

F. No. 375/35/B/2021-RA  
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**SPEED POST**



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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 26/8/22

Order No. 285-289/22-Cus dated 26-8-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Five Revision Applications filed, under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. JNK-EXCUS-APP/08/2021-22 dated 07.05.2021 and JNK-EXCUS-APP/16-19/2021-22 dated 06.06.2021, both passed by the Commissioner (Appeals), GST, Central Excise and Customs, Jammu.

Applicants : 1. Sh. Vijender Singh, Ludhiana.  
2. Sh. Anil Kumar, Gurdaspur.  
3. Sh. Davinder Kumar, Jalandhar.  
4. Sh. Sanjeev Kumar @ Sonu, Jalandhar.  
5. Sh. Sushil Chauhan, Jalandhar.

Respondent : The Commissioner of Customs (Preventive), Amritsar.

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### ORDER

Five Revision Applications, bearing nos. 375/35/B/2021-RA dated 12.08.2021 and 375/40/B/2021-RA, 375/41/B/2021-RA, 375/42/B/2021-RA & 375/43/B/2021-RA all dated 13.09.2021, have been filed by Sh. Vijender Singh, Ludhiana (earlier R/o Amritsar) (hereinafter referred to as the '**Applicant-1**' or '**Vijender**'), Sh. Anil Kumar, Gurdaspur (hereinafter referred to as the '**Applicant-2**' or '**Anil**'), Sh. Davinder Kumar, Jalandhar (hereinafter referred to as the '**Applicant-3**' or '**Davinder**'), Sh. Sanjeev Kumar @ Sonu, Jalandhar (hereinafter referred to as the '**Applicant-4**' or '**Sonu**') and Sh. Sushil Chauhan, Jalandhar (hereinafter referred to as the '**Applicant-5**' or '**Sushil**'), respectively, against the Order-in-Appeal No. JNK-EXCUS-APP/08/2021-22 dated 07.05.2021 and JNK-EXCUS-APP/16-19/2021-22 dated 06.06.2021, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jammu. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Joint Commissioner of Customs (Preventive), Amritsar, bearing no. 18/JC/CUS/ASR/2017 dated 25.08.2017, in a case of smuggling of 01 Kg gold by Applicant-2 on 24.05.2015 and 06 Kg Gold by Applicant-5 on 06.07.2015, totally weighing 7 Kg, collectively valued at Rs. 1,72,85,240/-, in connivance with each other and the Applicants-1, 3 & 4 etc., from SGRDJI Airport, Amritsar. The details of OIO dated 25.08.2017 are as under:

S. No.	Qty. of Gold smuggled	Value of the Gold smuggled	Duty amount confirmed with Interest	Name of the Applicant(s) S/Sh.	Amount of Penalty imposed	Sections of CA, 1962 under which duty amount was demanded & confirmed, interest and penalty imposed
1.	01 Kg	25,59,140/-	9,22,570/-	Anil Kumar, <b>Applicant-2</b>	9,22,570/-	28, 28AA 114A
2.				Davinder Kumar <b>Applicant-3</b>	10,00,000/- 2,00,000/-	112(a) 114(i)
3.				Sanjeev Kumar @ Sonu <b>Applicant-4</b>	10,00,000/- 5,00,000/-	112(a) 114(i)
4.	06 Kg	1,47,26,100/-	53,08,759/-	Sushil Chauhan <b>Applicant-5</b>	53,08,759/-	28, 28AA 114A
5.				Sh. Vijender Singh <b>Applicant-1</b>	25,00,000/-	112(b)
<b>Total</b>	<b>07 Kg</b>	<b>1,72,85,240/-</b>	<b>62,31,329/-</b>			

2.1 Brief facts of the case are that subsequent to recovery of 394.570 gms of gold from the Santro car bearing registration no. PB02 AP 3575 of the Applicant-1, parked in parking area outside SGRDJI Airport, Amritsar, on 06.07.2015, and handing over of a mobile phone (98144-93966) by one Sh. Ravi, House Boy working at the Airport, to the Assistant Commissioner of Customs posted at SGRDJI Airport, Amritsar, investigations were initiated in the case of smuggling of gold from the said airport. In preliminary investigations, it was revealed that the said mobile phone (98144-93966) was handed over to Sh. Ravi, House Boy by the Applicant-1, on 06.07.2015, with the directions that the Applicant-1 would take it back later on. When confronted with the statement of Sh. Ravi, the Applicant-1 denied the fact of handing over of any phone to Sh. Ravi. However, the CCTV footage made it evident that the Applicant-1 had handed over something to Sh. Ravi, House Boy working at the Airport, which he was denying. Further, scrutiny of said mobile phone having number 98144-93966, it was found that documents like airport's shift duty roster, were shared with one contact saved as 'Sanju Jalandhar alias Billu', (hereinafter referred to as '**Billu**') on 30.06.2015 and photographs & names of Applicant-3 & 5 were received from the above saved contact no. 98144-09166 of 'Sanju Jalandhar alias Billu' and text message 'Good luck', between mobile number 98144-93966 and mobile number 98144-09166 of 'Sanju Jalandhar alias Billu', were sent & received on 06.07.2015. On further inquiries, it was ascertained that the Applicant-3 & 5 arrived at SGRDJI Airport, Amritsar, on 06.07.2015, by Air India Flight No. IX-192. Accordingly, after ascertaining the passport numbers and addresses of the Applicant-3 & 5, searches were conducted on 16.07.2015, which resulted in recovery of mobile phones having Nos. 99151-05251 belonging to Applicant-3 and 98152-38374 belonging to Applicant-5 along with a pair of rubber slipper and their passports.

2.2 The statements of Applicant-3 & 5 were recorded on 16.07.2015 & 20.07.2015, respectively, under Section 108 of the Customs Act, 1962, wherein they admitted their involvement in smuggling of gold, from Bangkok & Dubai, for monetary consideration for Applicant-4, by concealing the same in rubber slippers/ chappals; that they had declared 03 Kg gold at Dubai airport and paid the charges payable and had torn the receipt of charges before boarding the flight; that their tickets & stay arrangements were made by Applicant-4; that for the purchase of gold, they carried 4.2 Lakh UAE Dirhams (2.1 Lakh UAE each), as handed over to them by the Applicant-4; that they would hand over the smuggled currency to one Sh. Jagdish, the owner of gold shop for purchase of confiscated gold, as per the instructions of Applicant-4; that they both had smuggled gold on 06.07.2015 from Dubai from green channel as per some settings/ arrangement with a Customs officer, as made by Applicant-4 at SGRDJI Airport, Amritsar; that the Applicant-3 had handed over the

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smuggled gold carried by him to the Applicant-5 as per information passed on, by the Applicant-4, as the Applicant-3 was likely to be checked by the Customs officers at SGRDJI Airport; that on the instructions of Applicant-4, they shared their photographs with Applicant-4 from Dubai on 06.07.2015; that they handed over the gold to Applicant-4 outside the airport in the car; that the amount of Rs. 15 Lakh was returned to the Applicant-3 by Applicant-4 after sale of smuggled gold along with profit of Rs. 50,000/-. The business premises of Applicant-4 and 'Billu' (now deceased) (brother-in law of Applicant-4) were searched, on 16.07.2015, and during search proceedings, one mobile phone without SIM and 03 SIM Cards were recovered from the business premises of 'Billu'. On enquiry about mobile numbers recovered, it was found that Mobile Nos. i.e., 95922-99652 (used by 'Billu'), 98144-93966 (used by Applicant-1 and handed over to the AC, Shift by Mr. Ravi, House Boy) and 98144-09166 (used by 'Billu'), were procured by Sh. Amit Kumar, real brother of 'Billu', on the basis of the documents issued in the names of some other persons. During the course of further investigations in the matter, enquiries were made from the dealers regarding sale of 02 handsets of mobile phones, so recovered from the Applicant-1 (98150-95357) and Applicant-1's Mobile Phone Handset (98144-93966), handed over by Sh. Ravi, House Boy working at the Airport to the AC, Shift, SGRDJI Airport. It was revealed that one Sh. Kamal Arora had purchased the said handsets of mobile phones from the dealer for trading purpose. Sh. Kamal Arora, in his statement dated 29.09.2015, admitted that he had purchased the said handsets of mobile phones, in cash and sold the same to Applicant-1 and delivered them to Applicant-1's son. He further admitted that no bill was raised and the payment was made by Applicant-1's son, on 30.5.2015, in cash.

