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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/413, 414 & 403/B/WZ/2022-RA } : Date of Issue : 15.02.2023  
1023

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ORDER NO. 233-235 /2023-CUS (WZ)/ASRA/MUMBAI DATED 14 .02.2023  
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.

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(i). **F.No. 371/413/B/WZ/2022-RA**

Applicant No. 1. : (i). Shri. Dilip B. Kashela, .....A1

(ii). **F.No. 371/414/B/WZ/2022-RA**

Applicant No. 2. : (ii). Shri. Ramesh B. Kacchela, .....A2

(iii). **F.No. 371/403/B/WZ/2022-RA**

Applicant No. 3. ; (iii). Shri. B.N Panigrahy .....A3.

Respondent : Pr. Commissioner of Customs, CSMI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal Nos.  
MUM-CUSTM-PAX-APP-351/2022-23 dated 26.05.2022  
issued through F.No. S/49-695/2021 passed by the  
Commissioner of Customs (Appeals), Mumbai – III.

**ORDER**

These three revision applications have been filed by (i). Shri. Dilip B. Kashela, (ii). Shri. Ramesh B. Kacchela and (iii). Shri. B.N Panigrahy (hereinafter referred to as the Applicants or alternately, more specifically referred to as Applicant no.1 (A1), Applicant no.2 (A2).) and Applicant no.3 (A3) resp.) against the Order in Appeal Nos. MUM-CUSTOM-PAX-APP-351/2022-23 dated 26.05.2022 issued through F.No. S/49-695/2021 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that on 08.04.2018, based on a specific information that A3 who was a Head Hawaldar, Customs posted at CSMI Airport and was on duty in Uniform 'C' Batch had collected some smuggled gold from a passenger who had imported it into India by air route on 08.04.2018 and would be handing over the same to someone outside CSI Airport at around 18:00 hrs, a strict vigil was kept on A3 from 15:00 hrs by Customs Officers. At around 18:30 hrs, A3 came out in civil dress and walked towards the staff gate and was followed by the Customs officers. A3 took a rickshaw from the rickshaw stand where another person carrying a black coloured cloth hand bag joined him and they left the airport in rickshaw No MH02 EQ 2583. The Customs Officers tailed A3 and stopped the rickshaw near L& T. Chandivali, Mumbai. The other person accompanying A3 identified himself viz, as A2. Thereafter, A2 and A3 were escorted to Customs CCTV Room in Arrival Hall, CSMI Airport, Mumbai. To questioning by the Customs Officers in the presence of panchas, whether they were in possession of any dutiable goods, contraband or gold, both A3 and A2 replied in the negative. Detailed examination of black hand bag of A2 resulted in the recovery of two cut pieces of yellow coloured metal bars weighing 600 grams purported to be gold wrapped

in black adhesive tape. Examination of black backpack with red strips of A3 resulted in the recovery of Rs.25,000/- in cash.

2(b). A2 informed that the 600 grams of cut pieces of gold bars had been given to him by A3 who had earlier received these from his brother viz A1 who had arrived from Bangkok by Jet Airways Flight no. 9W61 in the morning of 08.04.2018. A2 admitted that he had paid A3 an amount of Rs. 25,000/- as a monetary consideration for carrying the gold from the airport and handing it over to him.

2(c). A Government Approved Valuer assayed the two cut pieces and certified the same to be gold of purity 999% i.e. 24 kts, weighing 600 gms and valued at Rs. 17,08,128/- (Tariff value). The two cut pieces of gold bars weighing 600 gms alongwith the Rs. 25,000/- cash were seized.

2(d). Statement of A3 was recorded on 08.04.2018 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that he was on duty in 'C' Batch Uniform and was posted at PRO Counter at Arrival Hall on 08.04.2018 from 0800 hrs to 2000 hrs; that he had left his duty early at about 18:30 hrs; that he went outside the airport and joined A2 who had been waiting for him in an auto rickshaw; that they both immediately left for Kanjurmarg station; that he had not brought Rs.25,000/- while coming on duty; that A2 had given him Rs.25,000/- as a monetary benefit in exchange for the gold pieces; that A1 had arrived from Bangkok by Jet Airways flight No 9W61 on 08.04.2018 in the morning and handed over the said gold bars to him in the washroom opposite belt no. 10 in the arriving hall of CSMI Airport, Mumbai and had instructed him to hand over the same to his brother viz, A2; that he had met A2 some years back at a funeral and since then they were friends.

2(e). Statement of A2 was recorded on 08.04.2018 under Section 108 of Customs Act 1962 wherein he inter alia stated that he was a trader and was

trading agarbattis at Ulhasnagar; that A3 had handed over two cut pieces of 600 grams gold bars which had been brought by his brother viz, A1 from Bangkok by Jet Airways flight 9W61 on 08.04.2018; that he (A2) had given Rs. 25,000/- to A3 for having assisted them in smuggling the gold from the Customs area; that he was the owner of the seized gold; that he did not have any documentary evidence in support of purchase of the gold; that he had taken a loan of Rs.12 lakhs from his friends and Rs.4 lakhs from his savings and had sent his brother viz, A1 to purchase gold for his daughter's marriage; that he had spoken to A3 on 06.04.2018 and requested him to get the smuggled gold from Customs and had promised him Rs.25,000/-; A1 had gone to Bangkok on 07.04.2018 and brought gold and handed it over to A3 in the toilet at the arrival hall; that he was aware that import of gold without a declaration and payment of Customs duty was an offence under Customs Law.

2(f). Statement of A1 was recorded on 09.04.2018 under Section 108 of the Customs Act, 1962, wherein he stated that he was a trader and was trading in readymade garments at Ulhasnagar; that he had arrived from Bangkok by Jet Airways Flight No. 9W61 at CSI Airport, Mumbai in the morning of 08.04.2018 and had handed over two cut pieces of gold bars weighing 600 grams wrapped in black coloured adhesive tape to A3 in the toilet near belt no. 10 of the Arrival Hall; that he had purchased the gold at Bangkok and had handed it over to A3 to be cleared without payment of Customs duty; that he was the owner of the gold.

