Dalchand Hiran, he had been purchasing Gold Bangles/Kada from M/s B K Jewellers, Kolkata since August-2023. He also shared the purchase details of his past orders with M/s B.K. Jewellers.

9.3.6.3 Upon perusal of the copy of invoices, recovered during the search proceedings carried out at residence/shop premises of Shri Bal Kishan Soni, it becomes clear that the above said invoices pertained to the orders of gold placed by Shri Dinesh Dalchand Hiran to Shri Kamal Soni of M/s B.K. Jewellers, Kolkata in the past. Further, Shri Dinesh Dalchand Hiran also confirmed the receipt of the said quantity of gold.

9.3.6.4 Further, it is important to mention that none of the aforesaid past transactions in between M/s B K Jewellers & M/s Glorious Silver Ornaments are shown in their sales/purchase account/legder as detailed below:

Sr. No.	Description of Document	Period	Remarks
1	Purchase Register	01.04.2023 to 05.03.2024	1. It is observed that none of the amount mentioned in the manual sales invoices recovered from the residence of Shri Bal Kishan Soni are reflected in the said purchase register. 2. The details of the past orders of gold with M/s B.K. Jewellers furnished by Shri Dinesh Dalchand Hiran during recording of his statement dated 16.02.2024 are reflected in the said purchase register including the present consignment in question.
2	Statement of Bank Account	01.04.2023 to 29.02.2024	1. It is observed that the payment for the past orders of gold with M/s B.K. Jewellers, as got

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			confirmed from the recovered manual sales invoices from the residence of Shri Bal Kishan Soni were not reflected in the said statement of bank account. 2. The payment for the past orders of gold with M/s B.K. Jewellers as furnished by Shri Dinesh Dalchand Hiran during recording of his statement dated 16.02.2024 as well as the amount transferred to M/s B. K. Jewellers for the present consignment are not reflected in the said statement of bank account.
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Table: Documents produced by Shri Dinesh Dalchand Hiran Proprietor of M/s Glorious Silver Ornaments, Ahmedabad during recording of his statement dated 17.4.2024

Sr. No.	Description of Document	Period	Remarks
1	Sales Ledger	01.04.2023 to 14.02.2024	1. It is observed that none of the numbers i.e. Value/Quantity mentioned in the manual sales invoices recovered from the residence of Shri Bal Kishan Soni are reflected in the said sales ledger. 2. The details of the past orders of gold with M/s B.K. Jewellers as furnished by Shri Dinesh Dalchand Hiran during recording of his statement dated 16.02.2024 are not reflected in the said sales ledger. 3. There are total 102 sales transactions in the said sales ledger. Out of the said transactions, 101 transactions are below the amount of Rs 20,000/- i.e. for sale of very small quantity, whereas, only the transaction for the current consignment is reflected as Rs. 2,20,42,818.24/-.
2	Purchase Ledger	01.04.2023 to 14.02.2024	The total purchase shown in the said purchase ledger was Rs. 27,01,122.47/- only.

Table : Documents produced by Shri Bal Kishan Soni of M/s B K Jewellers, Kolkata during recording of his statement dated 26.02.2024

9.3.7 Submission in respect to Mode of Procurement of gold by M/s B K Jewellers for current seized consignment

9.3.7.1 From the investigation conducted, it appears that Shri Bal Kishan Soni stated in his statement dated 26.02.2024 that he prepared bangles for

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Shri Dinesh Dalchand Hiran using gold from his family. He claimed his and brother, who passed away some time ago, possessed around 2900-3000 grams of ancestral gold, and he himself had about 1500 grams. He purportedly used this gold to make bangles for Shri Dinesh Dalchand Hiran's order.

9.3.7.2 The aforementioned explanation appears to be an after-thought on the part of Shri Bal Kishan Soni. His deposition appears to be misleading and intended to conceal the illegal procurement of gold, given that Shri Dinesh Dalchand Hiran placed an order for Gold without specifying a design or form (not any jewellery such as kada/bangles.). However, Shri Bal Kishan Soni sent the gold to Shri Dinesh Dalchand Hiran in the form of raw gold bangles and cut pieces. He could have send his ancestral gold in its original state/form by simply assaying its fineness, without converting it into bangles.

9.3.7.3 Therefore, from the investigations, it appears that all the business transactions occurred between M/s Glorious Silver Ornaments, Ahmedabad and M/s B K Jewellers were unaccounted, including the present consignment wherein about 3598.4gms of gold bangles form were seized under provision of Customs Act 1968. The circumstantial evidences discussed above indicates that the seized gold in question is of foreign origin, smuggled through Indo-Bangladesh Border. Subsequently, the goods underwent a process of defacement at the clandestine melting facility, converted into crude-jewellery, and then sent from Kolkata to various locations in India as domestic courier consignments.

9.3.7.4 In view of the facts discussed above, it appears that the unknown passenger(s)/person(s), M/s Bal Kishan Soni of M/s BK Jewellers, Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments, and Shri Kamal Soni (son of Shri Bal Kishan Soni) were knowingly involved in a smuggling operation. Their alleged actions involved manipulated invoicing, cash/angadiyas transactions, and other means to obscure the illicit nature of their activities. They smuggled foreign-origin gold through the Indo-Bangladesh border, then converted it into crude jewellery before transporting it from Kolkata to Ahmedabad via domestic air courier.

10. LEGAL PROVISIONS:

10.1 In exercise of powers conferred by Section 3 read with Section 5 of FT (D&R) Act, 1962, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government vide DGFT's Notification No. 49/2015-2020 dated 5th January, 2022 made amendment in import policy conditions of gold in any form Chapter 71 of ITC (HS), 2017, Schedule-1 (Import Policy) as under:

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ITC(HS) Code	Item Description	Policy	Existing Policy Condition	Revised Policy Condition
71061000	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069110	Unwrought: Grains	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069190	Unwrought: Others		Silver dore can be imported by refineries against a license with AU condition.	
71069210	Sheets, plates, strips, tubes and pipes	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT(for other agencies).	No change in existing Policy Condition
71069290	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT(for other agencies).	No change in existing Policy Condition
71081100	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71081200	Other unwrought forms	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies). Gold dore can be imported by refineries against a license with AU condition.	Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA(for qualified jewellers through India International Bullion Exchange) Gold Dore can be imported by refineries against an import license with AU condition.
71081300	Other semi-manufactured forms	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71189000	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA(for qualified jewellers through India International Bullion Exchange).

10.2 As per the said Notification, the expression “Gold in any form” includes gold in any form above 22 carats under Chapter 71 of ITC (HS), 2017, Schedule-I (Import Policy).

10.3 Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30/06/2017 (as amended), gold, with description as below, is allowed

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to be imported by importers and/or eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

10.3.1.1 Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial No. and weight expressed in metric units and gold coins having gold content not below 99.5%, imported by eligible passenger, subject to fulfillment of condition No. 41 of the subject Notification.

10.3.1.2 Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of condition No. 41 of the subject Notification.

Condition 41 of the said Notification 50/2017 dated 30.06.2017, as amended, is as follows:

If,-

1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

- (i) Serial No. 358(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;
- (ii) Serial No. 358 (ii) gold coins having gold content not below 99.5%, and gold findings, Other than imports of such goods through post, courier or baggage.

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Explanation:- For the purpose of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of jewellery in place.

10.4 Guidelines on Import of gold by Nominated Banks/Agencies has been issued by Reserve Bank of India vide circular RBI/2014-15/474, AP (DIR Series) Circular No. 79 dated 18.02.2015 (as amended) which states inter-alia that nominated banks are permitted to import gold on consignment basis and Star and Premier Trading Houses (STH/PTH) can import gold on DP basis as per entitlement.

10.5 Section 2(33) of the Customs Act, 1962 - "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.

10.6 Section 2(39) of the Customs Act, 1962 - "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.

Burden of Proof

10.7 Further, in terms of provisions under Section 123 of the Customs Act, 1962, it is the responsibility of the person who is in possession of the said gold /silver or the person claiming ownership of the same, to prove that the same were not smuggled gold. Relevant provisions of Section 123 of the Customs Act, 1962 are as under:

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.*

10.8 Further, Section 111 of the Customs Act, 1962 provides for the confiscation of the goods which are imported improperly.

Section 111. Confiscation of improperly imported goods, etc. -

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

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- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

10.9 Section 119: Confiscation of goods used for concealing smuggled goods:

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

10.10 Section 120. Confiscation of smuggled goods notwithstanding any change in form, etc.

- (1) Smuggled goods may be confiscated notwithstanding any change in their form.
- (2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation: Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation.

10.11 Further, Section 112 of the Customs Act, 1962 provides the penalty on the persons for the improper import of the goods.

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, or
- (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,

10.12 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

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provided for such contravention or failure, shall be liable to a penalty not exceeding 1[four lakh rupees].

10.13 Further, as per Section 2(33) of the Customs Act, 1962, '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 goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with, implying that any goods imported in violation of the conditions subject to which the goods are permitted to be imported are nothing but prohibited goods. Hence, the smuggling of gold in contravention of the Foreign Trade Policy 2015-20 read with the relevant notification issued under the Customs Act, 1962, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in the said Regulations. It is pertinent to note that any prohibition applies to every type of prohibition which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence the restrictions imposed on the said imports are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable for confiscation under Section 111 of Customs Act, 1962. Therefore, it appears that import of gold in contravention of the Foreign Trade Policy 2015-20 read with the Customs Act, 1962 and RBI circulars, as well as the Rules and regulations mentioned supra, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in said Regulations.

11. Analysis of the legal position vis-à-vis facts of the case:

11.1 From the facts and discussions made herein above, it appears that this is a case of gold smuggled through Indo-Bangladesh Border. The said gold was then converted into crude-jewellery form by M/s B.K. Jewellers of Kolkata and Shri Kamal Soni. The crude-jewellery made from the smuggled gold was then transported to Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments of Ahmedabad from Kolkata to Ahmedabad by domestic Air Courier consignments.

11.2 Gold Bangles including cut pieces of Various Sizes of purity 995/24 Kt., totally weighing 3598.400 grams valued at Rs. 2,29,72,186/- (Rupees Two Crore Twenty Nine Lakh Seventy Two Thousand One Hundred Eighty Six only) clearly appears to be made from smuggled gold. Furthermore, the supplier Shri Bal Kishan Soni of M/s B.K. Jewellers has not produced any licit document/proper justification regarding their source of procurement of gold, which ultimately traveled from Kolkata to Ahmedabad in the form of crude- jewellery through Air Courier.

11.3 The various facts revealed during the investigation as discussed in the previous paras, *inter alia* discrepancies in purity, payment of the gold, Cash transaction, non-appearance of Shri Kamal Soni, discrepancies in design, discrepancy in sourcing of gold for the present as well as the past transactions in between M/s B K Jewellers & M/s Glorious Silver Ornaments, Non reflection of any of the past transactions in the books of

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account/Bank Account on the part of M/s B K Jewellers & M/s Glorious Silver Ornaments give adequate force to allege that the seized gold in question was originally of foreign origin, which were smuggled into India through Indo-Bangladesh Border and thereafter the said goods having undergone the process of defacement in the original form/melting at the clandestine melting facility, for conversion into crude-jewellery form, which were then sent from Kolkata to different places in India by air as domestic courier consignments.

11.4 Shri Dinesh Dalchand Hiran during the panchnama dated 15.02.2024 as well as in his statements admitted that he used to place his order for gold through mobile phone to Kamal Soni alias Kamalji. Despite issuance of multiple Summons to Shri Kamal Soni, he did not present himself before the investigating agency. From the said act of dishonoring of Summons, it appears that Shri Kamal Soni tried to flee the investigation for saving himself from the clutches of law.

11.5 Import of gold in India is allowed with observance of conditions prescribed in Notification No. 50/2017-Customs dated 30/06/2017 (as amended) with payment of applicable duty among other conditions. In the present case, unknown passenger(s)/ person(s), who so ever have smuggled the gold through Indo Bangladesh border appear to have contravened the stipulated conditions thereby making the impugned goods as prohibited goods, defined at Section 2(33) of the Customs Act, 1962. Further, his/her/their acts of commission or omission appear to have led to improper import which is nothing but smuggling as defined at Section 2(39) of Customs Act, 1962 and further supplied after transformation from its original form, thus the impugned good are liable for confiscation under Section 111 and/or 120 of the Customs Act, 1962.

11.6 It is pertinent to mention here that Apex Court clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction imposed on the import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods liable for confiscation also under Section 111(d) of Customs Act, 1962.

11.7 Under section 123 of the Customs Act, 1962, the burden of proof lies on Shri Dinesh Dalchand Hiran, Shri Bal Kishan Soni and Shri Kamal Soni.

11.8 This section shall apply to gold and manufactures thereof, watches and any other class or good which the Central Government may by notification in the Official Gazette, specify."

11.9 It appears that there is sufficient reasonable belief that the impugned goods were smuggled goods, and the burden of proof as to whether they were not smuggled goods, shall be on the person who claims to be owner of the goods so seized. Sub- section 2 of section 123 of Customs Act, 1962 applies to gold.

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11.10 Further, it appears that Shri Bal Kishan Soni of M/s B K Jewellers did not disclose the details about any of the other members of the organized syndicate to save him/her/them from the clutches of law.

11.11 It appears that the mobile number 9836825670 which were purportedly used by Shri Kamal Soni was issued in the name of Molla Saidulla, Purandarpur, Pashchim Para, North Kashinagar 105, Roydighi, S24PGS, West Bengal-743349 and further the said number got deactivated on 17.02.2024 i.e. just after the detention of the present consignment. It appears that the mobile number 9836825670 was obtained by Shri Kamal Soni by fraudulent means and he got the same deactivated just after the detention of the present consignment only to avoid his detection by DRI and further to flee away from the clutches of law.

11.12 The facts of this case reveals a systematic and organized smuggling of gold through unauthorized route, which was carried/transported/kept illegally without any valid supporting documents of the goods.

11.13 Section 77 to 81 as contained in Chapter XI of the Customs Act, 1962, deals with the special provision regarding baggage. The present system of clearance of passenger's baggage is to great degree, based on the trust reposed in the passengers who are expected to make a bona fide and complete declaration of the contents of their baggage, for the purpose of clearing it, as envisaged in Sec. 77 of the Customs Act 1962. Section 79 of the Act talks of the *bona fide* baggage, which is exempted from Customs duty and proper officer has been empowered to pass free of duty any article which is in the baggage of a passenger and which has been in his use for a prescribed period or is for his use or is meant for making gifts or souvenir. Thus a passenger arriving in India, statutorily is required to make a true and correct declaration about the contents of his baggage and only *bona fide* personal baggage is allowed clearance from the mode of passenger baggage and import in commercial quantity is not allowed.