2.3 The statements of Applicant-4 were recorded, on 16.07.2015 & 20.07.2015, under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he knew Applicant-3 & 5 who smuggled gold for them from Dubai on 06.07.2015 via flight number IX-192; that the smuggled gold was received by him outside the SGRDJI Airport, on 06.07.2015; that he knew Applicant-1 who was on duty on 06.07.2015; that the photographs received from Applicant-5's Mobile No. 98152-38374, were forwarded by him from his Mobile No. 98140-43670 to 'Billu' who further forwarded the same from his Mobile No. 98152-02128 to the Applicant-1 [on Mobile No. 98144-93966, (used by Applicant-1 and handed over to the AC, Shift by Mr. Ravi, House Boy)]; that Mobile Phone in which SIM No. 98140-43670 was operative has been destroyed; that an amount of Rs. 50,000/- per Kg used to be taken by Applicant-1 from 'Billu' for clearance of gold; that through voice message, he wanted to inform Applicant-5 about the discussion held with Applicant-1 regarding bringing of gold on Tuesday instead of Monday as per telephonic conversation with Applicant-1; that he

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identified the persons in photographs as the Applicant-3 & 5; and that he agreed with the statements dated 16.07.2015 & 20.07.2015 of both the Applicant-3 & 5.

2.4 The statements of Sh. Sanjeev Kumar alias 'Sanju Jalandhar' alias 'Billu' (now deceased), the brother-in law of Applicant-4, were also recorded on 16.07.2015 & 20.07.2015, under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he knew Applicant-3 & 5 who smuggled gold for them [Billu & Sonu. (i.e., Applicant-4)] from Dubai; that he agreed with the statement of Applicant-4 in toto; that he received the photographs from Applicant-4 on his Mobile No. 98152-02128 and forwarded the same from his another Mobile Phone having No. 98144-09166 to the Applicant-1's Mobile No. 98144-93966; that SIM No. 98144-93966 being used by the Applicant-1 was got issued in the name of his real brother Sh. Amit Kumar; that during the visit of Applicant-1 to their shops (his & Applicant-4's), on 11.07.2015, they gave Rs. 1.5 Lakh to him (Applicant-1) in lieu of facilitating smuggling of 3 Kgs gold on 06.07.2015; that he had another Mobile No. 95922-99652 which was in his brother's name through which he was in touch with the Applicant-1 and the SIM was destroyed by the Applicant-1 on 11.07.2015; that the Applicant-1 visited their shops (his & Applicant-4's), on 11.07.2015 and collected Rs. 1.50 Lakh; that he agreed with the statements dated 16.07.2015 & 20.07.2015 of Applicant-3, 4 & 5; that he was in touch with Applicant-1, who used to help their group at airport in smuggling of gold; that Applicant-1 informed him about the name of the Applicant-3 in the customs check list for interrogation and search; that the Applicant-4 informed about search and interrogation to the Applicant-3 & 5; that the Applicant-5 had then taken over the smuggled gold from the Applicant-3 and, therefore, Applicant-3 came out of the airport without carrying any gold. The facts regarding visit of Applicant-1 at the shops of Billu and Applicant-4 was further confirmed by another person, namely, Sh. Varinder Verma in his statement dated 08.10.2015, under Section 108 of the Customs Act, 1962. Sh. Varinder Verma admitted that he knew Applicant-1; that he along with his relative and the Applicant-1 visited the shop of Applicant-4, as seen in the video recording shown to him; that during their visit on 11.07.2015 at Applicant-4's shop, the Applicant-4 had broken one mobile phone on the directions of Applicant-1; that he did not know about the transaction or any conversation that took place at the shop or the reasons to break the mobile phone. The footage of DVR installed at Billu's shop, resumed on 18.07.2015, showed that Applicant-1 visited the shop on 11.07.2015, stayed there for 70 minutes and thereafter left with a black packet in hand.

2.5 The statements of Applicant-1 were recorded on 07.07.2015, 17.08.2015 and 30.09.2015, under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that

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he knew Sh. Sanjeev Kumar alias 'Sanju Jalandhar' alias 'Billu' (now deceased), the brother-in law of Applicant-4, who introduced himself as an informer but no information was provided by him; that 'Billu' also introduced Applicant-4 to him for providing of information; that he did not remember the phone number of 'Billu' though he knew him as 'Sanju Jalandhar' and 'Sanju Beas'; that he did not remember phone number of Applicant-4. On being shown the statements dated 16.07.2015 & 20.07.2015 of Applicant-3, 4 & 5, statement dated 16.07.2015, 20.07.2015 & 17.08.2015 of 'Billu' and statements all dated 29.09.2015 of 03 Mobile Phone dealers including of Sh. Kamal Arora, the Applicant-1 stated that he had nothing to do with the said statements; that he knew Applicant-4 through 'Billu' in the context of receiving good information; that he had not helped any person who was involved in any illegal activity; that he had not taken any money etc. from anyone.

2.6 The amount of customs duty evaded on 03 Kg gold smuggled on 06.07.2015, equivalent to Rs. 12.50 Lakh was deposited by the Applicant-3, 4, 5 and 'Billu', on 03.08.2015, 07.10.2015 and 09.10.2015, respectively.

2.7 The forensic examination of the recovered six mobile phones was conducted under Panchnama proceedings dated 02.09.2015 and it was revealed that the Applicant-1 was in touch with 'Billu' through his own Mobile No. 98150-95357 from 02.07.2015 to 06.07.2015. Similarly, Applicant-5 had, through his Mobile No. 98152-38374, exchanged voice messages on WhatsApp with Applicant-4 on his Mobile No. 98140-43670 (destroyed on 11.07.2015) wherein it had a mention that the Applicant-3 & 5 carried 136,950 Pounds, 5,000 Euros and 20,000 Dirhams from India for purchase of gold from one Sh. Jagdish at Dubai; that Sh. Jagdish would initially raise two bills for 1½ Kg. each, one bill for 01 Kg and rest in the name of Applicant-3 or 5; that (at later stage) total 06 Kgs gold was purchased by Applicant-3 & 5 at Dubai and total 04 purchase bills for 1½ Kg each were got issued with the intent to show only two bills of 1½ each, at Dubai Airport; that photographs of passports of all the 03 passengers, including Applicant-3 & 5, were sent by Applicant-5 to the Applicant-4 from Dubai for the purpose of identification by the Applicant-1 who would help them in smuggling of gold from SGRDJI Airport on 06.07.2015; that as discussed with 'Billu', Applicant-1 confirmed the facilitation of smuggling activities on Monday instead of Tuesday; that the Applicant-3 & 5 agreed upon to carry the smuggled gold in chappals or boots, as per their convenience. Thus, the facts and figures regarding the quantity of 03 Kg gold smuggled on 06.07.2015 and foreign currency 2.1 Lakh UAE Dirhams illegally exported by the Applicant-3 & 5, as admitted by them along with Applicant-4 and 'Billu', in their respective earlier statements, were found to be incorrect and wrong to the extent that actually, a total of 06

Kg gold was smuggled on 06.07.2015 and foreign currency equivalent to 136,950 Pounds, 5,000 Euros and 20,000 Dirhams was smuggled out of India illegally by the Applicant-3 & 5 on 02.07.2015, in association with Applicant-4 and 'Billu'.