2(g). Confrontation of A3 and A1 was conducted on 09.04.2020 at 04:00 hrs and both had recognized each other. On 10.04.2018, A3 had filed a retraction of his statement dated 08.04.2018 which was rebutted vide letter dated 11.05.2018, A2 and A1 too had filed retraction of their statements vide

affidavits dated 10.04.2018 and 13.04.2018 respectively which was rebutted on 24.07.2018.

2(h). Statement of A3 was recorded on 24.07.2018 under Section 108 of Customs Act 1962 wherein he stated that Rs.25,000/- recovered from him was given by his friend Mr. Rakesh Pandey at Marol Naka Signal at the time when he was going to Kanjurmarg along with Mr. Ramesh on 08.04.2018;

2(i). Statement of A2 was recorded on 27.08.2018 under Section 108 of Customs Act, 1962 wherein he stated that he had purchased the said two cut pieces of gold bars weighing 600 grams from M/s. Mega Jewellers owned by Mr Kamlesh vide Bill No. 428 dated 05.04.2018 on credit basis;

2(j). Statement of Mr. Kamlesh Daulji Choudhary owner of M/s. Mega Jewellers was recorded on 21.09.2018 under Section 108 of Customs Act. 1962 wherein he stated that he had issued Bill No. 428 dated 05.04.2018 for two cut pieces of gold bars weighing 600 grams valued at Rs. 19,00,350/- as requested by A2; that he was not aware that A2 was involved in smuggling of gold; that in July, 2018, A2 had requested him to issue purchase bill dated 05.04.2018 to get a loan and he had agreed to help as a friend and had issued the bill though no purchase was done by him (A2);

2(k). Further statement of A3 was recorded on 25.09.2018 under Section 108 of the Customs Act, 1962 wherein he was shown CCTV footage recording of 08.04.2018 of around 09:53 hrs at L2 PTZ near Customs PRO counter. He was seen talking on his mobile phone near baggage reclaim area and was seen going behind A1. On being asked, A3 replied that he did not remember to whom he was talking and did not know why no call details of that call had reflected in the CDR: that he did not use any alternate phone or number; on being asked,

A3 replied that he was going to the wash room and that it was a coincidence that he was behind A1.

2(l). Statement of Mr. Rakesh Gurudin Pandey was recorded on 27.09.2018 under Section 108 of the Customs Act 1962 wherein he stated that he had met A3 at CST station on 07.04.2018 and they had decided to meet at Marol Naka at 20:00 hrs on 08.04.2018; that he had reached Marol Naka at 17:30 hrs on 08.04.2018 and handed over Rs. 23,000/- to A3; On being asked whether he had informed A3 about his early arrival, Pandey in he negative. On being asked how with intimation from A3 he had reached Marol naka at around 18:30 Hrs on 08.04.2018 instead of 20:00 Hrs, Mr. Pandey had not given any reply.

2(m). Scrutiny of the Call Details Records (CDRs) of mobile numbers of A3, A1 and A2 had revealed that no calls had been exchanged between them. It was alleged that they might be using some alternate numbers and details of which had not been provided during the investigations.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/VDJ/ADJN/51/2020-21 dated 22.02.2021 issued through S/14-5-243/2018-19/Adjn (SD/INT/AIU/163/2018 AP-'D') ordered for the (i). absolute confiscation of two cut pieces of gold bars weighing 600 grams of 24KT purity of gold, valued at Rs. 17,08,128/- under Section 111(d), (l) and (m) of the Customs Act, 1962, (ii). imposed a penalty of Rs. 2,00,000/- on A1 under Section 112(a) of the Customs Act, 1962; (iii). imposed a personal penalty of Rs. 2,00,000/- on A2 under Section 112(b) of the Customs Act, 1962, (iv). imposed a personal penalty of Rs. 3,00,000/- on A3 under Section 112(b) of the Customs Act, 1962 and (v). confiscated Rs. 25,000/- under Section 119 of the Customs Act, 1962 recovered from / carried by A3.

4. Aggrieved by the said order, all the three applicants filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide Order-in-Appeal Nos.MUM-CUSTOM-PAX-APP-351/2022-23 dated 26.05.2022 issued through F.No. S/49-695/2021 held that she did not find any reasons to interfere with the impugned OIO passed by the OAA.

5(a). Aggrieved with the above appellate order passed by the AA, A1 & A2 have filed the revision applications bearing file nos as mentioned at (i) and (ii), above. They have stated that their submissions and grounds of appeal filed before the AA and OAA may be considered as their submissions before the revisionary authority. A copy of these two submissions was enclosed. The grounds made out therein are as under;

5.1. that the SCN dated 05.10.2018 had prejudged the entire issue and the OAA had yielded to the same. The OIO was not sustainable.

5.2. that the OIO dated 22/23-02.2021 was not on merits and not a speaking order. Many of the issues had not been discussed or countered by the OAA

(a). that the OAA was required to decide each and every issue but the same had not been done.

(b). that the panchas were not independent and respectable. The panchanama cannot be relied upon.

(c). that A3 was not on duty when he had been intercepted.

(d). that the confrontation panchanama could not be relied upon,

(e). cross-examination had not been allowed.

(f). that the Customs Officers were on fishing expedition.

(g). evidence against A2 and A3 was only hearsay.

(h). that when the goods had left the airport, it had lost its identity of imported goods.

(i). statements recorded at odd hours could not be relied upon.

(j). confessions of co-accused could not be relied upon,

(k). CCTV footage had not been provided hence, the same was not admissible.

