



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	File No.	VIII/48-35/Adj/ADC/MCH/2017-18
B	Order-in-Original No.	MCH/ADC/AS/58/2019-20
C	Passed by	Shri Amarjeet Singh, Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	30.08.2019
E	Date of Issue	30.08.2019
F	SCN NO. & Date	F. No. DRI/DZU/34/Enq-3/2017 dt. 17.11.2017
G	Noticee / Party / Importer / Exporter	M/s. Param Equipment Private Limited, WZ-17, Lajwanti Garden, New Delhi & others.

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – 1, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

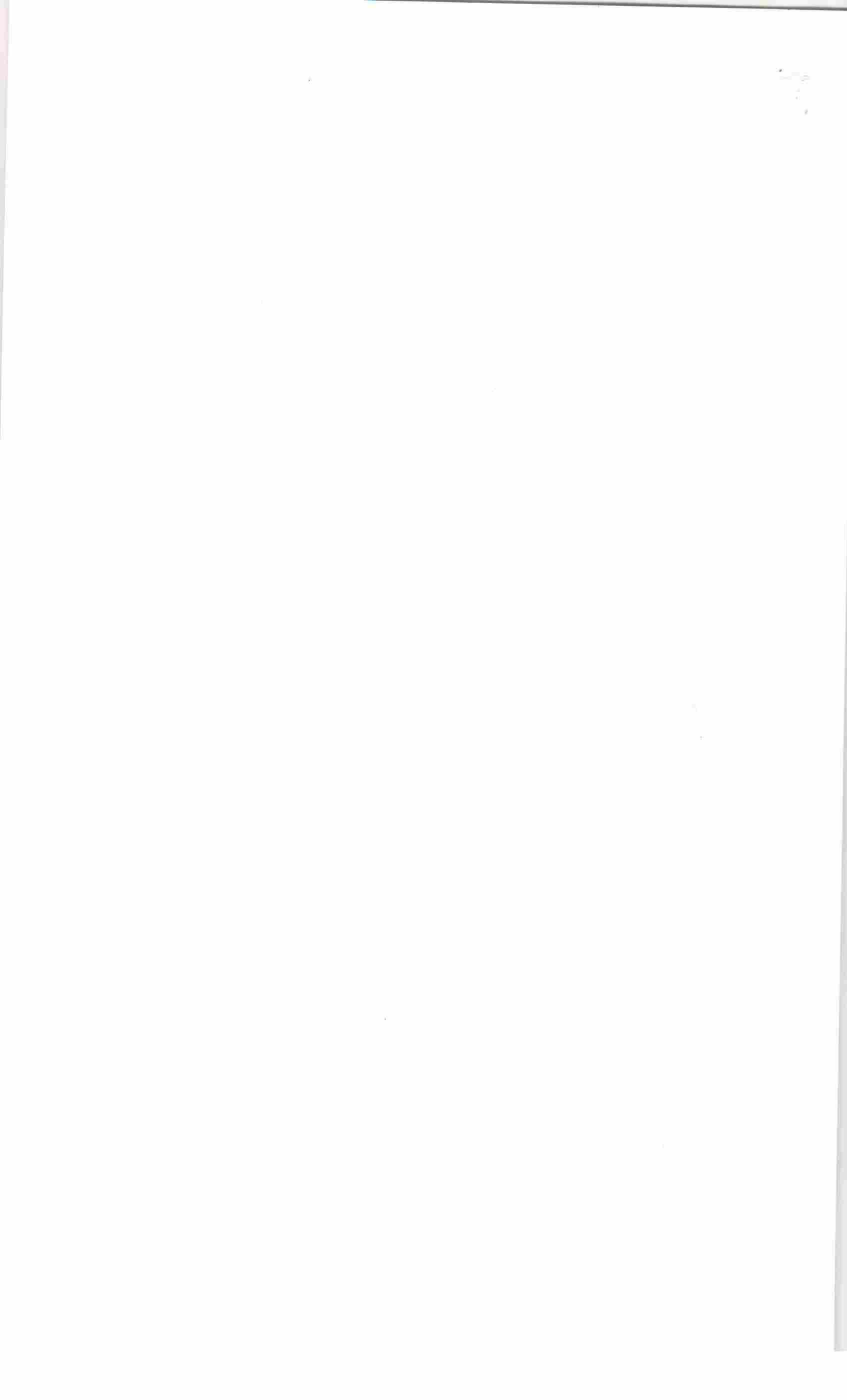
6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject :- SCN F. No. DRI/DZU/34/Enq-3/2017 dt. 17.11.2017 dated 05.07.2018 issued to M/s. Param Equipment Private Limited, WZ-17, Lajwanti Garden, New Delhi & others.



BRIEF FACTS OF THE CASE

The officers of Gandhidham Regional Unit (GRU) of Directorate of Revenue Intelligence, acting on the intelligence received regarding smuggling of gold by concealing the same with other goods, examined the goods imported vide Bill of Lading No. MSL/JBL/MUN/ 123/ 17 dated 12.05.2017 in container No. IALU2244230 in the name of consignee M/s Param Equipments Pvt. Ltd., New Delhi, at M/s All Cargo CPS, Bharat Zone CFS, Adani Port 86 Special Economic Zone, Mundra Port, Mundra Kutch, Gujarat in the presence of two independent witnesses and the concerned Custom Broker under Panchanama dated 20/21 May 2017.

2. The said container bearing number 'IALU2244230' arrived at Mundra Port in the vessel MV Northern Prelude IGM No. 2164976 dated 17.05.2017. Sh. Deepak Sawlani, the Customs Broker of the Importer 'M/s. Param Equipments Private Limited', WZ-17, Lajwanti Garden, New Delhi-110046, presented copy of Bill of Lading Number MSL/JBL/MUN/123/17 dated 12.05.2017 and Invoice and Packing List both numbered MJ/2016-17-1030 dated 18.05.2017. Description of goods as declared in the said B/L was "All Automatic Poultry Egg Incubator 336 in the Eggs Capacity, Poultry Egg Brooder Panel". The net weight of the goods container was found to be 1655 kgs. The container was found sealed with bottle seal no. CMA-CGM F4918883. On opening the said container, one wooden plank plastic covered box and few blue and saffron coloured metal frames were found. The wooden box was taken out from the container and opened and after removal of the wooden planks one iron frame was seen. Inside the frame one white machine, egg incubator was seen which was taken out and the iron frame was shifted to workshop to cut open the same. With the help of electric cutter, Iron frame was cut from the joints from all the sides. In some iron frames small size wooden pieces were visible from outside. With the help of hand tools the wooden piece were taken out. The wooden pieces were sticky because of white adhesive material present. After banging the iron rod on floor, tape wound gold bars came out. From all the arms total 28 tape wound packs came out from the iron frame. After opening all the said 28 tape-wound packs, 52 gold bars bearing foreign markings and weighing 1 kg each were recovered. Besides four wooden pieces of same size as of gold bars were recovered. The inventory of the gold bars is as follows-

Sr.No.	Weight	Make	Purity	Marks and Nos
1	1 kilo	International Precious Metal	995	A047267
2	1 kilo	International Precious Metal	995	A045783
3	1 kilo	International Precious Metal	995	A047260
4	1 kilo	International Precious Metal	995	A047263
5	1 kilo	International Precious Metal	995	A047266
6	1 kilo	International Precious Metal	995	A046411
7	1 kilo	International Precious Metal	995	A047258
8	1 kilo	International Precious Metal	995	A046188
9	1 kilo	International Precious Metal	995	A047256
10	1 kilo	International Precious Metal	995	A047257
11	1 kilo	International Precious Metal	995	A046413
12	1 kilo	International Precious Metal	995	A046412
13	1 kilo	International Precious Metal	995	A047265
14	1 kilo	International Precious Metal	995	A047078
15	1 kilo	International Precious Metal	995	A045509
16	1 kilo	International Precious Metal	995	A047261
17	1 kilo	International Precious Metal	995	A047259
18	1 kilo	International Precious Metal	995	A046503
19	1 kilo	International Precious Metal	995	A047268
20	1 kilo	International Precious Metal	995	A047262
21	1 kilo	International Precious Metal	995	A047264
22	1 kilo	ARG	995	B24089
23	1 kilo	ARG	995	B21286
24	1 kilo	ARG	995	B24182
25	1 kilo	ARG	995	B24322
26	1 kilo	ARG	995	B24301
27	1 kilo	ARG	995	B24214
28	1 kilo	ARG	995	B24215
29	1 kilo	ARG	995	B24088

30	1 kilo	ARG	995	B24319
31	1 kilo	ARG	995	B24186
32	1 kilo	ARG	995	B24404
33	1 kilo	ARG	995	B24314
34	1 kilo	ARG	995	B24315
35	1 kilo	ARG	995	B24320
36	1 kilo	ARG	995	B24216
37	1 kilo	ARG	995	B24372
38	1 kilo	ARG	995	B24317
39	1 kilo	ARG	995	B24323
40	1Kg	Kaloti Dubai	995	A548437
41	1Kg	Kaloti Dubai	995	A548430
42	1Kg	Kaloti Dubai	995	A548435
43	1Kg	Kaloti Dubai	995	A548432
44	1Kg	Kaloti Dubai	995	A548434
45	1 kilo	Gulf Gold Refinery	995	FR041124
46	1 kilo	Gulf Gold Refinery	995	FR041080
47	1 kilo	Al Etihad Gold	995	F169117
48	1 kilo	Al Etihad Gold	995	F169111
49	1 kilo	Gold Link Gold	995	G091615
50	1 kilo	Gold Link Gold	995	G091614
51	1000g	AGR	995	AFO1000
52	1000g	AGR	995	AF01008

3. The entire proceedings of the examination were recorded under panchnama dated 20/21.05.2017, The officers placed above said illegally imported 52 gold bars each of 1 KGS found concealed inside the iron frame imported with the declared goods along with the declared goods i.e. "All automatic Poultry Egg Incubator 336 Eggs Capacity Egg Poultry Egg Brooder" under seizure as per the provisions of Section 111 of the Custom Act, 1962 vide seizure memo dated 21.05.2017.

4. Thereafter Sh. Devang Ratilal Soni, Government Approved Gold/ Jewellery Valuer, examined each of the 52 gold bars seized vide seizure memo dated 21.05.2017 by DRI who ascertained the total weight of the seized 52 gold bars gold as 51998.80 grams and also estimated market price of the same prevailing as on 22.05.2017 as Rs.14,97,56,544/-. The valuation certificate is RUD-7 to this Show Cause Notice.

5. The statement of Sh. Harish Vaniya Branch Manager of M/s. Muskan Container Line Private Limited at Gandhidham was recorded under section 108 of the Customs Act, 1962, in which he inter alia stated that that container no. IALU2244230 covered under Bill of Lading No. MSL/JBL/MUN/123/17 dated 12.5.2017 arrived through vessel MV. Northern Prelude V38 at Mundra on 20.5.2017 and was loaded from Jebel Ali, UAE and that the container was booked by M/s. Al Mehrab General Trading Sharjah, UAE whose owner was Jagjit Singh (971508617956) mail idpoultrydayal@gmail.com as he had confirmed telephonically from Sh. Vivek Pandey, Branch Manager of M/s. Muskaan Shipping LLC at Dubai. Sh. Vivek also informed him that the goods mentioned in the Bill of Lading 'All Automatic Poultry Egg Incubator 336Eggs Capacity Poultry Egg Brooder Panels' was stuffed in the Shipper place and in the Docks at Port. He further stated that the Shipper M/s. Al Mehrab General Trading LLC, Sharjah, UAE had paid the freight and local charges by cash into the ATM for the booking of the container at Jebel Ali as informed by Sh. Vivek Pandey, Branch Manager of M/s. Muskaan Shipping LLC, Dubai. The Bill of Lading was collected by person sent by Sh. Jagjit Singh through mail request to their Dubai counterpart. At Mundra, the consignee M/s. Param Equipments Pvt. Ltd., made the payment of Mundra Port import local charges and then they released the Delivery Order to the Customs Broker as told by the consignee .

