

F.No. 371/236 & 237/B/WZ/2022-RA
F.No. 371/192 & 242/B/WZ/2021-RA
F.No. 371/191/B/WZ/2021-RA

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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. 371/236 & 237/B/WZ/2022-RA
F.No. 371/192 & 242/B/WZ/2021-RA
F.No. 371/191/B/WZ/2021-RA

3705 : Date of Issue 17.05.23

ORDER NO. 156-160/2023-CUS (WZ) /ASRA/MUMBAI DATED 12.05.2023 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.

F.No. 371/236 & 237/B/WZ/2022-RA

Applicant : Shri. Virendra Mehta, (referred to as Applicant No. 1 / A1),

Applicant : Shri. Mayur Virendra Mehta, (referred to as Applicant No. 2 / A2),

F.No. 371/192 & 242/B/WZ/2021-RA

Applicant : Shri. Mayur Virendra Mehta, (referred to as Applicant No. 2 / A2),

Applicant : Shri. Prakasam Kanniah (referred to as Applicant No. 3 / A3),

F.No. 371/191/B/WZ/2021-RA

Applicant : Shri. Mayur Virendra Mehta, (referred to as Applicant No. 2 / A2)

Respondent : Pr. Commissioner of Customs (Airport), CSI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the undermentioned four Orders-in-Appeal, all passed by the Commissioner of Customs

(Appeals), Mumbai – III.

(i). MUM-CUSTM-PAX-APP-1636 & 1637/2021-22 dated 08.02.2022 issued on 10.02.2022 through F.No. S/49-816 & 817/2021 [F.No. 371/236 & 237/B/WZ/2022-RA]

(ii). MUM-CUSTM-PAX-APP-2057/2020-21 dated 25.03.2021 issued on 30.03.2021 through F.No. S/49-1138/2019. [F.No. 371/192/B/WZ/2021-RA]

(iii). MUM-CUSTM-PAX-APP-07/2021-22 dated 09.04.2021 issued on 15.04.2021 through F.No. S/49-133/2020. [F.No. 371/242/B/WZ/2021-RA]

(iv). MUM-CUSTM-PAX-APP-1919/2020-21 dated 25.03.2021 issued on 26.03.2021 through F.No. S/49-695/2020. [F.No. 371/191/B/WZ/2021-RA]

ORDER

These 5 revision applications have been filed by (i). Shri. Virendra Mehta, (ii). Mayur Virendra Mehta and (iii). Shri. Prakasam Kannaiyah (herein referred to as the Applicants or alternately and more specifically referred to as Applicant no. 1 / A1, Applicant No. 2 / A2 and Applicant No. 3 / A3 resp.) against the four Orders-in-Appeal Nos., mentioned at Table No. 1 below, all passed by the Commissioner of Customs (Appeals), Mumbai – III,

TABLE No. 01.

Sl. No.	Orders-in-Appeals Nos.	Appeals filed by	Order-in-Original nos.	R.A F.No. & Applicant filing details
(a).	(b).	(c).	(d).	(e).
1.	MUM-CUSTM-PAX-APP-1636 & 1637/2021-22 dated 08.02.2022 issued on 10.02.2022 through F.No. S/49-816 & 817/2021.	A1 & A2	O-I-O No. ADC/VDJ/ADJN/105/2020-21 dated 16.03.2021 issued through [F.No. S/14-5-128/2018-19 Adjn (SD/INT/AIU/170/2017 AP 'A)]	371/236 & 237/B/2022 (i). Virendra Mehta (A1)& (ii). Mayur Virendra Mehta (@ Raja Bhai, Sagar, A2)
2.	MUM-CUSTM-PAX-APP-2057/2020-21 dated 25.03.2021 issued on 30.03.2021 through F.No. S/49-1138/2019.	A2	O-I-O No. ADC/AK/ADJN/177/2019-20 dated 30.09.2019 issued on 04.10.2019 through [F.No. S/14-5-193/2018-19 Adjn (SD/INT/AIU/233/2017 AP 'A)]	371/192/B/WZ/2021 (i). Mayur Virendra Mehta (A2) @ Raja Bhai, Sagar 371/242/B/WZ/2021
3.	MUM-CUSTM-PAX-APP-07/2021-22 dated 09.04.2021 issued on 15.04.2021 through F.No. S/49-133/2020.	A3	O-I-O No. ADC/AK/ADJN/177/2019-20 dated 30.09.2019 issued on 04.10.2019 through [F.No. S/14-5-193/2018-19 Adjn (SD/INT/AIU/233/2017 AP 'A)]	371/242/B/WZ/2021 (i). Prakasam Kannaiyah (A3) @ Prakash

4.	MUM-CUSTM-PAX-APP-1919/2020-21 dated 25.03.2021 issued on 26.03.2021 through F.No. S/49-695/2020.	A2	O-I-O No. ADC/AK/ADJN/53/2019-20 dated 21.05.2019 issued through [F.No. S/14-5-239/2017-18 Adjn (SD/INT/AJU/253/2017 AP 'A)]	371/191/B/WZ/2021 (i). Mayur Virendra Mehta (A2)
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2. Brief facts of the cases are, as under ;

2(a)(i). The chronological matrix of the case in brief is that (i). on 22.07.2017, the Customs Officers at CSMI Airport, Mumbai had intercepted two passengers viz (l). Ms. Santhaletchmi Supramaniam, a Malaysian National and (m). Ms. Magisvary Jairaman, a Singaporean National who had arrived by Jet Airways Flight No. 9W 009 dated 22.07.2017, after they had cleared themselves through the green channel. The search of these passengers had resulted in the total recovery of 4000 grams (i.e. 2000 gms each) of crude gold consisting of kadas and chains, of 24Kts purity and totally valued at Rs. 1,03,27,680/- (i.e. Rs. 51,63,840/- each).

