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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/18-19/B/2023-RA / 304

Date of Issue : 06.02.2024

ORDER No. 137-138/2024-CUS (WZ)/ASRA/MUMBAI DATED 02.02.2024
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962

Applicant No. 1 : Mrs. Vinita Jaipuria

Applicant No 2 : Mrs Devki Jaipuria

Respondent : Pr. Commissioner of Customs, C.S.I Airport, Mumbai

Subject : Revision Applications filed under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal Nos.
MUM-CUSTM-PAX-APP-1809 & 1810/2022-23 dated
22.11.2022 [Date of issue. 23.11.2022] passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

These separate Revision Applications have been filed by Mrs Vinita Jaipuria and Mrs Devki Jaipuria (now deceased and represented through her legal representatives) (herein referred to as 'Applicant No 1 and Applicant No 2 respectively and as 'Applicants' when referred collectively)' against the Orders-in-Appeal Nos MUM-CUSTOM-PAX-APP-1809 & 1810/2022-23 dated 22 11 2022 [Date of issue 23 11.2022] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III in respect to the Applicants

2 Both the Applicants alongwith others were noticees in adjudication proceedings for having purchased diamond jewellery from Mrs Vihari Rajesh Sheth, which were illegally imported by Mrs Vihari Rajesh Sheth without payment of customs duty and declaration to customs, and subsequently sold to the Applicants. The genesis of these Applications lies in the import of diamond jewellery by Mrs Vihari Rajesh Sheth and the gist is as under

3.1 Based on specific information, Mrs.Vihari Rajesh Sheth was intercepted by DRI on 30.07.2013 on her arrival at CSJ Airport, Mumbai after she cleared Customs through Green Channel. The passenger had not declared to carrying any dutiable goods and on search of personal baggage no dutiable goods were recovered. However, personal search of the said passenger resulted in recovery and seizure of diamond studded gold jewellery from her upper and lower inner garments. The passenger was also found to be in possession of one new wrist watch of Hubolt brand, 1 Samsung mobile, 1 I-Pad, one red coloured diary and few documents, all of which were seized under the Customs Act, 1962. The seized jewellery and wrist watch were totally valued at Rs 2.45 crores by a Govt. Approved Valuer.

3.2 Mrs Vihari Rajesh Sheth in her statements interalia stated that she is a resident of Singapore and residing there since childhood, that her father Rajesh Sheth is a diamond trader, that jewellery showroom in the name of Vihari Jewels at Hotel Grand Hyatt, Mumbai was being-run by Shri Jiten Sheth (her uncle), that she admitted to have carried diamond studded gold jewellery from Singapore on

30.07.2013 and to have evaded payment of Customs duty leviable in India, that she had concealed the jewellery in her inner garments to evade customs duty and not declared before Customs of carrying the same

3.3 The Jewellery showroom of M/s. Vihari Jewels was searched and 41 pieces of diamond studded gold jewellery valued at Rs.2,05,21,000/- and certain documents were taken over. Shri Jiten Sheth (uncle of Mrs Vihari Sheth) submitted 4 purchase bills issued by M/s Vir Gems in favour of Vihari Jewels claiming 41 pcs of unaccounted jewellery seized were covered by the said invoices. In his statements, he stated that he was into manufacturing and trading of loose diamonds and jewellery and the said business is being carried out in the name of Rajesh Brothers and Vihari Jewels, that he has another partnership company M/s Tisya Jewels, that his jewellery showroom contains 20% excess unaccounted stock of jewellery; that Mrs Vihari Sheth in last 3 months on 3 different occasions had brought some diamond studded gold jewellery from Singapore; the same was handed over by her for sale in his showroom situated in Hotel Grand Hyatt, Mumbai; that all the said jewellery was being smuggled into India by her in her personal baggage, that he was to pay 2% commission to Mrs Vihari Sheth on the profit and after sale of diamond studded gold jewellery.

3.4 During the course of investigation, in his statements, Shri Jitendra Katavat of M/s. Vir Gems stated that he had never supplied any jewellery to M/s Vihari Jewels or any other sister concerns, that he had issued 4 invoices in the name of M/s. VJ on the request of Shri Jiten showing sale of diamond studded gold jewellery valued at approx 1.75 crores, that no diamond studded gold jewellery was ever sold by him to Mr. Jiten; that Mr. Jiten had requested to issue four bills which were prepared as per the instruction/information received from Mr Jiten and on the basis of printouts of jewellery details given by Mr Jiten.

4 Show Cause Notice dated 27.01.2014 (SCN No.1) was issued to with respect to the goods seized from Mrs Vihari Sheth on 30.07.2013 and from the showroom of M/s Vihari Jewels proposing confiscation of the goods under Section 111(d) (j) (1) and (m) of the Customs Act, 1962 and imposition of penalty on both of them under Section 112 ibid and pursuant to Mrs Vihari Rajesh Sheth and Mr Jiten Sheth filing

applications before the Settlement Commission, the case was settled by the Settlement Commission vide Final Order No 109/FINAL ORDER/CUS/AS/2016 dated 29 06 2016.