5.1 Sh. Harish Vaniya further stated that he also received mails from poultrydayal@gmail.com for the query related to the containers. On query he stated that they had shipped in total 42 shipments of the consignee M/s. Param Equipments Pvt. Ltd., New Delhi from March 2014. Earlier, that is in year 2014 and 2015, the shipments booked as Final place of Delivery as ICD TKD through Mundra Port, total 11 container shipments were for ICD TKD

delivery, and 31 container shipments were delivered at Mundra. He also submitted the list of arrived containers of M/s. Param Equipments Pt. Ltd., New Delhi.

6. Sh. Sunil F Sharma the Sales Executive of M/s. Sea Consortium Shipping India Private Limited in his statement dated 24.05.2017 recorded under section 108 of the Customs Act, 1962, inter alia stated that their operation agent- M/s. Samsara Shipping Agencies Private Limited' acting on behalf of them sent arrival notice of the container number IALU2244230 pertaining to Bill of Lading No. MSL/JBL/MUN/123/17 dated 12.05.2017 arrived per vessel Northern Prelude V.38 and IGM No.2164976 to M/s. Muskan Container Line Private Limited and they filed IAL (import advance list) and he also submitted the copy of manifest which was submitted by M/s. Muskan Container Line Private Limited .

7. Ms. Hiral D Desai, 'F Card Holder of Custom Broker, M/S. Ribhus International Pvt. Ltd. in her statement dated 05.06.2017 recorded under section 108 of the Customs Act, 1962, inter alia stated that her firm had cleared one import consignment on behalf of M/s. Param Equipment Private Limited vide Bill of Entry No. 6734873 dated 15.09.2016 pertaining to Incubator for egg. She further stated that as the license of the regular CHA (M/s. D.K. Logistics) of M/s. Param Equipment Private Limited was suspended temporarily, the representative of M/s. D.K. Logistics approached her firm through Sh. Harsh Ahuja, 'H' card holder of M/s. Ribhus International Private Limited, to provide services of Custom Broker for the above said import consignment. She also stated that the agency charges were billed to Shri Deepak of M/s. D.K. Logistics and that the importer had arranged the transport from Mundra Port to Delhi.

8. Sh. Deepak T Sawlani, the branch manager of M/s. DK Logistics in his statements dated 23.05.2017 and 25.05.2017 recorded under section 108 of the Customs Act, 1962, inter alia stated that Mr Manish Oberoi of M/s Kingship Shipping Services, New Delhi (Forwarder Agent) approached him for clearing the consignments of M/s. Param Equipment Private Limited in 2015 and agency charge of Rs. 5,000/- per container was negotiated by him and was paid through RTGS and that Manish Oberoi also mailed the KYC, B/L, Invoices, Packing Lists and authority letters of M/s. Param Equipment Private Limited. As the value of the goods was small it used to be cleared under RMS. He also stated that his firm was not aware if gold was concealed along with the declared goods. On query he replied further that he had never met Sh. Harnek Singh of M/s. Param Equipment Private Limited or his relative in Dubai .

8.1 Sh. Deepak T Sawlani also provided his firm's bank account statements showing details of payments received of M/s. Param Equipments Private Limited through the freight forwarder M/s. Kingship Shipping Services, New Delhi. He further disclosed that Sh. Kulwant Singh and Sh. Santosh were the representatives of M/s. Param Equipments Pvt. Ltd. and that the transporter M/s. Laxmi Road Carrier Tempo Service was hired by Harnek Singh and his representative. He submitted the details of 32 Bills of Entry cleared by him. He further informed that his Customs Broker licence was suspended during the month of September, 2017. During the said period, he managed the filings of bills of entry of two consignments of M/s. Param Equipments Pvt. Ltd. through Customs Broker M/s. New Link Overseas and M/s. Ribhus International. He also produced the mail correspondence between the forwarder M/s. Kingship Shipping Services and M/s. D.K. Logistics related to the importer M/s. Param Equipments Private Limited.

9. A similar consignment of M/s. Param Equipments Pvt. Ltd. was already under investigation, by the Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter referred to as DRI, DZU). In the said consignment officers of DRI, DZU has recovered 44 kgs Gold having foreign markings. The same modus operandi was used in the subject consignment. As DRI, DZU was doing

the detailed investigation the case of seizure of 52kg Gold vide seizure memo dated 21.05.2017 was transferred to DRI, DZU vide office letter number DRI/AZU/GRU/GOLD-PARAM/INT-25/2147 dated 13.07.2017.

9.1 Ms Gurdeep Kaur, wife of Harnek Singh and one of the directors of M/s. Param Equipment Private Limited was summoned on 12.09.2017 who in her statement dated 12.09.2017 recorded under section 108 of the Customs Act, 1962, inter alia stated that she was the director of 'M/s. Param Equipment Private Limited' since inception to 27.03.2017 when she resigned from the post of director. She also stated that she was not an active director in the said company and that all business activities of 'M/s. Param Equipment Private Limited' are looked after by her husband Sh. Harnek Singh.

9.2 Sh. Santosh Kumar in his statement dated 13.05.2017 had inter alia stated that he was working under the directions of Harnek Singh and his job was to reach Mundra and contact the truck driver on mobile number provided by Harnek Singh and oversee the loading of goods from the container to hired truck and then to accompany the goods in the truck till the Nangloi godown where all the stuff was unloaded. From there the machine along with covering frame was taken to Harnek Singh's house at Maya Enclave by another staff Mohan Chandra on rickshaw. He also stated that he was not aware of any gold bars hidden in the said machine.

9.3 Sh. Mohan Chandra (Sharma) in his statement, accepted the fact that he used to take the machine contained in the iron frame container to Harnek Singh house but he showed ignorance of any gold hidden in the iron frames. He stated that has repeated the said act about 15-16 times.

10. Further, in connection with seizure of 44 kg gold from the consignment imported by M/s Param Equipments Pvt. Limited' vide Bill of Entry No. 9568462 dated 05.05.2017 searches were also conducted at the residential premises of Harnek Singh at House No. EB- 135, 133 and 141, Maya Enclave, Hari Nagar, N Delhi and factory premises of M/s Dayal Poultry Appliances at C-160, Mayapuri Phase 2, New Delhi on 13.5.2017. From H.No EB-141 various tools like drill machine, screw drivers and other tools for dismantling/ assembling the machines were found along with some new poultry incubating machines. The hollow frames attached with the said machines in dismantled condition were also found. The hollow frames of three machines along with some electronic items were resumed for further investigation under panchnamas.

11. Sh. Harnek Singh in his statements dated 13.05.2017 and 14.05.2017 recorded under Section 108 of the Customs Act, 1962 had accepted his role in illegal import of Gold. He has also accepted the ownership of the seized gold bars.

11.1 In his statement dated 13.05.2017 he, inter alia, stated that his father had business of manufacturing of poultry appliances in the name of M/s. Dayal Poultry Appliances, having office at WZ-16, Lajwanti Garden, New Delhi 110046 and factory at C-160, Phase-II, Mayapuri, New Delhi - 110064 which was established by his grandfather Sh. Kabul Singh in around 1960 and his mother was its proprietor and he had been handling all the affairs of M/s. Dayal Poultry Appliances after his brother dissociated from the said company since 1997. He added that M/s. Dayal Poultry Appliances manufactures incubators used as egg-hatching machine in poultry industry. These incubators were sold all over India and also exported to various parts of Africa and to Oman and Bangladesh. In 2016, M/s. Dayal Poultry Appliances had exported about six containers and in 2017, it had so far exported about four containers however it was not engaged in imports. Turnover of M/s. Dayal Poultry Appliances in the financial year 2016-14 was about Rs. 2.5 Crores.

11.2 He further stated that he and his wife were directors in 'M/s Param Equipments Pvt. Limited', WZ-17, Lajwanti Nagar, New Delhi. When he was

asked about the recovery of 44 kg gold bars on 13.05.2017, duly concealed in a consignment of Automatic Poultry Egg Incubator Poultry and Egg Brooder Panels, imported vide Bill of Entry No.9568462 dated 05.05.2017 in the name of 'M/s. Param Equipment Pvt. Ltd.((IEC0513077227)' he stated that he did so to earn huge money in short time period and for this purpose, he consulted his brother-in-law Jagjit Singh who had settled in Sharjah since around 2004 where he was engaged in business of interior designing. Jagjit Singh suggested that they should start bringing gold from UAE to India which would fetch them huge profit. However, to avoid being caught by the law enforcement agencies, they decided to bring the same through sea-route as it was less prone to be caught by the agencies such as Customs and DRI Thereafter, he floated a company named M/s Param Equipment Pvt. Ltd having its office at WZ-16, Lajwanti Garden, New Delhi-110046. As he had been dealing with poultry industry for a long time, he decided to import Poultry Egg Incubator Poultry and Egg Brooder Panels from Sharjah and to conceal the gold in the same. Further, being a well known person in the market of poultry equipment market, it would appear quite normal for him importing items related to poultry equipments and no one would be suspicious. He disclosed that first such consignment was imported by him in around March, 2014. He further disclosed that the consignments of Poultry Egg Incubator and Egg Brooder Panels were sent from Sharjah(UAE) by his brother-in-law Jagjit Singh through his firm M/s. Al Mehrab General Trading LLC, P.O. Box No. 4112, Sharjah (UAE). He added that Jagjit Singh procured gold in Sharjah and also bought the Poultry Egg Incubator and Egg Brooder Panels for using the same to conceal the gold. The said incubators were put into a cuboid-shaped pallet made of hollow rectangular iron sections and plywood board base. The gold was then concealed inside the hollow rectangular iron sections. He further stated that imported Poultry Egg Incubators were not of much use for him as he was already into the business of manufacturing the same. He imported only one such Poultry Egg Incubator in each of the consignments, and to make-up for a full container load they stuffed Brooder Panels in the same consignment so that consignment did not appear odd and invite attention of Customs authority. He stated that the consignments are imported through Mundra Port and Bills of Entry are filed with Mundra Port Customs by his Customs Broker 'M/s. D.K. Logistics' which was contacted through Mr. Ashish Oberoi of 'M/s. Sea Ship Forwarders' having office in District Centre, Janak Puri, New Delhi which is the Customs Brokers for the exports of M/s. Dayal Poultry Appliances through ICD, Tughlakabad. The transportation from Mundra to Delhi was arranged by one Mr.Surendra (Mobile No. 9978620785) who was introduced by Mr. Ashish Oberoi. Payments to the Customs broker were made through the bank account of M/s. Param Equipment Pvt. Ltd (A/c No. 3111170655) maintained at Kotak Mahindra Bank, Mansarovar Garden, New Delhi Branch while payments to the transporter were made in cash.

11.3 Harnek Singh further confessed that in all of his import consignments the goods were declared as All Automatic Poultry Egg Incubator and Egg Brooder Panels and he never declared gold in any of the consignments and that he did not have any permit for importing gold. He stated that at the time of each import he used to send one of his employees Mr. Santosh (Mobile No.8527446603) to Mundra to accompany the consignment via road to Delhi. During the transportation of the cargo from Mundra to Delhi, he used to remain in regular contact with Santosh. When the consignment were about to reach his warehouse near Chander Vihar Naala, Vikas Puri, New Delhi, he used to instruct his employee Mr. Mohan Chandra Sharma to reach at the said warehouse. Thereafter, Mohan used to arrange the labourers for de-stuffing the cargo. He further stated that the Egg Brooder Panels were then stored in the warehouse while the Poultry Egg Incubator were used to be brought by Mohan Chandra Sharma to one of his flat at EB-141, Maya Enclave, Harinagar, New Delhi 110064, which was near to the flat in which he resided. After Mohan leaving the said premises he himself used to cut the iron frames to retrieve the gold bars whose number ranged from 37 to 44 per consignment and then place the said gold bars in a shelf of the kitchen of the said flat. Thereafter, one person whom he knew as 'Mr. Agrawal' used to contact him over phone and

come to his said flat where he used to give him one or two gold bars at a time. However, he did not disclose the contact number of 'Mr. Agrawal.' Regarding mode of payment for such gold bars he disclosed that Mr. Agrawal did not pay him directly rather the payments were made by him through hawala transactions which was received in Dubai by Jagjit Singh from Dubai based hawala operators, one of whom is 'Mr. Gupta' and another person who is referred as 'Sardarji'. After making payments,, Mr. Agrawal used to give him a token number for each payment which he would give to Jagjit Singh and once Jagjit Singh had collected the payments from above named Dubai based hawala operators, Jagjit Singh used to confirm him. He further stated that in the year 2017, so far, he had brought gold six times and his seventh consignment in this year was intercepted by DRI, DZU. On being asked about his earlier imports of gold, he said that the started bringing gold from Sharjah using this modus since around March 2014. In 2014, he imported about five consignments in the name of M/s. Param Equipment Pvt. Ltd. wherein gold was concealed, in the year 2015, eleven and in 2016, 22 such consignments were imported by him. As such, totally 44 consignments of gold have been brought by him so far before the 45th consignment was intercepted by DRI today. In these 44 consignments, around 1700 kgs of gold has already been brought before the seizure of 44 kgs of gold by DRI. The profit earned by such smuggling of gold was shared between him and his brother-in-law Jagjit Singh. He further stated that the money so earned was invested in purchasing the flat at EB-141, Maya Enclave, Harinagar, New Delhi - 110064 which was registered in the name of his wife. Further he added that he had fondness for luxury cars and during last 2-3 years he purchased various luxury cars.