(ii). In immediate follow up action, one person named Mr. Anand Mohan Mishra who was supposed to collect the crude gold was apprehended outside the airport. He was found in possession of INR 50,000/- and 09 grams of gold of 24Kt and revealed that on the instructions given by Mr. Prakash of Singapore, he was supposed to escort the said two passengers to a hotel in Mumbai and then deliver the gold to Mr. Raja bhai at Zaveri Bazar; that Raja bhai used to make payments towards the cost of the gold, through angadia service, to one Shri. Pathu who is based at Chennai; that this money was then routed to Mr. Prakash in Singapore through hawala transaction; that he (Anand) had delivered almost 70-75 kgs gold in the past few months on 16-17 occasions to said Raja bhai; that the owner of the shop viz M/s. Venus Bindi Collection at 1st floor, Glitz Mall, Kalbadevi was the actual receiver of the seized gold.

(iii). The investigating agency visited the Glitz mall to secure CCTV footage of the Mall premises. On enquiry, it was gathered that the hard drives containing CCTV footage had been replaced. The same were retrieved from the terrace of the building where they had been hidden. Investigations carried out revealed that the hard disk containing

CCTV footage were replaced at the instance of A1; that A1 was the father of A2; that A2 was the owner of the said shop at Glitz mall i.e. Shop no. 110A, 1st Floor, Glitz Mall, Vithalwadi, Kalbadevi and A1 had requested for deleting the CCTV footage as his son viz A2 was involved in a case at CSI Airport;

(iv). A1 in his statement had admitted that he had requested for deleting the CCTV footage as he knew that the Customs Authority had visited shop no. 110 at Glitz Mall and that his son viz, A2 had been called at the CSI Airport in a case of smuggling of gold; that A1 had paid Rs. 20,000/- to defray the cost of the new hard disc; A1 had confirmed and corroborated the statements given by the Security Supervisor and Secretary, both of the Glitz Mall and the CCTV service provider;

(v). Statement of A2 was recorded but he had given vague details about his business of bindis and had not produced any purchase bills or sales bills of his business deals. CCTV footage of various days showing Anand Mishra frequently visiting his shop at Glitz Mall were shown to A2, but he stated that Anand Mishra came to his shop to enquire about supply of bindis; he was confronted with the video on the days when Anand Mishra had visited his shop after having collected smuggled gold from various arriving passengers; however, A2 stated that Anand Mishra had visited in connection with his bindi business; photograph of A3 and said Pathu were also shown to A2 but he denied knowing these persons;

2(b). (i). When the investigations of the above case were going on (i.e. mentioned at para 2(a)(i) to (v), above), another two passengers viz Mr. Vickneswaran and his wife viz, Mrs. Kelly Anne Gnanamuthuammal Louis, both Singaporean Nationals were intercepted at CSI airport on 14.09.2017. The search of these passengers had resulted in the total recovery of 2400 grams of crude gold consisting of kadas and chains, of 24 Kts purity and totally valued at Rs. 66,19,800/-. Based on the information provided by these two passengers, a person viz, Rahul Gaikwad was picked up from the Airport Metro Hotel, Marol, Mumbai who had come forward to collect the gold.

(ii). Mr. Rahul Gaikwad informed that Mr. Prakash had instructed him to collect the gold and reach Kalbadevi to deliver the gold; that near Shruti Hotel on Kalbadevi Road he would meet Raja bhai; that accordingly, he was allowed to go there and was trailed by the officers; that there, he (Rahul Gaikwad) met Raja bhai who took him to a nearby building and gave him Rs. 50,000/-; that when Raja bhai asked for the gold, he was immediately apprehended by the Officers of Customs;

(iii). In his statement, Raja Bhai admitted that his name was Mayur Mehta (i.e. A2) and was known by names such as Raja Bhai or Sagar; he had come to Shruti Hotel, Kalbadevi to take delivery of the gold from Rahul Gaikwad who had received the same from two passengers; that he was told by Prakash alias Ganeshan to go to Shruti Hotel and collect 2400 grams of gold and was also to pay him (Rahul) Rs. 50,000/- towards the gold delivered to him on 12.09.2017; that he had received same quantity of gold on 6 earlier occasions from Rahul Gaikwad and made a total payment of Rs. 2,20,000/- to him; that one Shiva who was employee of Mr. Prakash had introduced him to Rahul Gaikwad and told him that he (Rahul) would bring gold in place of Mr. Anand Mishra; that A2 recognised the photograph of Mr. Anand Mishra and admitted that in the past 3 months, he had received gold more than 50 times from Mr. Anand Mishra; A2 revealed that he was also known by his *alias* viz Raja bhai and Sagar; that his name was Mayur Mehta that he had given the gold to persons / companies as per the instruction of Mr. Prakash; that he always used to receive gold from Mr. Anand Mishra at his shop i.e. 110A, 1st Floor, Glitz Mall, Vithalwadi, Kalbadevi; A2 had admitted that Mr. Anand Mishra would come to his shop and meet him; that afraid of the repercussion, A2 did not divulge the names of the persons / companies to whom he had delivered the gold; that he was getting 4 to 6% of the sales proceeds of the gold; that the money for Prakash was sent to Chennai through angadias;

(iv). The two passengers viz Vickneswaran and Ms. Kelly Anne identified the photograph of Mr. Anand Mishra and stated that on the previous occasion they had delivered the gold to him as per the instruction of Mr. Prakash. Mr. Anand Mishra too

admitted that he had received the gold from these passengers and had handed over the same to A2.

2(c)(i). When the investigations of the above two cases were going on (i.e. mentioned at paras 2(a)(i) to (v) and 2(b)(i) to (iv), above), another two passengers viz Ms. Kanaeswary Isaac and Ms. Shalini P. Rajendran both nationals of Singapore were intercepted by Customs at the CSMI Airport, Mumbai on 27.09.2017. The search of these passengers had resulted in the total recovery of 2000 grams of crude gold consisting of kadas and chains, of 24Kts purity and totally valued at Rs. 56,37,480/-. The said two passengers revealed that the gold had been given to them by one person named Mr. Prakash, based in Singapore and had been instructed to hand over the same to one person who would meet them at Hotel FabAdlon, Sakinaka, Andheri (E), Mumbai. Ms. Shalini P. Rajendran accepted that this was her sixth visit to India and in all her earlier five visits she had carried gold. She identified the photograph of Anand Mishra which was shown to her and stated that she had handed over the gold to him during her previous three visits;

(ii). In his statement, Anand Mishra admitted that he had met Ms. Shalini Rajendran on 2-3 occasions in the past and had received the gold parcels; that he used to receive the gold sent by Prakash alias K. Prakasam of Singapore and as instructed he would deliver the parcels to A2 alias Raja bhai; that he identified Mr. Prakash as the same K. Prakasam.