5. Analysis of the data stored in the said Samsung mobile seized from Mrs Vihari Rajesh Sheth and entries found to be made in the red diary indicated that she had apparently indulged in smuggling of diamonds and diamond studded gold jewellery (to the tune of Rs. 30 crores approx) in the past, that Mrs Vihari Sheth was in the habit of smuggling gold jewellery/diamonds from Vihari Jewels Pte Ltd , Singapore and House of Gems, Singapore, in which her mother and father are Partner and Managing Director respectively, that her uncle, Jiten Sheth was using M/s Vihari Jewels, Mumbai as a front to market and sell the jewellery smuggled in the past, that Mrs Vihari Sheth was a conduit by her family in India and Singapore to smuggle jewellery and sell them through their family showroom in Mumbai, that Mrs Vihari Sheth has travelled 32 times in the past 27 months and had smuggled gold jewellery/diamonds in her previous trips also

6 In her further statement, Ms Vihari Sheth divulged that the entries in the red coloured diary with names of certain persons with description of jewellery and amount (in USD) and also it was observed that images were found in her I-pad/mobile phone were sold through M/s Vihari Jewels and summons were issued to the said persons, who submitted their jewellery along with the invoices issued by M/s Vihari Jewels and payment details All the jewellery items and diamonds mentioned in the invoices issued by M/s Vihari Jewels were seized under panchanamas under the reasonable belief that these were smuggled items and hence were liable for confiscation under the provisions of Customs Act, 1962 and the statements of concerned persons were recorded under Section 108 of the Customs Act, 1962.

7 The said jewellery items and diamonds submitted by the concerned persons were examined by the Government Approved Valuer, who opined that all the articles of jewellery appear to be imported and appraised each of the jewellery sold to the 9

persons including both the Applicants mentioned above. Collectively the jewellery has been valued at Rs 16,41,45,682/-

8 Investigations in respect of the gold studded diamond jewellery smuggled in the past by Mrs Vihari Rajesh Sheth revealed that jewellery were sold to Mr. Manoj Modi, Ms Bhakti Modi, Ms Smita Modi, Ms. Rina Jain, Ms. Aditi Hemendra Kothari, Mrs Vinita Jaipuria, Mrs Devki Jaipuria, Dr Sujata Jetley and Mr Rishabh Poddar and was found to be have been sold through various invoices generated in the records of M/s. Vihari Jewels

9 After following the due process of the law, the Original Adjudicating Authority (OAA) viz, Additional Commissioner of Customs, Chhatrapati Shivaji International (C S I) Airport, Mumbai vide Order-In-Original No ADC/VDJ/ADJN/1/ 2021-22 dated 28 04 2021 issued through F No [S/14-5-217/2014-15 Adjn DRI/MZU/C/INV-08(u)/2013-14] ordered absolute confiscation of confiscated seized diamond jewellery valued at Rs. 16,41,45,682/- under Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962 with option to Mrs. Vihari Rajesh Sheth to pay a fine of Rs 2 50 crores in lieu of confiscation under Section 125 of the Customs Act, 1962 in addition to payment of customs duty as per Notification No. 136/90-Cus dated 20 03.1990 as amended by Notification No 16/2005-Cus dtd. 01.03.2005 and other duties as applicable. Penalty of Rs 2.00 crores was imposed on Mrs. Vihari Rajesh Sheth under Section 112 (a) & (b) of the Customs Act, 1962, Penalty of Rs. 75 lakhs was imposed on Mr Jiten Sheth under Section 112 (b) of the Customs Act, 1962 and Penalty of Rs 20 lakhs was imposed on M/s. Vihari Jewels under Section 112 (b) of the Customs Act, 1962

10. Aggrieved by said Order-in-Original, appeals were filed before the the Appellate Authority i.e Commissioner (Appeals), Mumbai Zone-III by Shri Rishabh Poddar, Mrs Bhakti Modi, Mr Manoj Modi, Mrs Smita Modi, Mrs Rina Jain, Mr. Jiten Sheth, Mrs. Vihari Rajesh Sheth, Mrs. Vihari Jewels The Appellate Authority vide Order-in-Appeal No MUM-CUSTOMS-APP-397 to 405/2021-22 dated 23 07 2021 [F.No S/49-208 to 932,1158,1159,397/2020], upheld the penalty of Rs 2,00,00,000/-

imposed on Mrs. Vihari Rajesh Sheth, penalty of Rs 75,00,000/- imposed on Mr Jiten Sheth and penalty of Rs 20,00,000/- imposed on M/s Vihari Jewels, by the OAA. The Appellate Authority also rejected the assessable value of the seized goods ascertained by the OAA and redetermined the same to be the value of the seized goods mentioned in the VAT paid invoices issued by M/s Vihari Jewels. The AA also ordered for the redemption of the goods to the buyers on payment of redemption fine at the rate of 15% of the value of the goods mentioned in the VAT invoices issued by M/s Vihari Jewels. The AA ordered that in addition to the redemption fine under Section 125(1) of the Customs Act, the buyers shall be liable to any duty and charges payable in respect of such goods under Section 125(2) of the Customs Act.

