

F.No. 371/176/B/2022-RA
F.No. 371/184/B/2022-RA
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F.No. 371/194/B/2022-RA
F.No. 371/195/B/2022-RA

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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

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Date of Issue: 10.01.2024

ORDER No. 43-5 V/2024-CUS (W2)/ASRA/MUMBAI DATED: 17.01.2024. OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962

Applicant No. 1 : Shri Virendra C Lawani (F.No. 371/185/B/2022-RA)
Applicant No. 2 : Shri Rajkumar L. Israni (F.No. 371/184/B/2022-RA)
Applicant No. 3 : Shri Pradeep W Bobde (F.No. 371/176/B/2022-RA)
Applicant No. 4 : Shri Ritesh Manoharrao Mahajan (F.No. 371/195/B/2022-RA)
Applicant No. 5 : Shri Anur Shamsulla Khao (F.No. 371/194/B/2022-RA)

Respondent : Pt Commissioner of Customs, C Ex and S, Tax, Nagpur I

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the following appeals passed by the Commissioner (Appeals), Customs, C.Excise and GST, Nagpur

- 1) OIA No. NGP/EXCUS/000/APPL/05/18-19 dated 19.06.2018
- 2) OIA No. NGP/EXCUS/000/APPL/019/18-19 dated 31.07.2018
- 3) OIA No. NGP/EXCUS/000/APPL/016/18-19 dated 31.07.2018
- 4) OIA No. NGP/EXCUS/000/APPL/018/18-19 dated 31.07.2018
- 5) OIA No. NGP/EXCUS/000/APPL/020/18-19 dated 31.07.2018

ORDER

The separate Revision Applications have been filed by Shri Virendra C Lalwari (hereinafter referred to as Applicant No 1 or A1), Shri Rajkumar L Israni (hereinafter referred to as Applicant No.2 or A2), Shri Pradeep W Bobde (hereinafter referred to as Applicant No.3 or A3), Shri Ritesh Mancharran Mahajan (hereinafter referred to as Applicant No 4 or A4) and Shri Amir Shamsulla Khan (hereinafter referred to as Applicant No 5 or A5) against the following OIA's passed by the Commissioner (Appeals), Customs, C Excise and GST, Nagpur

- 1) OIA No. NGP/EXCUS/000/APPL/05/18-19 dated 19.06.2018
- 2) OIA No. NGP/EXCUS/000/APPL/019/18-19 dated 31.07.2018
- 3) OIA No. NGP/EXCUS/000/APPL/016/18-19 dated 31.07.2018
- 4) OIA No. NGP/EXCUS/000/APPL/018/18-19 dated 31.07.2018
- 5) OIA No. NGP/EXCUS/000/APPL/020/18-19 dated 31.07.2018

2 Brief facts of the case are that on 04.07.2014, the basis of information, Crime Branch of Police, Nagpur intercepted an Innova Car bearing registration No. MH31 DC 4990 near Sonegaon lake, Nagpur and on search of the car, one Samsung 40 inch LED 5 series TV and dry fruits was recovered and during personal search of the person in the car, Shri Pradeep Bobde (A3), Retd. Police officer, a gold brick, a gold biscuit and 16 gold coins were recovered from the pocket of trousers worn by him.

2.1 On being asked for documents for ownership of gold brick, gold biscuit and coins as well as Samsung LED, during the police Panchanama, A3 stated that he did not have any document and the said Samsung LED, gold brick, gold biscuit and 16 gold coins were handed over to him by Shri Virendra Lalwari (A1), for handing over to a person named Shri Rajkumar Israni (A2).

2.2 As A3 could not produce any document regarding ownership of the Samsung LED television, gold brick, gold biscuit and 16 gold coins, the Police officers seized said goods alongwith the Innova Car No. MH31 DC 4990.

2.3 The gold which was seized by the police on 04 07 2014 were handed over to the Customs and Central Excise department on 08 07 2014 and were assayed and the details of the gold were as under

Sr No	Description of gold	Pieces	Gross/net weight of gold in grams	Total value of pure gold
1	GOLD BAR 24K (AL ETHHAD GOLD DUBAI UAE 1 KILO GOLD 999.3 MELTER ASSAYER D062501(995))	1	1000.03	27,91,063.73
2	GOLD BAR 24 K (AT ETHHAD GOLD DUBAI UAE (999))	1	116.66	3,25,761.38
3	GOLD COIN VULCAMER SWITZERLAND	16	32.23	82,418.76
	Grand Total	18	1148.91	31,99,263.87

During the course of investigations by the Respondent, several statements of the Applicants were recorded, the gist of which are as under,

3.1 In his statements recorded on 05 07 2014 and 08 07 2014, Applicant No. 3, *interalia* stated that he retired as Dy. Supdt. of Police in the month of August, 2013; that on 04 07 2014 at about 7 00-7.30 Hrs, his friend Shri Virendra Lalwan (A1), called him and informed that he had arrived at Dr. Babasaheb Ambedkar International Airport, Nagpur from Sharjah and was having one LCD TV and a polythene bag containing dry fruits and requested A3 to pick him up from Airport and also requested to carry these luggage to A3's house and that subsequently he would collect the same from his residence. A3 stated that accordingly he reached Nagpur Airport on 04 07 2014 at about 07.30 Hrs, where A1 met him and loaded the LCD TV from back door of the vehicle and placed the polythene bag containing dry fruits on the front left seat and thereafter he moved out of the Airport; that he dropped A1 on the way and A1 left the TV Set in Innova car on the rear seat and also left plastic polythene carry bag in the leg space of front left seat of Innova Car; that he (A3) remembered that his file containing papers of agriculture land remained at his home, he took U turn before Khajri Fly Over / bridge and returned towards his home, near Sonaganj Lake he was intercepted at round 8.30 Hrs by police personnel, who took him to their office and arrested him; that he knew Shri Rajkumar Jaram (A2) since around 30 years and that A2 owned a shop selling mobile handsets; that he (A3) does not have any transaction with A2.