11.14 The unknown passenger(s)/ person(s) had smuggle/improperly imported Gold, which were then converted into Crude Jewellery by M/s B K Jewelers, Kolkata of quantity 3598.400 Gram having total value of Rs. 2,29,72,186/- (Two Crore Twenty Nine Lacs Seventy Two Thousand One Hundred and Eighty Six only) (Market Value) and Rs.1,92,91,778/- (One Crore Ninety Two lacs Ninety one thousand and Seven hundred and seventy eight only) (Tariff Value), with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. The unknown person(s)/passenger(s) had smuggled the said gold through indo Bangla border, to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by the unknown passenger(s)/person(s) by way of concealment without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The unknown person(s)/passenger(s) has/have thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the

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Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

11.15 The unknown passenger(s)/ person(s), by not declaring contents of the baggage which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

11.16 The improperly imported (smuggled) gold by unknown passenger(s)/ person(s) without declaring it to the Customs is thus liable for confiscation under Section 111(d), (e) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

11.17 It appears from the discussions in the previous paras that the unknown passenger(s)/ person(s), M/s Bal Kishan Soni of M/s B K Jewellers, Kolkata, Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments and Shri Kamal Soni, Son of Shri Bal Kishan Soni have knowingly concerned themselves in the act of smuggling of foreign origin Gold through Indo-Bangladesh Border, which was then transported from Kolkata to Ahmedabad by domestic Air Courier consignments after converting into crude- jewellery form. Further, M/s Bal Kishan Soni of M/s B K Jewellers, Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments have failed to discharge the burden of proof cast upon them by Section 123 of the Customs Act, 1962, hence they have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules 2016, Customs Notifications, etc., which rendered the said goods liable to confiscation under Section 111(b) & (d) and/or 120 of the Customs Act, 1962.

11.18 They had deliberately dealt with the said goods i.e. in carrying, removing, concealing, harboring, purchasing and selling and dealing with the goods, which they knew or had reason to believe were liable to confiscation under the provisions of Section 111 and/or 120 of the Customs Act 1962. The acts of omission and commission on the part of the unknown passenger(s)/ person(s), M/s Bal Kishan Soni of M/s B K Jewellers, Kolkata, Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments and Shri Kamal Soni, Son of Shri Bal Kishan Soni have rendered themselves liable for penal action under the provisions of Section 112 (a) & 112 (b) of the Customs Act, 1962 & 117 of the Customs Act, 1962. Further, the white container used for concealing the above said Gold Bangles including cut pieces of Various Sizes of purity 995/24 Kt., totally weighing 3598.400 grams believed to be used for concealment is liable to confiscation under Section 119 of the Customs Act, 1962.

12. ROLE PLAYED BY PERSON INVOLVED IN SMUGGLING ACTIVITY:

12.1 Role played by Shri Bal Kishan Soni:

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12.1.1 Shri Bal Kishan Soni of M/s B.K. Jewellers, Kolkata appears to be one of the spearheads of the organized syndicate engaged in smuggling of foreign origin gold from Bangladesh and delivering the smuggle gold by domestic Air Courier consignments from Kolkata to Ahmedabad after defacement of its original form and converting it into crude-jewellery form.

12.1.2 As evident from the deposition dated 07.03.2024 of Shri Bal Kishan Soni, he did not disclose about the source of their Gold, which was sold to M/s Glorious Silver Ornaments as per the invoices which were recovered during the search proceedings dated 07.03.2024 as well as in respect to the details of past orders of gold furnished by Shri Dinesh Dalchand Hiran during recording of his statement dated 16.02.2024. The procurement of gold by M/s B K Jewellers appears to be dubious in nature and accordingly, his submission that he had prepared the bangles for Shri Dinesh Dalchand Hiran from the ancestral gold available with his family is nothing but an afterthought. The said deposition appears to be misleading and made to hide the illegal procurement of gold, considering the fact that Shri Dinesh Dalchand Hiran had placed the order for Gold without any specific design and form (Not any jewellery viz. kada/bangles.), however, Shri Bal Kishan Soni sent the gold to Shri Dinesh Dalchand Hiran in the form of raw gold bangles and cut pieces. He could have send his ancestral gold in the same state/form as available with him, only by assaying its fineness and there was no further requirement of converting the said gold into bangles. It appears that the gold for the current consignment in question was originally smuggled gold and after defacement and conversion into crude- jewellery was sent from Kolkata to Ahmedabad.

12.1.3 It is evident from the gestures of Shri Bal Kishan Soni that in spite of the detention of gold jewellery consignment at Ahmedabad on 15.02.2024, he did not come forward for any inquiry with the investigation agency.

12.1.4 It is evident that M/s B.K. Jewellers issued the tax invoice for name sake only and merely prepared to show the transaction as genuine, so as to avoid any intervention by any agency during the transit of the gold, as neither the seller nor the buyer has kept the record thereof and neither accounted for the same in their books of account. Further, they carried out the transaction in cash. It appears from the discrepancies discussed above such as date of placing of order, quantity of Gold, type of gold, payment of the gold made in Cash, Non-payment through RTGS, source of procurement of gold, that the said transaction was dubious and the depositions made by either of the persons i.e. the seller and the buyer were to mislead/ digress the authority so as to show the said transaction as genuine. Thus it appears that said gold is of smuggled nature and for the same reason, the same was dispatched after its defacement and conversion into crude-jewellery form and the payment for the same was made via cash transaction.

12.1.5 It also appears that Shri Bal Kishan Soni deliberately did not divulge the details of the persons from whom he had procured the smuggled gold along with other members of the gold smuggling syndicate to save him from the clutches of law.

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12.1.6 All the business transactions in between M/s Glorious Silver Ornaments, Ahmedabad and M/s B K Jewellers were dubious including the transaction in the present consignment. The aforementioned contradictions give adequate force to allege that the gold Jewellery/gold i.e. Bangles (Including cut pieces) seized by DRI vide seizure memo 20.02.2024 was originally of foreign origin, which were smuggled into India through Indo-Bangladesh Border and thereafter the said gold had undergone the process of defacement/melting at the clandestine melting facility, for conversion into crude-jewellery form. The said crude-jewellery was then sent from Kolkata to different places in India by air as domestic courier consignments.

12.1.7 Shri Bal Kishan Soni of M/s B.K. Jewellers, Kolkata, emerges as a central figure in an organized syndicate involved in smuggling foreign-origin gold from Bangladesh, converting it into crude jewellery in Kolkata, and then shipping it to Ahmedabad via domestic air courier. His deposition and the evidence suggest a pattern of deception, including misleading claims about using ancestral gold, inconsistencies in transactions, and a refusal to cooperate with investigators. The financial dealings between M/s B.K. Jewellers and M/s Glorious Silver Ornaments appear to be fabricated, with cash payments and manipulated invoices used to obscure the illicit nature of the transactions. Shri Bal Kishan Soni's reluctance to disclose information about his suppliers and other members of the syndicate further implicates him in the smuggling operation. His actions, which encompassed purchasing, selling, and transporting smuggled gold, coupled with providing misleading information to authorities, constitute serious offenses under the Customs Act, 1962, and make him liable for penal action.

It appears that Shri Bal Kishan Soni of BK Jewelers has concerned himself in purchasing, selling of the said gold, which rendered the said crude jewellery liable to confiscation under the provisions of the Customs Act, 1962 and thereby rendered himself liable to penal action under Section 112(a) and/ or 112(b) of the Customs Act, 1962. Further, his act of providing misleading information to the agency during the course of investigation has rendered himself liable to penal action under Section 117 of the Customs Act, 1962.

12.2 Role played by Shri Kamal Soni, Son of Shri Bal Kishan Soni

12.2.1 As evident from the above discussions, Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments was in touch with Shri Kamal Soni, who used to communicate with him for all the business dealings of M/s B.K. Jewellers, Kolkata. Shri Kamal Soni was the son of Shri Bal Kishan Soni, Proprietor of M/s B.K. Jewellers, Kolkata. Shri Dinesh Dalchand Hiran used to call Shri Kamal Soni was carrying the business activities of M/s B K Jewellers, Kolkata. Further, Shri Dinesh Dalchand Hiran used to place order on phone mainly to Shri Kamal Soni.

12.2.2 M/s B K Jewellers used to issue hand written tax invoices to M/s Glorious Silver Ornaments and it appears that the said tax invoices were prepared by a single person. Upon observing the signatures available on the

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Tax invoice No. 13/18.10.2023, 15/27.10.2023 & 24/4.11.2023, it appears that they have been signed by Shri Kamal Soni.

12.2.3 It is also evident from the statement dated 08.03.2024 of Shri Vineet Soni, M/s CSK Jeweller, Kolkata that Shri Kamal Soni deals in trading of raw gold.

12.2.4 His involvement in the dealing with smuggled gold appears to be reflected from his gesture of using the mobile number 9836825670 and 8697962411 originally issued in the name of Molla Saidulla, Purandarpur, Pashchim Para, North Kashinagar 105, Roydighi, S24PGS, West Bengal-743349 and Ms Mariyam Begam, 62, Tiljala Road, Kolkata-700046, West Bengal, India respectively. Further the sim-card in respect to mobile number 9836825670 got deactivated on 17.02.2024 i.e. immediately upon the detention of consignment by DRI. Further, the address upon which Sim card was issued in respect to mobile No. 8697962411 was found to be vague in nature.

12.2.5 Further, despite issuance of multiple summons dated 11.03.2024, 03.04.2024 & 10.04.2024, Shri Kamal Soni did not present himself before DRI and submitted paltry excuses vide his letter dated 15.03.2024 & 08.04.2024 that he had no knowledge regarding the seized cargo and did not take part in the investigation. It appears that Shri Kamal Soni tried to save himself from the clutches of law by fleeing from the investigating agency.

12.2.6 Shri Kamal Soni of Kolkata appears to be one of the spearheads of the organized syndicate engaged in smuggling of foreign origin gold from Bangladesh and delivering of the said smuggled gold by domestic Air Courier consignments from Kolkata to Ahmedabad after defacement and conversion into crude-jewellery form.

12.2.7 It appears that Shri Kamal Soni has concerned himself in purchasing, selling of smuggled gold, which rendered the said crude jewellery liable to confiscation under the provisions of the Customs Act, 1962 and thereby rendered himself liable to penal action under Section 112(a) and/ or 112(b) of the Customs Act, 1962. Further, his act of dishonoring of the summons issued to him during the course of investigation has rendered himself liable to penal action under Section 117 of the Customs Act, 1962.

12.3 Role played by Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments

12.3.1 Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments appears to be one of the spearheads of the organized syndicate engaged in smuggling of foreign origin gold from Bangladesh.

12.3.2 As evident from the deposition dated 07.03.2024 of Shri Bal Kishan Soni, he did not disclose the sourcing/procurement of Gold, which was sold to M/s Glorious Silver Ornaments as per the invoices recovered from his residence during the panchnama proceedings dated 07.03.2024 as well as

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in respect to the details of past orders of gold furnished by Shri Dinesh Dalchand Hiran in his statement dated 16.02.2024. The procurement of gold by M/s B K Jewellers appears to be dubious in nature and accordingly, his submission that he had prepared the bangles for Shri Dinesh Dalchand Hiran from the ancestral gold available with his family is nothing but an afterthought. The said deposition appears to be misleading and made to hide the illegal procurement of gold, considering the fact that Shri Dinesh Dalchand Hiran had placed the order for Gold without any specific design and form (Not any jewellery viz. kada/bangles.), however, Shri Bal Kishan Soni sent the gold to Shri Dinesh Dalchand Hiran in the form of raw gold bangles and cut pieces. He could have send his ancestral gold in the same state/form as available with him, only by assaying its fineness and there was no further requirement of converting the said gold into bangles. It appears that the gold for the current consignment in question was originally smuggled gold and after defacement and conversion into crude- jewellery was sent from Kolkata to Ahmedabad.

12.3.3 Further, as per the deposition dated 16.02.2024 of Shri Dinesh Dalchand Hiran, he had made purchase of Gold from M/s B K Jewellers, Kolkata, however the said transactions does not reflect in his purchase ledger as well as in the bank account statement. Further, he assured that he would furnish the copy of tax invoices of gold for his past purchases from M/s B. K. Jewellers. However, he has failed to produce the copy of any of the tax invoices till now. His above act shows his intent of hiding his previous transactions with M/s B K Jewellers and shows that he had knowledge regarding the smuggled nature of the gold.

12.3.4 It is evident from the above discussions that it was known to Shri Dinesh Dalchand Hiran that M/s B.K. Jewellers have issued the tax invoices for name sake only to show the transaction as genuine so as to avoid any intervention by any agency during the transit of gold. Accordingly, the said tax invoices were never preserved as well as accounted for by Shri Dinesh Dalchand Hiran. Hence, he did not bother about the discrepancies discussed in the previous paras in respect to the date of order placed, quantity of Gold, type of gold, payment of gold made in Cash, non-payment through RTGS, source of procurement of gold. It appears that the transaction was dubious and deposition made by either of the persons was for to mislead/ digress the authority to show the said transaction as genuine. Thus, the said gold appears to be of smuggled nature and for the same reason, it was defaced and converted into crude-jewellery form and then was dispatched from Kolkata to Ahmedabad to change the identity of the smuggled gold.

12.3.5 All the business transactions in between M/s Glorious Silver Ornaments, Ahmedabad and M/s B K Jewellers were dubious including the transaction in the present consignment. The aforementioned contradictions give adequate force to allege that the seized gold in question was originally of foreign origin, which was smuggled into India through Indo-Bangladesh Border. Thereafter, the said goods had undergone the process of defacement at the clandestine melting facility, for conversion into crude-jewellery form.

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The said crude-jewellery was then sent from Kolkata to different places in India by air as domestic courier consignments.

12.3.6 Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments is implicated as a key figure in a gold smuggling operation from Bangladesh. Evidence suggests he knowingly purchased smuggled gold from M/s BK Jewellers, deliberately obscured these transactions, and misrepresented the gold's origin. His actions, including accepting defaced gold and utilizing false invoices, expose his complicity in the illegal operation. These actions render him liable for confiscation of the smuggled gold and potential penal action under the Customs Act, 1962.

It appeared that Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments have concerned himself in purchasing, selling of smuggled gold which have rendered the said crude jewellery liable to confiscation under the provisions of the Customs Act, 1962 and thereby rendered himself liable to penal action under Section 112(a) and/or 112(b) of the Customs Act, 1962. Further, his act of non-submission of Tax invoices for his past transactions with M/s BK Jewellers during the course of investigation has rendered himself liable to penal action under Section 117 of the Customs Act, 1962

12.4 Role of Unknown passenger(s)/person(s):

12.4.1 The unknown passenger(s)/ person(s) appears to be one of the spearheads of the organized syndicate engaged in smuggling of foreign origin gold from Bangladesh and delivering the smuggle gold by domestic Air Courier consignments from Kolkata to Ahmedabad after defacement of its original form and converting it into crude-jewellery form.

12.4.2 The unknown passenger(s)/ person(s) had smuggled/improperly imported Gold through Indo-Bangladesh border, which were then converted into Crude Jewellery by M/s BK Jewelers, Kolkata and the quantity 3598.400 Gram having total market value of Rs. 2,29,72,186/- (Two Crore Twenty Nine Lacs Seventy Two Thousand One Hundred and Eighty Six only) and Tariff Value of Rs.1,92,91,778/- (One Crore Ninety Two lacs Ninety one thousand and Seven hundred and seventy eight only) (Tariff Value), with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations.

12.4.3 The unknown person(s)/passenger(s) has/have thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade16.6(Development and Regulation) Act, 1992 read with Section 3(2) and 33) of the Foreign Trade (Development and Regulation) Act, 1992.