11. The separate appeals filed by Applicant No. 1 and 2, alongwith 2 other notices i.e. Smt Aditi Hemendra Kothari and Dr. Sujata Jetley was decided by the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, vide his order Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1809 & 1810/2022-23 dated 22.11.2022 [Date of issue: 23.11.2022] [F.No. S/49/1155,1156,1163 and 2560/2021] modified the order of the Original Adjudicating Authority to the extent of rejecting the assessable value of the goods seized from them, ascertained by the OAA on the basis of the valuation reports given by the Government valuer and redetermining the same to be the value of the seized goods mentioned in the VAT paid invoices issued by M/s Vihari Jewels. The AA also ordered for the redemption of the goods to the buyers [Applicant No. 1 and Applicant No. 2 in the instant case and to Smt Aditi Hemendra Kothari and Dr. Sujata Jetley] on payment of redemption fine at the rate of 15% of the value of the goods mentioned in the VAT invoices issued by M/s Vihari Jewels. The AA ordered that in addition to the redemption fine under Section 125(1) of the Customs Act, the buyers shall be liable to pay any duty and charges payable in respect of such goods under Section 125(2) of the Customs Act, 1962.

12. Aggrieved with the aforesaid Order passed by the AA, the Applicant No. 1 and Applicant No. 2, being two of the four persons involved in the Order-in-Appeal have preferred separate revision applications against the same. The Grounds of Appeal in

both the applications being common, save for dates and relationship, are clubbed and are as under;

- i) That the impugned order has been passed by the Appellate Authority without any application of mind to the contentions raised by the Applicants, and also without properly appreciating and understanding the statutory provisions,
- ii) That the Appellate Authority has passed the said order in appeal mechanically upholding the findings of the Adjudicating Authority in so far as the findings that the goods are smuggled and liable to confiscation are concerned, without even considering or controverting the grounds of appeals urged in this regard as well as the submissions made by the Applicants,
- iii) That the non-application of mind is writ large over the impugned Order in Appeal inasmuch as the Appellate Authority has mechanically upheld the findings of the Adjudicating Authority by broadly re-stating the findings of the Adjudicating Authority,
- iv) That the lack of findings on the submissions made by the Applicants renders the impugned Order in Appeal wholly devoid of any substance in as much as it is settled law that findings in a quasi-judicial order ought to be based on evidence and reason. The Applicants have placed reliance on the following decisions (a) Union of India & Ors. vs Security and Finance (P) Ltd, [1983 (13) E.L.T. 1562 (S.C.)] (b) A G Enterprises vs Union of India, [2015 (316) E.L.T. 449 (All)] (c) Nestle India v Commissioner of Central Excise, Chandigarh, [2009 (235) E.L.T. 577 (S.C.)] (d) Commissioner of S.T., Bangalore vs Maa Communications Bozell Ltd., [2010 (19) S.T.R 490 (Kar.)]
- v) That the action of the Appellate Authority of not recording proper reasons is indicative of the fact that the said authority did not apply her mind to the facts of the case, and has fallen short of demonstrating that there were cogent reasons to uphold the findings of the lower authority,
- vi) That in failing to consider the evidence on record and the contentions put forth by the Applicants, the Appellate Authority has acted against the principles laid down in the decisions of relied upon supra and also relies on the decision of the Honourable Supreme Court in S.N. Mukherjee vs Union of India, [1990 AIR 1984] and on the decision in Upper India Tannery vs CC, [2002 (148) ELT 685 (Tri-Mum)].

vii) That the Appellate Authority has grossly erred in holding that the observations of the settlement commission indicate the factual correctness of the allegations levelled by the Revenue in SCN 2,

viii) That the Appellate Authority failed to appreciate that the SCN 2 or the allegations therein were not the subject matter of the order of the Settlement Commission in Final Order No 109/FINALORDER/CUS/AS/2016 dated 29-06-2016,

ix) That the Appellate Authority failed to appreciate that the Adjudicating Authority had rendered a wholly incorrect finding that the present owners do not have any evidence/proof of licit import of the jewellery without controverting the fact circumstances stated by the Applicants;

x) That the Appellate Authority failed to appreciate the averment of the Applicants husband/son (of A2), Shri Aditya Jarpuria, detailed in his letter dated 16 09 2014, detailing how they had come in contact with Mrs Vihari Sheth and other aspects of the transaction with her for purchase of the jewellery and the details of the payments made by them;

xi) That the Applicants had no knowledge as to whether the subject jewellery were imported by M/s Vihari Jewels as the Applicants had been told that the jewellery would be manufactured to order at Mumbai, that it is reiterated that the jewellery were purchased from a store, viz M/s. Vihari Jewels, having its outlet at No F 18, Grand Hyatt Plaza, Santacruz (E), Mumbai -400055 and that the Applicant's husband/son(of A2) had visited the store and taken delivery at the said store; that they were innocent purchasers of the jewellery and had no reasons to believe that the jewellery was in any manner smuggled or not duty paid as Mrs Vihari Poddar had told that the jewellery would be manufactured in her unit in Mumbai, that the Applicants have specifically paid for labour as well in the tax invoice and were all along under the impression that the subject jewellery was made at the workshop/unit of Mrs. Vihari Poddar in India and that the Applicants had no reason to believe it was made elsewhere as the bangles are typical to the Indian taste,