3.2 In his statement dated 05.07.2014 and 07.07.2014, Shri Virendra C. Lalwani, interalia stated that he went to Sharjah from Mumbai on 02.07.2014 in search of job and stayed there for day and returned on 04.07.2014 at 04.30 hrs, that the TV was bought by him from Sharjah for his friend Shri Ujwal Bobde, that his friend Shri Ujwal Bobde informed him that his uncle had parked his Innova Car at the Airport and instructed A1 to handover the TV and other goods to A3, that as nobody was there to receive him A1, A3 offered him a lift upto main road by the said Innova Car with A3, who dropped him and that apart from above the three items viz TV, liquor Bottles and Dry Fruits, he had not given any other goods to A3, that he had paid customs duty on the 40" Samsung make LED TV and was cleared from the Customs area : that he was working with A3 as a civil contractor.

3.3 In his statement recorded on 17.07.2014 and 24.07.2014, Shri Ritesh Manoharran Mahajan (A4), Cargo Service Agent of M/s KAS Aviation Services Pvt. Ltd., working at Dr. Babasaheb Ambedkar International Airport, Nagpur interalia stated that he had access to entire airport, that he was responsible for the proper unloading of baggage from the baggage hold of the aircraft, proper placement of baggage on the conveyor belt at the airport and regarding any mis-handled baggage of the passengers, that he did A1, A2 or A3 and that he had neither met them in person nor had any telephonic conversation with them: that he knew Anur Khan (A5) and had spoken to him on 03.07.2014(03.30hrs) and 04.07.2014(03.30 hrs)

4 During the course of investigation by the Respondents, call detail records (CDR) were obtained in respect of Mobile No. 9325970185 of Shri Virendra Lalwani, Mobile No. 8482938984 of Shri Anur Khan and Mobile Nos. 9321594387 and 9373100955 of Shri Rajkumar Islam and mobile no. 9370267000 of Shri Shankar

5 Pursuant to the receipt of the call data records (CDR) of the phones of all the Applicants, statements were again recorded, the gist of which are as under

5.1 In his statements dated 12.09.2014 and 15.09.2014, Rajkumar Islam (A2), stated that he knew A1, that he accepted the details of the incoming and outgoing calls of his mobile no 9373100955 and 9321594387 between 02.07.2014 and 04.07.2014 and agreed that he had spoken to A1 on 9325970185 but did not recollect the conversation, that he was in constant touch and conversation with A3

(mobile 9923136510) on 03.07.2014 and 04.07.2014 but did not know the contents of the conversations, that he also had conversations with G2 numbers of UAE but did not divulge the conversations, that he had made calls and received calls from A4 (mobile no 9975520127), who worked at the Nagpur International Airport, on 03.07.2014 and 04.07.2014,

5.2. In his statements dated 26.08.2017 and 08.09.2014, Shri Ritesh Manoharrao Mahajan, that he did not know any person by the name of Shri Pradeep Bobde (A1), Shri Ujwal Bobde, Shri Vitendra Lalwani (A1) or Shri Rajkumar Irani (A2) and neither met them in person nor had any telephonic conversation with them from his both mobile numbers or otherwise; that he knew Shri Anur Khan since he had worked with him that he did not know the person using mobile number No 9321594387 (Shri Rajkumar Irani) and the name of the person holding this number; that he accepted the calls made and the conversations with Shri Anur Khan and person having mobile number 9321594387 (A2) on 03-07-2014 and 04-07-2014 and but he is not in a position to divulge the details of conversation as he does not recollect the contents of conversation. Also he did not know the person to whom he had conversation of mobile number 9321594387; that he accepted the conversations with 8482938984 and 9321594387 but he did not divulge the contents of the conversations, feigning amnesia; that other than the two numbers, he did not have conversations with any other number in the night between 03.07.2014 and 04.07.2014

5.3. In his statements dated 21.08.2014 and 08.09.2014 Shri Anur Shamuulla Khan(A5) stated that as customer service agent he looked after the work related to Air Arabia flight at Nagpur Airport; that on 04.07.2014 he supervised the unloading/loading of baggage near the ramp area of the flight; that he went inside the said flight and met the pilot and around 05.30 hrs he came to the arrival hall and supervised the arrival of luggage on the conveyor belt; that he accepted the calls made and received on 03.07.2014 and 04.07.2014 from the G3 mobile phones with him, that on 03.07.2014 and 04.07.2014, he conversed with A4 (mobile no 9975520127) for 2694 seconds, that he had divulged the intricate details of the Air Arabia flight to A4, though he was not supposed to do so, that he did not divulge the contents of the conversations with A4; that he accepted the conversations on

04.07.2014 but did not divulge the details of the conversation stating that he did not recollect the same.

5.4 Statement of Shri Virendra C. Lalwan (A1) was once again recorded on 20.08.2014 wherein, interalia, stated that he had seen the CDR of calls made from 02.07.2014 to 04.07.2014 from his mobile no 9325970185, that mobile number 9321594387 and 9373100955 was used by A2, that on 02.07.2014 and 04.07.2014, he had conversations with A2 many-times on his mobile number 9321594387 & 9373100955 and that the total duration of conversation lasted to 2239.7 seconds, that he was in constant touch with A2 on 2 July, 2014 when he was at CSI Airport, Mumbai awaiting the Air Arabia flight for Sharjah from Mumbai.

5.5 In his statement dated 25.08.2014 and 08.09.2014, Shri Pandeep W. Bobde (A1) interalia stated that he stated that he knew A2 since last around 20 years. On going through the CDR, he accepted that he had conversations in respect of all the calls made by him to A2 and all the calls received by him from A2 on 03.07.2014 and 04.07.2014 but did not recollect the details of conversation of any call. the mobile number 9321594387 and 9373100955 are in regular use by Shri Rajkumar Israni, that the gold recovered from him was brought by A1.