12. Role of persons involved in the case

12.1 Role of Harnek Singh

- (a) From the investigations conducted till date and facts mentioned supra appears that Sh. Harnek Singh, the director of M/s. Param equipment Private Limited is the mastermind of smuggling and clandestine sale of such gold in India, who in connivance with unscrupulous elements in Dubai and Delhi indulged in large scale smuggling of gold bars for the last three years or so.
- (b) Sh. Harnek Singh made the whole affairs of extraction and sale of gold an individual affair in India and used the import of incubators and brooding panels in the name of newly floated company 'M/s. Param Equipment Private Limited to camouflage the smuggling of gold in huge quantity. The fact of presence of gold in the packaging frame of the Egg incubators was suppressed in the import and transport documents deliberately to avoid detection and seizure.
- (c) Further inquiry in the matter has revealed that Harnek Singh is a habitual offender. A Show cause Notice for illegal import of 44 kgs of gold has already been issued to him vide C. No. DZU/34/Enq-3/2017 dated 11.11.2017. He has also been found to have imported gold repeatedly using the said modus operandi. In fact, as many as 44 times which has been corroborated from his phone records, the Bills of entry, and statements of his staffs, Custom Brokers and his own statements recorded under Section 108 of the Customs Act, 1962. He has smuggled Gold which is around 1700 kgs. As per ICES as many as 40 Bills of Entry have been filed by the said party between Feb. 2015 to May 2017 alone and in all similar goods as one egg incubator and some brooding panels have been declared in all the said Bills of entry. Whereas the incriminating evidences showed that he was also involved in sending money illegally to the supplier in Dubai using the services of hawala operators but he did not divulge their whereabouts till date. Despite repeated questioning Sh. Harnek Singh failed to divulge the full name and addresses of receivers of gold down the line. Thus he has shielded the buyers of smuggled gold and the hawala operators involved in remitting the payments in Dubai.
- (d) As such Sh. Harnek Singh with his acts of omission and commission, as mentioned in preceding paras, has made himself liable for penal action under section 112 a and 114AA of the customs Act, 1962.

12.2 Role of Jagjit Singh

It appeared that he was the co-conspirator in the smuggling of gold in India. He is brother-in-law of Harnek Singh and he arranged gold and concealing materials in Dubai. It was he who concealed the gold in the hollow iron pipes and exported them from Dubai under the guise of Egg Incubators and Brooding panels. As such Sh. Jagjit Singh has engaged himself in the clandestine smuggling of gold using the modus operandi as mentioned supra and thus he has made himself liable for penal action under section 112 a and 114 of the customs Act, 1962.

12.3 Role of M/s. Param Equipment Private Limited

It appeared that the said company having IEC No. 0513077227 have failed to file correct declaration in the Bills of entry filed by them and they have engaged themselves in the clandestine smuggling of gold using the modus operandi as mentioned supra and thus have contravened the provisions of Section 46(1), (2) and (4) and engaged itself in the clandestine smuggling of notified goods under Section 123 of the customs Act, 1962. It has also contravened the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with the guidelines for import of gold and gold bars vide circular RBI/2013-14/187,AP (DIR Series) Circular No. 25 dated 14.08.2013 as revised, issued by the Reserve Bank of India. Thus for its acts of omission and commission as mentioned supra, they have made themselves liable for penal action under section 112 (a) and 114 of 1962.

13. Therefore an Show Cause Notice bearing file No. DRI/DZU/34/Enq-3/2017 dated 17.11.2017 was issued to M/s. Param Equipment Private Limited , calling upon them to Show Cause individually, in writing to the Additional/ Joint Commissioner of Customs (Preventive), Custom House, Mundra, Kutch, Gujarat-370421, as to why-

- (i) The foreign marked Gold Bars totally weighing 51998.80 grams having market value of. 14,97,56,544/- (Rupees Fourteen Crores Ninty Seven Lakhs Fifty Six Thousand Five Hundred Forty Four only) seized vide panchnamas dated 20/21.05.2017 drawn at All Cargo CFS, Adani Port and SEZ, Mundra, should not be confiscated under the provisions of sections 111(d), 111 (i), 111 (o) and 111 (p) of the Customs Act,1962
- (ii) The concealing materials viz. Poultry egg Incubators and Iron Brooding panels seized vide Panchanamas dated 20/21.05.2017 should not be confiscated under section 119 of the Customs Act 1962.
- (iii) Penalty should not be imposed on them, under section 112(a) and 112 (b) and 114 AA of the Customs Act, 1962 for the acts of omission and commission, as brought out in the foregoing paras.

13.1 Therefore, an Show Cause Notice bearing file No. DRI/DZU/34/Enq-3/2017 dated 17.11.2017 was issued to Sh. Harnek Singh , calling upon him , to Show Cause individually, in writing to the Additional/Joint Commissioner of Customs (Preventive),New Customs House, Near IGI Airport, New Delhi-110037, as to why-

- (i) The foreign marked Gold Bars totally weighing 51998.80 grams having market value of. 14,97,56,544/- (Rupees Fourteen Crores Ninty Seven Lakhs Fifty Six Thousand Five Hundred Forty Four only) seized vide panchnamas dated 20/21.05.2017 drawn at All Cargo CFS, Adani Port and SEZ, Mundra, should not be confiscated under the provisions of sections 111(d), 111(i),111(o) and 111(p) of the Customs Act, 1962.
- (ii) The entire concealing materials including Poultry egg incubators and iron Brooding panels seized vide Panchanamas dated dated 20/21-05-2017 should not be confiscated under section 119 of the Customs Act,1962.
- (iii) Penalty should not be imposed on him under section 112(a) and 112 (b) and 114 AA of the Customs Act,1962 for the acts of omission and commission , as brought out in the foregoing paras .

13.2 Therefore an Show Cause Notice bearing file No. DRI/DZU/34/Enq-3/2017 dated 17.11.2017 was issued to Sh. Jagjit Singh calling upon him , to Show Cause individually, in writing to the Additional/Joint Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi-110037, as to why penalty should not be imposed on him under section 112(a), 112(b) and 114 AA of the Customs Act, 1962 for the acts of omission and commission , as brought out in the foregoing paras .

13.3 Further , as Sh. Harnek Singh, has failed to provide the details of all the beneficiaries and true quantity of total gold smuggled by him since 2014 and further investigation was going on to unearth the total gamut of smuggling and to book the other culprits involved in this case, the show cause was issued under section 124 of the Customs Act, 1962 in respect of goods seized vide Seizure Memo dated 21.05.2017.

13.4 Further, a corrigendum bearing file No. DRI/DZU/34/Enq-3/2017 dated 30.11.2017 was issued by the Additional Director , Directorate of Revenue Intelligence , Delhi Zonal Unit making the entire Show cause notice answerable to the Additional /Joint Commissioner of Customs , Adani Port, Mundra, Kutch, Gujarat-370421.

DEFENSE REPLY

14. Written reply to the show cause notice was submitted by the Noticee No.1 and 2 vide their letter dated 03.01.2018 through their advocates M/s Law Chambers of Ramakant Gaur, New Delhi . The relevant portion of their defense reply is reproduced as under

"7.....The notice humbly request Hon'ble Adjudicating Authority to grant the opportunity to cross-examine the said Valuer since the manner of examining the purity and the issuance of the Certificate about the valuation of gold is not credible at all.

8. It is an admitted fact that the Noticee was never confronted with the seized gold and the purity of the same was not examined in his presence. The Noticee wants to examine the said gold bars whilst cross-examining the aforesaid Valuer Shri Devang Ratilal Soni. The Noticee yearns to point out the absurdity of the report which was prepared in haste, under the diktat of the DRI officials,. It is humbly submitted that the said valuation report was prepared under the influence of officials of Directorate of Revenue Intelligence (GRU) and the same was not prepared independently. It is a typed report, which was prepared on the computer located at the office of investigating Officer.

9.....The noticee refute the allegations levelled by the issuing authority of the show cause notice. It is a matter of record that the copy of the Bill of Lading, the telephone record which evinces any communication between the duo, receipt indicating the payment of Mundra Port import local charges at the instance of Noticees, whereby the delivery order was released to the Customs Broker, as mentioned in para 5 of the Show Cause Notice, are missing from the Relied Upon Documents, though they are referred to as evidence. Irrespective of their absence in the relied upon documents, near mentioning thereof weighed heavily on the mind of the issuing authority of the Show Cause Notice however, their presence and supply to the Noticees was not entrusted .

10. In para 5.1, the credence has been placed on the statement of Shri Harish Vaniya, whereby he claimed that he received mails from poultrydayal@gmail.com for query related to the containers. No such email has been place on record. The Noticee humbly request Hon'ble Adjudicating Authority to direct the Officers of Directorate of Revenue Intelligence to supply the copy of emails allegedly issued by Shri Jagjit Singh , if taken on record of investigation by complying the provisions of the Information Technology Act, 2000.

It is submitted that the statement of Shri Harish Vaniya has been considered as an incriminating evidence against the Noticees No.1 , Therefore , the cross examination of Shri Harish Vaniya is quintessential for the purpose of fair adjudication of the case. It is a settled law that the person, whose statement is relied upon by the depart in the adjudication proceedings, has to be made available for the purpose of cross examination. The list of arrived containers, allegedly provided by Shri Harish Vaniya is not provided to the Noticees.

11. The issuing authority of the Show Cause Notice has mentioned that the statement of Shri Sunil F. Sharma was recorded under section 108 of the Customs Act, 1962 on 24.05.2017, whereby he stated that their operation agent M/s Samsara Shipping Agencies Private Limited sent an arrival notice of the Container No. IALU2244230 pertaining to the Bill of Lading No. MSL/JBL/MUN/123/17 and further acclaimed that they filed import advance list. It is mentioned in paragraph 6 of the Show Cause Notice that he also submitted the copy of manifest which was submitted by M/s Muskan Container Line Private Limited. It is a matter of record that none of the documents mentioned in para 6 of the statement of Shri Sunil F Sharma are supplied to the Noticees along with the Show Cause Notice, though they are referred and relied upon in material particulars. It is therefore requested that the copies of the documents mentioned in paragraph 6 of the Show Cause Notice must be supplied so that an efficacious reply can be filed to the SCN as directed. It is submitted that the statement of Shri Sunil F Sharma was typed. In his statement, Shri Sunil F Sharma has admitted that he can read and write in English, but he requested to get the same typed by the officers of DRI. The said statement is not accompanied with the certificate under Section 65B of the Indian Evidence Act, 1872. In the absence thereof, the computer printout of the statement is not admissible in law. The Noticees strongly refute and it is specifically submitted that no such instructions were issued to him. It appears to be trap of some individuals so that they can get away by implicating the poor Noticees. The humble Noticees requests Ld. Adjudicating Authority to provide for, the inspection of the computer, so that, the timing of the recording of the statement and the veracity and sanctity can be ascertained.