(iii). In his statement, A2 stated that he did not recognize the two ladies but identified Anand Mishra; that earlier, two more cases had been booked against him.

2(d). Investigations carried out revealed that Mr. Prakash alias Mr. Prakasam Kannaiah was the mastermind of the entire smuggling operation of gold into India from Singapore. Summons were issued to him. Since, he did not turn up, a look out circular (LOC) dated 20.11.2017 was issued in his name. Based on the LOC, later, A3 was

intercepted at Chennai International Airport by Bureau of Immigration, Chennai Airport. In his statement dated 05.06.2018, A3 stated that he started companies in Singapore for trading in gold viz M/s. Jothis Gold Jewellery, Jothimani Pte. Ltd., Singapore Gold Mart, etc; that he had a travel agency in India viz, M/s. Jyothimani Travels at Chennai which was managed by his manager, viz, Mr. Badmanabhan alias Pathu; that he knew Ms. Santhaletchmi Supramaniam and Ms. Magisvary, who had been arrested in India for smuggling of gold; that he had instructed them to carry gold and evade payment of Customs duty; that he was not the owner of the gold and got it on credit; that after its sale, he used to share the profits with the actual owners of the gold in Singapore; that the notebook recovered during the searches and bearing the name 'Ashish Kumar' pertains to the details of the gold procured by him from M/s. Growmore Pte Ltd., a company owned by 'Mr Ashish Kumar'; the notes in the book / diary had been written by him; the names of the passengers to whom he had handed over the gold were written in the notebook; that he knew Mr. Vickneswaran and his wife Ms. Kelly Anne Louis and had offered them monetary consideration for carrying gold to India; that he knew Rahul Gaikwad and had instructed him to receive the smuggled gold after the arrest of Anand Mishra; that Rahul Gaikwad had received almost 15 kgs of gold; he identified the names of the passengers to whom he had instructed and handed over gold to be smuggled into India; that he also confirmed the hotel bookings made by him for the various passengers who had travelled to India with the gold; that as instructed Anand Mishra used to collect the gold from the passengers and hand over the same to Mayur Mehta; that he was not aware about the buyers of the gold from Mayur Mehta; that Mayur Mehta @ Raja bhai used to send him the consideration of the gold through various carriers after deducting his commission that he used to earn Rs. 1 lakh profit for 1 kg of gold; that the person 'Raza' referred in the whatsapp message was Mayur Mehta alias Raja bhai; that he had smuggled around 100 – 105 kgs of gold into India through passengers who were of Singapore, Malaysian origin.

2(e). The records indicate that extensive investigations including forensic examination of the mobile phones, notebook, whatsapp messages; diaries, confrontation with various persons named, inquiries with the buyers of gold; travel agency, hotels, CCTV footage, identification of photographs, etc were carried out; On conclusion of the investigations, 3 SCNs were issued for the aforesaid three interception of passengers and recovery of gold.

3(a). After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/VDJ/ADJN/105/2020-21 dated 16.03.2021 issued through [F.No. S/14-5-128/2018-19 Adjn (SD/INT/AIU/170/2017 AP 'A')] ordered for the absolute confiscation of the 02 kadas and 16 gold chains, collectively weighing 4000 grams, valued at Rs. 1,03,27,680/- recovered from Ms. Santhaletchmi Supramaniam and Ms. Magisvary Jairaman, the 9 grams of gold recovered from Mr. Anand Mishra, all under Section 111 (d), (1) and (m) of the Customs Act, 1962, also Rs. 50,000/- recovered from Mr. Anand Mishra too was seized under Section 121 readwith Section 123 of the Customs Act, 1962. Besides the two passengers and others involved in the case on whom penalties were imposed, a penalty of Rs. 10 Lakhs under Section 112 (a) and (b) of the Customs Act, 1962 was imposed on A3; a penalty of Rs. 5,00,000/- was imposed on A2 under Section 112(b) of the Customs Act, 1962 and a penalty of Rs. 2,00,000/- was imposed on A1 under Section 112(a)(i) of the Customs Act, 1962.

3(b). After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/AK/ADJN/177/2019-20 dated 30.09.2019 issued on 04.10.2019 through [F.No. S/14-5-193/2018-19 Adjn (SD/INT/AIU/233/2017 AP 'A')] ordered for the absolute confiscation of the gold weighing 2400 grams, valued at Rs. 66,19,800/- recovered from Mr. Vickneswaran and Ms. Kelly Anne G Louis under Section 111 (d), (1) and (m) of the Customs Act, 1962. Besides the two passengers and others involved

in the case on whom penalties were imposed, a penalty of Rs. 5 Lakhs under Section 112 (a) and (b) of the Customs Act, 1962 was imposed on A3; a penalty of Rs. 2,00,000/- was imposed on A2 under Section 112(b) of the Customs Act, 1962. Also, the Rs. 50,000/- recovered from A2 and Rahul Gaikwad was confiscated under Section 121 of the Customs Act, 1962.

3(c). After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/AK/ADJN/53/2019-20 dated 21.05.2019 issued through [F.No. S/14-5-239/2017-18 Adjn (SD/INT/AIU/253/2017 AP 'A')] ordered for the absolute confiscation of the gold weighing 2000 grams, valued at Rs. 56,37,480/- recovered from Ms. Kanaeswary Isaac and Ms. Shalini P. Rajendran under Section 111 (d), (1) and (m) of the Customs Act, 1962. Besides the two passengers and others involved in the case on whom penalties were imposed, a penalty of Rs. 1 Lakh under Section 112 (a) and (b) of the Customs Act, 1962 was imposed on A2;

4(a). Aggrieved by the aforesaid Order-In-Original dated 16.03.2021, the applicants i.e. A1 & A2 preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai – III only on the specific issue of penalties having been imposed on them. The AA vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-1636 & 1637/2021-22 dated 08.02.2022 issued on 10.02.2022 through F.No. S/49-816 & 817/2021, [F.No. 371/236 & 237/B/WZ/2022-RA] upheld the penalties imposed by the OAA.