5.6 In his statements dated 12.09.2014 and 15.09.2014, Shri Rajkumar L. Israni interalia stated that he knew A1 since two years, that he accepted the details of outgoing calls made by him and incoming calls received by him on 02.07.2014 and 04.07.2014 through his mobile no 9373100955; that he accepted details of outgoing calls made by him and incoming calls received by him on 04.07.2014 through his mobile no 9321594387 with A1 on number 9325970185 and accepted the conversation to mobile number 9325970185 with A1 on 02.07.2014 and 04.07.2014 but did not recollect the contents of conversation, that he was in constant touch and conversation with A3 on his mobile no 9923136510 on 03.07.2014 and 04.07.2014 but did not divulge details of conversation stating that he did not know the contents of conversation, that he accepted the conversations in telephone number 971559573828 and 97142290593 of UAE but did not divulge details of conversation stating that he does not know to whom he had conversation as well as the details of the conversation, that he accepted that on 03.07.2014 and

04.07.2014 he had made calls and received calls through his mobile nos 9373100955 and 9321594387 to A4 on Mobile number 9321594387 and had conversations with him

6. The one Gold Bar 24 K (AT ETIHAD GOLD) DUBAI UAE D062501 (995) having net weight of gold of 1000.03 Grams, Gold Bar 24 K (AT ETIHAD GOLD) DUBAI UAE (999) having net weight of gold of 116.66 Grams and 16 Nos of Gold Coins 22 K VALCANBI SWITZERLAND having net weight 32.22 Grams, collectively valued at Rs. 31,99,264/- and the vehicle used i.e. Innova Car bearing registration No. MH 31 DC 4990 valued at Rs.7,00,000/- were seized under the provisions of Section 110 of the customs Act, 1962 under reasonable belief that these gold items were brought into India illegally in violation of the Foreign Trade, Policy and contravention of the provisions of the Baggage Rules, 1998 read with Customs Act, 1962 and the said goods alongwith the vehicle used for carrying the gold items was liable for confiscation under the provisions of the Customs Act, 1962.

7. From the investigations it came to light that A1 arrived from Sharjah 04.07.2014 and declared 3 bags and one Television in the Customs Declaration Form. He was in continuous contact from 02.07.2014 (Mumbai for Sharjah flight) Shri Rajkumar Ieran(A2) was in continuous contact with Shri Pradeep Bobde(A3) and Shri Ritesh Mahajan(A4) having access to the entire Airport. Thus, A2 was in contact and conversation with A4 simultaneously at the same time when he was in conversation with A1 as well as A3. Shri Ritesh Mahajan was in continuous contact and conversation with Shri Amir Khan who is having access to the entire Airport & the Airplane. Thus it appears that A1, A4 and A5 jointly hatched and executed the plan to bring out the above said gold from the Airport avoiding the Customs. Shri Pradeep Bobde (A3) stated during Pancharama dated 04.07.2014 that the gold items recovered from him are of Shri Virendra Lalwani (A1) and was meant for handing over to A2. Investigations alleged that Shri Rajkumar Ieran(A2) planned the entire smuggling syndicate with the help of all these persons and he was instrumental in issuing directions, instruction, guidance and was having overall control and supervision of the entire syndicate for smooth passage of the smuggled gold of foreign marks which was subsequently recovered from Shri Pradeep Bobde on 04.07.2014 by the Police and all these persons involved in the smuggling

syndicate would have remained un-noticed had the investigation not laid hands on the Call Data Record (CDR) of some of the mobile numbers used by these persons.

8 After following the due process of law, the Original Adjudicating Authority (OAA) viz. Additional Commissioner of Customs, Central Excise and Service Tax, Nagpur-I vide Order-in-Original No. 07/AJV/ADC/CUS/2015 dated 29.04.2016 ordered for the absolute confiscation of the impugned gold weighing 1148.91 grams valued at Rs. 31,99,264/- under Section 111(ii), (i), (l) and (m) of the Customs Act, 1962 and absolute confiscation of the Impora Car under Section 115 of the Customs Act, 1962. Penalties were imposed on the persons as under:

- (i) Penalty of Rs. 5,00,000/- was imposed on Shri Yashendra Lalwani under Section 112(a) and (b) of the Customs Act, 1962 and Rs. 3,00,000/- was imposed under Section 114AA of the Customs Act, 1962.
- (ii) Penalty of Rs. 5,00,000/- on Shri Pradheep Bobade under Section 112(b) of the Customs Act, 1962.
- (iii) Rs. 3,00,000/- on Shri Bhimsingh D. Sirga under Section 112(b) of the Customs Act, 1962.
- (iv) Rs. 7,00,00/- on Shri Rajkumar Jaram under Section 112(b) of the Customs Act, 1962.
- (v) Rs. 3,00,000/- on Shri Ritesh Mahajan under Section 112(b) of the Customs Act, 1962.
- (vi) Rs. 3,00,000/- on Shri Amir Shamsulla Khan under Section 112(b) of the Customs Act, 1962.

9 Aggrieved by this order, the Applicants filed separate appeals with the Appellate Authority viz. Commissioner (Appeals), Customs, C. Excise and GST, Nagpur who vide the captioned Orders-in-Appeal pertaining to each Applicant, rejected each of the separate appeals of the Applicants to so far as the it related to the imposition of penalties.

10 Aggrieved with the said Orders-in-Appeal, the Applicants filed separate appeals before the Central Excise & Service Tax Appellate Tribunal, Mumbai.

Regional Bench, which vide Final Order No A/85161-85165/2022 dated 24.02.2022 dismissed the Appeals as being non-maintainable, giving the Applicants the liberty to approach the Revisionary Authority.

11. In deference with the directions of the CESTAT, Mumbai, each of the Applicants, being aggrieved with the Order of the Appellate Authority, have preferred separate individual revision applications inter alia on the grounds mentioned in the paras below.

12.1. Grounds of the Revision Application filed by Shri Virendra Lalwani (Applicant No. 1)

- (a) That the impugned order is bad in law, unjust and has been passed without application of mind and is a cryptic order and is passed without considering all the relevant facts.
- (b) That it is incorrect to draw the inference about the nexus between the Applicant and one Mr. Pradeep W. Bobde as the Applicant does not know him personally and came to know Mr. Pradeep Bobde only through his friend Mr. Ujwal Bobde who had requested him to meet Mr. Pradeep Bobde so that he could hand over the LED TV to Mr. Pradeep Bobde on behalf of his friend Mr. Ujwal Bobde.
- (c) That it is incorrect to draw the inference about the nexus between the Applicant and one Mr. Rajkumar Jaram with respect to the allegation that the gold was to be delivered to Mr. Rajkumar Jaram.
- (d) That the gold brick, a gold biscuit and 16 gold coins were not recovered from the Applicant but the same was recovered from one Mr. Pradeep Bobde as alleged in the impugned show cause notice.
- (e) That the Applicant had undergone complete immigration procedures and was subjected to strict scrutiny of his luggage and after thorough scrutiny, nothing incriminating was found from the Applicant.
- (f) That the OAA has not looked into the aspects of the spot or place of recovery of gold items and has erred in drawing an adverse inference which is victimising the Applicant without any cause.