xii) That the Appellate Authority has rendered a wholly incorrect finding that the Department has discharged its burden of proof under Section 123 failing to appreciate that the Adjudicating Authority itself had only relied on the court findings

mentioned at para 65.1 to 65.3 and that the ratio of the decisions cited in para 65.1 to 65.3 are distinguishable in that the said decisions have been rendered in the peculiar facts and circumstances of those cases, which are entirely different from the facts and circumstances of the Applicant's case,

xiii) That the Appellate Authority failed to appreciate that in any event Section 123 of the Customs Act, 1962 would not apply in the Applicant's case,

xiv) That the Appellate Authority ought to have appreciated that Section 123 of the Customs Act, 1962, as per sub-section (2) thereof, applies to gold, and manufactures thereof, watches and any other class of goods which the Central Government may by notification in the Official Gazette specify;

xv) That the Notification No. 204-Cus dated 20.07.1984 as amended, issued by the Central Government, specifying the other classes of goods, for the purposes of Section 123 also do not specify diamond jewellery,

xvi) That the Appellate Authority has not controverted the Applicants contention that the diamond bangles studded on the setting of 18 k gold purchased by the Applicants are classifiable as diamond jewellery and merely because the setting or base is 18 k gold, which is inseparable without destroying the design, the diamond bangles cannot be said to be gold or manufactures thereof so as to attract the provisions of Section 123 of the Customs Act, 1962;

xvii) That Appellate Authority has rendered a wholly incorrect finding that the Department has discharged its burden of proving the illegal smuggling of the jewellery,

xviii) That the AA and has failed to controvert the Applicants' contentions and the onus to prove that the diamond bangle purchased by the Applicants are smuggled into India, is on the Department and the Department has not adduced any evidence to substantiate the said allegation and therefore the proposal to confiscate the said diamond bangles is untenable. Reliance placed on the decisions in (a) Naryan Kumar Jain vs. UOI, [2000 (125) ELT 450 (Mad)] and (b) Collector of Customs, New Delhi vs. Sudhar Electronics, [2000 (123) ELT 1054 (Tri)]

xix) That the Appellate Authority has rendered a wholly incorrect finding that the Department has proved the smuggled nature of the goods through the confessional voluntary statements of Mrs. Vihari Rajesh Sheth and Mr. Jiten Sheth, that from the

analysis of the data stored in the Samsung mobile seized from Mrs. Vihari Rajesh Sheth and the entries in the red diary indicated that she had apparently indulged in smuggling of diamonds and diamond studded gold jewellery in the past; and that the Appellate Authority ought to have found that the Diamond Bangles has been seized without adequate material to form reasonable belief and hence they are not liable to confiscation and have to be released in as much as the aforementioned findings have been rendered by the Appellate Authority without controverting the contentions of the Applicants raised in the grounds of appeal and written submissions filed in this regard. The reliance placed on the decision in *CC vs D Boormull*, [1983 (13) ELT 1546 (SC)]

xx) That the Appellate Authority has not controverted the Applicants' specific contention that the Department has not let in any evidence to show that the seizing officer had adequate material which would form "reason to believe" as contemplated in Section 110 of the Customs Act, 1962 to effect the seizure. Reliance placed on the decisions in *Ashok Kumar & another vs CCE & Cus, Kanpur and another*, [1984(15) ELT 400 (All)] *Gurumukh Singh vs Union of India and others*, [1984(18)ELT (P&H)], *Aasu Exim Pvt Ltd vs. Commissioner of Customs, New Delhi*, [2006 (205)ELT 1077 (Tri- Mumbai)], *Lalchand Kothari vs CC(P), Mumbai*, [2001 (136) ELT 525 (Tri-Mumbai)] and *Sultan Dharani vs Commissioner of Cus (P), Mumbai*, [2007 (220) ELT 820 (Tri-Mumbai)],

xxi) That the Appellate Authority has not controverted the specific contention of the Applicants with regard to the statement of Mr. Jiten Sheth dated 01-08-2013 and that it is settled law that an uncorroborated statement of a co-accused cannot be relied upon to render a finding that the offence alleged has been committed by Mrs. Vihari Rajesh Sheth, more so when she was never confronted with the said statement.