12. The contents of para 7 suggest that Ms. Hiral D Desai, 'F' card holder of Customs Broker, M/s. Ribhus International Private Limited was examined by the Investigating Officer under section 108 of the Customs Act, 1962. A bare perusal of the statement of Ms. Desai suggest that she is a chartered accountant, though involved into the active business as a director of the company. This very act is illegal and endangers her membership from The Institute of Chartered Accountants of India. The conduct of the witnesses is extremely important under the provisions of the Indian Evidence Act, 1872 and in this particular case, an adverse inference can be drawn against said Ms. Desai, who is flouting the law conferring the stature of Chartered Accountant unto her. It is specifically submitted that no correspondence/ communication between M/s. D.K. Logistics and the M/s. Ribhus International Private Limited is placed on record. In absence of the aforesaid documents, it is not possible for the Noticees to make any comment on the content of the aforesaid communication. It is, therefore, requested that the investigating officer may be directed to produce the communication between D K logistic and M/s Ribhus international private limited, as aforesaid communication is referred and relied upon by the issuing authority of show cause notice. Therefore, the cross examination of Ms Hiral Desai is requisite for the purpose of fair adjudication of the case.

13. In paragraph 8 and 9 of the show Cause Notice, the credence has been given to the statement of Shri Deepak T Sawlani, the Branch Manager of DK Logistic, recorded under section 108 of the Customs Act, 1962 on 23.05.2017 and 25.05.2017. In the aforesaid statement, it is acclaimed that one Shri Manish Oberoi mailed the KYC, Lading, Invoices, Packing List and Authority Letters of M/s. Param Equipments Private Limited. However, no such document is enclosed with the Show Cause Notice, which are the soul of the statement. It is humbly submitted that no reliance can be placed on the statement of Shri Deepak T Sawlani, as it is devoid of merits. In case these documents were placed before the offices of Directorate of Revenue Intelligence, then the same must be provided to the Noticees, in compliance with the law of natural justice. The name of Shri Kulwant Singh and Shri Santosh erupted in a statement and the same is reflected as reliable material in the Show Cause Notice. The Noticees submit that no person in the name of Kulwant Singh exist in M/s. Param Equipments Private Limited. It is mentioned in the aforesaid statement that Mr Sawlani produced the mail correspondence between the Forwarder, King Shipping Services and DK Logistics related to the importer, M/s. Param Equipments Private Limited. The aforesaid mail communication has neither been made part of the Show Cause

Notice nor supplied to the Noticee. The statement of Shri Santosh T Sawlani has been considered as incriminating evidence against the Noticee. Therefore, the Noticee seeks the opportunity to cross examine Shri Sawlani. It is further requested that the documents mentioned in para 8 and 9 of the Show Cause Notice, as given by theories of learning must be given to the Noticees, in compliance of the law of natural justice. Therefore, the cross examination of Shri Deepak T Sawlani is crucial for the purpose of fair adjudication of the case.

14. The contents of paragraph 9 of the Show Cause Notice suggests, that the investigation of the present case was transferred to DRI, DZU vide office letter number DRI/AZU/GRU/GOLD-PARAM/INT-25/214 dated 13.07.2017. The copy of the aforesaid letter is not enclosed with the Show Cause Notice. The noticees request the Hon'ble Adjudicating Authority to provide the copy of the aforesaid letter as the investigation of the present set of fact was never conducted by the offices of DRI, DZU. The noticee would demonstrate that the investigation in the present case is paradigm of the shoddy and therefore that letter is nothing but shrugging of the responsibility by the offices of DRI, GRU. It is a matter of record that the Noticee no. 2 was arrested on 13th May 2017 and was released on bail by virtue of the order dated 14.07.2017 passed by the Chief Metropolitan Magistrate, New Delhi. This very fact articulates that the Noticee number 2, who was allegedly violating the law of the land, was present within four walls of the prison. He was always available to the investigators for the purpose of investigation, had they ever desired to do so. It is a matter of record that no question was ever put to Shri Harnek Singh about the seizure of the gold at Mundra Port, during the period of his incarceration. This very fact raises the suspicion on the conduct of the investigating officers, who felt contented to pontificate by hurling some allegations, without substantiating the same with the help of corroborating evidence. In light of the aforesaid facts, the noticee humbly requests the Hon'ble Adjudicating Authority provide the examination of the Investigating Officer, Seizing Officer and the officers who typed the statements/ recorded the statement of various persons, whilst investigating the facts of the presents how Cause Notice, whilst serving with Directorate of Revenue Intelligence, GRU, in the interest of Justice.

15. It is a matter of fact that Shri Harnek Singh was summoned by the officers of DRI, DZU on 13.05.2017 and he appeared in response of the summons. He was never questioned about the alleged seizure of 52 kilogram of gold, which is subject matter of the present Show Cause Notice. The silence of the officers of DRI, DZU on the captioned issue, is beyond the prudence of, even a common man. This is a pivotal issue, which could be unearthed during the cross examination of the officers of DRI, DZU, who allegedly conducted the investigation after the issuance transfer, of investigation. The noticee humbly requests Hon'ble Adjudicating Authority to provide the opportunity of cross examination of the investigating officer, the officer who recorded the statement of Harnek Singh, whilst investigating the facts of the present case and serving with DRI, DZU. The aforesaid cross examination will unravel the lackadaisical approach of these officials and would further demonstrate the innocence of the Noticees.

16. The contents of paragraph 9.1 articulate that Mrs. Gurdeep Kaur Made exculpatory statement, which was never challenged or confronted by the investigators.

17. In paragraph 9.2 and 9.3 of the Show Cause Notice, reliance has been placed on the statements of Shri Santosh Kumar and Shri Mohan Chandra Sharma. In this regard, It is submitted that both the above named person were not literate and they were coerced to append their signature on the printout taken by the officers of DRI, DZU. The statements are not accompanied with the certificate under section 65B of the Indian Evidence Act, 1872 and therefore the same cannot be considered as an evidence against the present Noticee. It is a matter of record that the mobile phones of both the above named person were taken into custody by the officers of DRI, DZU. This fact has been specifically suppressed by the issuing authority of the Show Cause Notice. It is evident that the statements of Shri Santosh Kumar and Mohan Chandra Sharma have been relied upon by the issuing authority while switching the Show Cause Notice therefore it is imperative to provide the cross examination of the above named

persons. It is also prayed that the cross examination of the officials, who recorded the statements of the above named persons, must be provided for the cross examination, in compliance of the principle of natural justice.

18. In paragraph 10 the inferences drawn from seizure of 44 kilogram gold on 13.05.2017, which is the subject matter of a separate Show Cause Notice pending before Your Honour. A detailed reply in respect of aforesaid Show Cause Notice is being filed. No documents in relation to the above case has been placed on record by the issuing authority of the Show Cause Notice. It is, however, prayed that the inspection of the Machines, iron frames and other material, which were allegedly used for the purpose of import of the gold in Clandestine manner, must be granted. That material was allegedly seized under the Panchnama dated 13.05.2017 and the same shall be considered as the case property. The examination of the case property is a matter of right and the noticees wish to exercise their rights to inspect the aforesaid ancillary material so that an articulate presentation can be made to the effect, that the gold could not have been concealed in the aforesaid material. This very fact would demonstrate the innocence of the Noticees.

19. In the Panchnama dated 13.05.2017, it is mentioned that Shri Harnek Singh, the Noticee was summoned by the officers of the DRI at about 130 PM, when the search was being conducted at his residential premises. It is further mentioned in the Panchnama prepared at DRI office that Shri Harnek Singh was summoned. He was asked about the presence of gold bars in the alleged incubator frames, who denied to have any knowledge about the same. It is further recorded in the aforesaid Panchnama that the panch witnesses witnessed the extraction of gold from the frames of incubators. The most interesting part of the Panchnama is that Shri Harnek Singh showed his ignorance about the presence of the gold in the frames of incubators.

Heavy Reliance is placed on the Panchnama dated 13.05.2017 in a subtle manner, which was prepared at the place of the Noticee. It is recorded therein that one laptop of HP brand, model No. RT3290 and Serial No. 5CD2414YKK were seized and two other computer hard disks were taken into custody by the seizing officer as mentioned in Annexure 'A' to the Panchnama dated 13.05.2017. The issuing authority of the show cause notice failed to supply the hard copy of the contents of the said computer and hard disks. The show cause notice failed to describe as to whether the said electronic record was dealt with in terms of provisions of the Information Technology Act, 2000 and section 65B of the Indian Evidence Act, 1872. The Noticee seeks the indulgence of Hon'ble Adjudicating Authority to direct the DRI to provide the copies of the electronic evidence in accordance with the law of land. It must be ferreted out whether the same digital records were subjected to the forensic investigation or not.

The aforesaid digital records are quintessential for the purpose of filing an efficacious reply to the Show Cause Notice. It is a matter of fact that the same digital records are not mentioned in the captioned Show Cause Notice and in this scenario, the same are considered to be Non-Relied Upon Documents/ material. Therefore, the noticees are entitled to retrieve the possession of those Non relied upon digital records. Therefore, the Noticee seeks indulgence of the Ld. Adjudicating Authority to issue the directives to DRI to render the Non RUDS in original and the legible photocopy of all the referred and relied upon documents

20. The statement of Sri Harnek Singh was recorded under the provisions of section 108 of The Customs Act, 1962. It is a matter of fact that Shri Harnek Singh did not admit about the recovery of gold and showed his ignorance about its presence amidst the frames of incubator. For this, he had to undergo the excruciating events including the harassment and physical torture, by the officers in their illegal custody. It is a matter of fact that the Noticee was able to write his statement, however the same was typed. This fact raises a finger of scepticism onto the nature of the Investigation. According to the Noticee, his statement was recorded under duress, threat and coercion. He was beaten mercilessly with the help of rubber rods. The bottom line of the statement dated 13.05.2017 ascribe that Shri Harnek Singh has requested the officers of DRI to stayback at their office. Since the statement was typed and there was no other option before Shri Harnek Singh but to sign such involuntary statement, he appended his signature at the bottom of the typed statement and on several

blank papers. It is beyond the prudence of a common man as to which accused prefer to stay at the office of the investigator, beyond the office hours.

21. The statement of Shri Harnek Singh is the computer generated print out and the same was typed on the computer installed in the office of DRI-DZU. Though, the copy of the statement of Shri Harnek Singh has been relied upon heavily and supplied to the Noticee, However, the certificate under section 65B of the Indian Evidence Act, 1872 is missing. It is specifically submitted that the said statement was typed beyond the office hours, whilst the Noticee was kept in illegal custody. The provision of section 108 of the Customs Act, 1962 and admissibility thereof shall cease its effect as the statement of Shri Harnek Singh was recorded under duress, threat and coercion. The Noticee requests Hon'ble Adjudicating Authority to direct the Investigating Officer to produce the certificate under Section 65B of the Indian Evidence Act, 1872. It is surprising to note that the Investigating Officer and the issuing authority of Show Cause Notice suppressed the retraction filed by Shri Harnek Singh before the court of competent jurisdiction. The Court of Chief Metropolitan Magistrate was pleased to direct the Investigating Officer to file the reply to the said retraction application, which has not been filed till this moment.

22. It is relevant to mention here that Shri Harnek Singh was shown as arrested on 14.05.2017 irrespective the fact that he was in continued illegal custody of the offices of DRI since 13.05.2017. He was produced before the court of Duty Magistrate, who was pleased to remand him to judicial custody. It is a matter of record that Shri Harnek Singh retracted from his statement investigators. Ld. Chief Metropolitan made in custody of the Magistrate took cognizance of the same on 31.05.2017 and directed the DRI to file the reply of the aforesaid retraction application. No such reply has been filed by the DRI till this date, which itself is an evidence about the untrue nature of statement, which was retracted before the court of competent jurisdiction. It is trite law that if a statement is retracted, then the onus lies on the investigating agency to prove the allegations with the corroborative evidence. However, the same has not been complied with till today.

23. It is relevant to mention here that the Noticee no. 2 moved an application before the court of Chief Metropolitan Magistrate in Delhi for seeking direction to the telecom companies to provide the location details of the officers concerned in the investigation of the present case as the case of the Noticee is that he was kept in illegal custody and was coerced to write the statement which is a fictional and uncorroborated story evolved by the officials of DRI and does not contain any truth. The said statement is not the voluntary statement of the Noticee and therefore, the same is liable to be discarded in view of the law laid down by Hon'ble Apex Court in *Noor Aga v State of Punjab and Another* (2008 (16)SCC 417) and *Vinod Solanki v. Union of India* case (2008 (15)SCC 537)

24. At the stake of repetition, the Noticees humbly submit that he was subjected to physical and mental torture. It is mentioned in the Panchnama that he expressed his inability to point out the presence of gold in the frames of incubators. In the statement dated 13.05.2017, he admitted the recovery of gold but failed to point out the name, address and particulars of the person, who was taking the delivery of the alleged gold. It is stated that it was one Mr. Agarwal, who used to call him from different numbers and used to take the deliveries of the gold. However, it has been alleged that the payment in respect of the alleged gold used to be sent to Shri Jagjit Singh at Dubai by using Hawala means. Shri Harnek Singh was forced to admit that the said Hawala was being done by one Shri Gupta whose particulars were not known to him.