- (1). only circumstantial evidence had been taken based on mere suspicion,
- 5.3. Cross examination of the panchas and officers had been denied by the OAA without recording any reasons. Principles of natural justice had been violated.
- 5.4. that in the departmental inquiry against A3 which had been initiated on the basis of facts, documents, evidence, etc the Inquiry Officer had concluded in his report that both the said panchanamas were manipulated and were untrue of facts and was a fraud. Hence, the OIO based on these same facts, panchanamas and circumstances had become unsustainable; that though the disciplinary authority had disagreed with the Inquiry Report and intended to take a final decision in the matter, any adverse decision of the disciplinary authority was rebuttable and appealable.
- 5.5. that the CCTV in the absence of a certificate under Section 65B of the Indian Evidence Act, was invalid and not reliable. The footage did not prove the meeting of A3 with A1 in the toilet. The absence of conclusive and consistent proof of circumstantial chain of evidence leads to a hypothesis of guilt only. Only circumstance of 'seen together could not be made basis of conviction.
- 5.6. that they had reiterated the submissions as earlier the OAA had not considered the same.
- 5.7. that A2 claimed ownership of the gold under absolute confiscation

Under the circumstances, A2 and A3 have prayed to the revision authority for the unconditional release of the two cut pieces of gold weighing 600 gms and valued at Rs. 17,08,128/-.

5(b). It is noticed that the submissions made by A3 before the revisionary authority is almost verbatim to the submissions made by them i.e. A1 and A2 before the AA. Hence, details of the case laws, evidences, documents, averments etc made therein have not been repeated as the same has been considered in the submissions made by A3 below.



6. Aggrieved with the above appellate order passed by the AA, A3 has filed the revision application bearing file no as mentioned at (iii), above. The grounds therein are as under;

- 6.01. that the show cause notice dated 5-10-18 had prejudged the entire issue and the OAA had yielded to the pre-judged SCN and thus had prejudged the Applicant no. 3. The impugned O-i-O dated 22/23-2-21 was not sustainable.
- 6.02. A3 has reproduced certain paragraphs from the SCN such as 24.1, 24.2, 24.4, 24.5 and 25.1 and has made out grounds that these paras have prejudged the OAA. A3 has alleged that department which had issued the impugned SCN had already made up its mind and pre-judged that the pieces of gold bars were illicitly and allegedly illegally imported into India from a foreign country and that A3 had smuggled the gold out of the airport;
- 6.03. that principles of natural justice had been violated. A3 has placed reliance in the case of Calcutta High Court in Raghunandan Jalan vs Collector of Central Excise And Customs on 16 February, 1972: 1981 (8) EL T 476 Cal; that A3 has contended that the SCN suffers from bias as it had confronted A3 with definitive conclusions. A3 contend that at some of the places in the SCN, the authority has also used the word "appears" suggesting that the authority's conclusion is only tentative but not final or conclusive but the overall impression one got from a reading of the SCN was that the authority had predetermined the issue.
- 6.04. that while issuing the SCN, the authorities should take care to manifestly keep an open mind as they were required to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when they had the power to take a punitive step against the person. On the principle that justice must appear to have been done, they have relied upon the Supreme Court case of V.C., Banaras Hindu University v. Shrikant (2006) 11 SCC 42, Rajam Industries (P) Ltd.'s case, High Court of Andhra Pradesh in SBQ Steels Ltd. Versus Commissioner of Customs, Central Excise & Service Tax. Etc.
- 6.05. that the Order of the OAA dated 22/23-02-2021 was not an order on merits and not a speaking order: The OAA had in the impugned order failed to take cognizance of all the submissions made by A3 without giving any reason. A decision passed without considering the entire submission/ argument and merits of the defense, could not be to be a decision on the merits. In this regard, A3 has stated that Supreme Court's direction in the case of Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan {Citation:- 2011 (273) EL T 345 (SC)} had not been applied.

6.06. In the present case, the OAA had failed to decide on many of the issues which were raised in the replies to the SCN; such as, (i). the panchas were not independent and respectable, therefore, the seizure Panchnama dated 8-4-2018 was invalid; (ii). A3 was not on duty when he was intercepted by AIU Officers. His duty was over when he had left the Airport.; (iii). Specific information based on which the Officers reported to have acted was false. The Officers were on fishing expedition.; (iv). Panchnama drawn in English was invalid.; (v). Confrontation panchnama dated 9-4-2018 could not be relied upon. Evidence against A3 and A2 was only hearsay and therefore not reliable; (vi). Seizure of the cut pieces of gold was invalid since when A3 had left the airport and allegedly cleared the gold clandestinely out of the airport, the goods had lost its identity as 'imported goods' and became 'smuggled goods'.; (vii). Panchnama was not drawn at the spot.; (viii). Statements of A3 had been recorded at odd hours and could not be relied upon; (ix). CCTV footage had not been provided to the notices, hence, the footage was not admissible as evidence.; (x). Alleged meeting of A3 and A1 in the toilet in the arrival hall for the purpose of smuggling of gold had not been proved; (xi). The only circumstantial evidence relied upon by the prosecution was that the accused were seen together so had raised suspicion, but this was not independently sufficient to lead to a finding of guilt.; (xii). Penal actions proposed in the SCN were not sustainable.; (xiii). Once goods had been cleared for home consumption from Customs, it ceased to be imported goods and hence, the same were not liable to confiscation; (xiv). since the cash amount i.e Rs 25,000/- was not imported/smuggled from abroad, Section 111(d) was not applicable to the said cash amount for that simple reason; (xv). Cross-examination of the panchas and Officers were denied by the OAA without recording any reasons, thereby the principles of natural justice had been violated.; (xvi). The main purpose of seeking cross-examination of the Officers and witnesses was to bring the truth to the surface and expose the falsehood in the case against A3. However, the learned OAA had denied the opportunity of cross-examination without recording any reasons which was a violation of the principles of natural justice; (xvii). A3 referred to para no 14.9 of Circular No. 1053/02/2017-CX F.No. 96/1/2017-CX.I GOI dated 10th March, 2017. (xviii). On the issue of natural justice, A3 has placed reliance on the following case laws; (a) Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra & Ors., Civil Appeal NO.7728/2012 decided on 08.11.2012 by the Supreme Court; (b). Mehar Singh Vs. Appellate Board Foreign Exchange, Crl. A. 109/1975; (c). Central Govt. represented by the Director, Enforcement Directorate, Foreign

Exchange Regulation Act, New Delhi Vs. Fr. Alfred James Fernandez, AIR 1987 Kerala 179; (d). Natwar Singh Vs. Director of Enforcement, 2010 (13) sec 255; (e). State of Kerala Vs. K.T. Shaduli Grocery Dealer etc. (1977) 2 sec 777; (f). S.C. Girotra Vs. United Commercial Bank (UCO Bank) and Others, 1995 Supp (3) sec 212. It was a well settled position that when a crucial witness had not been produced for cross-examination, then that portion of the evidence was required to be discarded.