xxii) That the Appellate Authority grossly erred in failing to appreciate that, in any event the said statement also refers only to three occasions in the past three months dating back from 01-08-2013 which would cover only May, June and July 2013 and can by no stretch of imagination extend to the diamond bangles sold to the Applicants on 16-04-2013, more so when the statement of Mr. Jiten Sheth states

that the said jewellery allegedly smuggled by Mrs Vihari Rajesh Sheth in the past is lying unsold in his show room,

xxiii) That the Appellate Authority has merely mechanically reproduced the allegation in the show cause notice when rendering the finding that from the diary and private records, without controverting the categorical assertions of the Applicants in the reply regarding the diary and private records;

xxiv) That the Appellate Authority has not discussed or refuted the Applicants specific contention about the entries in the diary pertaining to bangles and that it is also pertinent that the only other entry alleged to be that pertaining to the jewellery sold to the both the Applicants , is an endorsement "June Bangie Nita 40 lakhs". That it only stands to reason that when a specific endorsement is made indicating a month, it can only be a note for an intended action to be performed in that month/or an action that has happened in that month. In any event, the second endorsement only mentions the name "Nita" which can relate to anyone, including any other resident of the same name in Mumbai or elsewhere and cannot be said to be conclusively connected to the Applicants in any manner;

xxv) That the Appellate Authority failed to appreciate that, in any event, there is neither an allegation of the Applicants having placed any order for delivery of one more bangle to be delivered in June nor is there any evidence that the Applicants have in any manner transacted the said amount with either Mrs. Vihari Rajesh Sheth or with Jiten Sheth or with anyone else and that the alleged recovery of proforma invoice from Mrs Vihari Rajesh Sheth's phone done at the in-house forensic analysis facility of the DRI is susceptible due to the same being a non-independent evidence collection

xxvi) That the mere existence of such a proforma invoice which indicated a sum higher than the sum finally negotiated and paid for on issuance of a tax invoice, in respect of the diamond bangle purchased by the noticees in April 2013, and nothing more and that the alleged entries therefore can in no way relate to the transaction of purchase of diamond bangles by the Applicants that has taken place in April 2013, particularly since the forensic analysis is not by an independent agency;

xxvii) That the Appellate Authority has not controverted in the impugned order, the categorical averment of the Applicants that no order for any bangles to be

delivered in June 2013 was placed and also the categorical averment that there has been no bangle delivered by Mrs Vihari Rajesh Sheth or her agent or anyone else to the Applicants in June 2013 and denies that Mrs Vihari Rajesh Sheth had made a sale of bangles to the Applicants in June 2013,

(xxviii) The Appellate Authority has not controverted the specific contention of the Applicants that in any event, when there was no difficulty for the DRI to do so, it is pertinent that they have refrained from investigating and placing on record whether or not Ms Vihari Sheth has in the past made declarations before the Customs Authorities during her visit and also whether or not her baggage had been examined and screened,

xxix) That the Appellate Authority failed to appreciate that in the absence of any such evidence, the sole fact that she was travelling between India and Singapore cannot be the basis for a reason to believe that she had indulged in smuggling the said seized bangles especially in the complete absence of any corroborative evidence as to on which occasion, if at all, she had done so and when the bangles themselves are not stated to have any foreign markings,

xxx) That the Appellate Authority has also not controverted the contention of the Applicants that 'Information' is merely unverified data and cannot be equated with "Intelligence", which is specific. Therefore merely on the basis of the so called information about Mrs Vihari Rajesh Sheth indulging in smuggling in the past, in the absence of any corroborative evidence to substantiate the same and when there was no evidence on record till the date when the officer has stated that he had reasonable belief to seize the diamond bangles, which would justify the formation of the said reasonable belief, the seizure made on mere suspicion is clearly void ab initio and the seized goods ought to be released to the Applicant unconditionally,

xxxi) That the Appellate Authority has failed to discuss or reject with reasons the Applicant's specific contention that the valuation report does not give any basis or reasoning why the said opinion has been formed and that the Appellate Authority failed to appreciate that the valuation report does not state any alleged foreign markings on the diamond bangle that can indicate that it is of foreign origin and other details that on the contrary the bangle is definitely of Indian taste as is evident from its design,

xxxii) That the Appellate Authority failed to appreciate that the valuation report also does not indicate the basis on which such a valuation has been arrived at, as there is no evidence of the value of any similar/comparable goods having been imported and evaluated and there is no basis for the value assessment;

xxxiii) That the request for permission to cross examine the valuer who has given the said valuation report dated 16.09.2014 in respect of the aforesaid diamond bangle seized from the Applicants was not granted.

xxxiv) That the jewellery was purchased from a store, viz. M/s. Vihari Jewels, having its outlet at No F 18, Grand Hyatt Plaza, Santacruz (E), Mumbai -400055 and that delivery was taken at the said store and had specifically paid for labour as well in the tax.