4(b). Aggrieved by the aforesaid Order-In-Original dated 30.09.2019, the applicant i.e. A2 preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai – III only on the specific issue of penalty having been imposed on him. The AA vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-2057/2020-21 dated

25.03.2021 issued on 30.03.2021 through F.No. S/49-1138/2019 [F.No. 371/192/B/WZ/2021-RA] upheld the penalty imposed by the OAA.

4(c). Aggrieved by the aforesaid Order-In-Original dated 30.09.2019, the applicant i.e. A3 preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai – III only on the specific issue of penalty having been imposed on him. The AA vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-07/2021-22 dated 09.04.2021 issued on 15.04.2021 through F.No. S/49-133/2020. [F.No. 371/242/B/WZ/2021-RA] upheld the penalty imposed by the OAA.

4(d). Aggrieved by the aforesaid Order-In-Original dated 21.05.2019, the applicant i.e. A2 preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai – III only on the specific issue of penalty having been imposed on him. The AA vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1919/2020-21 dated 25.03.2021 issued on 26.03.2021 through F.No. S/49-695/2020 [F.No. 371/192/B/WZ/2021-RA] upheld the penalty imposed by the OAA.

5. Aggrieved by the OIA mentioned at para 4(a) above, A1 has filed this revision application i.e. [F.No. 371/236/B/WZ/2022-RA] on the undermentioned grounds of revision;

5.01. that the impugned Order is illegal, bad in law and cannot be sustained; that the same has been passed without considering the law as applicable, vital and relevant facts and evidences on record and also in gross violation of the principles of natural justice; that the impugned order appears to be arbitrary, sans any logic and without any sustainable evidence; that the impugned Order is passed in a prejudicial and biased manner without application of mind and thus, was liable to be set aside.

5.02. that the AA had failed to appreciate that if the allegation and charges as levelled against the Applicant (A1) were taken on their face value, then too, no penalty was imposable on him u/s 112 (a) of the Customs Act 1962, as

held by the OAA; that A1 had no role in the illegal importation/smuggling of the confiscated 4 Kg gold or allegation of dealing with the offending goods in any manner; that alleged role of A1 was that he had removed the hard disc of the CCTV installed in the Society premises, where the shop of his son viz, Mr. Mayur Mehta (A2) was located; that the same had been subsequently taken over and seized by the Customs Officers; that no other role whatsoever had been attributed to A1 in the alleged smuggling of the seized gold or any other infringement of the Customs Act.

- 5.03. that the sub-Section 112(a) was applicable to any act or omission which rendered the goods liable for confiscation during the import or abetment thereof; that in the case of A1, no such allegation or averment had been made; that the alleged act of removal of hard disc of the CCTV installed in the Society's premises did not render the smuggled goods (Gold in the case) as liable for confiscation; that the alleged act by A1 was consequent to the seizure of Gold and would not render the goods liable to confiscation.
- 5.04. that the AA had failed to appreciate that Original Authority had confiscated the 4 Kg of gold for violation of Section 111 (d), (l) & (m) of the Customs Act while in the show cause notice it was proposed for imposition of penalty on A1 under Section 112 (a) and/ or 112 (b); that the role of A1 cannot by any no stretch of imagination render the goods liable for confiscation, attracting penalty u/s 112(a) of the Customs Act 1962.
- 5.05. that the lower authorities had relied only on the statements recorded u/s 108 of Customs Act, 1962 and arrived at the findings; that A1's request for examination / cross examination of the witnesses had not been considered by the OAA;
- 5.06. that the AA had failed to appreciate that evidences in the form of statements was not adducible as evidence as the procedure prescribed under Section 138B of the Act had not been followed; that the law on the subject was well settled;
- 5.07. that the findings arrived at by the AA were merely reproduction of the findings arrived at by the original authority; that the AA had failed to give any cogent, logical and valid findings on the grounds mentioned by A1;

Under the circumstance, A1 has prayed to the revision authority to set aside the impugned order with consequential relief.

6. Aggrieved by the OIA mentioned at para 4(a) above, A2 has filed this revision application i.e. [F.No. 371/237/B/WZ/2021-RA] on the undermentioned grounds of revision;

- 6.01. that the impugned Order is illegal, bad in law and cannot be sustained; that the same has been passed without considering the law as applicable, vital and relevant facts and evidences on record and also in gross violation of the principles of Natural Justice; that the impugned order appears to be arbitrary, sans any logic and without any sustainable evidence; that the impugned Order was passed in a prejudicial and biased manner without application of mind and thus, was liable to be set aside.
- 6.02. submission was made by A2 that even if the allegations and charges levelled against him are taken at face value, then too, the penalty was not imposable u/s 112 (a) of the Customs Act 1962 as he did not have any role in the illegal importation/smuggling of the confiscated 4 Kg gold as his alleged role was to receive and sell the gold, which had not taken place since gold had been seized at Airport from the two passengers and had not been handed over to the intermediary viz, Mr. Anand Mishra, also; that A2 was slated to play his alleged role in relation to goods confiscated in the instant case, which was a future event and had not taken place; that only if the event had happened, it would then have attracted the provisions of Section 112 (b) of CA 1962; that the AA had failed to consider all these aspects and grounds.
- 6.03. that sub – section 112(a) was applicable to an act or omission which renders the goods liable for confiscation during the import or abetment thereof; that in this case no such allegation and or averment had been made against A2; that in absence of any such allegation and attributing any role to A2 in the alleged smuggling of the 4 kg gold through Mumbai airport on 22.07.2017 was misplaced, no penalty on A2 can be imposed under this said sub section; this issue had been specifically raised before the lower authorities who had failed to give any valid findings.
- 6.04. that A2 had in the past collected and disposed of nearly 50 kgs of the smuggled gold as per instructions of Prakash and the sale proceeds had been illegally sent to China however, the lower authorities had failed to appreciate that, no act or omission in respect of the 4 kgs of gold had been attributed to him (A2); that there was no proposal in the SCN for holding the earlier smuggled gold as liable for confiscation and in view of the above, A2's role on earlier occasions cannot be made applicable or result into any penalty under Section 112, in the present case.