- 6.07. In the Departmental Inquiry proceedings against A3 which had been initiated on the basis of same set of facts, documents and evidence, the Inquiry Officer had concluded in his report that both the said panchanamas had been established to be manipulated and untrue of facts and amounted to a fraud. Such being the case, the OIO issued by the OAA on the basis of the same panchnamas, facts and circumstances was not sustainable. Though, the Disciplinary Authority had disagreed with the Inquiry Report and intended to take a final decision in the matter, any adverse decision of the Disciplinary Authority was rebuttable and appealable: (i). The Disciplinary Authority i.e Additional Commissioner of Customs had appointed an Inquiry Officer to conduct an inquiry into the charges framed against A3 under Rule 14 of the CCS (CC&A) Rules, 1964 vide File no S/9-04/2019 ACC (Vig) Zone III dated 14-6-19. After completion of the inquiry, the Inquiry Officer submitted his Inquiry Report on 27-2-2020. The findings of the Inquiry Officer as submitted by him in the Inquiry Report, on deposition of witnesses, are;
- (a). Para 8.3 PW-3, Sh Vishwas Sudam Pawar, Panch 01 of Seizure Panchanama dt 8.4.2018; He admitted that he was not present at the Airport nor was on duty at the times mentioned in the said Panchanama because apart from his duty hours, he was not allowed to remain inside the high security Airport area. He explained that while going off duty he was required to surrender his Airport Entry Pass at his office and when he reported for duty on the following day, he would be handed over his Airport Entry Pass. His Duty Roster showed his duty hours from 10.00 pm on 8.4.2018 to 7 .00 am on 9.4.2018. These timings were confirmed by his office from the attendance rosters for 8.4.2018 which had been called for as an additional defence document and the contents had been accepted by the two panchas as true and correct.
- (b). Para 8.4 PW-4, Smt Asha Arjun Malve, Pancha 02 of Seizure Panchanama dt 8.4.2018; gave evidence on similar lines as that of Mr Vishwas Sudam Pawar, the Pancha No 01; that the said panchanama had been prepared behind her back.

(c). Para 8.5 PW-5, Ms. Hasina Rahim Sheikh, Panch 01 of Confrontation Panchanama dt 9.4.2018: drawn between 04.00 am to 04.30 am on 09.04.2018; had testified that the said panchanama was not prepared in her presence as she could not have been inside the airport and on duty between 4.00 to 4.30 am on 9.4.2018 because her duty timing was from 7.00 am to 4.00 pm on 9.4.2018 and while going off duty she was required to submit her Airport Entry Pass to her office and when she reported for duty on the next day, she would be handed over the Airport Entry Pass.

(d) Para 8.6 PW-6, Shri. Sanju S Jadhav, Panch 02 of Confrontation Panchanama dt 9.4.2018: stated the confrontation panchanama dated 9.4.018 was not drawn in his presence because his duty timing was from 7.00 am to 4.00 pm on 9.4.2018 and while going off duty he was required to surrender his Airport Entry Pass to his office and when he reported for duty on the next day, he would be handed over the Airport Entry Passes.

(e). 8.7 PW-7, Mr Anand Chouhan, AIU Customs Officer – who had drawn the Seizure Panchanama dtd 8.4.2018; could not give a proper explanation as to how when the Seizure Panchanama had ended at 9.00 PM on 08.04.2018, the two Pancha Witnesses had put their dated signatures on 09.04.2018. In his cross-examination, he admitted that there were no eyewitnesses to receiving of gold at the airport from any person or handing over gold to A2 outside the airport or in the auto rickshaw. (f). 8.8 PW-8, Mr Pravin R Patel, Government Valuer: who was summoned during the said panchanama drawn by Mr Chauhan and had done the assaying and testing of the two gold pieces between 7.30 pm and 9.00 pm on 8.4.2018, he had admitted that the two gold pieces weighing 600 gms did not bear any foreign markings and there was a possibility that the same could have been purchased from the local market.

(g). 8.9 PW-9, Mr Ashok S Patel, AIU Customs Officer- who had drawn the Confrontation Panchanama dated 9.4.2018 had admitted that when he reported for night duty at 8.00 pm on 08.04.2018, the Seizure Panchanama that is shown to have been conducted from 7.30 PM to 9.00 PM in AIU office had already been completed. He admitted that he had no answer about the presence of the Panchas during the Confrontation Panchanama between 04.00 am to 04.30 am on 09.04.2018.