xxxv) That the Appellate Authority has rendered a wholly incorrect finding that no documentary evidence has been submitted by Mr. Jiten Sheth to establish the licit procurement of the impugned items sold to the Applicants under the invoice of M/s Vihari Jewels and that the fact remains that the procurement of the said items by M/s. Vihari Jewels has not been accounted for in their registers and hence the same were found to have been illicitly acquired;

xxxvi) That the Appellate Authority failed to discuss or controvert the specific contention of the Applicants that vide letter dated 27.09 2013 Shri Jiten Sheth provided details of job workers employed by M/s. Vihari Jewels and the sales invoices issued during the year 2013-14 and that the manufacturer/ job worker of the diamond bangles sold to the Applicants is Shri. Tarun Das and that no statement of Shri Tarun Das has been taken and the notice neither gives any reason for not investigating this crucial fact nor does it state any difficulty faced by the Department preventing it from investigation of this fact and in the absence of the same, the onus is then shifted to the Department to show that the said contention is untenable and that the goods were indeed of foreign origin and smuggled as contended by them;

xxxvii) That the Appellate Authority ought to have found that as a bonafide purchasers of the said diamond bangles, in the face of lack of evidence, any inculpatory statement by any of the accused as regards the said seized diamond bangles, in the absence of any foreign markings stated to be present on the said diamond bangles and due to the fact that the crucial contention regarding

manufacture of the said diamond bangle by the job worker Mr Tarun Das remains uncontroverted by the Department, it is clearly evident that the Applicants have established the probability that the said diamond bangles sold to the Applicants were manufactured in India and are not of foreign origin.

xxxviii) That the Appellate Authority ought to have found that inasmuch as the Department has failed to prove its case that the contentions of the Applicants that the diamond bangle is of legal and local origin is incorrect, the proposal for its confiscation is therefore devoid of any merit. Reliance placed on the decisions in *Rajesh Pawar vs UOI*, 2014 (309) ELT 600 (Del), *Ran Chhordas Agarwal vs CC, Lucknow*, [2014(313)ELT 283 (Tri- Del)], *Kirtulal Gagaldas Shah vs CC, Calcutta*, [1983 (14) ELT 1966 (CEGAT)], *Rajesh k Bansali vs CC*, [1988(38)ELT 208 (Tri)] and *Sachin A Mehta vs CC(Preventive), Kolkata*, [2003(162)ELT 722 (Tri-Kolkata)] in this regard, have also not been controverted by the Appellate Authority

xxxix) That the Appellate Authority has grossly erred in rendering a finding that by filing application before the Settlement Commission, Ms. Vihari Seth admitted to her smuggling jewellery without declaration and payment of customs duty during her visits and the findings are wholly untenable, given that the present SCN was not the subject matter of the application before the Settlement Commission and the finding that in as much as when she was intercepted on 30/07/2013, she was found adopting a modus does not automatically mean that she has adopted the same modus in the past also, given that the onus to prove that she has adopted such a modus in the past squarely lies on the Department and has not been discharged by the Revenue,

xl) That the show cause notice which does not categorically demonstrate the allegation, is vitiated on this count alone and that it is settled law that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest as held by the Honourable Apex Court in *Commissioner of C.Ex, Nagpur v Ballarpur Industries Ltd*, 2007 (215) E L T 489 (S C)

xli) That the initial burden to substantiate the allegations in the notice rests with the Department and the Department ought to let in evidence categorically demonstrating the allegations raised and mere conjectures in the notice issued would not constitute evidence enough to prove the stated allegations. The Applicants have

relied on the following case laws in support of their contention (a) Phoneix Mills Ltd vs Union of India, [2004 (168) ELT 310 (Bom)] (b) Bharat Seats Limited vs. Commissioner of C. Ex, New Delhi, [2009 (242) E L T 308 (Tri -Del)] (c) National Aluminum Company Ltd vs Commr. of C Ex, Bhubhaneshwar, [2004 (177) E.L.T. 599 (Tri. Del)] and (d) Consumer Plastics Pvt. Ltd , vs. CC, [2004 (171) ELT 415 (T)]

(xli) That the show cause notice should disclose material facts and particulars in support of the allegations made therein and it has been held that the burden is cast upon the Revenue to substantiate the allegation made by them adducing sufficient evidence and that the show cause notice issued without any tangible evidences and based only on inferences involving unwarranted assumptions is vitiated by an error of law. The Applicants have relied on the following case laws in support of their contention (a) Rajmal Lakhchand vs Commissioner of Customs, Aurangabad, [2010 (255) E L T 357 (Bom)] (b) Jagriti Industries vs CCE, Aurangabad, [2004(167) ELT 442 (Tri-Del)] (c) Commissioner of Customs vs. Auto Ignition, [2008 (226) ELT 14 (SC)] (d) Commissioner of Customs (Imports) Chennai vs Flemingo (DFS) Pvt Ltd, [2010 (251)ELT 348 (Mad)].

(xlii) That given that the Show Cause Notice has not let in any evidence to prove that the goods confiscated are one that has been smuggled into India by Ms. Vihari Seth in the past, the same is not liable to confiscation and ought to be released unconditionally;

(xliii) That the diamond bangles, seized from the Applicants under Mahazar dated 16 09 2014 may be unconditionally released immediately to the Applicants in as much as the proposal for confiscation is totally mischievous and unwarranted under law. That though the seizure is premised on the alleged information that Mrs. Vihari Sheth indulged in smuggling in the past, the evidences narrated in the said mahazar as well as the subsequent investigation has belied the credibility of such information and has in fact underscored the fact that the said seizure was only on mere suspicion and there was no real basis for formation of reasonable belief rendering the seizure to be one made sans any evidence material and germane, and thus not in accordance with law. Reliance is placed on the decision in Angou Golmei vs. Vizovolie Chaka Sang [1996 (81) ELT 440 (Pat)], A.G International vs CC, Allahabad, [2013 (295)