- (d) It is submitted that there is contradiction between the statements given by Shri Pradeep Bobde and the panchas recorded under Section 108 of the Customs Act, 1962 regarding the recovery of the gold,
- (e) The Ld. Respondent has erred in establishing a nexus between the co-noticees ie (1) Shri Pradeep Bobde (2) Shri Raghunath Inam (3) Agar Khan. There is no substantial or any corroborative evidence to establish any nexus or conspiracy for smuggling of the gold by the Applicant which was recovered from one Shri Pradeep Bobde as alleged,
- (f) That the OAA and AA have carelessly jumped onto the erroneous conclusion by establishing the nexus between the Applicant and the co-noticee Shri Raghunath Inam on the basis of call detail records without any existence of the element of mens rea,
- (g) That it ought to be appreciated that the Applicant was travelling to Sharjah solely for finding and availing job opportunities,
- (h) The Applicant submits that the Applicant was accompanied by his luggage, Led TV and other miscellaneous items which are neither restricted nor prohibited under the Customs Act, 1962 and had paid the Customs Duty for the LED TV which was with him and the OAA and AA ought to have taken cognizance of the same,
- (i) That merely the statement of the Co-noticee Shri Shri Pradeep Bobde from whom the impugned gold items were recovered and who disclaimed the same subsequently is not reliable due to absence of any corroborative evidence required to substantiate the same as is evident without prejudice to the above contentions it is submitted that there are a number of judgments of various Hon'ble Courts;
- (j) That the OAA and AA have overlooked the provisions of the Customs Act, 1962 particularly Section 110 (2) of the Customs Act, 1962 and that no notice within the statutory period as mentioned in the provisions was given to the Applicant from the date of such seizure of the alleged contraband gold,
- (k) That the Applicant has NOT claimed the proprietary rights since inception over the impugned gold items seized from one Shri Pradeep Bobde,

- (o) That there is no justification of the Customs Department for not issuing the SCN within a period of six months from 05.07.2014 or even from 08.07.2014 when it was handed over the gold and other articles of gold by the police.
- (p) That the lower authorities who have mechanically taken the date of seizure as 24.07.2014, so as to wrongly justify the issuance of SCN on 21.01.2015, so as to create an impression as if due compliance of Section 124 had been done.
- (q) That there are two documents referred to in the Order-in-Original dated 31.03.2016 as well as the Order-in-Appeal dated 19.06.2018 which are not referred in the said SCN, nor relied upon by the department and consequently not furnished to the Noticee, which is as follows-
a) Agreement of sale of car to Shri Pradeep Bobde on 28.04.2014 b) the documents pertaining to the comments of the Adjudicating Authority (as mentioned in para 39.1 on page 47 of the Order-in-Original) that Noticee No. 3 (Shri Rajkumar Israfi) was a habitual offender as in an earlier case unaccounted and unexplained Indian currency Rs. 24,61,000/- alongwith and foreign currency worth Rs. 1,65,469/- was found in possession of Rajkumar Israfi was ordered for confiscation and penalty of Rs. 5 lacs was imposed on him, have not been given to him and hence the matter may be remanded back.
- (r) It is submitted that it may be appreciated that both these documents have not been mentioned in the SCN, nor in the list of relied upon documents nor furnished to the Appellant / Noticee and that the Adjudicating Authority had relied upon material whilst passing the impugned order which was only in his possession without the knowledge of the Appellant/ Noticee which tantamounts to violation of the principles of natural justice and going beyond the scope of the SCN. The Applicant has relied on the following judgments in support of their contention -
(i) Kothari Filaments vs Commr. of Cust (Port) Kolkata [2009 (233) ELT 289 (S C)]
(ii) Noble Import Pvt. Ltd. Vs Union of India [2017 (349) ELT 44 (A P)]

- (s) That there is no seizure of gold made from either Rajkumar Ierani or Virendra Lalwani and consequently there is no violation of any provisions of the Customs Act, 1962;
- (t) That no confrontation was done between all the notices by the Customs Department so as to establish the identity of the notices;
- (u) That the passenger Shri Virendra Lalwani has not mentioned that he has brought the gold in any of his statements but had declared his television that he had brought and he has paid the Customs duty on the television set.
- (v) That neither Virendra Lalwani nor Rajkumar Ierani admitted any knowledge of gold or any conspiracy as mentioned in the SCN.
- (w) That there is no material on record to show that Shri Virendra Lalwani has brought the gold and nothing to show as to how the gold is found in possession of Shri Pradeep Bobde and that ultimately the gold found from Shri Pradeep Bobde is a local seizure and it cannot be inferred that the gold found from Shri Pradeep Bobde is the gold allegedly brought by passenger Shri Virendra Lalwani so as to implicate passenger Shri Virendra Lalwani and Shri Rajkumar Ierani under the Customs Act, 1962 and that Shri Virendra Lalwani could not have brought the gold because his baggage was completely screened and duty payment was made by him and thereafter he was allowed to leave the airport.
- (x) That no enquiries have been made with the officers manning the counter where declaration has been made by passenger Shri Virendra Lalwani, nor with the officers manning the exit gate from where passenger Shri Virendra Lalwani had exited and thus vital investigation that ought to have been done by the Customs department have been significantly and conveniently left out by the Customs department.
- (y) That the Customs department has made up the entire case only on the basis of call records of all the notices and has made presumptions regarding the entire smuggling conspiracy without any legal justification of whatsoever nature.
- (z) That Virendra Lalwani has never stated or accepted the fact that he had brought gold.