It is humbly submitted that the Noticee was kept in illegal custody, where he was subjected to the physical beating, duress and coercion. He was pressurized by the officials that in case he does not append his signature on the statement written by the officers of Directorate of Revenue Intelligence, his wife will be prosecuted as she is the Director in the company which imported the captioned consignment from Dubai. A bare glance at the statement of the Noticee would demonstrate that except the recovery of gold, he had nothing to divulge about the alleged smuggling activity. Though, it is alleged that the Noticee did not cooperate with the investigators, but in reality, the investigators have nothing else to corroborate their allegations. The show cause notice is silent on the issue

whether Shri Jagjit Singh was ever summoned or any investigation was conducted from him, at the instance of the offices of Directorate of Revenue Intelligence.

In light of the facts mentioned herein above, it is submitted that the retracted statement cannot be relied upon if the same is not substantiated with the help of corroborative evidence as held by Hon'ble Supreme Court in various judgements. The cross examination of the departmental officers is therefore quintessential for the purpose of extracting the truth as the allegations levelled by the investigating officers are based on the retracted confessional statement and uncorroborated evidence.

25. The contents of paragraph 13.1(c) of the show cause notice are reproduced hereinafter-

"Further enquiry in the matter has revealed that Harnek Singh is a habitual offender. Show cause notice dated 11-11-2017 for illegal import of 44 kgs of gold has already been issued to him vide C. No. DZU/34/ENQ-3/2017 dated 11-11-2017. He has also been found to have imported repeatedly using the said modus operandi. In fact, as many as 44 times which has been corroborated from his phone records, the bills of entry, and statements his staff, custom brokers and his own statements recorded under section 108 of the Customs Act, 1962. He has smuggled gold which is around 1700 kgs...."

26. A bare perusal of the aforesaid contents of paragraph 13.1 (c) would demonstrate that the investigating officer has collected the phone records of the noticee no. 2, the bills of entry and thereafter, they reached at the conclusion that the noticee no.2 was privy to the smuggling of 1700 kilograms gold. None of the alleged phone records and bills of entry are made relied upon documents in this show cause notice, where as heavy reliance has been placed there upon. It is therefore, quintessential for the noticee to examine those documents and make his comment for filing the efficacious reply to the show cause notice. In the absence of these documents no comment can be offered about the content thereof and the fiction of the alleged pontification can be unraveled.

The financial transactions in respect of this alleged 1700 kilograms of gold smuggling has not been pondered and then their onus is shifted towards Shri Harnek Singh, which is malicious exercise of power. The Noticees humbly request the Hon'ble Adjudicating Authority to grant the cross examination of the departmental officers (DRI DZU and GRU) for demonstrating, that in fact no investigation was conducted in a pragmatic perspective, hitherto, the officers of directorate of revenue intelligence, chose to remain the coercive armoury of the state, which is not tenable in law. The illegal custody of Shri Harnek Singh, computer typed statement, non filing the reply to the retraction in spite of the direction of the competent court are several issues, which can be examined and truth can be extracted only when the investigating officers and other officials involved in the process of investigation are made available for the purpose of cross examination.

27. In the aforesaid paragraph, enough credence has been placed on the telephone records, however, the investigating officers felt contented to draw the inference from the aforesaid call records. However, they have not been made part and parcel of the adjudication proceedings. It has been done with an intent to thwart the course of justice. An appropriate sanction is required for the purpose of tapping the phone records. Certain communication must have taken place between the authority, which sanction the tapping of mobile phones of the Noticee. There must have been certain communication between the investigating officer and the service provider of the Noticee no 2. In response thereto the service provider might have given access to the DRI, the details of alleged call records. However, in the present case, the investigating officer has allegedly analysed and drew the adverse inference against the Noticee as apparent from the perusal of the show cause notice. A prejudice is being caused against the Noticees while some documents are referred are relied against them without providing the copy thereof. More so, DRI officials evaded to place the said material before Your Honour as well, whilst placing the material for the issuance of present show cause notice. This fact alone raises the finger of skepticism upon the conduct of

the investigator and the malicious investigation which is specifically designed to keep the real accused away from the clutches of the law and to implicate the innocent persons by citing the provisions of the Customs Act 1962. For this particular purpose mentioned herein above, the Noticees yearn to cross examine the investigating officer and seizing officer so that the truth can be extricated which is hidden beneath the bundle of lies and manipulations caused by the investigators, in connivance with the real accused.

28. Any efficacious reply to the show cause notice can be filed only after the supply of the documents mentioned herein above, which are not only referred in the show cause notice but also the same are heavily relied upon by the department whilst issuing the show cause notice. Moreover, the opportunity of the cross examination of the persons mentioned in the instant application has to be granted in observance of the law of the natural justice."

15. Written reply to the show cause notice was submitted by the Noticee No.3 vide their letter dated 08.03.2018 through their advocates M/s Law Chambers of Ramakant Gaur, New Delhi wherein he submitted that

"1. IMPROPER SERVICE OF SHOW CAUSE NOTICE TO THE PRESENT NOTICEE Present Show Cause notice was sent to the parental address of the Noticee Shri Jagjit Singh at Ludhiana, which is not his place of abode. On one hand, the issuing authority of the show Cause Notice feigned present Noticee is that the present in Dubai and was sending the consignment of seized gold and on the other hand, the Show Cause Notice was being served at Ludhiana. This intriguing fact exposes the manipulation of the officials of Directorate of Revenue Intelligence. It is humbly submitted that the Show Cause Notice was never served upon the Noticee. No appropriate materials/supporting documents have been provided to the noticee which are explained further in detail.

2. FACTUAL MATRIX OF THE CASE- By way of the aforementioned Show Cause Notice, Ld. Additional Director, DRI-DZU called upon the Noticees to show cause as to why the foreign marked Gold Bars totally weighing 44 kg having market value of Rs.12,32,35,200 allegedly seized vide panchnama dated 13.05.2017, drawn at DRI office, CGO Complex, Lodhi Road, New Delhi, should not be confiscated under the provisions of Section 111 (d), (i), (o) and (p) of The Customs Act 1962. Further, an amount equivalent to USD1668 and INR 12,49,900/- alleged to be the sale proceeds of the smuggled gold should not be confiscated under section 121 of Customs Act 1962. Further, it has been directed to show cause as to why the concealing materials including poultry egg incubators and Iron brooding panels seized vide panchnama dated 13.05.2017 should not be confiscated under section 119 of Customs Act. Furthermore, it has been requisitioned to show cause as to why the penal action under section 112(a), 112(b) and 114 AA should not be imposed upon the Noticee. (Para 19 of SCN). At the outset, it is submitted that all the allegations foisted upon the Noticee, are denied vehemently and no part of the show cause notice is admitted unless there is an express admittance thereupon.

3. The case emanates when the Noticee no.1 Shri Harnek Singh was taken into custody by the officers of the Directorate of Revenue Intelligence, DZU, New Delhi, whereas it is portrayed that he was arrested on 14.05.2013 by invoking the provisions of Section 104 of the Custom Act, 1962. It is acclaimed that the DRI officials recovered and seized 44 kgs of gold bars of 995 purity. It is alleged that the above said quantities of gold bars were total valued at Rs. 12,32,35,200/-. They were allegedly being concealed in a hollow iron frame container (packing), imported with other goods vide Bill of Entry No. 9568462 dated 05.05.2017 by M/s Param Equipments Pvt. Ltd, New Delhi. During the course of investigation, Shri Harnek Singh was allegedly interrogated under the guise of section 108 of Customs Act and his statements were recorded under duress, threat and coercion. It is humbly submitted that the statements dated 13.05.2017 and 14.05.2017 were Involuntary in nature. The Noticee No. 1 was arrested and produced before Ld. Duty Magistrate on 14.05.2017, who was pleased to remand him to judicial custody. Subsequently, the captioned statement was retracted. It is alleged that in his statement, the Noticee No. 1 implicated the present Noticee. However, cumulative reading of the statements shall depict that the DRI has painted an untrue picture and has wrongfully

implicated the Noticees. The said retracted statement neither confronted was nor corroborated by the investigators.

No complaint under the provisions of the customs act was filed against him within the statutory period, as a result of which, the then Ld. Chief Metropolitan Magistrate was pleased to grant him the liberty of statutory bail under section 167(2) of the Code of Criminal Procedure, 1973 vide order dated on 14.07.2017.

4. That as per para 12.2 of the SCN states about the confession made by Shri Harnek Singh (noticee no. 1), it has been wrongfully portrayed that the 44 kgs of Gold bars were smuggled in connivance with the present noticee. In his statement, the Noticee No.1 has stated - Shri Jagjit Singh is settled in Sharjah and he suggested that they should start bringing gold from UAE to India to retch them huge profits the consignments of Poultry Egg incubators and Brooder Panels were sent by the present noticee from Sharjah through his firm M/s Al Mehrab Generai Trading LLC, at P.O. Box. 4112, Sharjah UAE Jagjit Singh has allegedly procured gold and has brought Poultry Egg Incubators and Brooder Panels to conceal the gold in them and have further described in detail the alleged modus operandi of the alleged smuggling Jagjit Singh used to receive the payments of the sale proceeds of the smuggled gold which were made through Hawala operators the profits thus earned were shared between him and the present noticee.

Heavy reliance is placed upon the confessional statement of Harnek Singh. The mentioned statement above was retracted by Shri Harnek Singh. The co-noticee cannot be implicated on the basis of retracted statement of Shri Harnek Singh. The allegations foisted against the present noticee were not corroborated.

5. As per para 13, 14 and 15 of the SCN, the DRI has also examined several customs brokers who have been involved in the entire Import Clearance procedure the consignments of M/s Param Equipments Pvt. Ltd. However, none of them have admitted the knowledge of any purported smuggling of goods .Further, it is relevant to highlight here that the statements of these custom brokers are significantly referred and relied upon, however the same have not been supplied along with the Show Cause Notice. Further, DRI also examined the two employees of M/s Param Equipments, New Delhi, but a perusal of their statements evince that they have denied any knowledge about the presence of alleged smuggled gold in the consignments.

PANCHNAMAS ARE EXCULPATORY IN NATURE

6. That various search and seizures were conducted vide Panchnama dated 13.05.2017 at the Office premises of DRI, i.e at CGO Complex, Lodhi Road, New Delhi, another Conducted vide panchnama dated 13.05.2017 at the residential premises of Shri Harnek Singh (brother in law of noticee) Maya Enclave, New Delhi and also vide panchnama dated 13.05.2017, search conducted by the DRI officials at office Premises of M/s Dayal poultry Appliances, Mayapuri, New Delhi.

7. That bare perusal the Panchnama drawn at CGO Complex evince that that nothing incriminating was found produced, which could usher towards the involvement of noticee. In the search proceedings conducted at the residential premises of Shri Harnek Singh and office premises of M/s Param Equipments P. Ltd., New Delhi, nothing incriminating has been found which could evince the guilt of noticee. That several documents have been seized and several photographs have been annexed vide Annexure A to the aforesaid panchnama. Similarly, in search proceedings conducted at office premises of M/s Dayal Poultry Appliances, several documents were also seized along with a computer and 2 hard-disks. However, nothing incriminating was found, which could show alleged involvement of offence of present Noticee .Therefore, none of these panchnamas state anything about the alleged involvement of the Noticee Shri Jagjit Singh in the alleged smuggling of gold. Therefore, all the panchnamas are exculpatory in nature.