2.8 Keeping in view the data/ recorded voice messages recovered from the seized 06 mobile phones, further statement of Applicant-5 was recorded on 20.11.2015, wherein he, inter-alia, admitted that the recovered voice messages were exchanged between him and the Applicant-4 and saved in Mobile Phone having No. 98152-38374 of Applicant-5; that foreign currency was handed over to him in concealed manner by the Applicant-4 who also dropped him and Applicant-3 at Amritsar airport; that at Dubai, he counted the foreign currency equivalent to 136,950 Pounds, 5,000 Euros and 20,000 Dirhams and conveyed the currency figures to Applicant-4 on WhatsApp by sending him the voice messages; that he handed over the said foreign currency to Sh. Jagdish on 03.07.2015 on the directions of Applicant-4 and came back to their hotel; that on 04.07.2015, the Applicant-4 confirmed the settled rate of gold @ 138,300 Dirham per Kg and as directed, collected 06 Kg gold from Sh. Jagdish along with 04 purchase bills (two in his name and two in the name of Applicant-3) and came back to their hotel & informed the Applicant-4 on WhatsApp; that they had to pay a fee of 275 Dirhams per Kg at Dubai Airport but as per instructions of Applicant-4, they produced only two bills and saved 550 Dirhams at the time of coming back to India; that on the instructions of Applicant-4, he shared photographs of their passports with Applicant-4 as the same were required to be sent to a Customs Officer at Amritsar airport for their identification; that again he shared their photographs with Applicant-4 in the dress they were to wear, while coming back to India and, accordingly, in the early morning of 06.07.2015, he clicked their photos with his phone camera and sent the same to Applicant-4 on WhatsApp for the purpose of their identification at Amritsar Airport as asked by the Customs officer; that on 06.07.2015, they reached Amritsar airport with gold concealed in their shoes; that when they were in plane, Applicant-3 received a call from Applicant-4 who instructed him to hand over 03 Kg gold to him (Applicant-5) which he kept in his pocket, as the name of the Applicant-3 figured in the customs checking list; that he, after immigration, walked through Customs area without declaring the gold to Customs; that after checking the Applicant-3, he was allowed to come out by the Customs; that the Applicant-4 had come at airport to receive them and they all came to Jalandhar in his XUV; that the Applicant-4 took all 06 Kg gold from him (Applicant-5). The transcript of the voice message recovered from his mobile phone was signed by the Applicant-5 in token of its correctness.

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2.9 Further statement of Sh. Sanjeev Kumar alias 'Sanju Jalandhar' alias 'Billu' (now deceased), brother-in law of Applicant-4, was recorded on 20.11.2015, under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that the Applicant-3 & 5 had brought 06 Kg gold and he, Applicant-3, 4 & 5 and five others associates contributed money; that travel package including air tickets, hotel stay at Dubai etc. was arranged by the Applicant-4. On listening of voice message, he recognized the voices of Applicant-5 and Applicant-4 and confirmed that the same were related to bringing of gold by Applicant-3 & 5 from Dubai on 06.07.2015. He also confirmed the contribution of foreign currency made by him and his associates for purchase of gold at Dubai and bringing of the same to India by Applicant-3 & 5. When confronted with the statement dated 20.11.2015 of Applicant-5, wherein he admitted the carriage of foreign currency and bringing of gold at the airport, he stated that he had already clarified his version. On being asked, how he came in contact with Applicant-1, he stated that he sent Applicant-2 to Dubai for bringing 01 Kg gold and the Applicant-2 informed him that the said smuggled 01 Kg gold along with concealing material i.e., Chappals & passport carried by him (Applicant-2), was snatched by Applicant-1 from him (Applicant-2), on last Sunday of May, 2015, at SGRDJI Airport and he (Applicant-1) kept the same in his Santro car bearing registration no. 3575 (PB02 AP 3575) which was parked in the parking area outside the airport; that he along with his brother-in law, namely, Sh. Manoj Kumar visited airport and met Applicant-1 who fixed a place of meeting at 4 PM and gave his mobile no. to Sh. Manoj Kumar. They visited the pre-fixed place and the Applicant-1 came at the spot and demanded Rs. 10 Lakh for returning the gold (brought by the Applicant-2 & snatched by Applicant-1) and the amount was finally settled at Rs. 4 Lakh. The said amount of Rs. 4 lakh was brought by one of his friends, Bobby Dhir, and thereafter, Applicant-1 was informed, who again fixed another place for meeting at around 8 PM on the same day; that Applicant-1 came at the fixed place and handed over 01 Kg gold in exchange for Rs. 4 Lakh which were handed over to Applicant-1 by Sh. Manoj Kumar; that the Applicant-1 promised to return the passport of the Applicant-2 if they would give him some information about smuggling of gold; that the Applicant-1 directed them to meet him next day and, accordingly, he along with his friend Bobby Dhir met Applicant-1 at Amritsar where the Applicant-1 offered them to help in clearance of gold from the airport and demanded Rs. 50,000/- per Kg; that after a day or two he provided an information about two passengers who would bring gold at the instance of Applicant-4; that the Applicant-1, though was not on duty but was standing outside the arrival hall of the airport; that he identified the passengers and informed Applicant-1 and said two passengers were apprehended by Applicant-1; that Applicant-4 was also present at the airport and saw him with Applicant-1; that later on the Applicant-4 thrashed him badly and informed him that

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gold from Sh. Jagdish at Dubai, were evident from the WhatsApp voice messages; that he negotiated the purchase price @ Dirham 138,300 per Kg for 5925 gms of gold from Sh. Jagdish at Dubai; that he had instructed to get issued 04 purchase bills in the name of Applicant-3 & 5 and show only two bills with the intent to save fee of 550 Dirhams at Dubai Airport (275 Dirhams/ Kg); that on 05.07.2015, he requested Applicant-5 to send the photographs of their passports to him for further forwarding the same to the Applicant-1 through 'Billu' who was his brother-in law; that 'Billu' requested him to send the photographs of Applicant-3 & 5 in the dress, they were likely to wear during their travel from Dubai to India, for onward sharing with the Applicant-1 for the purpose of easy identification; that he received the photographs from Applicant-5 and forwarded the same to 'Billu', who had further forwarded the same to the Applicant-1 on WhatsApp; that as per the instructions of Applicant-1, only 'Billu' could contact Applicant-1; that on 06.07.2015, he reached SGRDJI Airport in the car of Applicant-5 to receive Applicant-3 & 5; that as per information shared by 'Billu', he directed Applicant-3 to hand over the gold to Applicant-5, as the name of the Applicant-3 was figuring in the customs check list; that the Applicant-3 handed over the smuggled gold to Applicant-5; that the Applicant-5 came out of the airport without declaring the smuggled gold and after sometime Applicant-3 also came out of the airport and they together left for Jalandhar; that on the way to Jalandhar, the Applicant-5 handed over 06 Kg gold to him which he had sold in the open market in small quantities and distributed the money, as per share in booty, to the persons who contributed money for purchasing and bringing of gold from Dubai. The Applicant-4 signed the typed version of WhatsApp audio messages in token of its correctness. On being shown the Digital Video Recording resumed from his shop on 18.07.2015, he stated that the person seen in the DVR was him and as seen, he was handling 06 kg gold, smuggled into India by Applicant-3 & 5 on 06.07.2015.

2.11 The Applicant-3 in his statement dated 04.02.2016, recorded under Section 108 of the Customs Act, 1962, admitted that typed Hindi version was the same as 104 audio clips were played for him; that he put his signatures on the same; that he was in total agreement with the statement of Applicant-4, 5 and 'Billu'.