12.4.4 It appears that unknown passenger(s)/ person(s) has knowingly acquired possession and concerned himself/herself/themselves in carrying, removing, keeping, concealing and delivery of the smuggled gold into India without the knowledge of the Customs Authorities, without declaration and payment of appropriate Customs duty, which have rendered the said crude Jewellery liable to confiscation under the provisions of the Customs Act, 1962 and thereby rendered himself/herself/themselves liable to penal

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action under Section 112/8) and/or 112(b) of the Customs Act, 1962 and also penal action under Section 117 of the Customs Act, 1962.

13. Accordingly, a Show Cause Notice was issued to (i) Unknown Person, (ii) Shri Dinesh Dalchand Hiran, Proprietor of M/s Glorious Silver Ornaments, Ahmedabad (iii) 3. Shri Bal Kishan Soni of M/s B K Jewellers, Kolkata (iv) 4. Shri Kamal Soni, Son of Shri Bal Kishan Soni, as to why:-

i) The seized crude jewellery i.e. Gold Bangles (includes cut pieces of Various Sizes) of purity 995/24 Kt., totally weighing 3598.400 grams valued at Rs. 2,29,72,186/- (Rupees Two Crore Twenty Nine Lakh Seventy Two Thousand One Hundred Eighty Six only), believed to be made from smuggled gold, should not be confiscated under Section 111(b), Section 111(d) & 120 of the Customs Act, 1962 as discussed supra;

ii) White container used for concealing above said Gold Bangles Gold Bangles (includes cut pieces of Various Sizes) of purity 995/24 Kt., totally weighing 3598.400 grams believed to be made from smuggled gold should not be confiscated under Section 119 of the Customs Act, 1962;

iii) Penalty should not be imposed upon each of them under Section 112(a) and/or 112(b) of the Customs Act, 1962 for their involvement as detailed hereinabove.

iv) Penalty should not be imposed upon each of them under Section 117 of the Customs Act, 1962 for their contravention as detailed hereinabove.

14. Defense reply and record of personal hearing:

14.1 Defense Reply of Noticee No. 1 Unknown Person:-

The noticee/s have not submitted any defense reply against the allegation made in SCN against him.

14.2 Defense Reply of Noticee No. 2 i.e Shri Dinesh Dalchand Hiran, Proprietor of M/s Glorious Silver Ornaments, Ahmedabad:

The co-noticee namely Shri Dinesh Dalchand Hiran, Proprietor of M/s Glorious Silver Ornaments, Ahmedabad vide letter dated 09.10.2024 & 21.10.2024 submitted his defense reply wherein he submitted that the

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proposal to confiscate the impugned goods and to impose penalty under various sections are illegal and unsustainable in the eyes of law. The proposal levelled against him are completely baseless and based on assumption and presumption. I am the genuine buyer of gold in unfinished form. He specifically mentioned that he did not know from where M/s. B.K Jewellery had procured the gold. He submitted that he was not indulged in any activity of smuggling of gold from foreign country and no such evidence has been brought in by department. The SCN was issued without any merit and deserves to be withdrawn in interest of justice. He submitted that he is engaged in business of purchasing and selling of gold jewellery and ornaments for last several years and also dealing in the unfinished jewellery. He has purchased the gold jewellery from various suppliers including B.K Jewellers, which is registered under GST Law and having office at 6, Banstolla Lane, Barabazar, Kolkata-700007. He submitted that he had purchased the gold in unfinished jewellery weighing 3598.24 grams under invoice no. 102 dated 14.02.2024 of Rs. 2,27,04,102/- (Rs. 2,20,42,818/- + Rs. 6,61,284/- GST= Rs. 2,27,04,102/- which was issued by M/s. B.K Jewellers. He submitted that he had paid the entire invoice amount alongwith GST. The supplier i.e M/s. B.K Jewellers has filed GST return and same is reflecting in his GSTR-2A (copy enclosed). The purchased goods arrived from Kolkata to Ahmedabad on 15.02.2024 at SVPIA, Ahmedabad through Indigo Flight No. 6E 245, alongwith copy of Airway Bill and original invoice which was later intercepted by the officers of DRI and detained the goods. While detaining the goods, the DRI officers has also withdrawn and kept the original tax invoice no. 102 dated 14.02.2024 alongwith the Air way Bill issued by the supplier M/s. Akgni Global Logistics LLP, which were along with the goods. He submitted that there was a clear error on the part of B.K Jewellers in writing net weight of the goods, and instead of correct figures of "3598.24" grams which was shown as gross weight in the tax invoice, the net weight was written as "359.24" grams and thus figure "8" was missed while writing Net weight in the tax invoice. He submitted that he was not aware what was recorded in his statements recorded and therefore, sworn on affidavit by stating that he was not allowed to read content of the statement and signature were taken forcefully. (copy of affidavit enclosed). He enquired from the Shri B.K Soni about the statement for which he stated that he confirmed before the officers about selling of the gold to M/s. Glorious Silver Ornaments and goods in question duly recorded in stock register and proper sale entry was

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made in the register when gold was sold on 14.02.2024. The only evidence against him was based only on his statement and statement of Shri B.K Soni. There is no evidence in support of contention that the concerned goods in the present case are smuggled from Indo-Bangladesh border and none of these statements have been tendered by the person concerned on their own or without being summoned by the officers. The evidence in support of the revenue's case is thus above referred statements, but this only statement which cannot be straightway admitted as evidence in quasi-judicial proceeding like adjudication of the SCN. It is laid down under Section 138B of the Customs Act, 1962 that such statements could be admitted as evidence only after the person who made statement was examined as a witness before court in court proceeding and before the quasi-judicial authority conducting adjudication in adjudication proceeding under the Customs Act.

He submitted that a statement made and signed by a person before a gazetted officer of the Customs during the course of any enquiry is relevant for the purpose of proving the truth of the fact which it contains only when the person who made such statement is examined as a witness in the case before the adjudicating authority and the adjudicating authority was of the opinion that, having regard to the circumstances of the case, such statement should be admitted in evidence in the interest of justice. Section 138B of the Customs Act, mandatorily provides for this procedure. This provision of Section 138B of the Customs Act, 1962 has fallen for consideration before Hon'ble Punjab and Haryana High Court in cases of Jindal Drugs Pvt Ltd reported in 2016 (340) ELT 67 (P&H) and M/s. G-Tech Industries reported in 2016 (339) ELT 209 (P&H) and the Hon'ble Punjab & Haryana High Court Held in both these cases that a statement recorded by an investigating officer was not admissible as evidence in adjudication proceedings unless and until the person who made the statement was examined before adjudicating authority. Further he relied upon the case law of M/s. J&K Cigarettes Ltd reported in 2009 (242) ELT 189 (Delhi) and M/s. Dhariwal Industries Limited reported in 2015 (325) ELT 532 (KAR). In the present case also statement of various person has been recorded by the officers and all such statement are relied upon for proposal of fastening liabilities against them on the basis that all such person's statement prove the allegations levelled in the SCN, but none of the person is so far examined as a witness in the adjudication proceeding and therefore, none of the

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statement is otherwise admissible as evidence in the adjudication being conducted. If these statements are discarded then the whole case of the customs fall in the view of contravention of Section 138B of the Customs Act. He relied on the following case Laws:-

- I. The Judgment of Hon'ble Supreme Court in case of State of Kerala Vs. Shaduli Grocery Dealer etc reported in AIR 1977 SC 1627
- II. V.K Singh Vs. CC reported in 1996 (84) ELT 520 of CEGAT
- III. Arsh Casting Pvt. Ltd Vs. CCE -1996(81) ELT 276 larger Bench of CEGAT
- IV. K.G Gluco Biols Ltd -1996(64) ECR 398,
- V. GTC Industries Limited Vs. UOI -1991 (56) ELT 29 (BOM).
- VI. Shri H.P Jain Vs. CC-1988 (17) ECR 765
- VII. F.M Potia Vs. Dilip Singhi -2000 (126) ELT 107(BOM)
- VIII. Sharma Chemical Vs. CCE -2001(42) RLT 631
- IX. Mahadev Prasad saraf Vs. S.K Srivastava-2000(126) ELT 32 (Calcutta)
- X. Eros Metal Works Pvt Ltd Vs. CCE -1989(43) ELT 361.

In view of above referred and legal position, it is clear that veracity and reliability of statement recorded by the person/witnesses could be checked up and established by way of only one method recognized by law namely cross examination of such persons. It is also recognized that it is a right of noticee to cross examination such persons as no reliance could be placed on statement of such person unless they were allowed to be cross examined by the adjudicating authority. He requested for examination and cross examination of himself and Shri Bal Kishan Soni. He submitted that it is a case of domestic purchase of gold items from a Kolkata based supplier. He has not done anything nor omitted to do anything which would render the goods liable for confiscation under Section 111 or 120 of Customs Act, 1962. Therefore, none of the ingredients of Section 111, 119 and 120 is satisfied for confiscation of the imported goods and also none of ingredients of Section 112 (a), 112(b) and 117 is satisfied in case for imposing the penalty. The goods purchased by him were not liable for confiscation and therefore, the proposal of confiscation deserves to be withdrawn.

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He submitted that the confiscation and penalty is a measure of deterrence and such measures are justified only when a person knowingly contravenes provisions of applicable law. In his defense he submitted following case law as:-

- Hon'ble Supreme Court of India in case of Hindustan Steel Limited reported in 1978 ELT (J159)
- Commissioner of Income Tax Vs. Anwar Ali reported in AIR 1970 SC 1782
- Commissioner of Customs Vs. Trinetra Impex Pvt Ltd 2020 (372) ELT 332 (Del.) of Hon'ble Delhi High Court
- Judgment of Hon'ble High Court of Andhra Pradesh in case of Boddu Ramaiah 1987 (32) ELT 355(AP)
- Mogul Line Limited Vs. Additional Collector of Customs, Bombay 1982 (10) ELT 397(Bom)
- Rajdoot Road Carrier Vs. Commissioner of Customs 2000 (118) ELT 146(Tri.)
- M/s. Exim Services 2021(377) ELT 615

He submitted that penalty is a quasi-criminal matter and therefore, it could be resorted to only in case where malafide intention of guilty conscious of an assessee was established. In the present case no suggestion or allegation of any malafide intention is even made out against him. He requested to provide opportunity of personal hearing.

Further, vide letter dated 09.12.2024 he requested for early hearing in the matter. Vide letter dated 05.03.2025 & 21.05.2025, requested for provisional release of goods.

14.3 Defense Reply of Noticee No. 3 i.e Shri Bal Kishan Soni (M/s B.K. Jewellers):- The noticee has not submitted any defense reply against the allegation made in SCN against him.

14.4 Defense Reply of Noticee No. 4 i.e Shri Kamal Soni:- The noticee has not submitted any defense reply.

Personal Hearing:-

15. Adequate opportunities of personal hearing were given to all the noticees in the Show Cause, which is summarized as under:-

Noticee No. 1: Unknown passenger(s)/ person(s):

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The noticee/s were given opportunity for personal hearing on 09.04.2025, 09.05.2025 & 06.06.2025 but the noticee failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Noticee No. 2: Shri Dinesh Hiran (Prop. Of M/s Glorious Silver Ornaments):

The noticee was granted opportunity for personal hearing on 09.04.2025 and 06.06.2025. On 09.04.2025, Shri Parth P. Rachchh, the authorized representative of the noticee, attended the personal hearing through video conferencing. Subsequently, due to a change of the Adjudicating Authority and in adherence to the principles of natural justice, a fresh personal hearing was fixed on 06.06.2025 by the new adjudicating authority. This hearing was also attended by the authorized representative of the noticee through video conferencing. During the personal hearing, the representative submitted that the case alleges gold smuggled from the Indo-Bangladesh border is being converted into crude jewellery and transported to different parts of India via domestic flights from Kolkata. However, he contended that there is no evidence to establish that the goods in question were smuggled from the Indo-Bangladesh border. He further submitted that his client is a genuine buyer who purchased the gold, in the form of crude jewellery, from B.K. Jewellers, supported by valid purchase invoices. He also admitted that as per regular trade practice, the payments were made in cash to the supplier. He argued that the penalties invoked under Sections 112 and 117 are based on assumptions and presumptions, and there is no concrete evidence to prove that the seized gold was smuggled. He also cited various case laws in support of his defense.

Noticee No. 3: Shri Bal Kishan Soni (M/s B.K. Jewellers):

The noticee was given opportunity for personal hearing on 09.04.2025, 09.05.2025 & 06.06.2025 but the noticee failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the

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ongoing adjudication proceedings and he do not have anything to say in his defense.

Noticee No. 4: Shri Kamal Soni (M/s B.K. Jewellers):

The noticee was given opportunity for personal hearing on 09.04.2025, 09.05.2025 & 06.06.2025 but the noticee failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

DISCUSSION AND FINDINGS:

16. I have carefully gone through the case records, the Show Cause Notice, the documents relied upon therein, and the statements of the noticees, along with the written submissions made by the noticees or their authorized representatives, both in writing and during the personal hearings held on various dates. Further, sufficient opportunities of being heard were provided to all the noticees in accordance with the principles of natural justice.

17. I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to Shri Bal Kishan Soni and Shri Kamal Soni, both of M/s B. K. Jewellers but they did not participate in the adjudication proceedings inspite of the fact that service of letters for personal hearings were done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

- a) *by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;*
- b) *by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*

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- c) *by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;*
- d) *by making it available on the common portal;*
- e) *by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;*
- f) *by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.*

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticee through post as well as on their provided mail id's, but they did not respond as if they did not have anything to submit in their defense.

17.1. I find that Shri Bal Kishan Soni and Shri Kamal Soni, both of M/s B. K. Jewellers have failed to appear for Personal Hearing, inspite of being given opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

17.2. With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws:

17.2.1. Hon'ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs & C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.) has held that:

19. No doubt hearing includes written submissions and personal hearing as well but the principle of *Audi Alteram Partem* does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing

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the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another v. M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

17.2.2. Hon'ble Tribunal of Mumbai in the case of *Sumit Wool Processors v. CC, Nhava Sheva* reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai) has observed as under:

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an *alibi* to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

17.2.3. Hon'ble High Court of Delhi in the case of *Saketh India Ltd Vs. Union of India* reported in 2002 (143) ELT 274 (Del), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant in spite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it

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chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case.”

17.2.4. The Hon’ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner of Central Excise, Ahmedabad-II reported in 2004 (171) ELT 412 (Tri. Mumbai) has held that:

“Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated.”

17.2.5. The Hon’ble Supreme Court in the case of Jethmal Vs. Union of India reported in 1999 (110) ELT 379 (S.C.) has held as under:

7. Our attention was also drawn to a recent decision of this Court in *A.K. Kripak v. Union of India* - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of *audi alteram partem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.

17.2.6. Hon'ble Delhi Tribunal in the case of Commissioner of C.Ex. Vs. Pee Iron & Steel Co. (P) Ltd. reported in as 2012 (286) E.L.T. 79 (Tri. – Del) [upheld by Hon’ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)**] has observed that:

“9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed *ex parte* order against the respondent.”

In view of the discussion held in Para 17 to 17.2.6. above, in case of Noticees i.e. Shri Bal Kishan Soni and Shri Kamal Soni, both of M/s B. K. Jewellers, I proceed to adjudicate the Show Cause Notice No. DRI/AZU/GI-02/ENQ-12/2024/Glorious/I dated 06.08.2024 *ex parte*.