- 6.08. In the inquiry report, the following observation have been made;
- (a). that the CCTV footage retrieved later on from the area near the washroom had not revealed any misdoing on the CO's part;
  - (b). that there were glaring discrepancies and anomalies in the facts and events as mentioned in the said seizure cum valuation

panchanama dated 8.4.2018 and from the evidence that had come on record, it was clear that the details in the said panchanama had been apparently manipulated;

(c). that the panchas were not on duty when the panchanama had been drawn;

(d). that the passenger viz, A1 had arrived on 8.4.2018 from Bangkok at 09:30 hrs and it had been alleged that the the gold pieces had been handed over to A3 around 10.00 a.m in the toilet of the arrival hall, but there was no footage of any such handing over of gold;

(e). that this coupled with the fact that the information was received by Mr Anand Chouhan at 3.00 pm, the panchas had been called only at 7.30 pm in the evening when the entire sequence of events was over and only seizure formalities were left was all mysterious;

6.09. As regards the validity and reliance on the seizure and confrontation panchanamas dated 8.4.2018 and 9.4.2018 respectively, enough evidence was brought on record by A3 to prove the hollowness of the details mentioned in the said two panchanamas. To use strong words, both the said panchanamas have been established to be manipulated and untrue of facts and amounted to a fraud. The Inquiry proceedings were quasi-judicial proceedings and it was clear from the evidence that had come on record that facts were false.

6.10. The inquiry officer had concluded that both the articles of charge framed against A3, had not been proved.

6.11. The AA and OAA had failed to take into consideration the additional defense submission made by A3 on 11-2-2020 and thus, the case against A3 was vitiated. The impugned order is therefore not sustainable and liable to be quashed.;

6.12. During the hearing, it had been stated before the OAA that further submissions would be submitted on 24-2-2020 which had been recorded at para 23 of the impugned O-i-O. However, the OAA had passed the impugned order without taking the submissions on record and without considering/mentioning the submissions. (a). Reliance was placed on the decision of Gujarat High Court in the case of Omprakash Goel vs Union of India (Uol) on 12 March, 2004 According to section 243(1) of CrPC, an accused had the right to present his evidence and defend his case.; (b). In State of Orissa v. Dr. (Miss) Binapani Dei & Ors., the Supreme Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. (c). etc

6.13. It is clear that the impugned adjudication order was biased and is a nullity. An adverse order, if it was found bad in law, was liable to be set side on legal grounds.

- 6.14. By ordering confiscation of the seized currency amounting to Rs 25,000/- under Section 119 of Customs Act, 1962 the Adjudicating Authority traversed beyond the scope of SCN. Confiscation of the currency was therefore not sustainable:
- 6.15. In the impugned SCN under Para 26, it was proposed to confiscate Rs. 25,000/- which was recovered from A3 under section 111 (d) of the Customs Act, 1962. Under Customs Act, only imported goods could be confiscated. Since the cash amount i.e Rs 25,000/- had not been imported/smuggled from abroad, Section 111 (d) was not applicable to the said cash. Reliance was placed on the following decisions: (a). R. Ramadas Vs Joint Commissioner of Central Excise (Madras High Court), (b). In the case of Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd., the Apex Court while delivering judgment under para 16 held that, the department cannot travel beyond the scope of the show cause notice; (c). In the case of CCE v. Ballarpur Industries Ltd., the apex court held that it is trite that the foundation of Revenue's case is laid in the show cause notice and the same must be confined to the allegations therein., (d). A similar view was adopted in the case of Mis Jetlite (India) Ltd. v. CCE New Delhi, wherein it was held that the adjudicating body did travel beyond the scope of the show cause notice was not legal and thus the previous judgment with regard to payment of service tax was dismissed. Etc.
- 6.16. CCTV footage in the absence of a certificate under section 65B of Indian Evidence Act was invalid and not reliable. The footage did not prove the meeting of A3 and A1 and their complicity in the smuggling. The absence of conclusive and consistent proof of circumstantial chain of evidence which lead to the only "hypothesis of guilt" against the A3 then, only the circumstance of "seen together" cannot be made basis of conviction.:
- 6.17. The CCTV footage was given to A3 only alongwith the charge memorandum. Departmental Proceedings were initiated on 14-6-2019. The said CCTV footage demonstrated the events in a different manner than the view taken by the department.
- 6.18. The Evidence Act mandated a special procedure for electronic records precisely because printed copies of such information were vulnerable to manipulation and abuse. Section 65-B of the Evidence Act intended to avoid manipulations by requiring an impartial certificate under sub-section (4) that also speaks of compliance with the technical requirements of sub-section (2). Sub-section (4) of section 65B of the Evidence Act lists additional non-technical qualifying conditions to establish the authenticity of electronic evidence. This provision required the production of a certificate by a senior person

who was responsible for the computer on which the electronic record was created, or was stored. The certificate must uniquely identify the original electronic record, describe the manner of its creation, describe the device that created it, and certify compliance with the technological conditions of sub-section (2) of section 65B. An electronic record by way of secondary evidence cannot be admitted in evidence unless the requirements under Section 65B were satisfied. Thus, in the case of CCTV footage, the same should be accompanied by the certificate in terms of Section 65B obtained at the time of taking the footage, without which, the secondary evidence pertaining to that electronic record was inadmissible.

- 6.19. In the instant case, the impugned O-i-O was silent about there being any certificate under Section 65B of the Indian Evidence Act, 1872 issued by CISF in respect of the CCTV footage relied upon. Therefore, the CCTV footage relied upon in this case was invalid and the allegations against A3 had not been proved.

Reliance has been placed on the following decisions; (a). High Court of Madras in Prakash Gold Palace P Ltd Versus C.C. (Airport & Air Cargo), Chennai - 2016 (340) E.L.T. 111(Mad.); (b). High Court of Delhi in Teleworld Mobiles Pvt Ltd Versus Commissioner of Trade & Taxes - 2018 (17) G.S.T.L. 202 (Del); (c). Supreme Court of India in Tomaso Bruno & Anr vs State Of U.P on 20 January, 2015.; (d). In a recent judgement passed by the three-judge bench of the Supreme Court headed by Justice RF Nariman, S Ravindra Bhat, and V Ramasubramanium, the Supreme Court has clarified that certificate under Section 65B(4) of Indian Evidence Act, 1872 was mandatory for the production of electronic evidence before the court. etc

- 6.20. If the CCTV footage (T2 NEAR BAGGAGE CLAIM AREA EMERGENCY EXIT EAST) which contains recording of 8-4-2018 between 9.56.21 a.m to 10.00.10 a.m) is analysed closely, movements of people including A3 in the toilet area is seen as given below. This is where the contraband gold was alleged to have changed hands as per the case of the Department. The toilet was in the dead zone / blind spot of the particular CCTV camera. Therefore, what happened behind the camera was not known.