- 6.04. that the lower authorities had relied only on the statements recorded u/s 108 of Customs Act, 1962 for arriving at the findings; that A1's request for examination / cross examination of the witnesses had not been considered by the OAA; that it was settled law, that the OAA should have examined the witnesses whose statements were relied upon in the adjudication proceeding; this requirement under the law had been dispensed with by the lower authorities; that the various judgments on the said issue had held that failure to adhere to the said requirement would result in the statements becoming inadmissible in evidence and cannot be relied upon against A2.
- 6.05. that no evidence whatsoever had been brought on record to demonstrate that the mobile telephone No. 8080136570 was being used by A2 or belonged to him; the OAA had in the OIO used the term that the said no. had been purportedly used by A2 as no valid evidence had been brought forth to the effect that that said mobile was being used by A2; that merely because the mobile phone had been used around Kalbadevi area , the same could not be linked to A2;
- 6.06. that the findings of AA were merely reproductions of the findings arrived at by the OAA and AA had failed to give any cogent, logical and valid findings on the grounds raised by A2.

Under the circumstance, A2 has prayed to the revision authority to set aside the impugned order with consequential relief.

7. Aggrieved by the OIA mentioned at para 4(b) above, A2 has filed this revision application i.e. [F.No. 371/192/B/WZ/2021-RA] on the undermentioned grounds of revision;

- 7.01. that the OIA is illegal, bad in law and unsustainable, has been passed in a mechanical manner without considering the law as applicable, vital and relevant facts and evidences on record and also in gross violation of the principles of Natural Justice; that impugned order is based on assumptions and presumptions, arbitrary, sans any logic and without any sustainable evidence, has been passed in a prejudicial and biased manner without application of mind and is thus liable to be set aside.
- 7.02. that even if the allegations and charges as levelled against A2 were taken on their face value, even then no penalty was imposable u/s 112 (b) of the Customs Act 1962, as he (A2) had no role nor had dealt with the impugned

- goods (confiscated 2.4 Kg gold) which were seized while being attempted to be smuggled; that A2's role was to receive and sell the gold, which was yet to take place in the instant case as the gold was seized at Airport only from the passengers had not even handed over to any intermediary or himself (A2); that at the best A2 was slated to play his alleged role in relation to goods confiscated in the instant case, which was a future event yet to take place and if happened would have attracted the provisions of Section 112 (b) of CA 62.
- 7.03. that the Sub-Section 112(b) was applicable to the person who had acquired possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knew or had reason to believe was liable to confiscation under section 111; that in this case there was no such allegation and or averment had been made against A2; that in absence of any such allegation and attributing any role to A2 in the alleged smuggling of the 24 kg gold through Mumbai airport on 14.09.2017, no penalty could be imposed under the said sub section; that failure to appreciate the factual and legal position had rendered the impugned order as bad in law and liable to be set aside.
- 7.04. that the lower authorities had failed to appreciate that no valid and sustainable evidence had been adduced in the entire notice regarding recovery of Rs. 50,000 and/or recovery of phone as no Panchanama was drawn; that panchanama was drawn one year later and this cannot be held as valid evidence, evidencing recovery etc as alleged by the notice; that statements have been retracted;
- 7.05. that no act or omission in respect of the 2.4 kgs of gold confiscated had been attributed to A2; that there was no proposal in the SCN for holding the earlier smuggled gold as liable for confiscation and A2's role on earlier occasions cannot result into any penalty under Section 112, in the present case.
- 7.06. that in the absence of any role / act or omission attributed to A2 in relation to the confiscated consignment of 2.4 Kg of Gold and any valid finding in the impugned order in original, the OIA confirming penalty u/s 112(b) of the Customs Act 1962 is not sustainable.
- 7.07. that A2's request for examination / cross examination of witnesses was not allowed during the adjudication of the case which had prevented him from making effective submissions and presenting his case effectively;
- 7.08. that hearings on 29.01.2019, 05.02.2019 and 12.02.2019, simultaneously were given which has been held by the higher judicial forums as legally not

valid and would not amount to giving 3 opportunities of hearing; that this issue was raised but the OAA had failed to take cognizance of the issue; that failure to do so had resulted in gross miscarriage of justice and impugned OIO was passed in gross violation of principles of natural Justice as passed without giving proper opportunity of hearing which had rendered the impugned order as bad in law.

Under the circumstance, A2 has prayed to the revision authority to set aside the impugned order with consequential relief.

8. Aggrieved by the OIA mentioned at para 4(c) above, A3 has filed this revision application i.e. [F.No. 371/242/B/WZ/2021-RA] on the undermentioned grounds of revision;

- 8.01. that the OIA is against the law, weight of evidence and circumstances and probabilities of the case.
- 8.02. that personal hearing had not been given in the case by the OAA; that a letter for personal hearing was received in which 3 dates had been given; that as per law, 3 dates are to be given through separate letters; that they rely on Vodafone Cellular Ltd vs. UOI case law [2015-323-ELT-81(MAD)]
- 8.03. that the statement had been retracted; that he had been detained at Central Prison, Nashik; that A3 had not handed over the gold to the two passengers; that the statements of the passengers had not been corroborated;
- 8.04. that mere arrangement of hotel accommodation to various persons who are alleged to be involved in smuggling of gold was not an offence.
- 8.05. that independent corroborative evidence had not been found against A3; that suspicion could not take the place of proof;
- 8.06. that on the issue of retraction of statement, A3 has relied upon the undermentioned cases;
 - (a). Viond Solanki vs. UOI [2009-233-ELT-157-(SC)] of Apex Court;
 - (b). Kuldipsingh Amamath Bagga vs. Coll. Of C.Ex [1991-52-ELT-543-Tribunal on the issue of personal penalty had held the same was not imposable merely on the statement of an accomplice without corroboration on material particulars.
 - (c). Surinder Kumar Khanna vs. I.O, DRI [2018-362-ELT-935(SC)] on the issue that the statement of accomplice without corroboration on material particulars cannot be relied upon.