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18. Before addressing the allegations levelled in the impugned SCN against the noticees, it is imperative to mention that Noticee No. 2 i.e. Shri Dinesh Hiran Prop. of M/s. Glorious Silver Ornaments, has filed an affidavit retracting the statements he made before the officers of the DRI. In the affidavit, he stated that he was asked to sign the statements and other documents without being allowed to read or understand their contents. He also claimed that he is not well-versed in English language, whereas all the documents signed by him were in English. Hence the confirmations, information, or details provided in the statements may not be accurate or reflective of the actual facts of the transactions.

In this regard, I find that in all his statements, the said noticee Shri Dinesh Hiran admitted that the statements were given voluntarily and without any inducement, threat, coercion or by any improper means. Furthermore, I note that Shri Dinesh Hiran's statements were recorded on four different occasions, and in each instance, the statements were made under Section 108 of the Customs Act, 1962. In every instance, he affirmed that the statements were given voluntarily, without any threat, pressure, or inducement, and he signed them after verifying the correctness of the facts, in full presence of mind. I find that Shri Dinesh Hiran has not submitted any documentary evidence to substantiate his claim that the statements were obtained under duress or coercion. A retraction of a statement recorded under Section 108 of the Customs Act, 1962, on the grounds of coercion or pressure, must be supported by credible evidence. The law presumes that a statement made under Section 108 is voluntary, and the person giving it is not obligated to endorse any typed statement if it was indeed obtained under coercion, as now alleged. Furthermore, his statements were recorded in a span of approx. two months. In each of these statements, he acknowledged and signed the contents after going through his own earlier statements as well as the statements of other individuals. Moreover, the noticee Shri Dinesh Hiran has filed an affidavit after lapse of more than three months from his first statement which indicates a calculated step to just mislead the proceedings.

It is also relevant to note that Shri Dinesh Hiran holds a BBA degree. It is difficult to accept that a person with such academic qualifications is not conversant in English, especially considering that his degree examinations were conducted in English. Additionally, I also find that, the

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affidavit of retraction was filed in English and specifically mentions that the content was read and understood before execution, which contradicts his claim that he is not well-versed in the language. This contradiction renders his claim unconvincing and appears to be a deliberate attempt to mislead the adjudicating authority. The contention that the statements were obtained forcefully is clearly an afterthought and a strategic move to derail or misguide the adjudication process. On going through the records of the case, I find that statements of Shri Dinesh were recorded under section 108 of the Customs Act, 1962 on 15.02.2024, 16.02.2024, 07.03.2024 & 17.04.2024. I find that in these statements, he disclosed detailed information about his past business activities, establishment of his proprietorship firm, M/s. Glorious Silver Ornaments. He further mentioned about his family details and education background. Shri Dinesh Hiran provided a comprehensive explanation of the entire process of selling, purchasing of gold ornaments, cash transactions, names and contact details of dealing persons, jewellery and unfinished jewellery, profit margin. I find that the statements of Shri Dinesh Haran contain specific and intricate details, procedure of sale and purchase of gold, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statements. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statements in question. It is on the record that the noticee has tendered his statement(s) volutarily under Section 108 of the Customs Act, 1962. In view of the above, I find that the statements given by Shri Dinesh Hiran under Section 108 of the Customs Act, 1962, were made voluntarily and carry evidentiary value under the law. In support of my view, I relied on the following judgements:

- (i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that ***evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.***
- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that ***"Statement recorded by a Customs Officer under Section 108 is a valid evidence"***
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that ***"It must be remembered that***

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the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962”

- (iv) ***There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion*** as held by Hon’ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- (v) Hon’ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that ***“Confessional Statement corroborated by the Seized documents admissible even if retracted.”***
- (vi) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon’ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.

- (vii) The Hon’ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in

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Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "

(viii) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

*Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. **As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily.** When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*

(ix) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the

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subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."

(emphasis supplied)

- (x) Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30.**

19. Further, it is impertive to mention that Noticee Shri Dinesh Hiran has also requested for cross examination of the persons whose statements have been relied upon i.e. himself and Shri B.K Soni, on the basis of Section 138B of Customs Act, 1962 and various case law submitted in the defense reply.

I find that it is not mandatroy to allow cross examination during adjudication proceedings under Section 138B(2) of the Customs Act, 1962. In the instant case, as detailed in the preceding paras, the facts and events have been establsihed not only through statements but also through documentary evidences. I find that cross examination is not expressly mentioned in Section 124 and Section 122 of Customs Act, 1962. I further find that the source of cross examination lies in the statute in Section 138B of the Customs Act. Sub-Section 138(B)(2) above uses the words "shall so far as may be" which suggests the primacy and desirability of exercise of power for permitting cross-examination in the interest of justice. It is explicit that cross-examination is not a mandatory requirement and the discretion has to be applied cautiously. The relevance of cross-examination, the identity of the person sought to be cross-examined, the context of their statements, and the nature of the dispute are all critical considerations. In taxation matters, which are civil in nature, the standard for appreciating evidence is based on the principle of *preponderance of probability*, unlike criminal proceedings where the strict provisions of the Indian Evidence Act apply. I find that Statements recorded under Section 108 of Customs Act are voluntary/ confessional in nature. The statements tendered by Shri Dinesh Hiran, under Section 108 of the Customs Act, 1962, contain details, which were exclusively known to him only and thus the statement is to be construed as voluntary. It is to be noted that there is a distinction between retraction and coercion. At no point has any evidence of threat or coercion in recording the statements been brought on record. Considering that the statement under Section 108 of Customs Act before a Customs Officer is distinct from a statement before a police officer. It is on the prniciples of

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natural justice that both sides should be heard fairly and reasonably, that if any reliance is placed on evidence or record against a person, then the evidence or record must be placed before him for his information, to comment and criticism. However, natural justice does not necessarily mandate formal cross-examination in every case. So long as the party charged has a fair and reasonable opportunity, to see, comment and criticise the evidence, statement or record on which the charge has been made against him, the demand and test of the natural justice satisfied. Cross examination in that sense is not the technical cross examination in a court of Law in the witness box, as held in judgment of Kishanlal Agarwal vs. Collector of Land Customs, AIR 1967. Further, it is held that denial of cross examination does not lead to violation of principles of natural justice. The following case laws are relevant and further support the above view:-

- (i) Poddar Tyres (Pvt) Ltd vs. Commissioner-2000 (126) E.L.T 737:- wherein it has been held that cross examination not a part of natural justice but only that of procedural justice and not a 'sine qua non'.
- (ii) Kumar jagdish Ch. Sinha Vs. Collector-2000 (124) E.L.T 118 (Cal H.C)- in this case it has been held that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- (iii) A.K Hanbeen Motarred Vs. Collector-2000(125) E.L.T 173 (Mad H.C):- wherein it has been held that the strict rule of the burden of proof applicable to criminal prosecution may not be applicable to proceedings before customs authorities.
- (iv) Shivom Ply N-wood Pvt Ltd Vs. Commissioner of Customs & Central Excise, Aurangabad-2004 (177) E.L.T 1150 (Tri. Mumbai):- wherein it has been held that cross examination not to be claimed as a matter of right.

Furthermore, I find that it is a well settled position that proceedings before a quasi-judicial authority are not on the same footing as proceedings before a court of law. It is within the discretion of the quasi-judicial authority to decide whether or not to allow request of cross examination, based on the requirements of natural justice in a given case. Denial of such a request has consistently been held not to violate the principles of natural justice in quasi-judicial proceedings, as upheld in the following case laws:

- a. In the case of kanungo & co. Vs. Collector of Customs, Calcutta and others [1993 (13) E.L.T 1486 (S.C)] wherein it was unequivocally held that for proceedings under Customs Act, the right to compliance to the principle of natural justice does not cover the right to cross examination witnesses.

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Relevant para is reproduced wherein the Hon'ble Supreme Court observed as follows:-

"in our opinion, the principles of natural justice donot require that in matters like this the person who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordinlgy, I hold that there is no force in the third contention of the appellant."

- b. In the case of Suman Silk Mills Pvt Ltd vs. Commissioner of Customs & C.ex, Baroda [2002 (142) E.L.T 640 (Tri. Mumbai)] Tribunal observed that-
"Natural Justice- Cross Examination-Confessional Statements- No Infraction of Principle of Natural Justice where witnesses not crossed examined when statement admitting evasion were confessional."
- c. In the case of Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) E.L.T 433 (Tri.) it was held- *" In a quasi judicial proceeding, strict rules of evidences need not to be followed. Cross examination cannot be claimed as a matter of right."*
- d. In the case of Patel Engg. Ltd Vs. UOI reported in 2014 (307) E.L.T 862 (Bom), Hon'ble Bombay High Court has held that :- *" Adjudication-Cross Examination- Denial of -held does not amount to violation of principle of natural justice in every case, instead it depends on the particular facts and circumstances-thus right of cross examination cannot be asserted in all inquires and which rule or principle of natural justice must be followed depends upon several factors- futher, even if cross examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated."*
- e. Hon'ble Punjab and Haryana High Court in its decision in case of Azad Engg Works vs. Commissioner of Customs and Central Excise, reported as 2006 (2002) ELT 423 held that :- *".....it is well settled that no rigid rule can be laid as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interferences with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble Supreme Court in K.L Tripathi Vs State Bank of India and others, AIR 1984 SC 273."*
- f. Hon'ble Tribunal in case of P Pratap Rao Sait Vs. Commissioner of Customs reported as 1988 (33) ELT (Tri) has held that *".....the plea of the learnt counsel that the appellant was not permitted to cross examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable"*.
- g. Similarly in A.L Jalauddin Vs. Enforcement Director reported as 2010 (261) ELT 84 (Mad HC) the Hon'ble High Court held that:- *".....therefore, we do not agree that the principle of natural justice have been violated by not*

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allowing the appellant to cross examine these two persons. We may refer to the paragraph in AIR 1972(SC) 2136=1983 (13)ELT 1486(SC) (Kanungo & Co.Vs Collector of Customs, Calcutta)”

- h. In the case of Liyakat Shah Vs. CCE [2000(120) ELT 556], the CESTAT held that Cross examination can be denied if it just delaying tactics to avoid justice.*
- i. In case of GTC industries Ltd Vs.Commissioner of Customs New Delhi [2011 (264) ELT 433 (Tri-Del.) it has been held that:- “Evidence in adjudication proceeding need not be like the one in criminal cases- Findings in the adjudication based on preponderance of probability- witnesses found to be not innocent but well conversant with the appellants’ trade-Statement of witnesses voluntary and not retracted-Reply to SCN not filed and merely raised filmy plea for cross examination prematurely-Right to Cross Examination not required when circumstantial evidence provide reliable basis corroborating statements-witnesses not having enmity with appellant and such witnessess not required to put to cross examination- No right to seek cross examination on filmy plea when burden of proof discharged by revenue- Natural Justice not violated.”*

I also observe that statements recorded under Section 108 of the Customs Act are voluntary and confessional in nature, therefore denial of cross examination does not violate principles of natural justice. I further find that Shri Bal Kishan Soni has given his statements voluntarily and moreover he has not retracted his statements till date. Request for cross examination of noticees who have made voluntary statements during the investigation is not acceptable in view of following case law:-

- a) In the case of Jagdish Shanker trivedi vs. Commissioner of Customs, Kanpur [2006 (194) E.L.T 290 (Tri.Delhi)] tribunal Observed that – “Confessional statements of noticee- retraction thereof, which was otherwise unacceptable would not entitle them to claim cross examination of witnesses on aspect which were confessed by them- there is no violation of natural justice principles in such a course....”*
- b) In the case of Surjeet Singh Chhabra Vs. UOI reported in 1997 (89) ELT 646(S.C)] it was held that- “ Customs officials are not police officers and admission made before them though retracted binds the deponent. In view of voluntary statements recorded and such statements not retracted did not warrant cross examination when other circumstantial provided reliable basis corroborating the statement. When nothing surfaced that the witnesses had any enmity with appellant, those were not liable to be discarded nor required to be put to cross examination”.*

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20. Further I find that the cross-examination of the co-noticee cannot be granted as Shri Dinesh failed to provide any cogent or valid reason for the cross-examination of Shri Bal Kishan Soni. In support of my view, I rely on the 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. Erode Annai Spinning Mills (Pvt.) Ltd. Reported In 2019 (366) E.L.T. 647 (T).*

20.1 I also find that Cross Examiantion sought without indicating specific reasons, is not admissible in view of following case laws:-

- 1) In the case of Fortune Impex vs. Commissioner of Customs, Calcutta [2001(138) ELT 556 (Tri. Kolkata)] Hon'ble Tribunal observed that:- ".....it is not required that in each and every case, cross examination should necessarily be allowed. There is no absolute right of cross examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross examoination without indicating the specific reason for cross examination. Theit cannot be said that there was violation of principles of natural justice by not allowing the cross examination of the person sought.". This view taken by the tribunal has been affirmed by the Hon'ble Supreme Court-2004 (164) ELT 4 (S.C) & 2004 (167) ELTA 134 (S.C).
- 2) Hon'ble CESTAT, Kolkata in its decision in Dipu Das Vs. Commissioner of Customs, Kolkata reported as 2010 (261) ELT 408 (Tri.Del) has held that:- ".....in adjudication proceedings, cross examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same."

I further find that the Noticee, Shri Dinesh Hiran, in his written submissions, has requested cross-examination of both himself and co-

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noticee Shri Bal Kishan Soni, stating that the same is sought **“for clarity and sake of convenience and in view of the mandatory provision of Section 138B of the Customs Act, 1962.”** However, the noticee has not provided any specific grounds or justification to support this request. There is no mention of any procedural lapse, irregularity, or deficiency in the manner in which the statements were recorded by the officers that could potentially affect the admissibility or credibility of the evidence relied upon against him. It is also pertinent to note that the idea of a noticee cross-examining himself is fundamentally illogical and procedurally unsound. I note that the Cross-examination is a tool used to challenge or test the veracity of a witness's statement or the reliability of evidence brought against a person. It is not intended to be used by an individual to question their own statements or testimony. Such a request lacks legal basis and appears to be misconceived. Furthermore, I find that the denial of cross-examination of the noticee and co-noticee does not diminish the evidentiary value of the documentary evidence or the voluntarily recorded statements already on record. Therefore, I find that insistence for cross-examining the noticee is a purely **strategic with a view to raise a contention of violation of ‘Principle of Natural Justice’**, which cannot be agitated in matters like this, where most of the Noticees avoided to appear before the Adjudicating Authority despite having been afforded adequate opportunity.

Finally, I note that Section 138B(2) or in any other provision of the Customs Act/Law does not expressively provide for a structured process involving examination-in-chief, cross-examination, and re-examination, as is followed in a court of law. The instant case is not solely based on the statement of third parties but is also supported by the voluntary statements of the noticee themselves. Accordingly, I find that the request for cross-examination made by the noticee is devoid of merit and appears to be a tactic to delay the adjudication proceedings. In these circumstances, I am not inclined to allow cross examination sought by the noticee and considering the fact and circumstances of the case, such denial cannot lead to violation of principles of natural justice. I further find that sufficient evidence exists on record to establish the case independently, and the noticees have not been able to demonstrate that their statements were involuntary, obtained under duress, factually incorrect, or made with any malicious intent toward the co-noticees. In light of the above discussions and considering the settled judicial pronouncements, I hold that cross-

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examination cannot be claimed as a matter of right by the noticee. I also find that no cogent reason(s) have been adduced to demand and justify cross examination and that not affording cross examination to the noticees does not vitiate the proceeding on ground of denial of natural justice.