INTERIM SUBMISSIONS

Heavy Reliance Upon the Retracted Statement of Shri Harnek Singh

8. It is evidently clear that the allegations against the Noticee Shri Jagjit Singh have been made by on the basis of solitary evidence i.e. the statement of Harnek Singh. That vide statements of Shri Harnek Singh dated 13.05.2017

and 14.05.2017 under section 108 of customs act, he has been involuntarily made to sit and undergo excruciating events including the harassment by the officers in their custody. That the statement has been made under threat, duress and coercion and was involuntary in nature. Furthermore, it is a matter of record that the statement of Harnek Singh has been retracted on 31.05.2017 before the Ld. Chief Metropolitan Magistrate, New Delhi and the Ld. CMM was pleased to take the same on record and further direct DRI to file the reply to the said retraction. To the best of knowledge of noticee, no reply to the retraction statement has been filed till date. The DRI has suppressed the aforesaid fact of the retraction from the Ld. Adjudicating Authority and have placed no material proving the same. In view of such lackadaisical attitude of DRI and the DRI relying heavily upon such retracted statements, it tends to raise finger of suspicion onto the whole investigation process. That DRI has implicated the noticee simply on the basis of the statement which hold no corroborative evidentiary value in the eyes of law.

Noticee has never been Summoned by DRI

9. It is further submitted that the Noticee Shri Jagjit Singh has never been summoned by the Department of Revenue Intelligence. The DRI never bothered to summon the noticee. It is apparent from the record that no Summons under section 108 of the Customs Act were ever been issued qua the Noticee. It is a paradigm of shoddy investigation, which was conducted to implicate the noticees and further vitiates the right of fair investigation of the noticee. The present notice prays for the intelligence of Honorable Adjudicating Authority direct the officials of the Directorate of revenue intelligence to provide the note sheets of the investigation proceedings so that the veracity of the exceptions of the offices of DRI. The copy of the communication issued in respect of the present noticee is quintessential yet no reference has been made in this regard. The humble Noticee prays the Honorable adjudicating authority to provide the copy of the summons and/or any other communication Issued in respect of the Noticee no. 1.

No investigation with respect to Sharjah and Dubai

10. It has been alleged that the consignments were ordered by the noticee in Sharjah, however, there is no whisper about any investigation being carried by the DRI with overseas authorities in Sharjah. It has been alleged by the DRI that the Noticee used to procure gold in Sharjah and bought the Poultry Egg Incubator to conceal them. However, there has been no material put forth to support the above fact. More so, There is no evidence about any kind of concealment of gold amidst the incubators at the hands of Noticee. There is no mention about any investigation being carried in Sharjah with respect to firm M/s Al Mehrab General Trading LLC. DRI failed to trace the procedure of gold procurements and have wrongfully concocted and foisted allegations unto the Noticee. Furthermore, if there has been any investigation undertaken, there shall be certain internal note-sheets which were to be maintained during the Course of investigation. Even they have not been provided along with the Show Cause Notice.

No Investigation Regarding 'Shri Gupta' And 'Shri Agarwal'

11. In his statement allegedly recorded under section 108 of the Customs Act, 1962, Shri Harnek Singh stated that it was one 'Mr Agarwal' who used to call him from different numbers and used to take the deliveries of the Gold. However, it has been alleged that the payment in respect of the alleged gold used to be sent to the Noticee, Shri Jagjit Singh at Dubai by using Hawala means. Shri Harnek Singh was further forced to admit vide his statement u/section 108 Customs Act 1962 that the said Hawala was being done by one 'Shri Gupta' who used to send him the proceeds of smuggling via Dubai based Hawala operators whose particulars were not known to him. However, there has been no trail of communications with these operators and no investigation pertaining to these Hawala operators have been undertaken. Furthermore, no documents have been placed before the Ld. Adjudicating Authority to corroborate about any investigation in Dubai with respect to the alleged Hawala Transactions. There is apparent failure on the part of the Investigators to track the Hawala route in Dubai as well as in Sharjah. The investigation is silent about the business relation between Noticee Jagjit Singh and the alleged Hawala operators.

WRONGFUL ALLEGATION OF A CO-CONSPIRATOR ON THENOTICEE

12. It is alleged in para 18.2 of the Show Cause Notice-Role of Jagjit Singh - that it appears to the DRI that 'The Noticee is the Co- conspirator in the smuggling of gold in India. That he is brother in law of Harnek Singh and he arranged gold and concealing materials in Dubai'. It has been further alleged by the DRI that he arranged gold and concealing materials in Dubai. It is alleged that it was he who concealed gold in the hollow iron pipes and exported them from Dubai under the guise of Egg incubators and brooding panels. However, all these allegations are blatant lies apparent on the record and are vehemently denied by the noticee. These allegations are a result of hallucinated presumptions of the Department of Revenue. There is no evidence to support or indicate any chain of conspiracy between Harnek Singh and Noticee Jagjit Singh and the allegation of the co-conspirator is baseless.

13. There is no iota of suspicion that the foundation stone of the whole case has been the statements u/section 108 of the Customs Act 1962 of Shri Harnek Singh. However, such reliance doesn't hold water. It is evidently clear that the investigators failed to nab the real accused and his nexus of buyers and alleged hawala operators. Hitherto the investigators preferred to foist all the allegations on the head of the Noticee without ascertaining the nature of evidence against the Noticee.

14. Further, as per the Show Cause notice ,portrayed the role of the Noticee as "engaging himself in clandestine smuggling of gold using the modus operandi mentioned supra and thus liable to penal action under section 112 (a) and 114 of the Customs Act". However, DRI failed to connect the shreds of the evidence as operandi allegedly adopted by the noticee in the act of smuggling of gold.

Reliance upon the Whatsapp Conversation Improper Investigation

15. It is alleged that Shri Harnek Singh, the Noticee no. 1, was confronted with 54 pages wherein the chat with his brother in-law, Noticee 3 Shri Jagjit Singh, was extracted from the software of WhatsApp installed in Shri Harnek Singh's Phone and thereafter the printouts were taken. It is alleged those 54 pages articulate about the conversation between the duo which constituted the evidence of the illicit import of gold by violating the provisions of The Customs Act, 1962. Some photographs of these pages have been appended along with the show Cause Notice however, legible copies of those 54 pages have not been supplied to the Noticees, till this date. The investigation of any case is a subject matter of the law. The investigators cannot form their own opinions and pontificate the same law. An alien procedure was carried out by the DRI officials whilst conducting the investigation in the present case. Show Cause Notice is silent on the aspect as to what procedure was followed by the investigators to extract the text from the software of WhatsApp installed in the iPhone allegedly owned by Shri Harnek Singh. It is relevant to point out that the provisions of the Information Technology Act and the Indian Evidence Act were usurped by the officers of Directorate of Revenue Intelligence. There is no mention of the certificate under section 65B of the Indian Evidence Act, as such the said printouts lose their evidentiary value and veracity. The Noticee humbly prays to the Learned Adjudicating Authority to direct the officers of DRI to place on record the internal note sheets about the extraction of the text from the software of WhatsApp installed in the phone of the Noticee. Furthermore, a bare perusal of the same shall indicate that that there is no direct averment which can evince the guilt of noticee.

The conversation between the two mobile devices occurs when the data packet is released by one Telecom operator and received by the another one in their transmission. No evidence has been placed on record, which could fortify the occurrence of any conversation between two persons by using mobile devices.

No forensic evidence evincing the examination of the mobile phones has been made the part of record.

No certificate u/section 65-B of Indian Evidence Act

16. The DRI failed to produce the certificate under section 65-B of the Indian Evidence Act, whereby said documents could be considered as evidence.

It is alleged that some forensic analysis has been conducted of all the electronic records seized from or at the entrance of the Noticee's residential/ business premises however, no such report from any credible forensic lab has been placed on record. In the absence of any such report, the electronic evidence is liable to be discarded and has no sanctity or evidentiary value in the eyes of law. It is also alleged that the Indian and Foreign Currency has also been recovered from the residential premises of Noticee and the same have been resumed for further investigation. However in absence of any forensic investigation report, the noticee is not in a position to file a detailed reply in this regard and shall respond after receiving relevant documents in this regard.

Relevant Documents Not Supplied

17. The case of the DRI is based upon several Relied upon Documents (RUDS) and Non- relied upon documents (Non RUDS). Para 23 of the Show Cause Notice states that "the Copies of relied upon documents, as mentioned in the Show Cause Notice are integral parts of the Show Cause Notice and the same are listed Annexure 'A' enclosed". However, there is no Annexure enclosed with the Show Cause Notice. As a matter of fact, the Noticee has not received any of the Relied Upon Documents as mentioned in Annexure-A to the Show Cause Notice and therefore, no efficacious reply can be filed to the aforesaid Show Cause Notice in the absence of the same.

18. It is quintessential to ascertain about the credibility and dependability of the referred documents since the same are construed as the relied upon documents. They were seized under the provisions of section 100 of the Code of Criminal Procedure read with section 165 of The Customs Act. The provisions under section 110 of the Customs Act mandates that the copy of the seized documents must be supplied to the Noticee. There are a plethora of non-relied documents including digital records as well, reference of which can be made out of the RUDS. Therefore, it is averred that that the Noticee has not been supplied all the relied upon and non-relied documents. Therefore, the basic tenet of constitution, the right to life envisages right to fair investigation and fair adjudication. Therefore the act of the DRI for not supplying the relied upon document is sheer violation of the basic tenets of the constitution.

19. It is quintessential to mention here that several vital documents have been referred and relied, inferred as evidence and some of them were confronted to the witness during the investigation. The statements of various witnesses encompass these vital documents and heavily relied upon by the DRI officials, they make the most part of the Show Cause notice. However it has evaded to supply the same to the Noticee.

20. These include the documents attached with the consignment note as mentioned in the Panchnama dated 13.05.2017 which constitute weighing slip of consignment, Bill of Entry, Delivery order, Stuffing job request, Gate pass, etc.

21. Several Bills of Lading Shipping Bills Bills of Entry relating to the consignment as mentioned in the SCN disputed. Furthermore, several import documents pertaining to M/s Param Equipments Pvt. Ltd. mentioned in Annexure A to Panchnama dt. 13.05.2017 at business premises seizure memo of the truck which was intercepted seizure memo and note sheet pertaining to the concealed poultry egg incubators and Iron brooding panels seized vide panchnama dated 13.05.2017. Documents with respect to the consignments of Poultry egg Incubators and Iron brooding panels sent by the Noticee through his firm Al Mehrab General Trading LLC, Sharjah are not mentioned in the list of RUDS.

22. All the above said documents have been referred and heavily relied during the course of investigation as evident from the statements. In the Show Cause Notice, the Issuing Authority has specifically mentioned these documents but the same are neither mentioned in the list of relied upon documents not supplied to the noticee. Therefore, they become very essential for the purpose of filing of an efficacious reply to the Show Cause Notice. The evasion of supply of such vital documents is causing the travesty of justice and the same must be supplied by the Honourable Adjudicating Authority, whilst conducting the quasi-judicial proceedings. The veracity of the documents must be tested at the touchstone of the cross examination.

23. Furthermore, it is necessary to mention that vide Annexure A to panchnama dated 13.05.2017, drawn at residential premises of Shri Harnek Singh situated at EB-135, EB 133 and EB 141, Maya Enclave, Hari Nagar, New Delhi, several documents and electronic devices were allegedly seized during the investigation which included Pen Drive, DVR, Hard disc, computer and bank accounts details and also cheque books bearing name of Noticee Jagjit Singh. Further it has also been mentioned that CCTV Cameras, Digital Video Recorder has also been resumed and are sent for further investigation. As a matter of right the copy of the extract of these documents/devices must also be supplied to the Noticee which has not been done till date. No report on the investigation of DVD or CCTV cameras has even been put before the Ld. Adjudicating Authority.

24. It is a settled law that if a document is seized from the possession of Noticee, then he is entitled for the copy of the document, in case the same is relied upon while issuing the Show Cause Notice. In case the said documents are not relied upon, then it is obligatory on the part of the DRI to return the aforesaid documents. The Issuing Authority of Show Cause Notice failed to discharge its duty to provide the copies of the relied upon documents and further failed to return the non relied documents. This fact alone indicates that the DRI usurped the law of natural justice. Therefore, It is not possible for the Noticees to file an efficacious reply without reading these referred, relied upon documents and non-relied-documents. No reply to the Show Cause Notice can be filed without reading and referring to their evidentiary value. Therefore, the Noticee seeks indulgence of the Ld. Adjudicating Authority to issue directives to DRI to render the Non RUDS in original and the legible photocopy of all the relied upon documents.