ELT 113(Tri-Del)] and United Brothers vs Commissioner of Central Excise, Calcutta, [2001 (238) ELT407 (Tri-Kolkata)] in this regard,

xiv) That the redemption fine imposed is excessive. Reliance is placed on the decision of the Honourable High Court of Kolkata in Extrusion vs CC, Kolkata, [1994(70) ELT 52 (Cal)], Haji Abdul Azeez vs CCE, Madras, [2000(125)ELT 390(Mad)] for the proposition that in the matter of imposition of redemption fine, mens rea as well as conduct of the party and other extenuating circumstances are material and relevant,

xiv.) That assuming without admitting that the said goods are notified and have been smuggled into India, even then it is evident that the DRI does not consider the Applicants as a party who has colluded in the illicit importation in as much as neither does the Notice attribute or allege any awareness on the part of the Applicants that they are purchasing or have purchased smuggled goods nor does the Notice contain any proposal to impose penalty on the Applicants. Therefore in as much as there is no allegation or evidence that the Applicants are complicit in the illegal activity, since the Applicants have made payment for the said diamond bangle through normal banking channels on bonafide belief that they are locally manufactured, and the DRI has refrained from alleging any collusion by the Applicants and has also refrained from proposing any penalty on the Applicants, the proposal for confiscation and imposition of redemption fine is untenable and at best the goods are liable to be redeemed only on payment of customs duty. Reliance is placed on the decision in K.R. Textiles vs CC (Preventive), Shillong, [2007 (217) ELT 118 (Tri- Kolkata)].

Under the circumstances, the Applicants prayed to set aside the Orders-in-Appeal MUM-CUSTOMS-PAX-APP-1809, 1810, 1811, 1812 /2022-23 dated 22.11.2022, passed by the Commissioner of Customs(Appeals), Mumbai-III, to the extent it holds the diamond bangle purchased by the Applicants from M/s Vihari Jewels as smuggled goods liable to confiscation and imposes redemption fine and also imposes liability to pay any duty and charges, as being illegal and untenable in law; and (b) to pass such other orders as this Authority may deem fit in the facts and circumstances of the case and in the interest of justice including consequential relief, if any.

13 The advocates for the Applicants, M/s Chander Kumar & Associates, vide letter dated 08.01.2024 filed an application for impleading legal representatives of deceased Applicant No. 2 (Mrs Devki Jaipuria), under Section 129DD of the Customs Act, 1962 read with Rules 8A and 8B of the Customs (Appeal) Rules 1982 read with Section 151 and Order XXII Rule 3 CPC, 1908. Vide the said Application, it was informed that Applicant No. 2 had passed away on 02.01.2024 and it was prayed that Mr Nirmal Kumar Jaipuria (husband of the deceased Applicant No. 2) and her two sons, Mr. Aditya Jaipuria and Mr. Vikram Jaipuria, be permitted to be impleaded in her place as legal representatives.

14 The Advocates for the Applicants vide letter dated 08.01.2024 (received on 12.01.2024) also filed an application for early hearing in the matter on the grounds that the Applicants were women and were deprived of wearing jewellery seized though already proved to be bonafide purchasers, that the order of redemption was already passed, however duty charges and redemption fines being very heavy, the Revision Applications were filed by them.

15 Personal hearing in the case was scheduled for 30.01.2024 or 06.02.2024. Ms. Yovini Rajesh Rohra, Advocate of M/s Chander Kumar & Associates appeared online for the personal hearing on 30.01.2024 on behalf of the Applicants. She reiterated the earlier submissions and submitted that Mrs. Devki Jaipuria has passed away and requested to implead her legal representatives. She further submitted that the Applicants had purchased jewellery from the shop and are being unnecessarily burdened with additional liabilities. On being pointed out that all other appellants including the main person have accepted the order of the Appellate Authority, she submitted that the Applicants were before this Authority for restoration of their dignity.

16 Government accepts the plea on behalf of Applicant No. 2 to implead Mr. Nirmal Kumar Jaipuria (husband of the deceased Applicant No. 2) and her two sons, Mr. Aditya Jaipuria and Mr. Vikram Jaipuria and proceeds to examine the case on merits.

17. Government has gone through the records of the case and the oral and written submissions of the Applicants. Government finds that the instant case has its genesis in the foiled attempt to smuggle diamond jewellery by Mrs Vihari Rajesh Sheth on 30.07.2013 and her uncle who is also an accomplice. Investigations conducted by the Respondent into the past acts of smuggling of jewellery by the said Mrs Vihari Rajesh Sheth and the sale of the same by firms associated with her uncle. Government notes that the initial case of smuggling of diamond jewellery and recovery of unaccounted jewellery has been settled vide the order dated 29.06.2016 of the Settlement Commission, Mumbai.