- (aa) That it may be appreciated that not a single notice in their statements recorded under Section 108 of the Customs Act, 1962 has mentioned a word about gold.
- (ab) That as regards call there is no content of the conversation brought out by the department in the Show Cause Notice, so as to justify the theory of smuggling of gold and therefore the call records are of no corroborative value.
- (ac) That the penalty under Section 114AA of the Customs Act, 1962 was introduced to provide for penalty in case where export was on paper only and no goods had ever crossed the border of false and for incorrect declaration of material particulars and for giving false statements, declaration, etc. for the purpose of transaction of business under the Customs Act, 1962.
- (ad) That Section 114AA was proposed to be imposed in such cases and not in cases where penalty under Section 112 of the Customs Act is otherwise impossible.
- (ae) That penalty under Section 112 is impossible on a person who has made the imported goods liable for confiscation. It is submitted that there could be situations where the export is only on paper, no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962 and in the instant case penalty under Section 114AA is not warranted as penalty has already been imposed under Section 112 (a) and (b) of the Customs Act, 1962.

Under the circumstances the Applicant No. 1 prays that the Order-In-Original No 07/AJV/AIDC/CUS/2015 Dated 31/03/2016 passed by the Adjudicating Authority and the Order-In-Appeal No NGP/EXCUS/APPL/019/18-19 dated 31.07.2018 may kindly be set aside and imposition of penalty amount of Rs. 5,00,000/- under Section 112 (a) & 112 (b) of the Customs Act, 1962 and penalty amount of Rs. 3,00,000/- under Section 114AA of the Customs Act, 1962, be set aside or any further orders as may deem fit and proper in the facts and circumstances of the case may be issued.

12.2. Grounds of the Revision Application filed by Applicant No. 2 (Rajkumar Israni)

- (a) That the impugned order is bad in law, unjust and has been passed without application of mind and is a cryptic order and is passed without considering all the relevant facts.
- (b) That it is incorrect to draw the inference about the nexus between the Applicant and Shri Virendra Lalwani and Mr Pradeep W Bobde with respect to the allegation that the gold was to be delivered to Mr Rajkumar Israni.
- (c) That the Applicant has no connection with the recovery of the gold from Shri Pradeep Bobde and that neither Shri Virendra Lalwani nor Shri Pradeep Bobde nor any person had ever mentioned that he had brought any contraband gold for delivery to the Applicant.
- (d) That the gold brick, a gold buscuit and 16 gold coins were not recovered from the Applicant but the same was recovered from one Mr Pradeep Bobde as alleged in the impugned show cause notice.
- (e) That Shri Virendra Lalwani had undergone complete immigration procedures and was subjected to strict scrutiny of his luggage and after thorough scrutiny, nothing incriminating was found from Shri Virendra Lalwani and thus the entire scope of allegation by the department is rendered unsustainable.
- (f) That the OAA has not looked into the aspects of the spot or place of recovery of gold items and has erred in drawing an adverse inference which is victimising the Applicant without any cause.
- (g) It is submitted that there is contradiction between the statements given by Shri Pradeep Bobde and the panchas recorded under Section 108 of the Customs Act., 1962 regarding the recovery of the gold.
- (h) The Ld. Respondent has erred in establishing a nexus between the co-accused i.e (1) Shri Pradeep Bobde (2) Shri Virendra Lalwani. There is no substantial or any corroborative evidence to establish any nexus or conspiracy for smuggling of the gold by Shri Virendra Lalwani which was recovered from Shri Pradeep Bobde as alleged.

- (ii) That the OAA and AA ought to have considered that by merely by correlating the call detail records between the Applicant and other co-noticees do not establish any such nexus between and to implicate them in smuggling and the OAA and AA have conveniently jumped onto the erroneous conclusion by establishing the nexus between the Applicant and the co-noticee Shri Virendra Lalwani on the basis of call detail records without any existence of the element of mens rea;
- (j) That it ought to be appreciated that Shri Virendra Lalwani was travelling to Sharjah solely for finding and availing job opportunities;
- (k) The Applicant submits that as per the statements of Shri Virendra Lalwani, he was accompanied by his luggage, Led TV and other miscellaneous items which are neither restricted nor prohibited under the Customs Act, 1962 and had paid the Customs Duty for the LED TV which was with him and the OAA and AA ought to have taken cognizance of the same.
- (l) That merely the statement of the Co-noticee Shri Shri Pradeep Bobde from whom the impugned gold items were recovered and who disclaimed the same subsequently is not maintainable due to absence of any corroborative evidence required to substantiate the same as is evident without prejudice to the above contentions it is submitted that there are a number of judgments of various Hon'ble Courts;
- (m) That the OAA and AA have overlooked the provisions of the Customs Act, 1962 particularly Section 110 (2) of the Customs Act, 1962 and that no notice within the statutory period as mentioned in the provisions was given to the Applicant from the date of such seizure of the alleged contraband gold.
- (n) That the Applicant has NOT claimed the proprietary rights since inception over the impugned gold items seized from one Shri Pradeep Bobde;
- (o) It is submitted that issuance of SCN was on 21.01.2015, whereas gold was seized by police on 04.07.2014 and handed over to Customs on 08.07.2014, tested and valued by Government Valuer on 08.07.2014. However, Panchnama was drawn by Customs u/s 110 of the Customs Act, 1962 on 24.7.2014. It is submitted that reasonable belief was

logically formed by the Customs on 05.07.2014 itself when they started searching the residence of Shri Pradeep Bobde and recorded his statement on the same day. Hence, there is no justification of the Customs Department for not issuing the SCN within a period of six months from 05.07.2014 or even from 08.07.2014 when it was handed over the gold and other articles of gold by the police. Significantly, this point has not been seriously considered by both the lower authorities who have mechanically taken the date of seizure as 24.07.2014, so as to wrongly justify the issuance of SCN on 21.01.2015, so as to create an impression as if due compliance of Section 124 had been done. It is submitted that it may be appreciated that the facts of the case and documents on record are to the contrary;

- (p) That there are two documents referred to in the Order-In-Original dated 31.03.2016 as well as the Order-In-Appeal dated 19.06.2018 which are not referred in the said SCN, nor relied upon by the department and consequently not furnished the following documents to the Applicants:

(i) Agreement of sale of car to Shri Pradeep Bobde

(ii) Documents pertaining to the comments of the OAA that the Applicant was a habitual offender in an earlier case of unaccounted and unexplained foreign and Indian currency.