(d). Supdt. Of Customs vs. Haribhai Vallabhbai Tandel [1991-51-ELT-302(BOM)]; that the statement of co-accused not to be made the basis for launching prosecution.

8.07. that the cross-examination of witnesses had not been allowed; In this regard they have relied upon the case of Andaman Timber Industries vs. Commr. Of C.Ex, Kolkata – II [2017-50-STR-93(SC)].

8.08. that neither offending goods nor incriminating evidences had been recovered from A3; that the entire case was based on statements which are contradictory; penal action under Section 112 without evidence was not sustainable; that retracted statements could not be the basis of evidence;

Under the circumstances, A3 has prayed to the Revision Authority to set aside the impugned order and set aside the penalty imposed on him.

9. Aggrieved by the OIA mentioned at 4(d) above, A2 has filed this revision application i.e. [F.No. 371/191/B/WZ/2021-RA] on the undermentioned grounds of revision;

9.01. that the OIA is illegal, bad in law and unsustainable, has been passed in a mechanical manner without considering the law as applicable, vital and relevant facts and evidences on record and also in gross violation of the principles of Natural Justice; that impugned order is based on assumptions and presumptions, arbitrary, sans any logic and without any sustainable evidence, has been passed in a prejudicial and biased manner without application of mind and is thus liable to be set aside.

9.02. that even if the allegations and charges as levelled against A2 were taken at their face value even then no penalty was imposable u/s 112 (b) of the Customs Act 1962, as A2 had no role nor had dealt with the impugned goods (confiscated 2 Kgs gold) which were seized while being attempted to be smuggled; that A2's role was to receive and sell the gold, which was yet to take place in the instant case as the gold was seized at Airport only from the passengers and had not even been handed over to any intermediary or to him (A2); that at the best, A2 was slated to play his alleged role in relation to goods confiscated in the instant case, which was a future event yet to take place and if happened, would have attracted the provisions of Section 112 (b) of CA 62.

9.03. that the AA had failed to appreciate that it was settled position in law that penalty under section 112 cannot be imposed under sub Section 112(a) and

112(b), simultaneously and that the failure to appreciate the same had rendered the impugned Order as bad in law and liable to be set aside.

- 9.04. that the Sub Section 112(b) was applicable to the person who had acquired possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knew or had reason to believe was liable to confiscation under section 111; that in this case there were no such allegation and or averment had been made against A2; that in absence of any such allegation and attributing any role to A2 in the alleged smuggling of the 2.4 kg gold through Mumbai airport on 27.09.2017, no penalty could be imposed under the said sub section; that failure to appreciate the factual and legal position had rendered the impugned order as bad in law and liable to be set aside.
- 9.05. that a proposal for imposition of penalty under Section 112 (a) and/ or 112 (b) was proposed against A2; that role of A2 was detailed at paras 13, 17.3 & 17.4 of the SCN, wherein it was stated that in the past, Anand Mishra had collected and delivered gold to A2; that no act or omission in respect of the 2 kgs of gold, which had been confiscated by the impugned order had been attributed to A2; that there was no proposal in the SCN for holding the earlier smuggled gold as liable for confiscation and in view of the above, A2's role on earlier occasions could result into any penalty under Section 112, in the present case.
- 9.06. that in the absence of any role/act or omission attributed to A2 in relation to the confiscated consignment of 2Kgs of gold and any valid finding thereon, no penalty u/s 112(a) of the Customs Act 1962 could be imposed on him.
- 9.07. that A2's request for examination / cross examination of witnesses had not been allowed during the adjudication of the case which had prevented him from making effective submissions and presenting his case effectively;
- 9.08. that OAA had failed to give any findings on the request of the A2 for cross examination of witnesses and had failed to communicate the outcome of his request which had rendered the impugned order as bad in law and liable to be set aside.

Under the circumstance, A2 has prayed to the revision authority to set aside the impugned order with consequential relief.

10. Personal hearing in the case was scheduled as mentioned below with option to appear for in-person or through the online video conferencing mode.

Table No. 2

Sl.No.	RA nos.	Personal Hearing Dates
1.	371/236 & 237/B/WZ/2022-RA	06.12.2022, 20.12.2022
2.	371/192/B/WZ/2021-RA	06.12.2022, 20.12.2022
3.	371/242/B/WZ/2021-RA	05.01.2023, 19.01.2023, 10.02.2023, 17.02.2023
4.	371/191/B/WZ/2021-RA	Personal hearing for this RA taken with sl. No. 1 above.

10(a). Shri. Ajay Singh, Advocate for A1 and A2 appeared for personal hearing on 30.12.2022 in RA nos mentioned at sl. nos. 1,2 & 4 of Table No. 2 above. He submitted that applicants have never dealt with goods confiscated in any manner as goods never reached them. He further submitted that attempt is not covered under Section 112(a) and (b) of the Customs Act, 1962. He further submitted that applicant no. 1 has been charged with recovery of hard disc in society which is not covered under Section 112(a) and (b) of Customs Act, 1962. He requested that penalty on applicants be set aside or substantially reduced.

10(b). In case of the revision application F.No. 371/242/B/WZ/2021-RA mentioned at sl. No. 3 of Table No. 2 above, the applicant nor his authorized representative appeared for the personal hearings. Sufficient opportunities have been given to the applicant to present and defend his case. Therefore, case is taken up for a decision based on the evidence available on the records.