18. Government notes that the instant case was registered pursuant to investigations by the Respondent, in the case of gold studded diamond jewellery illegally imported into India in the past by Mrs Vihari Rajesh Sheth and sold to various buyers including both the Applicants, by her uncle Mr Jiten Sheth by using M/s Vihari Jewels as a front and records and invoices generated by them. Government observes that the evidence of the such illegal import in the past by Mrs Vihari Rajesh Sheth was unearthed by the Respondent from forensic examination of the electronic devices and manual entries in a diary, clientwise sale of jewellery with specifications and amounts in private records which made it abundantly clear that the jewellery was smuggled by Mrs Vihari Rajesh Sheth in the past during her frequent visits from Singapore to India, without declaration and without payment of appropriate customs duty.

19. Government notes that as per Section 2(25) of the Customs Act, 1962 "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. This definition entails that till the order for home consumption of the same has not been given by the proper officer of customs, any goods brought into India from a place outside India will be considered as "imported goods". In the instant case the goods having been illegally brought into India and improperly removed from the customs area without any order of the proper officer of customs, would answer the definition of "imported goods" under the Customs Act, 1962.

20 The Applicants, in the Revision Applications have prayed to hold the jewellery as not liable to confiscation and release the same unconditionally stating that the jewellery was seized without adequate material to make it liable to confiscation, questioned the entries in the diary and the basis of valuation of the jewellery, stating that the purchase of the jewellery was licit and through bank accounts, that Mrs Vihari Sheth's filing of application before the Settlement Commission admitting to smuggling jewellery does not mean that the same modus operandi was adopted in the instant case.

21.1 Government finds that every aspect of the averments made by the Applicants have already been dealt with cogently by the Appellate Authority and have been deliberated upon point-wise. The Appellate Authority, in the Orders-in-Appeal, has discussed various contentions of the Applicants. The Appellate Authority, whilst dealing the issues at length and while countering the order of the Original Adjudicating Authority, despite the averment of the Applicants, has extolled the innocence of the Applicants and unhesitatingly agreed that the Applicants were bonafide purchasers and real owners of the goods and in terms of Section 125 of the Customs Act, redemption of goods should be given to the Applicants. The Appellate Authority has also negated the reasoning of the OAA as regards the manner in which the value was determined and diligently adhered to the principles/order of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to determine the value of the goods.

21.2 Government notes that both Mrs Vihari Rajesh Sheth and Mr. Jiten Sheth, who were involved in the illegal import of the jewellery, were also noticees in the show cause notice issued(SCN2) in respect of the illegal imports of jewellery in the past and sale of the same to various buyers including the Applicants. In the appeals filed by Mrs Vihari Rajesh Sheth and Mr Jiten Sheth, the Appellate Authority has upheld the O-I-O and rejected the appeals filed by them. This entails that the charge of illegal import has been accepted by the main noticees and has attained finality and thus the issue raised by the Applicants that the jewellery purchased by them were not illegally imported, is no longer open for examination. Hence, this point merits no further discussion.

22 Government observes that the Appellate Authority, whilst rightly holding that allowing the redemption of the seized goods to the person other than the bonafide buyers from whose possession or custody the goods were seized was erroneous, has in a judicious and lucid manner arrived at the conclusion that the jewellery be redeemed to the Applicants and other appellants, after arriving at the value in terms of the principles of determination of value envisaged under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 Government also opines that the rate at which the jewellery is ordered to be redeemed, is reasonable and in the interest of justice and Government concurs with the Order of the Appellate Authority

23. Government, notes that the Applicants, having purchased the jewellery in a legitimate manner without having any knowledge about the origin and nature of the jewellery, are bonafide purchasers. They have become entangled in the issue even though they had nothing to do with the illegal import of the said jewellery

24. In view of the above, the Government upholds the Orders-in-Appeal Nos MUM-CUSTOM-PAX-APP-1809 & 1810/2022-23 dated 22 11 2022 [Date of issue 23 11 2022] in respect of the Applicants, passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and does not find it necessary to interfere with the same

25 The Revision Applications are disposed on the above terms


(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 137-138 /2024-CUS (WZ)/ASRA/MUMBAI DATED 01.02.2024

To,

1 Mrs Vinuta Jaipuria, 863, 12th Main, 3rd Block, Koramangala, Bengaluru-560034

2. Mrs Devki Jaipuria, (now deceased and represented by Mr N.K Jaipuria, Mr. Aditya Jaipuria and Mr Vikram Jaipuria, all as legal representatives) 863, 12th Main, 3rd Block, Koramangala, Bengaluru-5600 34
3. Pr Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099

Copy to:

- 1 The Commissioner of Customs (Appeals), Mumbai -III, Awas Corporate Point, 5th Floor, Makwana Lane, Behind S.M Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059
- 2 Ms Yovini Rajesh Rohra, Advocate, M/s Chander Kumar & Associates, #510, 4th Floor, Oxford Towers, 139, Old Airport road, Kodihalli, Bangalore 560 008
- 3 Sr P S. to AS (RA), Mumbai
- 4 File Copy
- 5 Noticeboard.