20.2 I also observe that the notice, Shri Dinesh Hiran, has stated in his written submission that he will file a further reply after the cross-examination is conducted. As far as the existence of Legal provisions are concerned, it is observed that as per Section 124(b) of the Customs Act, which governs the issuance of SCN prior to confiscation of goods etc. noticee is required to submit his reply as he is bound by the said provision. A plain reading of Section 124 reveals that it incorporates the essential elements of the principles of natural justice. However, it does not impose any condition that a written reply can be submitted only after cross-examination has been granted. Similarly, neither Section 122 of the Customs Act, which deals with the process of adjudication, nor Section 122A, which outlines the procedure for adjudication, makes any provision or prescribes any requirement that the filing of a reply must be contingent upon the grant of an opportunity for cross-examination. Therefore, the noticee's claim that he will submit a reply only after cross-examination is unsustainable in law and contrary to the scheme of the Customs Act. In support of my view, I rely on the following judicial pronouncements:

- I. Hon'ble High Court of Allahabad in case of Kanpur Cigarettes Ltd Vs. UOI as reported in 2016 (344) ELT 82 (All.) [Civil Misc Writ Petition Tax No. 6 of 2013 decided on 15.01.2013 has held that:- *"there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statement were recorded, for cross examination before reply to the SCN is filed."*
It is also held that *"the petitioner cannot insist that the petitioner be first permitted to cross-examine the witnesses and thereafter it would submit its reply."*
- II. Tribunal of Delhi in case of Miraj Products Pvt Ltd Vs. Commissioner of C.Ex and Service tax, Udaipur reported in 2019 (369) ELT 1147 (Tri. Del.) [Final Order No. A/52948/2018-EX(DB), dated 13.09.2018 in application No. E/MISC/50757/2018 in Appeal No. E/51867/2018-DB held as under:-
"We follow the adjudication of Allahabad Tribunal in Kanpur Cigarettes (supra) case that the question of cross examination of witnesses would arise only when the adjudication proceedings commence after the stage of filing reply to Show Cause Notice. Neither Statutory nor any principle of natural

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justice requirement exists for allowing cross examination at a stage of receiving the mere SCN."

- III. In another case, Hon'ble High Court of Madras in case of KIBS Hoisery Mills Pvt Ltd Vs. SPL, DIR DTE of Enforcement, New Delhi [W.P No. 18857 of 2010 decided on 09.12.2014] reported in 2016 (344) ELT 24 (Mad) has held that *"Noticee were bound to submit their reply to SCN, follow procedure contemplated under ACT/Rules and could not device their own procedure as per their whims and fancies."*

21. As I have already discussed the validity of the statements of the noticee and co-noticees, as well as the requirement of cross-examination, I now proceed to examine the core issues involved in the present case. I have carefully perused the facts and evidence placed before me. The questions that need to be addressed in this matter fall within the purview of the Customs Act, 1962 and the allied laws, and are as follows:

- i. Whether the seized goods are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;
- ii. Whether, seized crude jewellery i.e. Gold Bangles (includes cut pieces of Various Sizes) totally weighing 3598.400 grams having purity of 995.0/24Kt and market value of Rs. 2,29,72,186/- (Rupees Two Crore, Twenty Nine Lakh, Seventy Two Thousand, One Hundred and Eighty Six only) believed to be made from smuggled gold is liable for confiscation under Section 111 (a)/(b)/(c)5 & (d) and Section 120 of the Customs Act, 1962.
- iii. Whether white container used for concealing above said Gold Bangles (includes cut pieces of Various Sizes) believed to be made from smuggled gold is liable for confiscation under Section 119 of the Customs Act, 1962.
- iv. Whether the act of the noticees renders them to be penalized discretionarily under Section 112(a) and/or 112(b) & Section 117 of the Customs Act, 1962.

22. With respect to the prohibition of the goods, it is to submit that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following:-

"Further, Section 2(33) of the Act defines "Prohibited Goods" as under:- Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not

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include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with.” From the aforesaid definition, it can be stated that (a) *if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods;* and (b) *this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with.* This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either ‘absolutely’ or ‘subject to such conditions’ to be fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in *Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others* [(1970) 2 SSC 728] wherein it was contended that the expression ‘prohibited’ used in Section 11 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negatived the said contention and held thus:- “... what clause (d) of Section 11 says is that any goods which are imported or attempted to be imported contrary to” any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. “Any prohibition” referred to in that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression “any prohibition” in section 11(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions ‘prohibiting’, ‘restricting’ or ‘otherwise controlling’, we cannot cut down the amplitude of the word “any prohibition” in Section 11(d) of Customs Act, 1962. “Any prohibition” means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition.

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Further, in case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court (i.e the Hon'ble jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods".* Relying on the ratio of the above judgments state above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, *ibid.*

23. I find that the noticees, in their replies and submissions, have primarily contested the intention and circumstances surrounding the events mentioned in the Show Cause Notice. I shall now proceed to examine the submissions made by the noticees, one by one, as follows:

23.1 I find that, based on specific intelligence, officers of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as 'DRI') had examined Air-way bill (AWB) No. 312-98794640, which had arrived on Flight No.6E245 from Kolkata to Ahmedabad. The officers examined the said cargo in the presence of Custodian Cum Executive authorized person of AKGNI Global Logistics LLP. The said consignment was found packed inside a sealed aluminium trunk bearing a light blue security seal of AKGNI, numbered 'CCU000854'. The seal was broken, and upon opening the trunk, the officers found white transparent plastic boxes wrapped with brown-coloured plastic tape. These boxes were opened by tearing the tape, and it was observed that they contained a total of 97 gold bangles (including cut pieces of various sizes). Additionally, the

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officers recovered certain documents from the trunk, including an original Tax Invoice No. 102 dated 14.02.2024 issued by M/s B.K. Jewellers, Kolkata-700007. The invoice indicated the buyer as M/s Glorious Silver Ornaments, Ahmedabad-380001, and described the goods as "**916 Unfinished Jewellery (HSN 7113)**" with a gross weight of 3598.24 grams, net weight of 359.24 grams, and a total invoice value of Rs. 2,27,04,102/- (Rupees Two Crore Twenty-Seven Lakh Four Thousand One Hundred Two only). After due investigation process, the gold was seized vide Seizure memo dated 20.02.2024. Subsequently, a Show Cause Notice was issued to Shri Dinesh Hiran alongwith other noticees for confiscation of the unfinished jewellery under Section 111 & Section 120 of Customs Act, 1962 and penalty under Section 112 and 117 of Customs Act, 1962.

23.2 I find that Shri Dinesh Hiran (Noticee No. 2) in his voluntarily statements recorded during the investigation interalia stated that the parcel received vide AWB 312-98794640 through M/s AKGNI Global Logistics LLP was meant for him; that he started purchasing Gold Bangles/Kada from M/s B K Jewellers, Kolkata from August 2023; that Tax Invoices were raised by M/s B K Jewellers, Kolkata in all the past consignments, which were manual invoices and not e-tax invoices; Shri Bal Kishan was the owner of M/s B.K. Jewellers, Kolkata and his son Shri Kamal Soni was carrying out the business activities of M/s B K Jewellers; that he used to place the order for gold on phone mainly to Shri Kamal Soni; that he had placed an order for 3.5 kilograms of gold bangles with M/s B. K. Jewellers on 14.02.2024; that he had paid the amount of Rs. 2,20,42,818/- (purchase value) of said invoice against the purchase of 3598.400 grams of gold to the supplier M/s. B.K Jewellers in cash through various angadiyas; that the source of this amount is as under:

Source	Amount in Rs.	Terminology used as Kg= 1 lacs
Shri Mehul Tahkkar of Mehul Bullion, Manek Chowk	10,00,000	10 kg.
K.V. Angadia	20,00,000	20 Kg.
D.Babu Angadia	25,00,000	25 kg
Mayur Kanti	10,50,000	10.50 kg
From market@8% per month	42,50,000	42.50 kg
Self	95,00,000	95 Kg
Family	17,00,000	18 Kg.

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He further admitted that he had been purchasing gold bangles and kadas from M/s B. K. Jewellers on earlier occasions as well, and all such transactions were made in cash. He has specifically given the details of such transactions of approx. one month as under:

Date	Quantity	Buyer in Ahmedabad
15.2.2024	3380 Gram	
14.2.2024	2900 Gram	Mehul Thakkar
12.2.2024	2400 Gram	
11.2.2024	1900 Gram	
9.2.2024	2100 Gram	
8.2.2024	817 Gram	
6.2.2024	1600 Gram	Mehul Thakkar
3.2.2024	2200 Gram	Mehul Thakkar
2.2.2024	650 Gram	Mehul Thakkar
1.2.2024	1120 Gram	Mehul Thakkar
29.1.2024	750 Grams	Mehul Thakkar
28.1.2024	1500 Gram	
26.1.2024	2100 Gram	
25.1.2024	1200 Gram	
21.1.2024	1855 Gram	
Total	26472 Gms	

From the above table, it is observed that within a span of approx 25 days, a substantial quantity of 26.472 kilograms of gold was received by the Noticee, Shri Dinesh Hiran, from M/s. B.K. Jewellers. Further, Shri Dinesh also accepted that he has received manual invoices for the above said gold and payment for the same was admittedly made entirely in cash. I also find that his explanation for choosing B. K. Jewellers as his supplier, solely based on their competitive pricing without any inquiry into their gold sourcing, further adds to the dubious nature of verifiable documentation. I find that all these facts and circumstances raises serious concerns regarding the genuineness and transparency of these transactions.

23.3 The description of the impugned goods mentioned in the invoice as **“916 Unfinished Jewellery”**. The image of the impugned goods is reproduced for reference:

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From the above, I observe that the so-called bangles appear to be merely flat strips of gold that have been embossed with certain designs, roughly shaped into a circular form, and soldered at the ends to resemble bangles. These do not appear to be unfinished jewellery items, but rather rudimentary forms created to give the appearance of bangles. Further, I note that Shri Soni Kartikey Vasantrai, a Government-Approved Valuer, has examined the impugned goods and submitted his valuation report vide Certificate No. 1398/2023-24 dated 20.02.2024. The valuation was conducted in accordance with Notification No. 12/2024-Customs (N.T.) dated 15.02.2024, which pertains to gold valuation, and Notification No. 13/2024-Customs (N.T.) dated 15.02.2024, which relates to exchange rates. As per his findings, the impugned gold bangles were found to be of 995 purity, i.e. 24 karat gold. I note that it is a well-established fact that 24-karat gold, due to its high purity, is extremely malleable and lacks the structural strength typically required for finished jewellery, especially items like bangles that are expected to withstand wear and pressure. This observation raises a significant red flag with respect to the nature and purpose of the impugned goods. It appears that M/s B. K. Jewellers has deliberately mis declared the nature and description of the goods in their invoices by referring to them as "916 Unfinished Jewellery" despite the fact that the actual items were of 995 purity and essentially crude forms shaped to look like bangles. Such mis-declaration indicates an intent to mislead the Customs Authorities regarding the true character of the goods. Moreover, had these goods been procured through legal and bona fide commercial transactions, they would have been supported by proper tax invoices

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reflecting accurate descriptions, and the payments would have been routed through verifiable banking channels.

23.4 I further find that during the search proceedings conducted at the residential and business premises of Shri Bal Kishan Soni, Proprietor of M/s B. K. Jewellers, multiple handwritten/manual tax invoices issued in the months of October, November, and December 2023 were recovered. These invoices were issued in the name of M/s Glorious Silver Ornaments and described the goods as “916 Unfinished Jewellery.” Additionally, two shipping notes from M/s AKGNI Global Logistics LLP were found, wherein M/s B. K. Jewellers was named as both the consignor and consignee, along with M/s Glorious Silver Ornaments. For better understanding the facts of the case, I reproduce the summary of the same as under:

Sr. No.	Invoice No. & Date	Description of Goods	Weight in Grams	Total Invoice Amount in Rs.
1.	12/18.10.2023	916 Unfinished Jewellery	448.040	27,46,274/-
2.	13/18.10.2023	916 Unfinished Jewellery	488.760	29,95,868/-
3.	14/20.10.2023	916 Unfinished Jewellery	719.200	44,66,232/-
4.	15/27.10.2023	916 Unfinished Jewellery	721.150	45,04,616/-
5.	NIL/03.11.2023	916 Unfinished Jewellery	2434.650	1,52,83,113/-
6.	24/04.11.2023	916 Unfinished Jewellery	2242.150	1,40,87,428/-
7.	25/07.11.2023	916 Unfinished Jewellery	752.440	46,65,579/-
8.	47/29.11.2023	916 Unfinished Jewellery	2323.450	1,49,57,209/-
9.	49/30.11.2023	916 Unfinished Jewellery	1434.330	92,15,770/-
10.	50/04.12.2023	916 Unfinished Jewellery	2332.550	1,51,14,294/-
11.	51/06.12.2023	916 Unfinished Jewellery	Cancelled Invoice mentioning 2151.110 grams of jewellery.	
12.	52/06.12.2023	916 Unfinished Jewellery	2151.110	1,37,87,947/-
13.	14/NIL	916 Unfinished Jewellery	1378.970	87,20,882/-
Total			17426.8	11,05,45,212/-

I further find that on confronting Shri Dinesh Hiran with the above records during his statement on 17.04.2024, admitted that the transactions reflected in the seized invoices pertain to orders placed by him with Shri Kamal Soni (associated with M/s B. K. Jewellers) using mobile numbers 9836825670 and 7044795194. He confirmed receiving the said gold and stated that payment was again made in cash via various angadiyas.

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23.5 I further find that voluntary statement of Shri Bal Kishan Soni was recorded on 26.02.2024 & 07.03.2024, wherein he interalia stated that the invoice no. 102/14.02.2024 of M/s B.K. Jewellers raised in the name of M/s Glorious Silver Ornaments was of his firm; he received a call from Shri Dinesh on 12.02.2024 for the supply of approx 3 to 3.5 kilograms of unfinished gold jewellery, which he agreed to supply in two to three days; he did not take advance for the said order from Shri Dinesh and the payment was supposed to receive through RTGS; that Shri Dinesh had not ordered for any specific jewellery design; that around 20-25 bangles were in stock, and remaining bangles were manufactured which took around 30 to 45 minutes for making a single bangle; that one bangle in the said order weighed around 40-42 grams and total 97 pieces of bangles were sent to Shri Dinesh in 4-5 types of design; that for the said supply of 3.5 Kg of gold items he was supposed to get profit of Rs. 10,000/-; that his father and his brother had around 2900-3000 grams of ancestral gold with them; that he was also having around 1500 grams of ancestral gold with him; that he utilized the said gold for making of bangles for the order of Shri Dinesh; that he had not made any such big transactions with M/s Glorious Silver Ornaments earlier; that he had not verified the KYC of Shri Dinesh or M/s Glorious Silver Ornaments and neither he nor any of his representatives had ever visited M/s Glorious Silver Ornaments, Ahmedabad; that he did not have any reply for doing such a huge transaction without taking any security amount/ advance; not replied specifically why he took risk of Rs. 2.25 Cr for sake of only Rs. 10,000/-; that on perusal of the invoices and shipping notes recovered during the search carried out at his home and shop under panchnama dated 07.03.2024 he stated that the said invoices were issued by him; that the courier receipt/shipping note pertained to the gold jewellery consignments that were prepared and sent by him to Shri Dinesh Dalchand Hiran through air courier; that on being asked regarding the source of the gold that was ultimately sent to M/s Glorious Silver Ornaments by M/s B.K. Jewellers, he had no answer to the above said question; that his mobile was lost during a family function.