2.12.1 On scrutiny of call details, as extracted from the Mobile Phone of Applicant-1 having No. 98150-95357, it was revealed that Applicant-1 had received/ dialed/ missed 14 calls to/ from 'Billu' having Mobile No. 98152-02128, during the period from 25.06.2015 to 29.06.2015 i.e., before departure of Applicant-3 & 5 to Dubai.

due to his acts, he had paid Rs. 20 Lakh to the Applicant-1; that thereafter he contacted Applicant-1 and informed him about the beating by Applicant-4 and, in return, the Applicant-1 gave him Rs. 2 Lakh out of Rs. 20 Lakh; that after taking a loan of Rs. 8 Lakh, he collectively returned Rs. 10 Lakh to Applicant-4 to cover up the loss; that thereafter he along with Applicant-4 met Applicant-1 and agreed to pay Rs. 50,000 per Kg for clearance of gold from airport; that they smuggled gold on three occasions from Dubai; that they smuggled gold, firstly 02 Kg and then 02 Kg and then again 06 Kg; that he did not remember the names of the passengers or the dates on which they brought above gold but incidents took place between June, 2015 to 06.07.2015 and they used to pay Rs. 50,000/- per Kg to the Applicant-1 on the same day when the gold was cleared from the airport. On being asked how many times they had paid to Applicant-1, he stated that he had paid Rs. 4 Lakh for 01 Kg gold brought by Applicant-2 and snatched by Applicant-1; that Rs. 20 Lakh was paid by the Applicant-4 for 1.5 Kg gold brought by two passengers (which actually belonged to Applicant-4) and caught by Applicant-1 on his information; that after making an alliance with Applicant-4 & Applicant-1, they (he & Applicant-4) paid Rs. 90,000/- to Applicant-1, for 2 Kg gold brought in the month of June, 2015; that again they paid Rs. 1 Lakh to Applicant-1, for 2 Kg gold brought by his passenger; that on 11.07.2015 they paid Rs. 1.5 lakh to Applicant-1 for 3 Kg gold (actual quantity 06 Kg) brought by Applicant-3 & 5 on 06.07.2015 and the said amount of Rs. 1.5 was paid by them to the Applicant-1 at the shop of Applicant-4.

2.10 The Applicant-4 was also confronted with the data recovered from the seized 06 mobile phones. In his statements recorded on 27.11.2015 & 23.06.2016, under Section 108 of the Customs Act, 1962, Applicant-4, inter-alia, admitted that the recovered voice messages were exchanged between him and the Applicant-5 and saved in Mobile Phone of Applicant-5 having No. 98152-38374, during the period from 02.07.2015, onwards when the Applicant-5 had gone to Dubai with Applicant-3 to bring gold; that he met Applicant-1 through 'Billu' (now deceased), his brother-in law for the purpose of seeking the help of Applicant-1, in clearance of gold from SGRDJI Airport; that the Applicant-1 agreed to take Rs. 50,000/- per Kg for clearance of gold; that after receiving confirmation from Applicant-1, he along with his other associates hatched a plan to bring gold from Dubai; that he purchased a travel package for Applicant-3 & 5 for Rs. 93,000/-; that he along with Applicant-3, 5, 'Billu' and his associates arranged foreign currency for buying and bringing of gold from Dubai; that he handed over the foreign currency to the Applicant-3 & 5 on 02.07.2015 at his plot at Basti Sheikh, Jalandhar and also dropped them (Applicant-3 & 5) at SGRDJI Airport; that the facts related to carrying of foreign currency and purchase of

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2.12.2 On scrutiny of call details, as extracted from the Mobile No. 98144-93966 (used by Applicant-1 and handed over to the AC, Shift by Mr. Ravi, House Boy), it was revealed that Applicant-1 had received/ dialed/ missed 171 call to/ from 'Billu' having Mobile Nos. 95922-99652 & 98144-09166 and with Applicant-4 having Mobile No. 97793-73936 during the period from 03.06.2015 to 06.07.2015 i.e., before departure of Applicant-3 & 5 to Dubai. Sh. Kamal Arora, in his statement dated 29.09.2015, admitted that he had sold 02 handsets to Applicant-1 and delivered them to Applicant-1's son; that no bill was raised and the payment was made by Applicant-1's son, on 30.5.2015, in cash. It was also found that the Applicant-1 was also in contact with Applicant-4 through another Mobile No. 97793-73936 of Applicant-4. It was from this number that the Applicant-4 made a call to Applicant-1 on 06.07.2015 at 13:07:47. The call details records procured from service provider Airtel, revealed that Applicant-4 also made a call to Applicant-3 on his Mobile No. 99151-05251 at 13:01:07 and then also made a call to Applicant-1 on his Mobile No. 98144-93966 at 13:08:03 and thereafter 'Billu' had made a call to him on his Mobile No. 97793-73936 at 13:51:24. Therefore, from the corroborated evidences in the form of call details records and voice messages on WhatsApp, it appeared that the Applicant-1 was in constant touch with Applicant-4 and 'Billu' and played a vital role in smuggling of 06 kg gold brought by Applicant-3 & 5. The Applicant-1 also extended help to the Applicant-4 and 'Billu' by passing on the information related to figuring of name of Applicant-3 in the customs check list. Further, to avoid detection for his nexus and involvement in smuggling activities, he forcefully handed over the recovered Mobile Phone having No. 98144-93966 to Sh. Ravi, a house boy working at SGRDJI Airport.

2.13 To ascertain the correctness of the facts and quantity of gold smuggled by the Applicant-2, the statements of Sh. Anil Kumar, the Applicant-2 herein, were recorded on 21.01.2016 & 19.04.2016, under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he had gone to Dubai on 21.01.2015 and brought 01 Kg gold at Amritsar Airport on 24.05.2015 by concealing the same in his chappals; that he was apprehended by Applicant-1 to whom, on enquiry, he informed that he had brought gold and concealed the same in his chappals; that the Applicant-1 took him to one room and instructed him to keep the gold along with chappals in Santro car parked outside the airport; that the Applicant-1 escorted him with concealed gold, out of the airport and handed over his car keys and instructed him to keep the gold in the car and returned the keys to him; that the Applicant-1 also took his passport from him; that he narrated the said incident to 'Billu' and Sh. Manoj Kumar {brother-in law of 'Billu'}, over telephone; that they both reached at the airport and he showed them the Santro car wherein gold was kept; that after some time the Applicant-

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1 came out of the airport and after a while went inside and thereupon he informed that the said officer was Applicant-1 who had snatched gold from him (Applicant-2); that he along with Sh. Manoj Kumar went inside the airport after buying entry tickets and met Applicant-1 and requested him to return the gold; that the Applicant-1 introduced himself as Sh. Vijender Singh, Superintendent and directed them to meet him at a fixed place; that after reaching the said place, he stayed in the park and they both ('Billu' and Sh. Manoj Kumar) met the officer (Applicant-1); that after meeting, they informed him that no case had been booked against him (Applicant-2) and the Applicant-1 agreed to return the gold on payment of Rs. 4 Lakh; that after two or three days, Sh. Manoj Kumar gave him (Applicant-2), his (Applicant-2's) passport. On being shown the photograph of the Applicant-1, he identified the person in the photograph as Sh. Vijender Singh, Superintendent who snatched gold from him and in token of identification, he put his dated signatures on the photograph of Applicant-1.

2.14 To ascertain the correctness of the facts stated by Applicant-4 & 5 and 'Billu', the statements of Sh. Manoj Kumar were recorded on 21.01.2016 & 31.03.2016, under Section 108 of the Customs Act, 1962, wherein he reiterated the facts and details about snatching of gold by Applicant-1 from the Applicant-2 and their meeting with Applicant-1, wherein Rs. 4 Lakh was handed over to Applicant-1 in lieu of returning of 01 Kg gold; that he along with Sh. Bobby Dhir and 'Billu' received the passport of Applicant-2 from the Applicant-1 and handed over the same to the Applicant-2. On being shown the photograph of the Applicant-1, he identified the person in the photograph as Sh. Vijender Singh, Superintendent and in token of identification, he put his dated signatures on the photograph of Applicant-1. On being asked about the money contributed by him in smuggling of gold, he stated that he had paid Rs. 5 Lakh to 'Billu' and received it back after some days; that he was neither involved in any smuggling activities nor gave any money for this purpose. He further disclosed that he received a call from 'Billu' and reached the Amritsar airport and he only talked to Applicant-2 from phone of 'Billu'. The Applicant-2 narrated the incident to them in the parking of the airport only.