SEEKING CROSS EXAMINATION OF DRI OFFICIALS AND WITNESSES

25. The noticee has the right to conduct cross examination of various officials of DRI who involved into the investigation of the matter in hand. As stated herein before this Hon'ble Adjudicating authority, no investigation was conducted by the offices of DRI inasmuch as the proper service of summons was never opted the investigators never ferreted about any investigation being conducted at the premises of Noticee either in Sharjah or Dubai. There is nothing on record to show the issuance of any search warrant or seizure memo which would have been issued by the Investigating/Seizing Officer. Therefore, it is neglected on the part of the Investigating officer who was supervising the investigation in this matter. Further, as a preliminary submission, the present investigation heavily relies upon Harnek Singh's statement dated 13.05.2017 and 14.05.2017 recorded by the Senior Investigating Officer, DRI-Delhi Zonal Unit. Therefore, the noticee seeks to cross examine the Investigating Officers/ Seizing Officers, Senior Investigating Officer of DRI-Delhi Zonal Unit and the Officers, who recorded the statements of various persons. A bare perusal of the Show Cause notice mentions certain names of the Investigating Officers such as Shri Manoj Kumar (SIO), Shri Ajay Kumar (IO), Shri Shashank Shekhar, Shri Rakesh Kumar etc. Further statements of number of witnesses have been relied upon by the DRI, hence the noticee also seeks to cross examine these witnesses. Few paragraphs of the Show Cause Notice quote extracts of the statements of Custom Brokers recorded under section 108 of Customs Act 1962. They have cleared the consignments of the 'M/s Param Equipments Pvt. Ltd'. However, all these custom brokers have stated that they were not aware of any illegal items being smuggled in these import consignments. Therefore it is requested to kindly grant opportunity to cross examine these customs brokers namely Shri Dinesh Agarwal, Smt Hiral Desai and Shri Rakesh Maheshwari.

26. As stated earlier, The statement of Shri Harnek Singh dated 13/14.05.2017 has been retracted, the record of which is not put forth the Ld. Adjudicating authority. That going through the diction and style of the statement, it appears to be a crafted one. To the best of Noticee's knowledge, Noticee Shri Harnek Singh was subjected to torture while interrogation. Hence the veracity of these statements have to quintessentially ascertained and hence cross examination of the DRI officers, witnesses and Panch witnesses is quintessential.

27. **RELEVANT CASE LAWS** The noticee relies on a catena of judgments in support of its interim submissions pertaining Summons, right to

seek Cross examination, right of fair trial and Fair adjudication supply of relevant and non- Relevant docs.

I. Law Relating to Right to seek Cross Examination

1) *In State of Kerala v. K.T. Shaduli Grocery Dealer*, (1977) 2 SCC 777, Hon'ble Supreme Court was pleased to hold as under

3. One of the rules which constitutes a part of the principles of natural justice is the rule of *audi alteram partem* which requires that no man should be condemned unheard. It "is indeed a requirement of the duty to act fairly which lies on all quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties because as pointed out by this Court in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 (1970) 1 SCR 457] "the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice" and justice, society which has accepted socialism as its article of faith in the Constitution is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative functions. This rule which requires an opportunity to be heard to be given to a person likely to be affected by a decision is also, like the genus of which it is a species, not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights affected and the consequences flowing from the decision. It is, therefore, not possible to say that in every case the rule of *audi alteram partem* requires that a particular specified procedure is to be followed. It may be that in a given case the rule of *audi alteram partem* may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on facts and circumstances of each case.

(2) *In J and K Cigarettes Ltd. v. Collector of Central Excise* reported in 2009 (242) ELT 189 (Del) which had upheld the validity of Section 9D of the CE Act, the Court in *Basudev Garg V. Commissioner of Customs* observed as under

"14. The Division Bench also observed that though it cannot be denied that the right of cross-examination proceeding is a valuable right given to the accused/Noticee, as these proceedings may have adverse consequences to the accused, at the same time, under certain circumstances, this right of cross-examination can be taken away. The court also observed that such circumstances have to be exceptional and that those circumstances have been stipulated in Section 9D of the Central Excise Act, 1944. The circumstances referred to in Section 9D, as also in Section 138B, included circumstances where the person who had given a statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay and expense which, under the circumstances of the case, the Court considers unreasonable. It is the clear that unless such circumstances exist, the Noticee would have a right to cross-examine the persons whose statements are being relied upon even in quasi-judicial proceedings. The Division Bench also observed as under-

"29. Thus, when we examine the provision as to whether the provision confers unguided powers or not, the conclusion is irresistible, namely, the provision is not uncanalised or uncontrolled and does not confer arbitrary powers upon the quasi judicial authority. The very fact that the statement of such a person can be treated as relevant only when the specified ground is established, it is obvious that there has to be objective formation of opinion based on sufficient material on record to come to the conclusion that such a ground exists. Before forming such an opinion, the quasi judicial authority would confront the assessee as well, during the proceedings, which shall give the assessee a chance to make his submissions in this behalf. It goes without saying that the authority would record reasons, based upon the said material, for such a decision effectively. Therefore, the elements of giving opportunity and

recording of reasons are inherent in the exercise of powers. The aggrieved party is not remediless. This order/opinion formed by the quasi judicial authority is subject to judicial review by the appellate authority. The aggrieved party can always challenge that in a particular case invocation of such a provision was not warranted.

(3) *IN R.R. Shah v. Commissioner of Central Excise*, 2016 SCC OnLine CESTAT 3607, a bench of CESTAT observed -

"From the above it is clear that the appellant sought for cross examination cross of various persons. However from the impugned order it is observed that Ld. Commissioner has not even dealt this request of the appellant as he neither allowed the cross examination nor even rejected the request. Therefore the Ld. Commissioner has not considered the request for cross examination in the impugned order. Therefore we find that Adjudicating authority has gravely erred inasmuch as has not followed the principle of natural justice irrespective any grave nature of offence natural justice is the foremost principle which is to be complied with in any judicial/quasi judicial proceedings. Therefore the matter needs to be remand for considering request for cross examination and passing afresh order. All the issues are kept open. Denovo adjudication proceedings shall be done by the adjudicating authority within a period of three months from the date of receipt of this order. Needless to say that appellant shall be given sufficient opportunity of personal hearing After considering the request for cross examination. Appeal is disposed of by way of remand.

II. Right to Fair adjudication/Fair Trial

(1) *In Noor Aga v. State of Punjab*, (2008) 16 SCC 417 (2010) 3 SCC (Cri) 748 at page 468, it is observed-

113. *Justness and fairness of a trial is also implicit in Article 21 of the Constitution, A fair trial is again a human right. Every action of the authorities under the Act must be construed having regard to the provisions of the Act as also the right of an accused to have a fair trial. The courts, in order to do justice between the parties, must examine the materials brought on record in each case on its own merits. Marshalling and appreciation of evidence must be done strictly in accordance with the well-known legal principles governing the same where for the provisions of the Code of Criminal Procedure and the Evidence Act must be followed. Appreciation of evidence must be done on the basis of materials on record and not on the basis of some reports which have nothing to do with the occurrence in question.*

114. *Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial. Such rights are enshrined in our constitutional scheme being Article 21 of the Constitution of India. If an accused has a right of fair trial, his case must be examined keeping in view the ordinary law of the land.*

(2) *In the matter of Pooja Pal vs. Union of India (UOI) and Ors.* (22.01.2016 SC) (2016) 3 SCC 135, it was propounded

"a trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee Under Article 21embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard and fast rules as such uniform and universal invocation decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

Any criminal offence is one against the society at large casting an onerous responsibility on the state, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, plenitude and content thereof can neither be enervated nor moderated by any legislation."

The expression "fair and proper investigation" in criminal jurisprudence was upheld by the Apex Court in *Vinay Tyagi vs Irshad Ali @ Deepak and Ors.* MANU/SC/1101/2012 (2013) 5 SCC 762 to encompass two imperatives firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

III. Right To Seek Relevant Documents

The Noticee relies on the following case laws to fortify his request to supply the relevant documents-

- 1) In the case of *CCE and Land Customs vs. Sanawarmal Purohit*, (1979 (4) E.L.T J613 (S.C)), the Hon'ble Supreme Court has held that a Quasi-Judicial Authority would be acting contrary to the Rules of natural justice if it acts upon information collected by it which has not been disclosed to the party concerned and in respect of which full opportunity of meeting the inferences which arises out of it has not been given.
- 2) In *Crescent Computers (P) Ltd. vs. CCE, New Delhi*, [2002 (149) E.L.T 1399 (T)], the Tribunal has held that principles of natural justice are violated when copies of the sales invoices, purchase invoices, etc. which would have enabled the assessee to meet every charge raised in the show cause notice are not supplied despite persistent requests made both in reply to the show cause notice as also after personal hearing.
- 3) In *Tribhovandas Bhimji Zaveri v. CCE*, [1997 (92) E.L.T 467 (S.C)], Hon'ble Supreme Court has held that when relied upon documents are not furnished, the right to offer proper explanation is severely prejudiced. Failure to supply copies of documents has caused prejudice and the principles of natural justice are violated. Impugned order is set aside and appeals are allowed. Similar principles have been laid down in cases of *Sanghi Textile Processors (P) Ltd. v. CCE*, [1993 (65) E.L.T 357(S.C)] , *Sunder Ispat Ltd. v. CCE*, [2002 (141)E.L.T 24 (A.P)].
- 4) In *Engser Ltd.v. Asst. Commissioner of Customs*, [2004 (163) E.L.T 412 (Cal.)], it was held that the rule of justice requires a free, frank and fair hearing and for the same, reasonable opportunity of inspection and exchange of documents, which are very foundation of civil justice, will be principally adopted by any authority in rendering such justice.
- 5) In the case of *Rathi Udyog Ltd. v. CCE, Meerut*, [2000 (123) E.L.T 880 (T)], it was held that Natural justice applies to inspection and supply of copies of record. When sufficient opportunity is not afforded to make effective representation in the proceedings pursuant to the show cause notice, an order passed in violation of principles of natural justice cannot stand scrutiny before judicial Tribunal.

In the light of these judgments, the adjudicating authority is expected to render the fair adjudication as flown from the constitution and reflected in various judgments of the Apex Court and Tribunals.

IV. Right To Seek Un-relied Upon Documents

Attention is further invited towards the law laid down by different courts in the following Judgements which tends to emphasis the relevancy of Un-Relied Upon Documents-

- 1) In *Naresh Kumar Jain v. Union of India and Ors.* [176 (2011) DLT 730]- it was held that the documents relating thereto were not shown in the list of relied upon documents but, that does not alter the position. If they were in fact relied upon for the purposes of forming the satisfaction, they ought to have been supplied to the detenu irrespective of their not being shown in the list of relied upon documents.
- 2) In *Hindustan Dyeing and printing Works Vs. Commissioner of C. Ex* [2013 (297) ELT55 (Tri.-Delhi)], The hon'ble Judicial member of CESTAT expressed that-

“It may not be out of place to mention here that the adamant stand of the Revenue not to supply the non-relied documents to the assessee, which stand seized from their premises and admittedly belonged to them and are required by them for taking a proper defence, result in such type of mess and may result in losing of the case of the Revenue which otherwise maybe a good case for them. According to the basic principle of adjudication, the principle of natural justice are required to be followed strictly. Fairness of the adjudication requires the department to return back all the relied upon/non-relied upon documents. No reason on the part of the Revenue can justify such non-return of the documents. I really sometimes fail to understand as to what can be the objection of the Revenue for return documents, which they no longer require and which admittedly belong to assessee. Probably, there is no valid answer to such question by the Revenue.”

16. Further written submission to the show cause notice was submitted by the Noticee No.3 vide their letter dated 04.05.2018 through their advocates M/s Law Chambers of Ramakant Gaur, New Delhi wherein he submitted that

IMPROPER SERVICE OF SHOW CAUSE NOTICE TO THE PRESENT NOTICEE

1. Present Show Cause notice was sent to the parental address of the Noticee Shri Jagjit Singh at Ludhiana, which is not his place of abode. On one hand, the issuing authority of the show Cause Notice feigned that the present Noticee is present in Dubai and was sending the consignment of seized gold and on the other hand, the Show Cause Notice was being served at Ludhiana. This intriguing fact exposes the manipulation of the officials of Directorate of Revenue Intelligence, DZU, Gandhidham Regional Unit (DRI-GRU). It is humbly submitted that the Show Cause Notice was never served upon the Noticee. No appropriate materials/supporting documents have been provided to the noticee which are explained further in detail.