23.6 I further find that Shri Dinesh Hiran has submitted the purchase register and trial balance from 01.04.2023 to 05.03.2024. On perusal of these records, it is observed that for the above said period, Noticee No. 2 has shown purchases amounting to Rs.1.05Cr. and sales amounting to Rs. 1.06 Cr. For ease of reference, the purchase register and

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trial balance for the aforementioned period are reproduced herewith, which clearly indicate that these transactions were not accounted for.

Glorious Silver Ornaments													
Ahmedabad													
Purchase Register													
1-Apr-23 to 5-Mar-24													
Date	Particulars	Voucher Type	Voucher No.	GSTIN/IN	Quantity	Value	Gross Total	Local Purchases	CGST	SGST	TCS & TDS Receivables	Round Off	Inter State Purchases
15-Jun-23	PATEL BULLION	Purchase	GBS-231	24AAVFP9078N1Z3	100.000 GMS	595714.00	614200.00 Cr	595714.00 Cr	8935.71 Dr	8935.71 Dr	614.00 Dr	0.58 Dr	
14-Jul-23	VJAYLAXMI BULLION	Purchase	23-24VLB-732	27APKPR5798D1Z8	100.000 GMS	593767.00	611580.00 Cr					0.01 Cr	593767.00 Dr
13-Jul-23	VJAYLAXMI BULLION	Purchase	23-24VLB-877	27APKPR5798D1Z8	100.000 GMS	583612.00	601120.00 Cr					0.30 Cr	583612.00 Dr
01-Jul-23	VJAYLAXMI BULLION	Purchase	23-24VLB-991	27APKPR5798D1Z8	150.000 GMS	867730.00	893814.00 Cr					0.60 Dr	867730.00 Dr
11-Jul-23	DD Bullions	Purchase	SG-84	27AAWJP7800R1ZF	400.000 GMS	2353784.00	2424308.00 Cr					0.48 Dr	2353784.00 Dr
14-Aug-23	Swayam Trading	Purchase	SBT149/23-24	24BEEP54524L1ZA	5000.000 GMS	347695.00	358125.00 Cr	347695.00 Dr	5215.43 Dr	5215.43 Dr		0.86 Cr	
16-Aug-23	Swayam Trading	Purchase	SBT153/23-24	24BEEP54524L1ZA	2000.000 GMS	130699.00	140000.00 Cr	130699.00 Dr	2050.49 Dr	2050.49 Dr		0.02 Dr	
07-Oct-23	DHANDEEP JEWELS	Purchase	SG-2045	27ACTPJ5722D1Z1	100.000 GMS	587480.00	584594.00 Cr					0.40 Cr	587480.00 Dr
16-Oct-23	Swayam Trading	Purchase	SBT038/23-24	24BEEP54524L1ZA	6281.000 GMS	439884.00	450000.00 Cr	438894.00 Dr	6553.41 Dr	6553.41 Dr		0.82 Cr	
19-Jan-24	Swayam Trading	Purchase	SBT521/23-24	24BEEP54524L1ZA	13082.000 GMS	970874.00	1000000.00 Cr	970874.00 Dr	14593.11 Dr	14593.11 Dr		0.22 Cr	
20-Jan-24	Swayam Trading	Purchase	SBT528/23-24	24BEEP54524L1ZA	13613.000 GMS	969902.00	990000.00 Cr	969902.00 Dr	14548.53 Dr	14548.53 Dr		0.94 Dr	
24-Jan-24	Swayam Trading	Purchase	SBT539/23-24	24BEEP54524L1ZA	13590.000 GMS	969902.00	990000.00 Cr	969902.00 Dr	14548.53 Dr	14548.53 Dr		0.94 Dr	
25-Jan-24	Swayam Trading	Purchase	SBT545/23-24	24BEEP54524L1ZA	14310.000 GMS	1022403.00	1053075.00 Cr	1022403.00 Dr	15336.05 Dr	15336.05 Dr		0.10 Cr	
29-Jan-24	Swayam Trading	Purchase	SBT551/23-24	24BEEP54524L1ZA	1274.000 GMS	90118.00	92915.00 Cr	90118.00 Dr	1351.77 Dr	1351.77 Dr		0.48 Dr	
Grand Total					70090.000 GMS	10508624.00	11592010.00 Cr	5540261.00 Dr	140863.03 Dr	140863.03 Dr	614.00 Dr	1.17 Dr	4066423.00 Dr

produced by me
W. Ginish
Sivas
17/4/24

Seen
W. Ginish
17/4/24

Glorious Silver Ornaments
Ahmedabad

Trial Balance
1-Apr-23 to 5-Mar-24

	Closing Balance	
	Debit	Credit
Capital Account		29,46,406.11
Current Liabilities	1,86,136.23	1,19,30,735.50
Fixed Assets	1,08,862.69	
Investments	25,000.00	
Current Assets	1,41,51,685.77	1,04,254.75
Sales Accounts		1,06,49,553.00
Purchase Accounts	1,05,06,625.17	
Indirect Incomes		1.40
Indirect Expenses	6,52,640.90	
Grand Total	2,56,30,950.76	2,56,30,950.76

produced by me
W. Ginish
Sivas
17/4/24

From the above, it is clear that only sales amounting to Rs. 1,06,49,553/- was account for by M/s Glorious Silver Ornaments. Further, the said purchase invoice no. 102 dated 14.02.2024 is not reflecting in the submitted/recovered purchase register of M/s. Glorious Silver Ornament

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(for the period 01.04.2023 to 05.03.2024). Also, the admitted previous purchase invoices for gold having total quantity of 26.472 grams which was procured 21.01.2024 to 15.02.2024 are also not found in the purchase register for the said period. Furthermore, from the case records and voluntary statements of the noticees, I find that M/s Glorious Silver Ornaments illegally purchased approx. 43 kilograms of gold in Financial Year 2023–24. These purchases were made entirely in cash, with no RTGS or other banking transactions found for such high-value transactions. However, on scrutiny of the sales ledgers of M/s B. K. Jewellers, no such corresponding entries were found to corroborate these transactions. Likewise, the purchase ledger of M/s Glorious Silver Ornaments did not reflect these purchases. This lack of matching records clearly indicates the intention of both the buyer and supplier of evasion of customs duty on smuggled gold. I further find that Shri Dinesh Hiran in his voluntary statement accepted that all the earlier transactions were also done in cash. I also find that when specifically questioned about the source of such a large quantity of gold, Shri Bal Kishan Soni responded, **“I have no answer to the above said question.”** Furthermore, Shri Bal Kishan Soni initially denied having any transaction with M/s Glorious Silver Ornaments before 15.02.2024 except a small gold item viz. a nose pin of value around Rs. 1500/-, but on confrontation with the recovered invoices, Shri Bal Kishan Soni admitted to such past transactions. Shri Bal Kishan Soni has also informed that he had lost his mobile phone somewhere during a function, which appears to be only an afterthought as it might contain sensitive data regarding smuggling activities. I also find that Shri Dinesh Hiran, in his voluntary statements, confirmed that in all previous transactions, manual invoices were issued, gold was received, and payments were made in cash. However, Shri Dinesh Hiran has repeatedly failed to produce copies of those invoices, claiming he could not be found. Additionally, the recovery of shipping notes issued by M/s AKGNI Global Logistics LLP and past invoices issued by M/s B. K. Jewellers evidencing the supply of approx. 17.43 kg of gold during October, November, and December 2023 from the residential or business premises of M/s B.K. Jewellers clearly establishes that gold was indeed supplied by M/s B.K. Jewellers to M/s Glorious Silver Ornaments in the past. It is also evident that these transactions were not intentionally recorded in the books of accounts of either the supplier Shri B.K Soni or the buyer Shri Dinesh Hiran, clearly indicating a modus operandi involving unaccounted and clandestine cash transactions. After successful delivery

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of smuggled goods, documentary evidence appears to have been deliberately destroyed. Had these transactions been genuine and lawful, they would have been accounted for in their books and routed through proper banking channels with GST-compliant invoices. Further, had the gold been purchased genuinely, there is no doubt that Shri Bal Kishan Soni would have disclosed the origin of these gold items supplied by him to Shri Dinesh Hiran on various occasions, either to the DRI officers or during the present proceedings.

23.7 I find from the statements of Shri Bal Kishan Soni that he claimed to have made the said gold bangles from his ancestral gold, which he stated was approx. 4,500 grams. In this regard, I note that ancestral jewellery or gold is generally of 22 karat purity (916), whereas, in the instant case, the seized gold was of 24 karat purity (995), therefore, the submission of the Shri Bal Kishan Soni is not creditworthy. Furthermore, he failed to provide any details or documentary evidence regarding the procurement of approx. 43 Kg of gold that he allegedly sold to Shri Dinesh Hiran in F. Y. 2023-24. An examination of the Balance Sheet and Profit & Loss Account of M/s. B.K. Jewellers for FY 2021-22 and FY 2022-23 reveals that the sales for these two years were Rs. 33.46 lakhs and Rs. 12.55 lakhs respectively. This indicates a declining trend in sales, as the sales in FY 2021-22 were significantly higher than in FY 2022-23. Regarding the submission by Shri Bal Kishan Soni that he generally purchased old jewellery and used it to fulfil orders, I find from the purchase ledger for FY 2023-24 that gold worth approx Rs. 27 lakhs was purchased only, against which gold worth more than approx. Rs. 25 crores was sold during the corresponding period. This includes the invoice (Invoice No. 102) valued at Rs. 2.20 crores issued to M/s. Glorious Silver Ornaments. Even if, I consider Shri Bal Kishan Soni's claim of possessing 4.5 kg of ancestral gold, along with the gold purchased during the year (as per the ledger and invoices, amounting to 451.279 grams) and the stock as of 31.03.2023 (valued at approximately Rs. 1.33 crores), it is still impossible to account for the supply of approx 43 Kgs of gold to Shri Dinesh Hiran during the year. Shri Bal Kishan Soni also failed to produce any legal documents evidencing the legitimate procurement of such gold. Further, the recovery of invoices and shipping notes clearly establishes that he was engaged in the supply of gold with similar descriptions such as "916 Unfinished Jewellery." On perusal of the invoices recovered from his premises, Shri Bal

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Kishan Soni admitted that he had issued invoices and supplied gold in the past to Shri Dinesh Hiran. However, Shri B.K Soni failed to provide any explanation regarding the source of that gold, clearly indicating that the gold was smuggled. Had the gold not been smuggled, Shri B.K Soni could have produced valid purchase invoices and recorded the same in his books of accounts rather than selling it for cash.

23.8 Further, I also observed from the sales ledger (signed by Shri B.K. Soni) of M/s. B.K. Jewellers for the financial year 2023–24 (covering the period from 01.04.2023 to 26.02.2024), during which the said supplies were made, that a total of 102 invoices/vouchers were issued by M/s. B.K. Jewellers. Out of these, 101 invoices/vouchers accounted for total sales of approximately Rs. 10 lakhs, while Invoice No. 102 alone had a value of Rs. 2.20 crores. It is pertinent to note that for the 101 invoices/vouchers, no buyer's name, either individual or firm, was mentioned and all were simply marked as “**By Cash.**” If the purchases made by Shri Dinesh Hiran were genuine, it raises the question as to why the supply of gold of 43 Kgs were not recorded in the books of accounts of either party, and why they were not even reflected in the sales ledger of M/s. B.K. Jewellers. Furthermore, in an era of widespread digital banking, it is unsolved mystery that why was payment made in cash? All these facts clearly indicate that dual invoices were being generated to conceal the illegal activity of smuggling gold under the guise of legitimate gold trading. The entry of a sale invoice in the name of M/s. Glorious Silver Ornaments in the sales ledger of M/s. B.K. Jewellers appears to be a deliberate, post-facto attempt to regularize or legitimize the disputed sales currently under adjudication.

23.9 I further find that contradictory statements of Shri Dinesh Hiran and Shri Bal Kishan Soni regarding the ordering and payment for the gold further support the conclusion that the transactions were not genuine and involved smuggled gold. Shri Dinesh Hiran in his statement confirmed that he has given the order on 14.02.2024, however, Shri Bal Kishan Soni in his statement confirmed that he has received the order on 12.02.2024 and he asked for two to three days time to manufacture the goods. It is highly implausible, even beyond imagination, that a person would hand over ancestral gold worth Rs. 2.20 crores to someone for merely Rs. 10,000, without any security, advance payment, or prior acquaintance, and without ever visiting the recipient's premises. I find that the transactions in the past

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were carried out entirely in cash, and the corresponding sales have not been recorded in the books of accounts of either the supplier or the purchaser. These facts clearly establish the existence of an unauthorized network involved in the illegal procurement, conversion, and transportation of gold in a systematic and organized manner. The discrepancy in the purity of gold further reinforces the suspicion of illegal procurement. Additionally, records seized from the premises of Shri B.K. Soni show that **he maintained a dual invoicing system, manual and computerized**, for the same transactions. In the manual invoices, he recorded the actual quantity and value of gold, while in the computerized invoices, he showed significantly lower quantities and values. This clearly indicates smuggling activity by under-reporting the actual gold in the computerized invoices and misrepresenting the figures in the books of accounts. From the table mentioned in para 9.3.3.6 above, I observe that M/s B.K. Jewellers were issuing both manual and computerized invoices for the supply of gold/gold items. It is evident that in every instance where a manual invoice was issued, no corresponding computerized invoice was generated. Moreover, the manual invoices were of significantly high value, whereas the computerized invoices were of comparatively low value. I further note that, had M/s B.K. Jewellers not been involved in any illicit activities, there would have been no necessity to issue two types of invoices. This clearly indicates their intent to engage in smuggling activities, and the issuance of duplicate invoices appears to be a deliberate attempt to cover their tracks in the event of detection by the department. In this context, I also note that Section 123 of the Customs Act, 1962, stipulates that the burden of proof lies on the person who claims ownership of or is found in possession of the seized goods to establish that the goods are not of smuggled origin. I also note that Shri Kamal Soni has also failed to appear before the investigating authorities despite multiple summonses issued to him. It is a well-settled principle that a genuine person would cooperate fully with an investigation and produce the relevant documents when summoned by a government agency. His continued non-compliance indicates a deliberate attempt to evade legal proceedings and avoid the consequences of his actions. He also failed to appear for personal hearing or submit any defense during the adjudication process. This behavior reflects his disregard for the ongoing legal proceedings and confirms his lack of intent to contest or clarify the allegations against him. I further find that Shri Bal Kishan Soni has neither submitted his defence reply nor appeared for the personal hearing. In the present case, Shri Bal

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Kishan Soni, Shri Kamal Soni and Shri Dinesh Hiran have failed to discharge this burden by not producing any credible evidence regarding the source of the gold.