2.15 To verify the facts related to bringing of Rs. 4 Lakh by Sh. Bobby Dhir and handing over of the same to Applicant-1 on 24.05.2015, in lieu of return of 01 Kg gold brought by Applicant-2 and handing over of Rs. 1.5 Lakh to Applicant-1 on 11.07.2015 by Applicant-4 and 'Billu' his brother-in law, in the presence of one Mr. Bobby Dhir for facilitation extended by Applicant-1, the statement of Sh. Bobby Dhir was recorded on 03.02.2016, under Section 108 of the Customs Act, 1962, wherein he stated that he knew Applicant-4 and 'Billu' and

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which proved that he had something to do with them and that the whole matter was investigated only on hearsay. On being confronted with the statement dated 20.11.2015 of 'Billu', he stated that he would be allowed to cross examine all the concern; that he had not snatched the gold and did not help any such person; that on one hand it was said that the gold was smuggled in chappals and on the other hand, it was smuggled in shoes; that no money exchange was seen in the CCTV footage for smuggling of gold from airport; that it was not clear who paid the money i.e. Applicant-4 (Sonu) or 'Billu'; that his Mobile Phone having No. 98150-95357 was seized at 1530 hrs on 06.07.2015 (from Seizure-cum-Recovery Memo dated 06.07.2015-RUD-3 to SCN dated 31.12.2015, the said phone was seized at 1840 hrs and the text message were sent to 'Billu' by Applicant-1, after recovery of 394.570 gms gold from his Santro car). Further on being confronted with the statement dated 27.11.2015 of Applicant-4, he stated that version of Applicant-4 (Sonu) and 'Billu' were different in different statements regarding introduction with them and quantity of gold smuggled and about smuggling of foreign currency; that details of cars were different; that AIU staff must have kept the suspected pax under watch and how a pax could give gold concealed in shoes to some other pax [as admitted 03 Kg gold was handed over to Applicant-5 by Applicant-3 in the plane; that he had nothing to do in false story. On being confronted with the statements all dated 21.01.2016 of Applicant-2 who brought 1 Kg gold, Sh. Manoj Kumar (brother-in law of 'Billu'), Sh. Bobby Dhir and that of Applicant-3, he, inter-alia, stated that the statements given by 'Billu', Applicant-2 and Sh. Manoj Kumar were false and tendered with ill will; that he never met Bobby Dhir in the city during his duty hours; that nothing had been stated by Applicant-3 against him. On being asked whether he knew any of the persons whose statements were shown to him, he admitted that he knew only Applicant-4 (Sonu) & 'Billu' and did not know any other persons.

2.17 The call details procured from Airtel were scrutinized in respect of 'Billu's' Mobile No. 98152-02128 which were made/ received on 24.05.2015, the day when Applicant-2 arrived at Amritsar airport with 01 Kg gold which was snatched by Applicant-1 and returned to 'Billu' on payment of Rs. 4 Lakh, made in the presence of Manoj Kumar and Bobby Dhir at cafe coffee day situated at Lawrence Road and it was noticed that the Applicant-1 had made one call from his Mobile No. 98150-95357 to 'Billu's' Mobile No. 98152-02128 and thereafter, 'Billu' made two calls from his Mobile No. 98152-02128 to Applicant-1 on his Mobile No. 98150-95357. Further, the location of above-mentioned two mobile numbers along with location of mobile numbers pertaining to Bobby Dhir and Manoj Kumar were at Ranjeet Avenue or nearby vicinity during the time period 1700 hrs to 1945 hrs, which clearly indicated that the Applicant-1 met 'Billu' and Manoj Kumar in the presence of Bobby Dhir

got percentage (purity of gold) checked from Applicant-4 and whereas, 'Billu' used to get jewellery made from him. On being asked about the Applicant-1, he stated that he brought Rs. 4 Lakh from Jalandhar to Amritsar and gave to 'Billu' in the presence of Sh. Manoj Kumar; that in his presence, one person came there and had a talk with both of them; that after some time the said person left and thereafter 'Billu', informed him that the said person was Applicant-1 who snatched gold from Applicant-2 and returned the gold to him after taking Rs. 4 Lakh; that after some days, they all met Applicant-1 again to get back the passport of Applicant-2; that after meeting, 'Billu' informed him that the Applicant-1 would help him in clearing of gold from airport for which they had to pay some money to him (to Applicant-1); that 'Billu' requested him to contribute money in bringing of gold but he refused; that however, on request, he lent Rs. 5 Lakh, on interest basis to 'Billu' which was returned to him after some time; that he again saw the Applicant-1 along with Sh. Varinder Verma, at the shop of 'Billu'; that 'Billu' told him that Applicant-1 had come to collect the money which has been given to him; that on being shown the photograph of Applicant-1, he recognized the same as the Customs officer and put his signatures in token of having seen and identified the same; that on being shown statements of Applicant-4 and 'Billu', wherein it was stated that he was involved in the smuggling activities and contributed money to bring smuggled gold, he stated that he was asked to contribute but didn't contribute, however he lent Rs. 5 Lakh on interest to 'Billu', which was returned to him; that he did not know as to where 'Billu', used that money; that in cafe coffee day situated at Lawrence Road, they all (himself, Billu, Manoj Kumar & the Applicant-1) talked about the gold smuggling and the Applicant-1 demanded Rs. 50,000/- for every Kg of gold; that he was also informed by Applicant-4 and 'Billu' that they had paid Rs. 1.5 Lakh to Applicant-1 for clearing of gold from Amritsar airport on 06.07.2015 brought by Applicant-3 & 5.

2.16 The version of the Applicant-1 was obtained about the disclosures made by various persons including Applicant-2, 3, 4 & 5, 'Billu', Manoj Kumar and Bobby Dhir, about the smuggling of gold against consideration of money as alleged in the statements recorded under Section 108 of the Customs Act, 1962. Accordingly, his statement was recorded on 20.05.2016, under Section 108 of the Customs Act, 1962 wherein, inter-alia, on being confronted with statement dated 20.11.2015 of Applicant-5, he stated that statement dated 20.11.2015 of Applicant-5 was not with him at the time of issuance of show cause notice dated 31.12.2015, to him; that it was required to ascertain the quantity of gold actually smuggled; that it was not possible to take foreign currency from airport; that it was not proved that he had extended any help to Applicant-5; that he could not say anything about the conversation made by anyone with anyone with some context; that there was no proof

and finalized the deal of returning of smuggled 01 Kg gold against payment of Rs. 4 Lakh (which were brought by Boddy Dhir from Jalandhar to Amritsar on the request of 'Billu').

2.18 The investigations resulted in issue of show cause notice dated 17.08.2016 and subsequent Orders, as brought out in para 1 above.

3.1 The revision application has been filed by the Applicant-1, mainly, on the grounds that the proceedings initiated under Section 155(2) of the customs Act, 1962 are beyond the time limit stipulated under the Act, ibid and are bad in law; that the cross-examination of the persons has not been allowed, despite requests; that OIO has been passed by relying upon the statements of co-noticees without any corroboration; that the OIO is non-est in terms of Public Notice no. 01/2014-Customs dated 14.10.2014 issued by the Chief Commissioner, Customs Preventive, (Delhi Zone) New Delhi; that valuation of the impugned goods has been done without resorting to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; that none reported about the involvement of the Applicant-1 in any nefarious/ unlawful activities at the airport; that the forensic of the recovered mobile phones was conducted by the private party without approval of the competent authority; that after forensic, the IMEI numbers of mobile phones did not match with the active mobile numbers in the said handsets; that no such person was examined, who were the actual subscriber of mobile numbers recovered during investigations; that there is no compliance as per Section 138B and 138C of Customs Act, 1962 & Section 65A & 65B of Indian Evidence Act, 1872; that photographs/ messages retrieved from WhatsApp application of the recovered mobile phones were cropped/ fabricated; that actual mobile handset of Sh. Billu was not recovered on 16.07.2015; that no money was given to the Applicant-1 at the shop; that 6 Kg gold could not be purchased from the foreign exchange taken by the Applicant-3 & 5; that no Panchnama was drawn at the time of receiving of mobile phone by Ravi to AC, Shift; that no money was given to Applicant-1 by Sh. Billu in the presence of Sh. Bobby Dhir; that the case is based on statements under Section 108 of the Customs Act, 1962 and have contradictions to each other; that there is no proposal for confiscation of the offending goods and thus penalty could not be imposed under Section 112 of the Act, ibid.