11. The Government has gone through the facts of the 3 cases. It is observed that in the said 3 OIOs and 4 OIAs referred at Table No. 1, above, a reference to the all 3 cases have been made, therein. It is also, observed that the names and roles of A2 and A3 have appeared in each of the 3 cases & OIOs. From the said OIOs and OIAs, Government notes that a huge quantity of gold (kadas & chains) had been recovered and the roles of A2 and A3 are intertwined in these cases. To comprehend the involvement of A2 and A3 in the smuggling operation or otherwise, it is imperative that the facts / evidence in the 3 cases and facts in the 3 OIOs are taken up together and discussed, holistically. The 3 cases and 3 OIOs taken up holistically, would give a

better understanding of the roles / involvement or otherwise of A2 and A3 and accordingly, to take a judicious view, the 5 RA's have been taken up together for a common and combined decision on the limited issue of penalties imposed therein on A1, A2 and A3.

12. The said three applicants have filed these five revision applications on the limited issue of penalties having been imposed on them. In other words, the confiscation of the gold is not the issue in these five revision applications and therefore, it is clear that on the aspect of confiscation of gold in these 3 cases, the 3 OIOs have attained finality.

13. From the evidence discussed in the 4 OIAs for which revision has been prayed for, Government notes that the services of foreign nationals were used to smuggle gold. All these passengers who had been intercepted and gold had been recovered from them, had revealed that A3 was the owner of the gold and had handed over the gold to them at Singapore with specific instructions that in India the same were to be handed over to his contact man / men such as Anand Mishra, Rahul Gaikwad etc. These persons thereafter, would hand over the gold to A2 who was tasked with the work of disposal of the gold and remitting the proceeds to A3 through his (A3's) representatives based in India.

14. The investigating agency had gathered evidence by way of (a). statements of the passengers, (b). analysis of CCTV footage of the premises of A2, (c). statements of A1, A2 A3 and (d). statements of others involved in the case or referred / named by the passengers, receivers / handlers of the gold, buyers of the gold etc, (e). a diary recovered from A3, (f). call data records of A2, A3 and others named i.e. CDR analysis, (g). whatsapp chats, (h). hotel bookings (i). identification of photographs (j). etc. A comprehensive investigation had been carried out. Analysis and corroboration of evidence, statements have been carried out and roles played by A1, A2 and A3 and others have been brought out.

15. Government notes that a large quantity of gold was seized in the aforesaid 3 cases. All the passengers had stated that the gold did not belong to them and that they were merely carriers who had carried the gold for a monetary consideration. They had stated that their travel and stay expenses had not been borne by them. All the passengers had informed that the owner of the gold was A3. All these passengers had clearly stated that A3 had used their services to clandestinely import the gold into India without payment of Customs duty. A3 too when he was apprehended admitted that the services of these passengers had been used to smuggle gold into India without payment of duty. Instructions were given by A3 to these passengers to hand over the gold to Shri. Anand Mishra, Shri. Rahul Gaikwad. Even the hotel accommodation of these passengers who had carried the gold to India was arranged and borne by A3. Instructions to Shri. Anand Mishra, Shri. Rahul Gaikwad were given by A3 and these persons collected the gold and handed over the same to A2. A diary / notebook was recovered from the possession of A3 which revealed the details and extent of the gold smuggled into India. A3 had worked out an elaborate system of smuggling gold into India and had indulged in evading payment of Customs duty. He had made arrangements for the stay of the passengers, the gold to be picked up from these passengers, the gold to be handed over to A2 who was tasked with its disposal, A2 sold the gold and the proceeds were sent to the conduits of A3 who siphoned out the proceeds from the country through hawala channels. The large volume of gold brought in by A3 brings out that a syndicate was engaged in the smuggling activity and evasion of payment of Customs duty. The passengers, Shri. Anand Mishra, Shri. Rahul Gaikwad, A2, the receivers of the gold, Hotel staff, buyers of the gold etc had all identified the photograph of A3 and had admitted that instructions were received by them from A3. Considering the evidence and corroboration of the same made by the investigating agency with the statements and other facts, the retraction filed by A3 is of no consequence and does not dilute his role / investigation. Clinching evidence by way of a diary / notebook being maintained by A3 had been recovered by the

investigating agency. This diary / notebook revealed the quantum of the gold brought clandestinely into the country by A3, details of his financiers, names of the passengers who had carried the gold to India on his directions, rate of the gold, details of persons to whom the gold had been handed over, profit, etc. This diary admittedly was in his (A3's) own handwriting. The forensic analysis of the whatsapp chats recovered from the cell phones too indicates that A3 was in constant touch with A2, Shri. Anand Mishra, Shri. Rahul Gaikwad and others and had been passing on instructions to them. Besides, it was a fact that huge amount of gold had been recovered. The investigations had concluded that A3 was the mastermind behind the entire smuggling operations. A3 was involved in the purchase of the gold, arranging for its finance, selecting passengers to carry and smuggle the gold to India, instruction to hand over the gold to his contact person, thereafter contact person taking the gold to A2, A2 disposing the gold and sending the sales proceeds to representatives of A3 at Chennai, these representatives remitting the sales proceeds to A3 at Singapore, A3 retaining the profits etc. A3 had complete control of the smuggling operation. It was a premediated act undertaken for profit. Considering the evidence lined up by the investigating agency against A3, the lower authorities had rightly upheld that he (A3) was the mastermind behind the entire smuggling operation. Government considering the role of A3, finds that the quantum of penalty imposed on A3 is proper and legal and is not inclined to interfere in the same. Government finds that the averment made by A3 that penalty imposed on him under Section 112 of the Customs Act, 1962 was not applicable, is specious.