23.10 I further note that the Hon'ble Supreme Court in case of CC Vs. D. Bhoormal 10 clarifies the code of conduct to be followed, as under:-

2004 (165) ELT 136(SC) 1999 (109) ELT 247 (T) (1997) 90 ELT 241 (SC) (1997) 89 ELT 646 (SC) 1983 (13) ELT 1546 (SC) —The law does not require the prosecution to prove the impossible. All that is required is the establishment of such a degree of probability that a prudent man may, on the basis, believe in the existence of the fact in issue. The Hon'ble Court further observed that _secrecy and stealth being its covering guards, it is impossible for the preventive department to unravel every link of the process.

23.11 From the above discussions and judicial prudent it is beyond doubt that the seized gold was smuggled gold and illegally imported into India by the unknown persons.

23.12 Shri Dinesh Hiran (Noticee No. 2) in his written submission, has contended that the impugned gold bangles were purchased from a registered taxpayer, namely M/s B. K. Jewellers, Kolkata and the goods were received under valid tax invoice. They have further submitted that the consideration for the said purchase was paid to the supplier along with applicable GST. In support of this claim, the Noticee has furnished a copy of the GSTR-2A of their firm, purportedly evidencing the genuineness of the transaction.

In this regard, I note from the records that at the time of interception of the said cargo on 15.02.2024, a copy of the invoice was found, wherein the description of the goods were mentioned as '**916 Unfinished Jewellery (HSN 7113)**' having Gross weight of 3598.24 grams and Net weight as 359.24 grams, with a total invoice value of Rs 2,27,04,102/- (Two Crore Twenty-Seven Lakhs Four Thousand One Hundred Two Only). However, the test certificate/report submitted by the Government Approved Valuer states that the gold items in question were of 995.0/24kt purity having total weight of 3598.400 grams and having market value of Rs.2,29,72,186/-, contrary to the 916.0 purity, weight 3598.24 grams and value of Rs. 2,20,42,818/-(Purchase Value) as indicated in the invoice. I find that the gold with the purity of 995.0/24kt are not in

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conformity with locally available gold but similar to the gold generally imported from foreign countries. This discrepancy raises suspicion and appears to be a calculated attempt to mislead officers by falsely representing the goods as locally procured, in line with general trade practices and prescribed norms, by mis-declaring their purity as 916.0. As discussed in detail earlier, it has been established that the supplier, M/s B.K. Jewellers, had previously supplied gold to Shri Dinesh Hiran on multiple occasions, wherein payment was made entirely in cash and such transactions were not recorded in the books of accounts. It is also a matter of fact that M/s B.K. Jewellers issued two types of invoices, computer-generated invoices for legitimate transactions and manual invoices for smuggled gold. Therefore, the manual invoice found with the impugned goods cannot be accepted as a valid invoice in the eyes of the law. I find that there is plethora of evidences indicating a pattern of transactions between these two parties, conducted entirely in cash, and omitted from the official books of accounts of both the supplier and the purchaser. This modus operandi has been seen in earlier dealings as well, where similar goods were supplied with misleading descriptions, paid for in cash, and deliberately excluded from accounting records. These cumulative facts strongly indicate that the impugned gold items were not sourced through legitimate channels but were fashioned from smuggled gold. The attempt to misrepresent them as “unfinished jewellery” of lower purity appears to be a deliberate strategy to evade customs scrutiny and lawful duty obligations.

To substantiate the claim of genuine procurement, the Noticee No. 2 submitted a printout of GSTR-2A for the financial year 2023-24, which reflects the said invoice under the name of M/s Glorious Silver Ornaments. However, on examining the GSTR-2A, I observe that it covers the entire financial year, yet shows only this single entry of receipt of goods by the said firm. There are no other purchase entries throughout the year, which is highly unusual for a business involved in regular trade. During the personal hearing, the advocate for M/s Glorious Silver Ornaments submitted that, as per general trade practice, payments are often made in cash. While I acknowledge this assertion in the interest of natural justice, the complete absence of such transactions in the firm's records strongly suggests that this explanation is merely an afterthought intended to mislead the adjudicating authority. Further, Shri Dinesh Hiran also admitted in his voluntary statement that he had previously purchased gold

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bangles and kadas from M/s B. K. Jewellers, and all such transactions were made in cash, however, no record of these purchases is found in the GSTR-2A, which clearly indicate that filing the GSTR-1/GSTR-3B by the supplier for the said invoice and that too beyond the prescribed time limit clearly an afterthought made only after initiation of the investigation, only to justify the supply as a legitimate supply in the eye of law and to save themselves from the clutches of the law. In addition, the said purchase invoice No. 102 dated 14.02.2024 is not reflected in the purchase register of M/s Glorious Silver Ornaments for the period from 01.04.2023 to 05.03.2024, which was submitted during the investigation. Therefore, in view of the above finding, I hold that the invoice accompanying the impugned goods is not valid invoice under the law and accordingly I reject the claim of the noticee.

23.13 Further, I find that the noticee, Shri Dinesh Hiran, has claimed that he paid an amount of Rs. 2,20,42,818/- (purchase value) in cash to the supplier, M/s B.K. Jewellers, for the purchase of 3,598.400 grams of gold as per the said invoice. This was also admitted by the authorized representative during the personal hearing, wherein it was stated that the amount was indeed paid in cash. However, this claim is contradicted by the voluntary statement of Shri Bal Kishan Soni, who categorically admitted that he had not received any amount from Shri Dinesh Hiran against the impugned gold. Moreover, while Shri Dinesh Hiran has submitted a copy of the GSTR-2A reflecting the said transaction, I find that in order to render such a transaction legitimate under GST laws, the payment must have been made through a banking channel. However, the noticee has failed to furnish any documentary evidence supporting the payment, whether in cash or through banking channels. During the investigation, Shri Dinesh Hiran provided a bifurcation of the alleged cash amount of Rs. 2.20 crore said to have been paid to Shri Bal Kishan Soni. However, the records show that this was merely a self-serving statement, and no transaction-level details or substantiating documents were submitted. He also claimed that Rs. 95 Lakhs out of the total amount was from his personal savings. This assertion appears highly questionable, especially considering that the total turnover declared by him during the financial year 2023-24 was approximately Rs. 1 crore, and such a large amount was not reflected in his financial records. If he indeed had valid documentation supporting possession of such a large amount of cash, he would have submitted it either before the DRI authorities or during the course of these proceedings. However, no such

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evidence has been provided till date. The possession of Rs. 95 lakhs in unexplained cash by an individual with a modest declared turnover strongly suggests the likelihood of involvement in illegal activities, indicates having possession of unaccounted money/black money. Additionally, records indicate a cumulative receipt of approx 43 Kgs of gold in the past by Shri Dinesh Hiran, further reinforcing my view that Shri Dinesh Hiran is engaged in smuggling activities and that the amount he claimed to have paid originated from such illicit operations. It is also pertinent to note that despite repeated assertions of cash payments, no documentary evidence, such as receipt vouchers, bank statement, acknowledgments, or angadia transaction slips, has been provided by Shri Dinesh Hiran in support of their claims. I also find that Shri Bal Kishan in his statement confirmed that he had not received any amount and the amount would be received through RTGS. Therefore, the claim of the noticee that he had paid the entire amount to the supplier does not hold water and I reject the same.

23.14 The Noticee No. 2 in their defence further contended that the department has failed to provide any evidence that the seized gold is of foreign origin.

In this regard, I find that there is a clear case of mis-declaration in the description of the seized gold. The test certificate/report submitted by the Government Approved Valuer confirms that the gold items in question were of 995.0/24kt purity, which is contrary to the 916.0 purity declared in the invoice. Furthermore, in his voluntary statement, Shri Dinesh Hiran admitted that within a span of approx 25 days, he had procured a substantial quantity of 26.472 kilograms of gold from M/s B.K. Jewellers and also for the period Oct-2023 to Dec-2023, he has received 17.426 Kgs of Gold and that payment for the same was made entirely in cash. However, upon examining the sales and purchase records of both the supplier Shri B.K Soni and the buyer Shir Dinesh Hiran, it is evident that none of these transactions have been recorded in their respective books of accounts. Had the transactions been genuine and legal, they would have been routed through proper banking channels with GST-compliant invoices, and the statements of the supplier and buyer would have been consistent and corroborative. Moreover, I find that the proprietor of M/s B.K. Jewellers, when asked in his voluntary statement to explain the source of such a large quantity of gold supplied to M/s Glorious Silver Ornaments, replied, **"I have no answer to the above said question."** Additionally,

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while Shri Dinesh Hiran stated that the order for the said goods was placed on 14.02.2024, Shri Bal Kishan Soni claimed to have received the order on 12.02.2024. This contradiction in their statements further raises serious doubts about the authenticity of the transaction. Shri Dinesh also claimed that he paid the full invoice amount in cash to Shri Bal Kishan; however, Shri Bal Kishan has categorically denied receiving any such payment. It is also important to note that under Section 123 of the Customs Act, 1962, the burden of proof lies on the person claiming ownership or found in possession of the seized goods to prove that the goods are not of smuggled origin. In the present case, neither Shri Bal Kishan Soni nor Shri Dinesh Hiran has been able to discharge this burden, as they have failed to produce any credible evidence regarding the source of the impugned gold. It is also required to be noted that Shri Bal Kishan Soni and Shri Kamal Soni, both of M/s B.K. Jewellers in spite of giving repeated opportunities has not even bothered to participate in the ongoing proceedings or to defend their case. In view of the above, I find that the contention of the noticee is devoid of merit and is accordingly rejected.

24. From the findings, it is crystal clear that the quantity of gold sold/supplied to Shri Dinesh Hiran during the period from October 2023 to February 2024, amounting to approximately 47 kilograms, including the seized quantity of 3.5 kilograms, by Shri B.K. Soni, does not reconcile with the documents recovered or submitted, namely the Balance Sheet, Profit & Loss Account, Purchase Ledger, and Sales Ledger for the said period. The submissions made by Shri B.K. Soni are not creditworthy in light of the available documentary evidence. He failed to justify the source of the gold supplied to Shri Dinesh Hiran and offered unsubstantiated excuses clearly intended to mislead the proceedings. The reasoning of providing the gold worth of Rs. 2.20 cr on credit basis for just earning of Rs.10,000/- is not trustworthy and merits no credence. It is highly implausible, even beyond imagination, that a person would hand over ancestral gold worth Rs. 2.20 crores to someone for merely Rs. 10,000, without any security, advance payment, or prior acquaintance, and without ever visiting the recipient's premises. The admitted practice of purchasing and selling gold exclusively in cash and beyond the records further raises serious concerns about transparency and the legality of procurement. Additionally, discrepancies in the purity of the gold, as evidenced by the mismatch between declared and tested purity, strongly indicate that the procurement was unlawful.

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Moreover, records obtained during the search of Shri B.K. Soni's premises reveal that he maintained a dual system of invoicing: both manual and computerized invoices were issued for the transactions. The manual invoices reflected the actual quantity and value of the gold, while the computerized invoices understated both quantity and value. The understated computerized invoices were recorded in the books of account, indicating a deliberate attempt to conceal the true extent of transactions and suggesting the smuggling of gold by suppressing its actual quantity and value. From all these circumstantial evidences on the record establishes that gold in question was smuggled one and was procured from Indo-Bangladesh border and after conversion the same was smuggled in an organized way to present it as part of a legitimate trading operation. Therefore, I hold that the impugned gold falls under the ambit of "illegal Import" as defined under Section 11A of Customs Act, 1962. Further, as per ruling of *the Hon'ble Supreme Court in case of Om Prakash Bhatia*, it is amply clear that the goods are to be treated as 'prohibited' if there is failure to fulfil the conditions/restrictions imposed by the Government on such import or export. In the present case, I find that Shri B.K. Soni with the connivance of some unknown person improperly procured the gold into India without any supporting documentary evidence and subsequently smuggled the same after converting it into crude form. Accordingly, the good procured by the Noticees falls under the ambit of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.

24.1 From the facts discussed above, it is evident that the noticee, Shri B.K Soni, had procured gold of 24 kt having 995.0 purity from Bangladesh with the connivance of some unknown person, with the intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 3598.400 gms, seized under panchnama dated 20.02.2024 liable for confiscation, under the provisions of Sections 111(b), 111(d) and 120 of the Customs Act, 1962. By not declaring the same before the Customs while procuring from a foreign country, it is established that the noticees had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act. Smuggling of foreign origin Gold have wide ranging detrimental ramifications for the Indian economy as its linked to generation and distribution of Black Money. Smuggling as per Section

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2(39) of the Customs Act, 1962 is established in this matter and therefore, the goods are liable for confiscation. Hon'ble Supreme Court of India in the case of State of Gujarat Vs Mohanlal Jitamalji Porwal & Anr AIR 1987 SC 1321, has observed that-

..... An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

25. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. In this regard, I find that the noticee, Shri Bal Kishan Soni in connivance of unknown person, did not declare the gold before the Customs authorities while procuring the same from a foreign country, i.e., Bangladesh. It is also observed that the imports were not for bona fide purposes. Furthermore, Shri Bal Kishan Soni and unknown person was failed to fulfil the conditions prescribed for an "eligible passenger" to bring gold into India under the provisions of Notification No. 50/2017-Customs, dated 30.06.2017. Therefore, the said improperly imported gold, without authorized channel and without legitimate documents cannot be treated as bonafide goods or personal effects. The Noticee No. 1 and Noticee No. 3 alongwith Noticee No. 4 has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

25.1 By using the modus of smuggling of foreign origin gold in illegal way and then defacing at the clandestine melting facility, to convert into crude-jewellery form and then sent from Kolkata to different places in India by air as domestic courier consignments in an organized manner. it is

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observed that the noticees were fully aware that the import of said goods is offending in nature. It is therefore very clear that the noticee Shri B.K Soni in connivance of Noticee No. 1 has knowingly brought the gold and failed to declare the same to the Customs on his arrival. It is seen that Shri B.K Soni has involved himself in keeping, concealing and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. Further, I find that Shri Dinesh Dalchand Hiran of M/s Glorious Silver Ornaments have concerned himself in purchasing the smuggled gold and onward smuggling of said gold which have rendered the said crude jewellery liable to confiscation under the provisions of the Customs Act, 1962.

25.2 I find from the submissions and statements tendered during the course of investigation that the noticee, Shri Bal Kishan Soni, claimed to have manufactured the gold bangles in question using his ancestral gold, based on an order allegedly placed by Shri Dinesh Hiran. On the other hand, Shri Dinesh Hiran claimed that the gold, in the form of unfinished jewellery, was procured legally under a valid invoice, and that the payment for the same was made in cash. However, both the noticees have failed to substantiate their respective claims with any credible documentary evidence. I find that neither Shri Dinesh Hiran nor Shri Bal Kishan Soni account for the said transactions in their books of accounts. They also did not provide any explanation or justification for the same. Furthermore, on examining the documents recovered during the investigation, including invoices, shipping notes, and voluntary statements recorded under Section 108 of the Customs Act, 1962, it is evident that similar transactions had taken place between the two parties on earlier occasions as well. The records further reveal that Shri Bal Kishan Soni supplied a substantial quantity of approximately 43 kilograms of gold to Shri Dinesh Hiran over a short span of time. Despite being provided an opportunity, Shri Soni failed to produce any documents evidencing the legitimate source of such a large quantity of gold, or the manner in which the payment for the same was received. Similarly, Shri Dinesh Hiran also failed to submit any reliable documentary evidence to demonstrate the source of funds used for these purchases, including the claim of having paid Rs.2.20 crore in cash. There were no cash receipts, acknowledgment slips, or even Angadia slips to support this assertion. There was a complete absence of entries in their respective purchase/sales ledgers, profit and loss accounts, or balance

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sheets reflecting the said transactions. Such conduct raises serious doubts regarding the legitimacy of the alleged trade and strongly suggests that the dealings were structured to conceal the actual origin and movement of smuggled gold. Further, Section 123 of Customs Act, 1962 clearly states that the onus to prove the seized gold was not of smuggled in nature lies on the person/s who claimed the ownership or from whose possession the goods were seized. Section 123 of Customs Act, 1962 stipulates that:-

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.