3.2 The revision applications have been filed by the Applicants 2-5, mainly, on the grounds that the department is heavily relying upon the statements of various persons and the Applicant-2-4 are almost illiterate and not conversant with English whereas all statements have been taken in English; that the Applicant-4 has once retracted his statement and tendered again his statement as per wish of Customs officials; that it is not

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possible to take 06 kg gold in the pocket and pass through the metal detector at airport; that the department had neither summoned nor examined any person before the adjudicating authority, whose statement was recorded; that the cross examination was not allowed during the proceedings; that the Applicant-2, 3 & 5 were not the actual owner of the smuggled gold and, thus, duty cannot be demanded from them; that Sh. Billu had committed suicide and his statement cannot be relied upon; that neither any goods have been confiscated nor there was any proposal for confiscation and, therefore, duty cannot be demanded and no penalty can be imposed upon the Applicants-2-5; and that Sh. Billu was the actual owner beneficiary and actual financier and, as such, they were the actual importer.

4.1 Personal hearing was fixed on 01.06.2022, 17.06.2022 and 04.07.2022. In the hearing held on 04.07.2022, in virtual mode, Sh. Naveen Bindal, Advocate, appeared for Applicants 2-5, and requested that the written submissions dated nil (received in the office on 01.07.2022) may be taken on record. He reiterated the contents of the respective revision applications and the written submissions received on 01.07.2022. Shri Bindal highlighted that:

- i) The duty involved in the present case is more than Rs. 50 Lakhs. Therefore, in terms of Board's Circular No. 24/2011-CUS dated 31.05.2011, the Order-in-Original passed by the Joint Commissioner is beyond his monetary jurisdiction.
- ii) The goods, alleged to have been smuggled, have already been cleared for home consumption and are, as such, not "imported goods". Therefore, the value cannot be determined in terms of the Valuation Rules, which are applicable to the "imported goods" only.
- iii) Special provisions have been made in Chapter XI of the Customs Act in respect of goods imported in baggage. Section 81 provides for making of regulations by the Board in respect of assessment to duties and clearance of baggage. No regulations in this respect have been framed. Since the Chapter XI provides a complete code in respect of baggage, and, as such, Section 28 could not have been resorted to for raising the demand.



- iv) As per Public Notice no. 01/2014-CUS dated 14.10.2014, issued by the Chief Commissioner of Customs (Preventive), New Delhi, the case comes under the jurisdiction of Commissioner of Customs, Ludhiana and not under Customs (Preventive) Commissionerate, Amritsar. As such, the Order-in-Original has been passed beyond his territorial jurisdiction by the Joint Commissioner.
- v) The Show Cause Notice does not seek confiscation of the goods alleged to have been smuggled, under Section 111 of the Act. Therefore, penalty could not have been imposed under Section 112.

4.2 Shri Sudhir Malhotra, Advocate appeared for the Applicant-1 and reiterated the contents of the revision application. He highlighted that:

- i) The case has been decided by Original Authority beyond his territorial jurisdiction. In terms of Public Notice No. 1/2014 dated 15.10.2014 issued by the Chief Commissioner of Customs (Preventive), New Delhi, the case falls under the jurisdiction of the Customs Commissionerate, Ludhiana and not the Customs (Preventive) Commissionerate, Amritsar.
- ii) The statements recorded from the co-accused regarding quantity of gold smuggled are contradictory in as much as the two accused have admitted to having smuggled 1.5 Kgs of gold each i.e., totally 3 Kgs, whereas subsequently, the quantity of smuggled gold is stated to be 6 Kgs.
- iii) The gold is stated to have been smuggled by hiding it in the Rubber Chappals. It is not possible to move in a secured area like the airport with so much of gold in Rubber Chappals.
- iv) The forensic evidence relied upon in the Show Cause notice is not supported by the Panchnama under which the forensic evidence was gathered.
- v) Notice under Section 155 (2) has been given to the Applicant beyond the period of three months. This position has also been upheld by the CESTAT

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in its final Order No. 60567-60568/2021 dated 25.03.2021. Therefore, the proceedings cannot subsist against the Applicant.

4.3 Shri Tarun Kumar, Superintendent supported the orders of the lower authorities on merits and requested that one weeks' time may be granted for making written submissions in respect of the submissions made on behalf of the Applicants during the personal hearing as well as the additional submissions dated 01.07.2022 (filed by the Applicants). Accordingly, the department was granted one weeks' time to make additional submissions.

4.4 The department filed additional submissions dated 07.07.2022, which were also shared with the Applicants. Rejoinders were filed by Applicant-1 on 11.07.2022 and by Applicants 2-5 on 09.07.2022.

5.1 The Government has carefully examined the matter. The Applicants have raised several legal and jurisdictional issues which need to be addressed at the outset.

5.2 The first contention of the Applicants is that the duty involved in the present case is more than Rs. 50,00,000/-. Therefore, in terms of Board's Circular No. 24/2011-Cus dated 31.05.2011, the Order-in-Original passed by the Joint Commissioner is beyond his monetary jurisdiction. The Government observes that this issue was also raised before the Commissioner (Appeals). In para 4.2 of the impugned Order-in-Appeal, it has been recorded that the Additional Commissioner/ Joint Commissioner can adjudicate the cases without limit in the case of baggage. It is observed that while the Commissioner (Appeals) has referred to the Board's Circular No. 23/2009-Cus dated 01.09.2009 to uphold the case, the Applicants have relied upon the Board's Circular No. 24/2011-Cus dated 31.05.2011. It is further observed that the Circular dated 31.05.2011 has been issued to amend the earlier Circular dated 01.09.2009. The scope of amendment is clear in the Circular dated 31.05.2011 and the provisions of the earlier Circular dated 01.09.2009 granting unlimited monetary jurisdiction to Additional/ Joint Commissioner in baggage cases have not been amended. Therefore, the Government is in agreement with the view taken by the Commissioner (Appeals) and does not find any merit in the subject contention.

5.3 The second contention of the Applicants is that the special provisions have been made in Chapter 11 of the Customs Act in respect of goods imported in baggage. Section 81 provides for making of regulations by the Board in respect of assessment to duty and clearance of baggage. No regulations in this respect have been framed. Since the Chapter-

XI provides a complete code in respect of baggage, as such Section 28 could not have been resorted to for raising the demand in the present case. Section 81 of the Customs Act reads as under:

***"SECTION 81. Regulations in respect of baggage. - The Board may make regulations -***

- (a) providing for the manner of declaring the contents of any baggage;*
- (b) providing for the custody, examination, assessment to duty and clearance of baggage;*
- (c) providing for the transit or transshipment of baggage from one customs station to another or to a place outside India."*

Thus, Section 81 empowers the Board that it may make regulations providing for the custody, examination, assessment to duty and clearance of baggage. It is the contention of the Applicants that as the Board has not made any regulations in regard to assessment to duty in respect of goods imported in baggage, Section 28 cannot be resorted to. The Government is not persuaded to accept this contention of the Applicants in as much as the use of word "may" in Section 81 makes it clear that it is discretionary for the Board to make regulations in respect of items listed in Section 81 and it is not mandatory that the Board ought to have made regulations, inter-alia, in regard to assessment to duty in respect of goods imported in baggage. The question, therefore, is that the Board having chosen not to exercise these powers, can the provisions of Section 28 be held to be inapplicable in respect of baggage imports. The obvious answer is NO as the discretionary powers not having been exercised to make a specific provision in regard to assessment to duty in respect of baggage imports, general provisions of Section 28 cannot be ousted.