9.56.21 a.m: A male passenger with a back pack enters the passage. He was immediately followed by A1 and was seen entering the passage at 9.56.26 a.m.

9.56.40 a.m: A3 enters the passage.

9.57.17 a.m: A man in a wheel chair was seen exiting alongwith a mobility assistant of Jet Airways who was also pushing a baggage cart.

9.57.36 a.m: A female (passenger) exits with a backpack.

9.58.05 a.m: Another person in blue shirt was seen entering.

9.58.09 a.m: A1 exits. He was in the toilet/blind spot for more than 1 minute and 40 seconds.

9.58.16 a.m: The passenger with the backpack who entered at 9.56.21 a.m is seen exiting.

9.58.40 a.m : Another person in full sleeved shirt enters. 9.58.58 a.m : A lady seemingly an airport staff exits.

9.59.28 a.m : A man (airport staff) enters

10.00.07 a.m : A passenger enters.

10.00.10 a.m: A3 and the person in blue shirt exit.

6.21. From the above, it is seen that A1 was in the toilet area between 9.56.21 a.m and 9.58.08 a.m i.e totally for only 1 minute and 47 seconds approximately. When A1 and A3 were there inside the toilet, 3 more people viz., the passenger in a wheel chair, his mobility assistant of Jet Airways and the passenger with back pack were also there inside the toilet.

(a). Question that arose was would A1 pass on the contraband gold to A3 when 3 more persons including a Jet Airways Staff was inside the toilet?

(b). Also, since there were no telephone calls between A1 and A3, an allegation could not be made that their meeting in the toilet was pre-planned for the purpose of smuggling of gold

(c). Since complete footage of the area was not available, allegations could not be levelled on A3.

6.22. The case of smuggling against A3 and A1 was decided on the basis of the circumstantial evidence and not facts.

6.23. In support of the contention that when a cross-examination was denied, the impugned order stood vitiated by breach of principles of natural justice and rendered the impugned order as a nullity, A3 has relied upon case laws viz, (2016) 15 SCC 785 ; 2015 (324) E.LT 641 (S.C.) ; 2017 (50) S.T.R. 93 (Andaman Timber Industries v. Commissioner of Central Excise, Kolkata II); (2005) 10 SCC 634 ; 2002 (143) E.L.T. 21 (S.C.) (Lakshman Exports Ltd. v. Collector of Central Excise),; etc. From the principles laid down by the Courts, the circumstance of 'seen together' would normally be taken into consideration for finding the accused guilty of the offence charged with only when it was established by the prosecution that they were found together. But in the present case, it has not been proved that A3 and A1 were seen together in the morning on 8-4-2018 between 9.56.21 a.m and 9.58.08 a.m in the toilet. Even if it was to be accepted that they both had entered into the toilet, there was no conclusive proof or eye witness to prove that they both had met inside



the toilet. On 8-4-2018. A3 was in his uniform and he would not have indulged in commission of any crime when others were present.

- 6.24. A3 has re-iterated these submissions which had been already made in the replies to the SCN since the OAA had failed to take it into consideration while deciding the case. The replies of A3 to the SCN should be considered while deciding the case.
- 6.25. A3 has relied upon a host of case laws on the issue of F.M gold. One among the citations relied upon is a case of Jitendra Pawar vs. Commissioner of Customs, 2003 (156) ELT 622, wherein on the issue of smuggled nature of goods, mere foreign marking not sufficient since at the time gold could be freely imported and was available in the market for sale, evidence to prove smuggled nature not found.
- 6.26. A3 had not committed any act of omission or commission which could be termed as a crime or manifesting of a smuggling activity. The test in such a case was to see whether the act was such that it gave rise to an inference that A3 was an offender. The case against A3 fails in this test. A3 was never concerned with acquiring possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing or in any other manner dealing with any prohibited goods which he knew or had reason to believe was liable to confiscation under section 111. Therefore, A3 was not liable for any penal action u/s 112 of Customs Act, 1962.
- 6.27. In the additional submissions dated 29.08.2022, A3 has reiterated his earlier submissions and has emphasized that cross-examination of the witnesses had not been allowed especially considering that there were allegations made against the department of fraud, manipulations etc and principles of natural justice had been violated.

Under the circumstances, in their revision application A3 has prayed to the Revision Authority that he was not liable for any penal action under Section 112 of the Customs Act, 1962 and the same may be set aside.

7.1. Personal hearings in the case in respect of A1 and A2 was scheduled for 21.11.2022. Shri. N.J Heera, Advocate appeared before the Revisionary Authority on 21.11.2022 and reiterated earlier submissions. He further submitted that gold was recovered from a market place 8 km from airport from applicant (A2) who was not a passenger, gold has no marking and therefore

this is not a case of Section 111 of the Customs Act. On being asked that Mega Jewellers had stated that no purchase was made from them, he submitted that it is because purchase was in cash. He requested to release the small gold quantity unconditionally.

8.2. Personal hearings in the case in respect of A3 was scheduled for 21.11.2022. Shri. Aditya Talpade, Advocate appeared before the Revisionary Authority on 21.11.2022 and reiterated their written submissions. They further submitted that applicant did not help the main accused. He also submitted that if Department had information about applicant, they should have acted when he was allegedly carrying gold. He also raised doubt about genuineness of panchanama. They requested to drop the penalty.

9. The Government has gone through the facts of the case. The applicants have made an exhaustive submission of case laws and have submitted copies including, panchanama, SCNs, statements recorded, their submission before the lower authorities, Inquiry Report etc.