- (q) It is submitted that it may be appreciated that both these documents have not been mentioned in the SCN, not in the list of relied upon documents nor furnished to the Appellant / Noticee and that the Adjudicating Authority had relied upon material whilst passing the impugned order which was only in his possession without the knowledge of the Appellant / Noticee which tantamounts to violation of the principles of natural justice and going beyond the scope of the SCN. The Appellant has relied on the following judgements in support of their contention:-

(i) Kothari Filaments vs Commr. of Cust (Port) Kolkata (2009) 237 ELT 289 (S.C.)

(ii) Noble Impact Pvt. Ltd. Vs Union of India (2017) 349 ELT 44 (A.P.)

- (r) That there is no seizure of gold made from either Rajkumar Jerni or Virendra Lalwani and consequently there is no violation of any provisions of the Customs Act, 1962

- (h) That no confrontation was done between all the noticees by the Customs Department so as to establish the identity of the noticees.
- (i) That the passenger Shri Virendra Lalwani has not mentioned that he has brought the gold in any of his statements but had declared his television that he had brought and he has paid the Customs duty on the television set.
- (ii) That neither Virendra Lalwani nor Rajkumar Ierani admitted any knowledge of gold or any conspiracy as mentioned in the SCN.
- (iii) That there is no material on record to show that Shri Virendra Lalwani has brought the gold and nothing to show as to how the gold is found in possession of Shri Pradeep Bobde and that ultimately the gold found from Shri Pradeep Bobde is a local seizure and it cannot be inferred that the gold found from Shri Pradeep Bobde is the gold allegedly brought by passenger Shri Virendra Lalwani so as to implicate passenger Shri Virendra Lalwani and Shri Rajkumar Ierani under the Customs Act, 1962 and that Shri Virendra Lalwani could not have brought the gold because his baggage was completely screened and duty payment was made by him and thereafter he was allowed to leave the airport.
- (iv) That no enquiries have been made with the officers manning the counter where declaration has been made by passenger Shri Virendra Lalwani, nor with the officers manning the exit gate from where passenger Shri Virendra Lalwani had exited and thus vital investigation that ought to have been done by the Customs department have been significantly and conveniently left out by the Customs department.
- (v) That the Customs department has made up the entire case only on the basis of call records of all the noticees and has made presumptions regarding the entire smuggling conspiracy without any legal justification of whatsoever nature.
- (vi) That Virendra Lalwani has never stated or accepted the fact that he had brought gold.
- (vii) That it may be appreciated that not a single noticee in their statements recorded under Section 108 of the Customs Act, 1962 has mentioned a word about gold.

- (aj) That as regards call there is no content of the conversation brought out by the department in the Show Cause Notice, so as to justify the theory of smuggling of gold and therefore the call records are of no corroborative value

Under the circumstances the Applicant No. 2 prayed to set aside the OIO and the OIA and remand the case back to the AA with the directions to supply the documents pertaining to Agreement of sale of car to Shri Pradheep Bohde and documents pertaining to the comments of the OAA that the Applicant was a habitual offender in an earlier case of unaccounted and unexplained foreign and Indian currency

12.3. Grounds of Revision Application filed by Shri Pradheep W Bohde (Applicant No.3)

- (a) That the AA ignored that there was a marked difference in the story of alleged smuggling as per the SCN when compared with the findings of the OAA.
- (b) That as per the SCN the Applicant was alleged to have conversations with both Ritesh Mahajan and Amr Khan whereas the scrutiny of the call records of the Applicant revealed that he had a conversation with Rajkumar Israni.
- (c) That both Ritesh Mahajan and Amr Khan in their statements had stated that they did not know the Applicant, disproving the theory that the Applicant abetted in smuggling of gold and hatching and executing the plan in conjunction with Rajkumar Israni, Virendra Lalwani, Ritesh Mahajan, and Amr Khan.
- (d) That the observation of the AA that Virendra Lalwani, on arriving at the Airport and clearance from Customs left his baggage with the Applicant in the car whereas the SCN mentioned that the Applicant provided a lift to Virendra Lalwani.
- (e) That the Applicant had no concern with the gold nor had travelled abroad and was not concerned with taking the gold out of the Airport.
- (f) That the offence of smuggling was already over before the Applicant came in possession of the seized gold and thus he could not be charged of abetment of the offence only because the person committing the

offence had placed the imported gold in the Applicants car without his knowledge

Under the circumstances the Applicant No 3 prayed to set aside the penalty imposed on him

12.4. Grounds of Revision Application filed by Shri Ritesh Mahajan (Applicant No. 4)

- (a) That the impugned order suffers from non application of mind on the part of AA in as much as he has merely reproduced the findings of the OAA in therefore is liable to be set aside,
- (b) That there is no other direct or circumstantial evidence to even remotely connect the Applicant with either the smuggled gold or the conspiracy of smuggling allegedly hatched by Rajkumar Israni,
- (c) That he was falsely implicated in the case merely because he happened to be one of the staff posted at the Airport when the flight by which Virendra Lalwani arrived landed at Nagpur Airport;
- (d) That the AA ought to have appreciated that the Applicant was working as a clerical staff in NAS and had no authority to deal with passengers luggage be it left over baggage or the baggage loaded on the baggage belt,
- (e) That the material gathered against him was not sufficient to bring home the charge of dealing with contraband goods with knowledge about their liability to confiscation,
- (f) That in any case, the penalty imposed is disproportionately high considering the alleged role of the Applicant

Under the circumstances, the Applicant No 4 prayed to set aside the imposition of penalty or give any other relief that may be deemed fit.

12.5. Grounds of Revision Application filed by Shri Amir Khan (Applicant No. 5)

- (a) That the impugned order suffers from non application of mind on the part of AA in as much as he has merely reproduced the findings of the OAA in therefore is liable to be set aside,
- (b) That the entire case against him is based on the telephonic conversation he had with Ritesh Mahajan, who in turn conversed with Rajkumar

Israni, the alleged mastermind of the smuggling of gold and there is no other direct or circumstantial evidence to even remotely connect the Applicant with Rajkumar Israni, whom he did not know.