5.4 It is further contented that as per Public Notice No. 01/2014-Cus dated 14.10.2014 issued by the Chief Commissioner of Customs (Preventive), New Delhi, the case comes under the jurisdiction of the Commissioner of Customs, Ludhiana and not under Commissioner of Customs (Preventive), Amritsar. As such, the Order-in-Original has been passed beyond his territorial jurisdiction by the Joint Commissioner of Customs (Preventive), Amritsar. The Government observes that in the said Public Notice, the preventive/ anti-smuggling work related to the entire State of Punjab has been allocated to the Commissioner of Custom (Preventive), Amritsar whereas Customs assessment and revenue related work in the State of Punjab has been allocated to Commissioner of Customs, Ludhiana. It is ascertained that pursuant to this Public Notice, during the relevant period, the work of Air

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Cargo Complex located at the SGRDI Airport, Amritsar, i.e., the assessment and revenue related work, was being handled by the Ludhiana Commissionerate whereas the work related to passenger clearance was being handled by the Customs (Preventive) Commissionerate, Amritsar. Present case relates to smuggling in passenger baggage and, therefore, squarely falls within the territorial jurisdiction of Amritsar Commissionerate. It is also observed that, in terms of Board's notification no. 78/2014-Cus (NT) dated 16.09.2014, the jurisdiction of Commissioner of Customs (Preventive), Amritsar includes the whole of State of Punjab. The said Public Notice appears to have been issued thereafter. The Public Notice does not make any specific provision in respect of passenger baggage cases and, therefore, it cannot be read in a manner so as to derogate from the general powers conferred by the Board. The Applicants have relied upon Government's earlier Order No. 257/21-Cus dated 11.11.2021 in support of the present contention. It is observed that the said case related to export of bicycles and bicycle parts and bicycle accessories from ICD, Ludhiana. In the said case, the Government had observed that this issue was raised before the Commissioner (Appeals), who had discussed the same with reference to Circular No. 24/2011-Cus dated 31.05.2011 of the Board. As already brought out herein above, this Circular deals with the monetary limit prescribed for adjudication of cases and does not deal with the issue of territorial jurisdiction. In this background, the Government had remanded the case to the Original Authority with the direction to decide the issue of jurisdiction first. The facts obtaining in the present case are altogether different. Further, it would also appear that this contention regarding territorial jurisdiction was not raised before the lower authorities. In view of this, subject contention of the Applicants also does not merit consideration.

5.5.1 Another contention of the Applicants is that the show cause notice does not seek confiscation of goods alleged to have been smuggled under Section 111 & 113 of the Act. Therefore, penalty could not have been imposed under Section 112 & 114. Before proceeding further to consider this issue, it would be appropriate to observe that this contention is applicable in respect of three Applicants, namely, Shri Devender Kumar, Shri Sanjiv Kumar @ Sonu and Shri Vijender Singh. The other two Applicants have been visited with a penalty under Section 114A of the Act and, therefore, the provisions of Section 112 are ousted in their case.

5.5.2 It is observed that in the final section of the show cause notice dated 17.08.2016, there is no mention of liability to confiscation under Sections 111 & 113. However, in the legal narration preceding the final section, it has been brought out that the Applicants, Shri

Anil Kumar and Shri Sushil Chauhan have smuggled the goods, which are liable to confiscation under Section 111(d), 111(i), 111(l) & 111(m). The show cause notice is also clearly alleging that the other Applicants have been involved in "smuggling" of gold in India and illegal export of foreign currency to Dubai. As per Section 2(39) of the Customs Act, 1962, "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113". As such, in respect of the other Applicants also, an allegation has been made that by their acts and omissions, they have made the goods liable to confiscation under Section 111 and Section 113 of the Act. Therefore, the show cause notice in substance clearly alleges that the Applicants had involved themselves in activities which made the goods liable to confiscation under Section 111 and Section 113. The original authority has also, at several places in his OIO, highlighted this position.

5.5.3 The Hon'ble Supreme Court has in the case of ***Ram Sunder Ram vs. Union of India & Ors. [2007(9) SCALE197]***, held "*It is well settled that if any authority has a power under the law merely because while exercising that power the source of power is not referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.*" While holding so, the Apex Court has followed its earlier judgment in the case of ***N. Mani vs. Sangeetha Theatres & Ors. (2004)12SCC278***.

5.5.4 There is no gainsaying that it would have been appropriate if liability to confiscation under Section 111 and Section 113 had been specifically invoked in the final section of the show cause notice but in view of the discussions above, as well as the dictum of Hon'ble Supreme Court, the question whether omission to specifically invoke Section 111 and 113 is fatal to the proceedings against the Applicants, has to be answered in negative.

5.6 It is further contended that the goods alleged to have been smuggled have already been cleared for home consumption and are as such not "imported goods". Therefore, the value cannot be determined in terms of the Valuation Rules, which are applicable to the imported goods only. The Government observes that in the present case, the value of the smuggled gold has been determined on "tariff value" basis, which is notified by the Board, from time to time, in respect of gold, in terms of the provisions of sub-section (2) of Section 14 of the Customs Act, 1962. Therefore, the subject contention does not merit consideration.

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5.7.1 In respect of Applicant-1, the provisions of sub-section (2) of Section 155 have been specifically cited to state that notice has been given to the Applicant beyond the period of three months provided therein and, therefore, the proceedings cannot subsist against the Applicant.

5.7.2 Section 155 of the Customs Act reads as under:

"SECTION 155. Protection of action taken under the Act. –

(1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause."

5.7.3 On a plain reading of the provisions of Section 155, it is apparent that the said provision is in the nature of protection of anything done or intended to be done in good faith by the Central Government or any officer of the Government. In the present case, the Applicant-1 is alleged to have indulged in bribery to enable smuggling of gold and foreign currency. The act of bribery cannot obviously be an act done in good faith and, therefore, no protection is available to the Applicant-1 in terms of sub-section (1) of the Section 155. This has also not been claimed. The Applicant has instead claimed that as per sub-section (2), no proceedings other than a suit shall be commenced against the Central Government or any officer of the Government without giving a months' previous notice in writing of the intended proceeding or after the expiration of three months from the accrual of such cause. The contention of the Applicant-1 appears to be that the show cause notice in the present case has been issued after the expiry of three months from the date of detection of the case and, therefore, it is time barred in terms of said sub-section (2). The lower authority has

repelled this contention of the Applicant on the grounds that the show cause notice has been issued under the provisions of Section 28 of the Customs Act, 1962 and within the time lines provided in the said Section 28. Therefore, the question of applicability of sub-section (2) of Section 155 would not arise. It is not even contended that the show cause notice is time-barred under Section 28. The question that, therefore, needs to be answered is whether in such a situation, time-line specified in sub-section (2) of Section 155 shall override other provisions of the Act. It is observed that the present proceedings are under various provisions of the Customs Act, 1962 and in compliance with the limitation period provided specifically under those specific provisions. There is nothing in sub-section (2) of Section 155, in the nature of a non-obstante clause, to override the provisions of limitation made in other sections of the Customs Act, 1962.