9.01. Government notes that A3 who was working as Head Hawaldar at CSMI Airport has contended that the Inquiry Report in the matter which was in his favour had not been considered by the OAA while deciding the case. A3 has stated that the same had been submitted before the OAA, however, it is alleged that the OAA had not taken cognizance of the same and that principles of natural justice had been violated.

9.02. Government notes that the Inquiry Report had been issued on 30.01.2020 and the last date of personal hearing granted to the applicants by the OAA was on 19.01.2021. It is recorded that none of the applicants had

appeared on the said appointed date and the OAA had proceeded with the Order.

9.03. Government observes that the Inquiry Officer had framed two Articles of Charge against A3 [the Charged Officer (OC)] in the Charge Memorandum which were as under;

**Article of Charge - I :** *That the CO (A3) while posted at Uniform 'C' Batch, CSI Airport Mumbai, connived with one Shri. Ramesh Bhalchand Kachhela (A2) to smuggle gold out of CSI Airport, Mumbai in lieu of monetary consideration of Rs. 25,000/- and thus intended to cause loss to the Government Exchequer.*

**Article of Charge - II:** *That the CO while posted at Uniform 'C' Batch, CSI Airport, Mumbai on 08.04.2018, received two cut pieces of gold bars collectively weighing 600 gms valued at Rs. 17,08,128- in the washroom near Belt No. 10 of the Arrival Hall, CSI Airport, Mumbai from a Passenger, Dilip Bhalchand Kashela (A1) who had arrived from Bangkok by Jet Airways Flight No. 9W-61 on 08.04.2018 and smuggled out the said gold bars out of CSI Airport, Mumbai and delivered it to Shri. Ramesh Kachhela (A2) and received the illegal gratification of Rs. 25,000/-, thereby compromised Government revenue.*

9.04. The Inquiry Officer in the proceedings had examined the documents relied upon by the department, written submissions made by CO and prosecution witnesses including A1, A2 and panch witnesses mentioned in the seizure panchnama, confrontation panchnama, AIU Officers who had drawn the seizure and confrontation panchanamas and Government Valuer had testified in the proceedings.

9.05. The Inquiry Officer after comprehensively considering the documents, written submissions, evidence from cross-examination / testimonies of the departmental as well as defence witnesses, submissions made by presenting officer and CO, CCTV footage and all other evidences, arrived at the following,

(a). the seizing officer (i). could not explain suitably the discrepancy between the dates recorded in the seizure panchanama and the dated signature of the Pancha witnesses. It was recorded that the panchanama had ended at 9:00 p.m on 08.04.2018 whereas, the date on the signatures of the Pancha witnesses was 09.04.2018., (ii). he admitted that there were no eyewitnesses to receiving of gold at the airport from any person or handing over of gold to A2 outside the airport or in the autorickshaw., (iii). even the CCTV footage retrieved later on of the area near the washroom had not revealed any misdoings by CO.

(b). Ms. Asha A Malve, (P2 in seizure cum valuation panchanama) had (i). firmly testified that the seizing Officer, was not telling the truth that he had summoned her at 7:30 p.m on 08.04.2018 to act as a panch witness when she had come on duty only at 10:00 pm on 08.04.2018. She stated that her night duty was much later from 10:00 p.m to 7:00 a.m on 09.04.2018. (ii). she had signed the seizure panchnama on 09.04.2018 and it was not a mistake that she had put the date of 09.04.2018 and not 08.04.2018., (iii). she had no idea when the jeweller, viz, Shri. Pravin R Patel had been called to the AIU office., (iv). She had no idea about the testing or markings on the two pieces of gold bars.(iv). She confirmed that she could not have been inside the airport from 07.30 pm to 9:00 pm on 08.04.2018 because when they went off duty as per procedure they surrendered their airport entry passes to their office and collected it when they come back on the next day.

(c). Shri. Vishwas Sudam Pawar (P1 in seizure cum valuation panchanama) had given testimony on similar lines as that of Ms. Asha Arjun Malve which revealed that the seizure cum valuation panchanama could not be relied upon.

(d). Shri. Pravin R. Patel, Government Valuer had admitted that the two pieces gold weighing 600 gms did not bear any foreign marking and there was a

possibility that the same could have been purchased from the local market. There was no evidence that the 600 gms of gold was of foreign origin and had been smuggled into India.

(e). Shri. Rakesh Pandey, Defence Witness testified that he had handed over Rs. 23,000/- to the CO on 08.04.2018 when he was travelling with A2 in the rickshaw at Marol. Of this Rs. 13,000/- was the return of a loan given to him in March, 2017 and the remaining Rs. 10,000/- was given as a loan to the CO.

(f). At para 26 of the Inquiry Report, the Inquiry Officer has held as under;

*Para 26. In light of the above and many other anomalies in the facts, timings and documents that have come on record and have been confirmed by the Departmental Witnesses themselves, I find it very difficult to accept that either of the two Articles of Charge was Proved during the Inquiry conducted by me. On basis of false facts being represented before me, it would be miscarriage of justice to hold the Articles of Charge as proved against the CO.*

(g). At para 27 of the Inquiry Report, the Inquiry Officer has concluded as under;

*Para 27. I therefore am left with no option but to hold as under:*

*Article of Charge-I : Not Proved*

*Article of Charge-II : Not Proved*

10.01. Government notes that while concluding that both the afore-stated articles of charge had not been proved, the Inquiry Officer has made very serious and grave observations. Government notes that the Inquiry Report had exposed multiple discrepancies. With all these anomalies, discrepancies and inconsistencies pointed out in the Inquiry Report, Government finds that the allegations against A3 lacks substantiation by credible evidence.

10.02. Government also observes that facts narrated reveal that the Investigating agency had specific information that A3 would be collecting gold

from an International passenger and would be handing it over to some person waiting outside the airport. When specific information was available, no valid and cogent reason was cited for allowing A3 and A2 to proceed and move away from the airport. Also, adequate time was available with the investigating agency to plan, formalize a strategy and intercept the applicants including A1 and make a strong case. Since, this was not done, sufficient evidence was required to be produced to establish connivance of A3, if any. Government finds that charge against A3 has not been substantiated.