16. The investigations carried out by the investigating agency had revealed that A2 was the conduit person of A3 involved in collecting the gold and arranging buyers and selling the same. A2 was also involved in sending the sales proceeds to the representatives of A3 at Chennai. When the name and role of A3 had first cropped up, he had denied his involvement. Later, the investigating agency had apprehended him (A2) red handed in the act of receiving the gold from Shri. Rahul Gaikwad. Thereafter,

he had revealed his role in the entire smuggling operation. A2 had handled large quantity of the gold for A3. The act committed by A2 was premeditated and deliberate and was party to the profits earned in this unscrupulous smuggling activity. The Investigating Agency had intercepted A2 when he was about to receive the gold from Rahul Gaikwad. A2 was also involved in getting buyers for the smuggled gold. It is clear that A2 had knowingly rendered his services to A3 and was an important part of the smuggling operation. Monetary benefit from the smuggling activity was accruing to him. During the investigations, A2 did not produce any legitimate documents to show that he was engaged in the business of purchase and sale of bindis. Government finds that A2 was an important link in the smuggling activity and had played a pivotal role in the smuggling, disposal etc of gold. Government finds that in RA nos. 371/237/B/2022-RA and 371/192/B/2021-RA, the lower authorities had rightly imposed penalty on A2 and is not inclined to interfere in the same. The plea made by A2 that the penalty of Rs. 5,00,000/- imposed on him in the case relating to F.No. 371/237/B/2022-RA was harsh and excessive, is specious, as it is noted that even when the investigations against him in this case had been initiated, he had indulged in the abetment of smuggling of the gold and infact had been apprehended in the act of receiving the smuggled gold from Rahul Gaikwad i.e. A2 had been caught red handed. (in the case pertaining to F.No. 371/192/B/WZ/2021-RA). Anand Mishra in his statement had revealed that on earlier occasions, gold received by him had been delivered to A2. Government is therefore, not inclined to reduce the penalty imposed on him in said RA no. 371/191/B/2021.

17. As far as the role of A1 is concerned, he had approached the Secretary of the Glitz Mall to erase the CCTV footage. He had spoken to the (i). Security Supervisor of Glitz Mall, (ii). Secretary of Glitz Mall and (iii). CCTV footage Agency person to erase the CCTV footage as he was aware that the Customs was investigating his son's (A2) involvement in a smuggling activity. A1 had defrayed the cost for replacement of the hard disk of the CCTV monitoring computer. During investigations, A1 had admitted

to his role in approaching the aforesaid persons to erase the CCTV footage of his son's shop. By his act, A1 had attempted to abet his son in his smuggling activity and attempted to destroy evidence. By his act, A1 had made himself liable for penalty under Section 112(a)(i) of the Customs Act, 1962. The statements of the aforesaid 3 entities sufficiently, corroborates the evidence against A1. Government finds that the lower authorities have rightly imposed penalty on A1. However, Government finds the quantum of penalty imposed on A1, a bit harsh and excessive and is inclined to reduce the same.

18. In view of the above, on the limited issue of penalties imposed on the applicants, the Government holds as under;

(a). In Revision Application F.No. no. 371/236/B/WZ/2022-RA, the penalty of Rs.2,00,000/- imposed on A1 by OAA under Section 112(a)(i) of the Customs Act,1962 and upheld by the AA, is reduced to Rs. 1,00,000/- (Rupees One Lakh only);

(b). In Revision Application F.No. 371/237/B/WZ/2022-RA, Government finds that the penalty of Rs. 5,00,000/- imposed on A2 by the OAA under Section 112(b) of the Customs Act, 1962 and upheld by the AA, is commensurate with the omissions and commissions committed and therefore, is not inclined to interfere in the same.

(c). In Revision Application F.No. 371/192/B/WZ/2021-RA, Government finds that the penalty of Rs. 2,00,000/- imposed on A2 by the OAA under Section 112(b) of the Customs Act, 1962 and upheld by the AA, is commensurate with the omissions and commissions committed and therefore, is not inclined to interfere in the same.

(d). In Revision Application F.No. 371/242/B/WZ/2021-RA, Government finds that the penalty of Rs. 5,00,000/- imposed on A3 by the OAA under Section 112(a) and (b) of the Customs Act, 1962 and upheld by the AA, is commensurate with the omissions and commissions committed and therefore, is not inclined to interfere in the same.

(e). In Revision Application F.No. 371/191/B/WZ/2021-RA, Government finds that the penalty of Rs. 1,00,000/- imposed on A2 under Section 112(a) and (b) of the Customs Act, 1962 by the OAA and upheld by the AA, is commensurate with the omissions and commissions committed and therefore is not inclined to interfere in the same.

19. Accordingly, the 5 Revisions Applications i.e. (a). F.No. 371/236/B/WZ/2022-RA filed by A1; (b). F.No. no. 371/237/B/WZ/2022-RA filed by A2; (c). F.No. 371/192/B/WZ/2021-RA filed by A2; (d). F.No. 371/242/B/WZ/2021-RA filed by A3 and (e). F.No. 371/191/B/WZ/2021-RA filed by A2, are decided / disposed of on the above terms.


(SHRAWAN KUMAR)

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

456-
ORDER No. 460/2023-CUS (WZ) /ASRA/Mumbai

DATED 2.05.2023

To,

1. Shri. Virendra Mehta, 2nd Floor, Parekh Bldg, Mama Parmanand Marg, Opp. Panchratna, Opera House, Mumbai – 400 004.
2. Shri. Mayur Virendra Mehta, 2nd Floor, Parekh Bldg, Mama Parmanand Marg, Opp. Panchratna, Opera House, Mumbai – 400 004.
3. Shri. Kannaiyah Prakasam, No. 22, F-Block, Police Quarters, Police Lines, Alandue Road, Saidapet, Chennai – 600 015; **Address no. 2:** No. 130/9, KTR Estate by-pass road, Thiruvavur, Tamil Nadu – 610 001.
4. Pr. Commissioner of Customs, CSI Airport, Terminal – 2, Level – II, Sahar, Andheri (East), Mumbai : 400 099.

Copy to:

1. Shri. Ajay Singh & Associates, Advocate, 4A, Rahimtoola House, 2nd Floor, 7, Homji Sreet, Off. P.M Road, Fort, Mumbai – 400 001.
2. Smt. Kamalamalar Palanikumar & S. Kameshwaran, Advocates, No. 10, Sunkrama Street, Second Floor, Chennai – 600 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Notice Board.