5.7.4 Even otherwise, it appears to the Government that the provisions of sub-section (2) of Section 155 are not applicable to the proceedings initiated by the Government against any of its officers for their acts of omission and/or commission. This position is substantiated from the following:

- i) The provisions of Section 155 are in respect of proceedings against the Central Government or any officer of the Government. In other words, on a plain reading, it would appear that this section is applicable in respect of the proceedings proposed to be initiated or initiated by third parties against the Central Government or any of its officers.
- ii) In such cases, the Central Government can take action against any of its officers for misconduct (criminal or otherwise), in the nature of disciplinary proceedings under the CCS(CCA) Rules, 1965; show cause notice under the Customs Act, 1962 for demand of duty and/or imposition of penalty; and prosecution under the Customs Act or the prosecution under any another Act like the Prevention of Corruption Act. There are no time lines specified for initiation of disciplinary proceedings under the CCS(CCA) Rules; prosecution under the Customs Act or the prosecution under the other laws such as Prevention of Corruption Act, under those specific legislations. Despite the same, no Constitutional Court appears to have provided protection to a Government officer under sub-section (2) of Section 155, in such cases. In fact, in the case of **Atul Dixit vs. CBI {Crl. MC.4143/2016 & Crl. M.A. 17270/2016}**, the Hon'ble Delhi High Court has taken a view that the

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limitation under sub-section (2) of Section 155 does not apply to the cases of prosecution. While taking this view, the Hon'ble Delhi High Court, in its judgment dated 23.01.2017, has agreed with the decision of the Hon'ble Rajasthan High Court, Jodhpur Bench, in criminal revision petition no. 1282/2016, decided on 08.11.2016.

- iii) The Applicant has relied upon the decision of Tribunal, in the case of Commissioner of Customs and Central Excise, Hyderabad-II vs. Rajeev Kumar Aggarwal {2007-TIOL-1736-CESTAT-BANG}. The Government observes that the Tribunal has decided the aforesaid case on the understanding that "a reading of the said Act shows that the protection under the above section is applicable to all legal proceedings. Further, if protection to officers against proceedings in courts can be given, there is no reason why such a protection cannot be given to proceedings before quasi-judicial authorities." As already brought out herein above, the Hon'ble Delhi High Court and Hon'ble Rajasthan High Court have specifically held that the protection of sub-section (2) of Section 155 cannot be given to proceedings in the nature of criminal prosecution. Therefore, it was incorrect of the Tribunal to hold that the said section is applicable to all legal proceedings. A decision of the Chandigarh Bench of the Tribunal in the Applicant's own case, in its Final Order no. 60567-60568/2021 dated 25.03.2021, has also been cited in support. However, the Government observes that in the said Final Order dated 25.03.2021, CESTAT has not given any reasoning to take this position.

5.7.5 In any case, the sub-section (2) of Section 155 provides for limitation in respect of any proceedings other than a suit, "*for anything purporting to be done in pursuance of this Act*". By no stretch of imagination, can it be considered that the Applicant's act of facilitating smuggling etc. in return for bribe were acts "*purporting to be done in pursuance of the Customs Act, 1962*". Therefore, without prejudice to the discussions above, the limitation provided under sub-section (2) is, in any case, not applicable in the present case.

5.8 Certain averments have been made regarding compliance with Sections 138B & 138C of the Customs Act and Sections 65A & 65B of the Indian Evidence Act. The Government observes that these issues were also raised before the Commissioner (Appeals) who has dealt with them in detail. The Government is in agreement with the reasoning adopted and the view taken by the Commissioner (Appeals), which are not being repeated here for the



sake of brevity. Similarly, the issue of cross examination has also been dealt with appropriately by the lower authorities.

6.1 On merits, both the lower authorities have discussed and appreciated the evidence in detail. Some averments have been made to impugn the evidence. It has been contended that the gold was allegedly smuggled by hiding it in the Rubber Chappals and it is not possible to move in a secured area like the airport with so much of gold in Rubber Chappals. On the other hand, it is commonly observed that there are several cases of concealment of large amounts of gold by the offenders in their body cavities. If the offenders can move with gold concealed in body cavities, it is not difficult to believe that they could move with gold hidden in the Rubber Chappals as well. Certain averments have also been made with reference to the technical and other evidence and the alleged discrepancy therein. The Government observes that this issue was also raised before the lower authorities. The original authority has, relying upon the decision of the Hon'ble Supreme Court in the case of CC vs. Bhoormul-AIR/1974/SC/859, correctly held that the department need not prove its case with mathematical accuracy.

6.2 The Government observes that the evidence collected is extensive. It is in form of CCTV footage, mobile phone records, WhatsApp chats and the statements of the persons concerned. The statements recorded by Applicant 2-5 and Billu are inculpatory in nature and are corroborated by the CCTV footage, other technical evidence and the statement of others concerned. The statements of Applicant-1 are exculpatory in nature and have been cited to support his defence. However, the Government observes that the denials/assertions made by Applicant-1 are not supported by other evidence. A few examples are as under:

- (i) It is claimed that the Mobile Phone with number 98144-93966 did not belong to him. However, it is observed that the House Boy Ravi gave this phone to the shift AC disclosing that the same was forcibly handed over to him by Applicant-1. This is supported by CCTV footage which records an exchange between them. Further, it has been revealed by Kamal Arora that the subject handset was sold by him to Applicant-1's son in cash. It was also revealed by Billu that this mobile sim was got issued in the name of his brother Amit Kumar and was in the use of Applicant-1.
- (ii) In his statement dated 20.05.2016, the Applicant-1 claimed that his mobile phone no. 98150-95357 was seized at 1530 hrs. on 06.07.2015. However, from the Seizure-cum-Recovery Memo dated 06.07.2015 (RUD-3 to the SCN dated 31.12.2015), it is


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observed that the said phone was seized at 1840 hrs. The wrong timeline of 1530 hrs. appears to have been asserted so as to disown the text messages sent to Billu by the Applicant-1, after recovery of 394.570 gms gold from his Santro car in another case.

- (iii) It is asserted that none of passengers have deposed that they knew Applicant-1. However, the Applicant-2 has in his statement identified him from his photograph.
- (iv) It is contended that CCTV footage does not specifically establish handing over of money to Applicant-1 at the shop of Billu. However, the Applicant-1 has not denied his presence at shop where handing over of bribe money has been confirmed by Billu (since deceased) and Bobby Dhir in their statements.

6.3 To summarize, in the present case, the allegations against the Applicants are based upon electronic and technical evidence such as CCTV footage, mobile records, besides the statements made under Section 108 of the Customs Act, 1962. The evidence is so overwhelming that any prudent person will reasonably believe the allegations made against the Applicants herein. Therefore, the Government does not find any merit in various contentions raised on merits of the case.

7. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

To

1. Sh. Vijender Singh, H.No. 87, Urban Estate, Phase-III, Dugri, Ludhiana -141013.
2. Sh. Anil Kumar, S/o Sh. Ramesh Chander, H. No. 397, Hamdania Mohalla, Tibba Bazar, Batala, Distt Gurdaspur (Pb).
3. Sh. Devinder Kumar, S/o Sh. Sh. Ram Lubhaya, H. No. WT 356, Basti Sheikh, (PS Div No. 5), Jalandhar.
4. Sh. Sanjeev Kumar @ Sonu S/o Sh. Raj Kumar, H. No. WR-27, Sonia Mohalla, Basti Sheikh, Jalandhar.

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5. Sh. Sushil Chauhan, Jalandhar S/o Sh. Kuldeep Chauhan, H. No. Kothi No. 1-D, Model House, Post office street, Jalandhar.

Order No. 285-289/22-Cus dated 26-8-2022

Copy to:

1. The Commissioner of Customs, Preventive, Customs House, Central Revenue Building, The Mall, Amritsar – 143001, Punjab
2. The Commissioner of CGST, Central Excise and Customs (Appeals), 32-OB, Rail Head complex, Jammu
3. Sh. Naveen Bindal, Advocate, No. 2307/1, Sector-386, Chandigarh.
4. Sh. Sudhir Malhotra, Advocate, Chamber No. 103, C.K. Daphtary Lawyer's Chambers, Supreme Court of India, Bhagwan Dass Road, New Delhi.
5. PA to AS(RA)
6.  Guard File.
7. Spare Copy

ATTESTED

*28/08/22*

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