- (c) That the AA has unduly highlighted that the Applicant had 03 mobile phone which did not sugar well with his bonafides and hence the AA has based his findings on matters extraneous to the circumstances showing the involvement of the Applicant.
- (d) That the AA has recorded the finding that as Pradeep Bobde was found in possession of the smuggled gold, the role of the airline person was implied and the motive was of making a quick buck, that a charge of smuggling cannot be proved by implications.
- (e) That the Applicant had no conversation with either Rajkumar Israni, Virendra Lalwani or Pradeep Bobde and the only person he had talked to was Ritesh Mahajan and that the Applicant cannot be penalized for speaking to one of the co-noticees who was also not remotely connected with the alleged conspiracy of smuggling.
- (f) That in any case, the penalty imposed is disproportionately high considering the alleged role of the Applicant.
- (g) That he was out of job due to Covid restrictions and had no earning and it was not possible to pay a huge penalty of Rs. 5,00,000/-

Under the circumstances, the Applicant No. 3 prayed that the impugned order be set aside.

13. PERSONAL HEARING DETAILS

13.1 Personal hearing of Shri Virendra Lalwani and Shri Rajkumar Israni

Personal hearing in the case was scheduled for 22/09/2023. Shri N J Heera and Shri V N Adams, Advocates, appeared for the hearing on behalf of both the Applicants and reiterated the earlier submissions. They further submitted that show cause notice was issued after 06 months. They submitted that gold did not belong to the Applicants and the same has been incorrectly attributed to them and they requested to drop the penalty against both the Applicants.

13.2. Personal hearing of Shri Pradeep W Bobde

Personal hearing in the case was scheduled for 05.09.2023 or 12.09.2023. Ms Ketaki Deshpande, Advocate appeared for the personal hearing on behalf of the Applicant, Shri Pradeep W Bobde. She reiterated the earlier submissions and further submitted that the Applicant picked up Virendra Lalwani (A 1) and has no connection with the clearance of goods from the Airport. She further submitted that the Applicant is a responsible citizen and is now suffering from cancer. She requested to take a lenient view and set aside the penalty.

13.3 Personal hearing of Shri Ritesh Mahajan.

Personal hearing in the case was scheduled for 05.09.2023 or 12.09.2023, 10.10.2023 or 17.10.2023. Shri Ritesh Mahajan appeared online for the personal hearing on 10.10.2023 and reiterated his earlier submissions. He submitted that he has been penalized under Section 112 of the Customs Act, 1962, without any evidence. He further submitted that merely because he received a call of general nature, he can not be made an accused in the case. He requested to set aside the penalty against him.

13.4. Personal hearing of Shri Amir Khan

Personal hearing in the case was scheduled for 05.09.2023 or 12.09.2023. Shri Amir Khan, the Applicant appeared online and submitted that he has been penalized merely because another airline employee, accused in the case had called him on the phone. He further submitted that there was no evidence against him he had nothing to do with any of the accused in the case and requested to drop the penalty.

13.5. No one attended the personal hearing on behalf of the Respondent on any of the scheduled dates.

14. Government observes that the Applicants i.e. A1, A2, A3, A4 and A5 have filed separate revision applications the issue in the instant case is limited to the imposition of personal penalty on the Applicants. As far as the absolute confiscation of the gold is concerned, the matter has attained finality.

15 Government notes the Applicant no 1 and 2, in the revisions applications filed by them have averred that the show cause notice was not issued within the period of 06 months from 05-07-2014 or from 08-07-2014 when it was handed by the police authorities. Government observes the issue has been addressed by the lower authorities correctly taking into consideration the date of seizure under the Customs Act, 1962 and the Appellate Authority at Para 55 of the OIA had rightly agreed with the observations of the lower authority that the impugned goods were seized by the Customs department on 24-07-2014 and the show cause notice was issued on 21-01-2015, which is within the prescribed time period of six months and Government concurs with the same and proceeds to examine the case on merits.

16 The Government has gone through the facts of the case. Government notes that neither the person from whom the gold was recovered, Shri Pradeep W. Bhide (A3) nor the passenger viz, Shri Virendra Lalwani (A1) or any of the other Applicants have laid their claims on the gold seized from A3. Hence, the O/O dated 29-04-2016, passed by the OAA, wherein the one Gold Bar 24 K (AT ETHAD GOLD) DUBAI UAE D082501 (995) having net weight of gold of 1000.03 Grams, Gold Bar 24 K (AT ETHAD GOLD) DUBAI UAE 19991 having net weight of gold of 116.66 Grams and 16 Nos of Gold Coins 22 K VALCAMEL SWITZERLAND having net weight 32.22 Grams, collectively valued at Rs. 31,99,264/- and the vehicle used i.e. Innova Car bearing registration No. MH 31 DC 4990 valued at Rs 7,00,000/- were seized under the provisions of Section 110 of the customs Act, 1962 has gained finality in terms of the absolute confiscation of goods, as the appeal period is over. Hence, the Government does not find it necessary to go into the issue of absolute confiscation of these goods and restricts itself to the Revisions Applications filed by A1, A2, A3, A4 and A5 for setting aside the penalties imposed on them.

17.1 As regards Revision Applications filed by Applicant No. 1 (Virendra Lalwani) and Applicant No. 3 (Pradeep W. Bhide), Government notes that the impugned gold was recovered from A3 by the Crime Branch of Police, Nagpur on 04-07-2014 around 4 Kms away from the Nagpur Airport and A3 in his statement had admitted that A1 had called him from Nagpur Airport to inform about his arrival from Sharjah and requested him to pick him up and carry his luggage i.e. one LCD TV

and polythene bag containing dry fruits and A3 had acceded to the request of A1 and later on being stopped by the police personnel, the impugned gold was recovered from him. A3 informed that the gold was given by and belonged to A1. A1 in his statement has also accepted that he knew A3 and had requested him to collect his belongings and take it to the house of A1. It is on record that the A1 did meet A3 after he arrived from Sharjah and exited the airport and was given a lift by A3 in his car alongwith his belongings.