11. On the issue of the two cut pieces of gold bars recovered at some distance away from the airport i.e. near Chandivali, the same was found without any foreign markings, which allowed A1 and A2 to claim that they were local purchases. However, M/s. Mega Jewellers had stated that they had raised an invoice, but they had not made delivery of the gold bars to A2.

12.1. The relevant sections of the Customs Act are reproduced below :

**Section 2(33)**

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

**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.

### Section 125

Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it *may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

12.2. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by the banks authorized by the RBI or by others authorized by DGFT and to some

extent by passengers. Therefore, gold which is a restricted item for import but which was imported without fulfilling the conditions for import becomes a prohibited goods in terms of Section 2(33) and hence it was liable for confiscation under Section 111(d) of the Customs Act. Section 123 places burden of proof on the person from whom gold is seized. Gold was seized from A2. A2 attempted to discharge that burden by producing a purchase Invoice from M/s. Mega Jewellers. Investigation revealed that the same was not a genuine transaction. Thus, A2 could not discharge that burden. Therefore, the seized gold was liable for confiscation under these Sections.

13.1. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that “ *if there is any prohibition of import or export of goods under the Act or any other law for the 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 goods are not complied with, it would be considered to be prohibited goods. .... Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus 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”.

13.2. Further, in para 47 of the said case the Hon'ble High Court has observed “*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to*



*check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....". Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicants thus, liable for penalty.*

14. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society at large. Thus, adjudicating authority can allow redemption under Section 125 of any goods which are prohibited either under the Customs Act or any other law on payment of fine but he is not bound to so release the goods.

15. Hon'ble Supreme Court in case of M/s. Raj Grow Impex [*CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021*] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below;

*71. Thus, 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;*

*and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

16. In the instant case, it is noted that quantity of gold was not large or commercial. No case was made out that either A1 or A2 was a habitual offender. In these circumstances, absolute confiscation of gold leading to dispossession of the gold is harsh and excessive. Hence, Government is inclined to set aside the absolute confiscation and grant an option to A2 to redeem the 2 cut pieces of gold bars valued at Rs. 17,08,128/- on payment of a redemption fine, penalty and applicable duty.

17. Government finds that the penalty of Rs. 2,00,000/- imposed on A1 under Section 112(a) of the Customs Act, 1962, is too harsh when gold has not been recovered from him and no credible evidence could be produced to establish that gold was brought by him. Government is inclined to substantially reduce the same.

18. The gold was recovered from A2 and as discussed in the preceding para, as required under Section 123 of the Customs Act, 1962, no credible evidence could be produced by him showing that he had made local purchases. Thus, A2 had made himself liable for penalty under Section 112(b) of the Customs Act, 1962. However, Government notes that the quantum of penalty of Rs. 2,00,000/- imposed on A2 is harsh and is inclined to reduce the same.

19. Penalty of Rs. 3,00,000/- was imposed on A3 under Section 112(b) of the Customs Act, 1962. For the reasons discussed above, especially the Inquiry Report, wherein panchanama itself has been doubted, money recovered has been reasonably explained, no incriminating electronic or documentary evidences could be produced, Government finds that evidence is not sufficient to conclude that A3 had connived with A1 or A2. Hence, Government is inclined to waive off the penalty imposed on A3.

20. On the issue of confiscation of cash amount of Rs. 25,000/- under Section 119 of the Customs Act, 1962, Government observes that the same has been invoked in the SCN at para 26. However, without going into the issue that the same had been confiscated under a Section which had not been invoked, Government finds that for the reasons as mentioned above, confiscation of Rs. 25,000/- is set aside.

21. For the aforesaid reasons, Government modifies the impugned Order-In-Appeal F.Nos MUM-CUSTOM-PAX-APP-351/2022-23 dated 26.05.2022 as under;

(i). Government sets aside the absolute confiscation upheld in the OIA. The 2 cut pieces of gold bars, totally weighing 600 grams and valued at Rs. 17,08,128/- are allowed to be redeemed on payment of a redemption fine of Rs. 3,00,000/- (Rupees Three Lakhs only),

- (ii). The penalty of Rs. 2,00,000/- imposed on A1 under Section 112(a) of the Customs Act, 1962 is reduced to Rs. 50,000/- (Rupees Fifty Thousand only),
- (iii). The penalty of Rs. 2,00,000/- imposed on A2 under Section 112(b) of the Customs Act, 1962 is reduced to Rs. 1,00,000/- (Rupees One Lakh only),
- (iv). The penalty of Rs. 3,00,000/- imposed on A3. by the OAA under Section 112(b) of the Customs Act, 1962 is quashed.
- (v). The confiscation of the cash amount of Rs. 25,000/- recovered from A3, is set aside. The same is to be returned back to A3.

22. The three Revision Applications are decided on the above terms.

*Shrawan*  
*14/02/23*

(SHRAWAN KUMAR)

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

ORDER NO. <sup>233-235</sup> /2023-CUS (WZ)/ASRA/MUMBAI DATED 14.02.2023

To,

1. Shri. Dilip B. Kashela, Room No. 8, Opp. Barack No. 246, Near Jhulelal Mandir, Ulhasnagar, Thane - 421 002.
2. Shri. Ramesh B. Kacchela, Room No. 8, Opp. Barack No. 246, Near Jhulelal Mandir, Ulhasnagar, Thane - 421 002.
3. Shri. B.N Panigrahy, 396/4616, Vrindavan CHS, Tagore Nagar Road No. 5, Vikhroli (East), Mumbai - 400 083.
4. Principal Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Level - II, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. G.P.O, Fort, Mumbai - 400 001.
2. Shri. Aditya Talpade, Advocate, 7, Trimurti Residency, J.B. Nagar, Andheri East, Mumbai - 400 059.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Notice Board.