Thus, in the instant case, the onus of proving that the seized gold in the form of unfinished jewellery weighing 3598.400 grams was not of smuggled origin lies squarely on Shri Bal Kishan Soni and Shri Dinesh Hiran, who were involved in the sale and purchase of the said goods. However, both individuals have failed to produce any valid or legitimate documents regarding the legal importation, acquisition, possession, or transportation of the gold in question. It is implausible to claim that approx 43 Kgs of unfinished jewellery/gold items could have been manufactured from ancestral gold weighing only around 4.5 kilograms, along with a closing stock of gold valued at approx. Rs. 1.33 crore during the financial year 2023-24, as reflected in the books of Shri B.K. Soni. Further, Shri Kamal Soni has signed the said invoices and was keep in touch with Shri Dinesh Hiran for supply of the said gold. This inconsistency raises serious doubts about the legitimacy of the gold's origin and further strengthens the conclusion that the noticees failed to discharge their burden of proof under

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Section 123 of the Customs Act, 1962. On the contrary, the investigation has successfully established that the gold in question was smuggled. The evidence indicates that the gold was illegally procured by Shri B.K. Soni with the help of unidentified individuals who clandestinely brought it across the Indo-Bangladesh border. Subsequently, the gold was defaced and melted at a facility in Kolkata and then smuggled to various parts of India through cargo routes disguised as domestic consignments. Given the glaring inconsistencies in their submissions, the lack of supporting documentation, discrepancies in purity of the gold (24kt of 995.0 purity as opposed to the claimed 22kt/916.0), and the dual invoicing mechanism adopted by Shri Bal Kishan Soni (manual and computerized invoices showing different quantities/values), it becomes apparent that the transactions were part of an organized modus operandi to regularize smuggled gold. The gold, most likely of foreign origin and illicitly brought into India via the Indo-Bangladesh border, was then melted at a clandestine facility and converted into crude jewellery to facilitate its movement across the country disguised as domestic courier consignments. Therefore, failure of the noticees to account for the gold in their books, provide legitimate source documentation, or establish lawful means of payment for the same clearly establishes that the goods in question were smuggled and their subsequent handling, dealing, and transportation was in violation of the Customs Act, 1962. It shows that knowingly and consciously they were involved in carrying and handling of foreign origin Gold which, they had reasons to believe or knew, were liable for confiscation under Section 111 of the said Act and intentionally made incorrect details in the generated invoices.

25.3 Further, I find that the Noticee Shri Dinesh Hiran has quoted and relied on various case laws/judgments as mentioned above regarding allowing provisional release of gold, alongwith defense submission. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and

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to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Hence, I find that judgments relied upon by the noticee, is not squarely applicable in the instant case. In view of the above discussions, I find that the modus adopted for smuggling of the gold, in this case clearly shows that the both noticee Shri Dinesh Hiran and Shri B.K Soni had attempted to smuggle the seized gold to avoid detection by the Customs Authorities by generated the invoice without indicating the actual description of the gold. Also they had adopted the modus of not accounting for the said goods in the books of account and adopted the mode of payment in Cash, so that the goods removed clandestinely without payment of eligible duties. Further, no evidence has been produced to prove licit import of the seized gold at the time of interception. Merely claiming the ownership without any documentary backing, is not proved that the goods purchased in legitimate way and belonged to them. Further, from the content of SCN, Panchnama and Statements tendered by the noticees, I find that they want to clear it clandestinely, to evade payment of customs duty. Had the goods not been intercepted by the DRI, the same was also removed without acknowledging in their books, just like their earlier consignments. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of *Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)]* that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of *Raj Grow Impex (Supra)*, the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration." Hon'ble Delhi High Court has, in case of *Raju Sharma [2020(372) ELT 249 (Del.)]* held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted

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by oblique motive.” Now in the latest judgment the Hon’ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that “---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer.” Therefore, keeping in view the judicial pronouncement above and nature of modus operandi, alongwith the facts of the case, ***I am therefore, 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.*** Further, to support my view, I also relied upon the following judgment which are as :-

25.3.1 Before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon’ble High Court held as under:

“Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act.”

The case has been maintained by the Hon’ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

25.3.2. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner’s order for absolute confiscation was upheld.

25.3.3 Further I find that in a recent case decided by the Hon’ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had

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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).*

25.3.4 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-

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 favor of redemption.

25.3.5 In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no

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option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

25.3.6 The Hon’ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

“23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea.”

*“26. The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/ 1983 (13) E.L.T. 1620 (SC)/ 1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country.**”*

26. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of smuggling, in this case clearly shows that they had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bangles. Thus, both noticees have failed to discharge the burden placed on them in terms of Section 123 of the Customs Act, 1962. Therefore, the gold weighing 3598.400 grams of 24Kt./995.0 purity in form unfinished bangles, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 3598.400 grams of 24Kt./995.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(b), 111(d), & Section 120 of the Act, alongwith the white container used for concealing above said Gold Bangles (includes cut pieces of Various Sizes) of purity 995/24 Kt., totally weighing 3598.400 grams made from smuggled gold under Section 119 of the Customs Act, 1962.**

27. I further find that the noticee Shri B.K Soni and Shri Dinesh Hiran had involved themselves in the act of smuggling of gold weighing 3598.400 grams of 24Kt./995.0 purity, retrieved in form of unfinished gold bangles from the trunk and smuggled by way of air route. Further, despite their

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knowledge and belief that transportation of said impugned gold is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute". Despite being fully aware that the sale and purchase of smuggled gold without valid documentation is an offence under the provisions of the Customs Act, 1962 and qualify as "prohibited goods" and the regulations framed thereunder, the noticees attempted to smuggle gold weighing 3598.400 grams of 995.0 purity (24Kt) by mis-declaring as "916 unfinished jewellery" and concealing the true nature of the goods through the use of a manual invoice. Thus, it is evident that the noticee, Shri B.K Soni, actively engaged in the procurement, possession, removal, concealment, and dealing of smuggled gold, which he knows very well and having reason to believe that the same was liable for confiscation under Section 111 and Section 120 of the Customs Act, 1962. And also, the noticee Shri Dinesh Hiran was involved in the procurement, possession, removal, and dealing of the said smuggled gold, which he knows very well and having reason to believe that the said gold was liable for confiscation under Section 111 and Section 120 of Customs Act, 1962. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "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" and covered under Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. Therefore, I find that the noticee Shri B.K Soni and Shri Dinesh Hiran are liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

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27.1 Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for imposition of penalty on any person who contravenes any provision of the said 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, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019. The detailed discussions in the preceding paragraphs clearly establish that the noticee, Shri B.K. Soni, along with the noticee, Shri Dinesh Hiran, not only failed to fulfill the conditions and responsibilities imposed upon them under the provisions of the Customs Act, 1962, but also knowingly mis-declared the purity of the goods in the enclosed invoice by indicating a lower purity of gold than the actual. Furthermore, both noticees fabricated records by omitting the actual purchases and sales from their respective ledgers and balance sheets. This constitutes a clear violation of Sections 77 and 79 of the Customs Act, 1962. In the present case, the noticee Shri B.K. Soni neither submitted any reply to the Show Cause Notice nor appeared for the personal hearing. Additionally, in his voluntary statement, he provided false information regarding transactions with M/s Glorious Silver Ornaments. Accordingly, this is a fit case for the imposition of a penalty under Section 117 of the Customs Act, 1962, on Shri B.K. Soni for non-cooperation during the investigation, and on Shri Dinesh Hiran for providing false information.

28. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Kamal Soni (Noticee No. 4) under Section 112(a) and/or 112(b) of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the documentary and digital records available on file, as well as the voluntary statements tendered by Shri Dinesh Hiran and Shri B.K. Soni under Section 108 of the Customs Act, 1962, it is evident that Shri Dinesh Hiran had regular business communications with Shri Kamal Soni, who is the son of Shri Bal Kishan Soni, Proprietor of M/s B.K. Jewellers, Kolkata. Shri Dinesh Hiran frequently referred to Shri Kamal Soni as the person handling the business operations of M/s B.K. Jewellers, Kolkata, and used to place orders telephonically with him. It is further observed that the manual invoices issued by M/s B.K. Jewellers to M/s Glorious Silver

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Ornaments were signed by Shri Kamal Soni. As per the statement of Shri Vineet Soni, who facilitated the introduction between Shri Dinesh Hiran and Shri Kamal Soni, it is evident that Shri Kamal Soni was actively engaged in the trade of raw gold. From the Subscriber Data Records (SDRs), it is revealed that the mobile numbers 9836825670 and 8697962411, used by Shri Kamal Soni, were registered under the identification documents of other individuals. This suggests that Shri Kamal Soni deliberately concealed his true identity. Further, the SIM card associated with mobile number 9836825670 was deactivated on 17.02.2024, immediately after the consignment was detained by the DRI. Additionally, the address provided for the mobile number 8697962411 was found to be vague and unverifiable. Moreover, Shri Kamal Soni has failed to appear before the investigating authorities despite multiple summonses issued to him. He submitted unsubstantiated excuses in his letters dated 15.03.2024 and 08.04.2024, claiming ignorance about the seized cargo and denying involvement in the investigation. However, it is a well-settled principle that a genuine person would cooperate fully with an investigation and produce the relevant documents when summoned by a government agency. His continued non-compliance indicates a deliberate attempt to evade legal proceedings and avoid the consequences of his actions. He also failed to appear before the Adjudicating Authority or submit any defense during the adjudication process. This behavior reflects his disregard for the ongoing legal proceedings and confirms his lack of intent to contest or clarify the allegations against him. Furthermore, neither Shri Dinesh Hiran nor Shri B.K. Soni raised any objections during the panchnama proceedings or disputed any findings at any subsequent stage. The entire procedure during the panchnama was conducted transparently in the presence of independent witnesses (panchas) and the noticees themselves. In his voluntary statement, Shri Dinesh Hiran explicitly confirmed that he used to communicate with Shri Kamal Soni for placing orders. I find that the facts clearly establish that Shri Kamal Soni played a leading role in an organized syndicate engaged in the smuggling of foreign-origin gold from Bangladesh. The said gold was defaced and converted into crude jewellery in Kolkata and then dispatched via domestic air courier consignments to Ahmedabad. From the above evidences, I find that the noticee Shri Kamal Soni has involved himself in removing, depositing, harboring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable

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to confiscation under the Act. If the Noticee Shri kamal Soni was a law-abiding citizen, he would have appeared before the DRI. Thus, I find that he deliberately did not appear to escape the clutches of law and knowingly/consciously, he was actively involved in carrying, handling and dealing with smuggled Gold. His non-appearance before the Investigating Authority and even before the Adjudicating Authority during the entire process of investigation and adjudication respectively alongwith Call Data Records and statements of Noticee Shri Dinesh Hiran reveal that he was actively involved in the smuggling of the said gold. It, is therefore, proved beyond doubt that the noticee Shri Kamal Soni has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

29. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon unknown person (Noticee No. 1) under Section 112(a) and/or 112(b) of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the documentary evidences available in the file, I find that unknown person/s had smuggle/improperly imported Gold, which was then converted into Crude Jewellery by M/s B K Jewelers, Kolkata of quantity 3598.400 Gram having total value of Rs. 2,29,72,186/- (Two Crore Twenty Nine Lacs Seventy-Two Thousand One Hundred and Eighty Six only) (Market Value) and Rs.1,92,91,778/- (One Crore Ninety Two lacs Ninety one thousand Seven hundred and seventy-eight only) (Tariff Value), with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. I find that the noticee i.e Unknown Person/s has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the other noticees i.e Shri Dinesh Hiran and Shri B.K Soni. It is seen that the unknown person has involved himself in carrying, removing, depositing,

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harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the unknown person has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

However, since the Noticee No.1 who imported the impugned gold is not known and nobody else has come forward to claim the impugned gold/goods and not submitted any reply in their defense, therefore, I desist from imposing personal penalty under the provisions of Section 112 and Section 117 of the Act on unknown person/s in this case.

30. Accordingly, I pass the following Order:

O R D E R

- i.** I order **absolute confiscation** of seized crude jewellery i.e. Gold Bangles (includes cut pieces of Various Sizes) of purity 995/24 Kt., totally weighing 3598.400 grams valued at Rs. 2,29,72,186/- (Rupees Two Crore, Twenty Nine lakhs, Seventy Two Thousand, One Hundred and Eighty Six only) and placed under seizure under panchnama dated 20.02.2024 and seizure memo order dated 20.02.2024 under Section 111(b),111(d) and 120 of the Customs Act, 1962;
- ii.** I order absolute confiscation of white container used for concealing above said Gold Bangles Gold Bangles (includes cut pieces of Various Sizes) of purity 995/24 Kt., totally weighing 3598.400 grams seized under Section 110 of the Customs Act, 1962, under Section 119 of the Customs Act, 1962.
- iii.** I impose a penalty of Rs. 55,00,000/- (Rupees Fifty Five Lakh Only) on **Shri Bal Kishan Soni Prop. of M/s. B.K Jewellers** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- iv.** I impose a penalty of Rs. 55,00,000/- (Rupees Fifty Five Lakh Only) on **Shri Dinesh Hiran Prop. of M/s. Glorious Silver Ornaments**

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under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.

- v.** I impose a penalty of Rs. 55,00,000/- (Rupees Fifty Five Lakh Only) on **Shri Kamal Soni Son of Shri Bal Kishan Soni, Prop. of M/s. B.K Jewellers** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- vi.** I impose a penalty of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand Only) on **Shri Bal Kishan Soni** under the provisions of Section 117 of the Customs Act 1962.
- vii.** I impose a penalty of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand Only) on **Shri Dinesh Hiran** under the provisions of Section 117 of the Customs Act 1962.
- viii.** I impose a penalty of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand Only) on **Shri Kamal Soni** under the provisions of Section 117 of the Customs Act 1962.

35. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-12/2024/Glorious/I dated 06.08.2024 stands disposed of.

(Shravan Ram)
Additional Commissioner
Customs, Ahmedabad

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Date: 10.06.2025

DIN: 20250671MN000000F48C

By SPEED POST A.D./Email

To,

1. Shri Dinesh Hiran
M/s Glorious Silver Ornaments,
215, 2nd Floor, Kanak Chamber,
Gandhi Road, Ahmedabad – 380001
(E-Mail: hiran.dinesh1@gmail.com)
2. Shri Bal Kishan Soni
M/s B.K. Jewellers
Barabazar, Kolkata
E-Mail: 1. bksoni@gmail.com
2. b.k.jewellers2021@gmail.com
3. Shri Kamal Soni
M/s B.K. Jewellers
Barabazar, Kolkata

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E Mail: 1. bksoni@gmail.com
2. b.k.jewellers2021@gmail.com

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
4. The Dy./Asstt. Director, DRI, AZU, Ahmedabad.
5. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
6. Guard File.