17.2 Government observes that the OAA and Appellate Authority has considered the details of the roles played by the A1 and A3 in the smuggling activity, with A1 being the passenger and A3 being the person from whom the impugned gold and the other goods imported by A1, was recovered, the evidence unearthed by way of admission by A3 that the impugned gold belonged to A1, the link woven by the investigators from the evidences collected and has considered the various pleas filed by A1 and A3 and evidentiary value of the statement of A3 and has rightly averred that penalty is unposible on the A1 and A3 under Section 112 (a) and (b) of the Customs Act, 1962.

17.3 As regards the imposition of penalty under Section 114AA of the Customs Act, on Applicant No. 1, Government opines that once penalty has been imposed under section 112(a) and (b) of the Customs Act, 1962, there is no necessity of imposing penalty under Section 114AA of the Customs Act, 1962 and is thus inclined to drop the same.

18.1 As regards the imposition of penalty on Applicant No. 2 (Rajkumar Israni), Applicant No. 4 (Ritesh Mahajan) and Applicant No. 5 (Aamir Shamshulla Khan), the allegation on A2 is that the gold that was recovered from A3 belonged to A1 and was to be handed over to A2, who was alleged to be the mastermind of the conspiracy to smuggle the gold and it was alleged that he was in constant touch with A1, A3 and A4 at the unearthly hours of the day, since the time the flight with A1 on board, landed at Nagnur Airport. The allegations on A4 and A5 is that they were in touch with each other and A4 was in touch with A2. The conclusions have been arrived at from the CDRs of the Applicants and has originated from the statement of A3 about the gold being handed over to him by A1 to be given to A2.

While A2, A4 and A5 in their statements have admitted that they knew one another and accepted that they were in contact with each other on the day of the incident, no details and context of the conversations could be brought out to draw any conclusions. The only evidence is calls made by A2 to A1 and A3. A1 was a civil contractor working with A2. A3 has stated that he knew A2 for more than 20 years. Hence calls among them are natural and the CDRs showing calls among them can be a ground for suspicion but same cannot be taken as evidence sufficient to penalise. The investigation has also not been able to unearth either the extracts of the conversations between the Applicants, or messages exchanged or any other credible evidence against these three Applicants (A2, A4 and A5).

18.2 The scrutiny of the CDRs of the Applicants does not lead to any conclusive evidence against the Applicants to hold the charge of being a part of the conspiracy and abetment to the smuggling and it only indicated that the Applicants knew each other and that A2 had telephonic conversations with A1, A3 and A4, however, role if any, played by A2, A4 and A5 had not been corroborated during the investigations.

18.3 Therefore, Government finds that the penalty imposed on applicant A2, A4 and A5 cannot be sustained in the absence of any reasonable evidence establishing the roles of the Applicants in the present case and therefore the Government is inclined to set aside the penalty imposed on applicant A2, A4 and A5.

19 Government opines that though there is concurrence with the AA about the imposition of penalty on A1 and A3, under Section 112 of the Customs Act, 1962 but considering the facts and circumstances of the case, value of goods involved, Government is of the opinion that the quantum of penalty imposed on A1 and A3 is excessive and is inclined to reduce the same.

20 In view of the above, Government modifies the impugned OIA's passed by the Commissioner (Appeals), Customs, C Euxam and GST, Nagpur to the extent of setting aside the penalty imposed on A2, A4 and A5 under Section 112 (a) and (b) of the Customs Act, 1962, setting aside the penalty imposed on A1 under Section

114AA of the Customs Act, 1962 and reducing the quantum of penalty imposed on A1 and A3, under Section 112 (a) and (b) of the Customs Act, 1962 as follows:

- (i) The penalty of Rs. 5,00,000/- imposed on A1 under Section 112(a) and (b) of the Customs Act, 1962 is reduced to Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only)
- (ii) The penalty of Rs. 3,00,000/- imposed on A1 under Section 114AA) of the Customs Act, 1962 is set aside
- (iii) The penalty of Rs. 7,00,000/- imposed on A2 under Section 112(b) of the Customs Act, 1962 is set aside
- (iv) The penalty of Rs. 3,00,000/- imposed on A3 under Section 112 (b) of the Customs Act, 1962 is reduced to Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only)
- (v) The penalty of Rs. 3,00,000/- imposed on A4 under Section 112(b) of the Customs Act, 1962 is set aside
- (vi) The penalty of Rs. 3,00,000/- imposed on A5 under Section 112(b) of the Customs Act, 1962 is set aside

21. The Revision Applications are decided on the above terms.

(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. W-53/2024-CUS (WZ)/ASRA/MUMBAI DATED 17.01.2024.

To,

1. Shri Virendra C Lalwani, B-7, Jeevan Jyoti CHS, Kabchi Chowk, Nagpur.
2. Shri Rajkumar Irani, 305(A), Khushi Niwas, Opposite Ashok Beer Bar, Sindhu Colony, Jangalka, Nagpur.
3. Shri Pradeep W. Bobde, Plot No. 53, Near Hanuman Temple, Lakshminagar, Nagpur.
4. Shri Ritesh Manoharrao Mahapatra, 33, Pawanrao Nagar, Ramna Market Road, Nagpur.
5. Shri Amir Shamsulla Khan, Near house of Babhu Member, Behind Kamal Talim, Balshahi Peth, Telipura, Nagpur.

6. The Pr Commissioner of Customs, 81, GST Bhavan, Telanghedi Road, Civil Lines, Nagpur 440001

Copy to

1. The Commissioner (Appeals), Customs, Excise and GST, Nagpur, GST Bhavan, 2nd Floor, Room No 221, Telanghedi Road, Civil Lines, Nagpur 440 001
2. Shri A M Sachwani, Advocate for Applicant No 1 and 2, Nulwala Budding, Ground Floor, 41, Mint Road, Opp G.P.O. Fort, Mumbai 400 001
3. Shri K J Heera, Advocate, Nulwala Budding, Ground Floor, 41, Mint Road, Opp G.P.O. Fort, Mumbai 400 001
4. Ms Ketaki G. Deshpande, Advocate for Applicant No 3, 54, Central Excise Layout, Telecom Nagar, Nagpur 440025
5. Sr P S to AS (RA), Mumbai
6. File Copy,
7. Noticeboard