FACTUAL BACKGROUND OF THE CASE

2. The case of the Directorate of Revenue Intelligence is that the Gandhidham Regional Unit (GRU) allegedly received an intelligence about the smuggling of gold and concealing the same with other goods. They allegedly examined the goods imported vide Bill of Lading No. MSL/|BL/MUN/123/17 dated 12.05.2017 in Container No. IALU2244230 in the name of consignee M/s. Param Equipments Private Limited, New Delhi. The said consignment was allegedly examined in the presence of two independent witnesses and the concerned Customs Broker, vide Panchnama dated 20/21.05.2017. It is alleged that the Container was found sealed with the bottle seal number CMA-CGM F4918883. It is further alleged that on opening the said container, 1 wooden box and a few Blue and Saffron coloured metal frames were found. Inside the frame, one white machine, an egg incubator was seen which was taken out and the iron frame was shifted to a workshop to cut open the same. With the help of electric cutter, iron frame was allegedly cut from the joints from all the sides. In some iron frames, small size wooden pieces were visible from outside and after opening all the said 28 tape bound packs, 52 gold bars bearing foreign markings, weighing 1kg each were recovered as mentioned in Show Cause Notice.

3. The factum of the case emanates with the issuance of authorisation to search by the Competent Authority. The same is not present on record. This is the primary document from where the case started. In the absence of the said document, it is not feasible to conduct the search proceedings. The copy of the same is not placed on the record. The Noticee humbly requests Hon'ble

adjudicating Authority to direct the officers of Directorate of Revenue Intelligence to supply the copy of the search warrant.

4. It is alleged that the entire proceeding of examination was recorded under Panchnama dated 20/21.05.2017(RUD1).The aforesaid quantity of gold and the packing material were seized under the provisions of Section 110 of the Customs Act, 1962.

5. With reference to pars 4 of the Show Cause Notice, it is further alleged that aforesaid 52 gold bars were examined by Shri Devang Ratilal Soni, Government approved Gold/ Jewellery Valuer, who issued the Valuation Certificate in respect of seized gold.

6. It is an admitted fact that the Noticee was never confronted with the seized gold and the purity of the same was not examined in his presence. The Noticee wants to examine the said gold bars whilst cross-examining the aforesaid Valuer Shri Devang Ratilal Soni. It is humbly submitted that the said valuation report was prepared under the influence of officials of Directorate of Revenue Intelligence (GRU) and the same was not prepared independently. It is a typed report, which was prepared on the computer located at the office of Investigating Officer. The Noticees humbly request Hon'ble Adjudicating Authority to grant the opportunity to cross-examine the said Valuer to examine the credibility of the report.

Heavy Reliance Upon the Retracted Statement of Shri Harnek Singh

7. That as per para 11.2 of the SCN states about the confession made by Shri Harnek Singh (noticee no. 2) vide statements dated 13.05.2017 and 14.05.2017 (RUD 10 and RUD 11) recorded under section 108 Customs Act, it has been wrongfully portrayed that the 44 kgs of Gold bars were smuggled in connivance with the present noticee. In his statement, the Harnek Singh (Noticee No. 2) has stated Shri Jagjit Singh is settled in Sharjah and he suggested that they should start bringing gold from UAE to India to fetch them huge profits the consignments of Poultry Egg Incubators and Brooder Panels were sent by the present noticee from Sharjah through his firm M/s Al Mehrab General Trading LLC, at P.O. Box. 4112, Sharjah UAE Jagjit Singh has allegedly procured gold and has brought Poultry Egg Incubators and Brooder Panels to conceal the gold in them and have further described in detail the alleged modus operandi of the alleged smuggling Jagjit Singh used to receive the payments of the sale proceeds of the smuggled gold which were made through Hawala operators the profits thus earned were shared between him and the present noticee.

8. It is evidently clear that the allegations against the present Noticee have been made by on the basis of solitary evidence i.e. the statement of Harnek Singh. That vide statements of Shri Harnek Singh dated 13.05.2017 and 14.05.2017, Harnek Singh (Noticee 2) has been involuntarily made to sit and undergo excruciating events including the harassment by the officers in their custody and the statements thus made under threat, duress and coercion and were involuntary in nature. Furthermore, it is a matter of record that the statement of Harnek Singh has been retracted on 31.05.2017 before the Ld. Chief Metropolitan Magistrate, Patiala House Courts, New Delhi and the Ld. CMM was pleased to take the same on record and further direct DRI to file the reply to the said retraction. To the best of knowledge of noticee, no reply to the retraction statement has been filed till date. The DRI has suppressed the aforesaid fact of the retraction from the Ld. Adjudicating Authority and have placed no material proving the same. In view of the same, it tends to raise finger of suspicion onto the whole investigation process. That DRI has implicated the noticee simply on the basis of the statement which hold no corroborative evidentiary value in the eyes of law.

Noticee has never been Summoned by DRI

9. It is further submitted that the Noticee Shri Jagjit Singh has never been summoned under section 108 of the Customs Act by the Department of Revenue Intelligence. It is a paradigm of shoddy investigation, which was conducted to implicate the noticees and further vitiates the right of fair investigation of the noticee. The present notice prays for the intelligence of Honorable Adjudicating Authority to direct the officials of the Directorate of Revenue intelligence to provide the note sheets of the investigation proceedings so that the veracity of

the investigation proceedings be ascertained. Furthermore, the humble Noticee prays the Honorable adjudicating authority to provide the copy of the summons and/or any other communication issued in respect of the Noticee no. 1.

No investigation with respect to Shariah and Dubai

10. It has been alleged that the consignments were ordered by the noticee in Sharjah, however, there is no whisper about any investigation being carried by the DRI with overseas authorities in Sharjah. It has been alleged by the DRI that the Noticee used to procure gold in Sharjah and bought the Poultry Egg Incubator to conceal them. However, there has been no material put forth to support the above fact. More so, there is no evidence about any kind of concealment of gold amidst the incubators at the hands of Noticee. There is no mention about any investigation being carried with respect to firm M/s Al Mehrab General Trading LLC in Sharjah. DRI failed to trace the procedure of gold procurements and have wrongfully concocted and foisted allegations unto the Noticee. Furthermore, if there has been any investigation undertaken, there shall be certain internal note-sheets which were to be maintained during the course of investigation. Even they have not been provided along with the Show Cause Notice. It is therefore requested that this Honourable Adjudicating Authority may issue directions to the Investigating Officials to provide for the internal note-sheets of Investigation carried out in Sharjah and Dubai, if any, to the Noticee.

No Investigation Regarding 'Shri Gupta' And 'Shri Agarwal'

11. In his statement allegedly recorded under section 108 of the Customs Act, 1962, Shri Harnek Singh (noticee no.2) stated that it was one 'Mr Agarwal' who used to call him from different numbers and used to take the deliveries of the gold. However, it has been alleged that the payment in respect of the alleged gold used to be sent to the Noticee, Shri Jagjit Singh at Dubai by using Hawala means. Shri Harnek Singh was further forced to admit that the said Hawala was being done by one 'Shri Gupta' who used to send him the proceeds of smuggling via Dubai based Hawala operators whose particulars were not known to him. However, there has been no trail of communications with these operators and no investigation pertaining to these Hawala operators have been undertaken to track the Hawala route in Dubai and Sharjah. The investigation is silent about the business relation between Noticee Jagjit Singh and the alleged Hawala operators. Furthermore, no documents have been placed before the Ld. Adjudicating Authority to corroborate about any investigation in Dubai with respect to the alleged Hawala Transactions.

WRONGFUL ALLEGATION OF A CO-CONSPIRATOR ON THE NOTICEE

12. It is alleged in para 13.2 of the Show Cause Notice-Role of Jagjit Singh - that it appears to the DRI that 'The Noticee is the Co-conspirator in the smuggling of gold in India. That he is brother in law of Harnek Singh and he arranged gold and concealing materials in Dubai'. It has been further alleged by the DRI that he arranged gold and concealing materials in Dubai. It is alleged that it was he who concealed gold in the hollow iron pipes and exported them from Dubai under the guise of Egg incubators and brooding panels. However, all these allegations are blatant lies apparent on the record and are vehemently denied by the noticee. There is no evidence to support or indicate any chain of conspiracy between Harnek Singh and Noticee Jagjit Singh and the allegation of the co-conspirator is baseless.

13. There is no iota of suspicion that the foundation stone of the whole case has been the statements u/section 108 of the Customs Act 1962 of Shri Harnek Singh. However, such reliance doesn't hold water. It is evidently clear that the investigators failed to nab the real accused and his nexus of buyers and alleged hawala operators and preferred to foist all the allegations on the head of the Noticee without ascertaining the nature of evidence against the Noticee.

14. Further, as per the Show Cause notice, the DRI has portrayed the role of the Noticee as "engaging himself in the clandestine smuggling of gold using the modus operandi mentioned supra and thus liable to penal action under section 112 (a) and (b) and section 114AA of the Customs Act". However, the DRI failed to connect the shreds of the evidence as modus operandi allegedly adopted by the noticee in the act of smuggling of gold.

Reliance upon the Whatsapp Conversation Improper Investigation

15. It is alleged that Shri Harnek Singh, the Noticee no.1 was confronted with 54 pages (after RUD11) wherein the chat with his brother-in-law, Noticee 3 Shri Jagjit Singh, was extracted from the software of WhatsApp installed in Shri Harnek Singh's iPhone and thereafter the printouts were taken. It is alleged those 54 pages articulate about the conversation between the duo which constituted the evidence of the alleged illicit import of gold by violating the provisions of The Customs Act, 1962. Some photographs of these pages have been appended along with the show Cause Notice however, legible copies of those 54 pages have not been supplied to the Noticees, till this date. The investigation of any case is a subject matter of the law and an alien procedure thereof cannot be carried out at the whims and fancies of the DRI officials. Show Cause Notice is silent on the aspect as to what procedure was followed by the investigators to extract the text from the software of WhatsApp installed in the iPhone allegedly owned by Shri Harnek Singh. It is relevant to point out that the provisions of the Information Technology Act and the Indian Evidence Act were usurped by the officers of Directorate of Revenue Intelligence. There is no mention of the certificate under section 65B of the Indian Evidence Act, as such the said printouts lose their evidentiary value and veracity. The Noticee humbly prays to the Learned Adjudicating Authority to direct the officers of DRI to place on record the internal note sheets about the extraction of the text from the software of WhatsApp installed in the phone of the Noticee. Furthermore, a bare perusal of the same shall indicate that there is no direct averment which can evince the guilt of noticee. No forensic evidence evincing the examination of the mobile phones has been made the part of record to fortify the occurrence of any conversation between two persons by using mobile devices.

Relevant Documents Not Supplied

16. The case of the DRI is based upon several Relied upon Documents (RUDs) and Non-relied upon documents (Non RUDs). Para 18 of the Show Cause Notice states that "the Copies of relied upon documents, as mentioned in the Show Cause Notice are its integral part and the same are listed in Annexure 'A' enclosed". However, there is no Annexure enclosed with the Show Cause Notice. As a matter of fact, the Notice has not received many of the Relied Upon Documents and Non-Relied Upon Documents which are referred and relied upon by the Adjudicating Authority and therefore, no efficacious reply can be filed to the aforesaid Show Cause Notice, in the absence of the same.

17. It is quintessential to ascertain the credibility and dependability of the referred documents since the same are construed as the relied upon documents (RUDs). They were seized under the provisions of section 100 of the Code of Criminal Procedure read with Section 165 of The Customs Act. The provision under section 110 of the Customs Act mandates that the copy of the seized documents must be supplied to the Noticee. There are a plethora of non-relied documents including digital records as well, reference of which can be made out of the RUDs. Therefore, it is averred that the Noticee has not been supplied all the relied upon and non-relied documents. Therefore, the basic tenet of constitution, the right to life envisages right to fair investigation and fair adjudication. Therefore, non supply of the relied upon document is sheer violation of the basic tenets of the constitution.

18. It is quintessential to mention here that several vital documents have been referred and relied, inferred as evidence, were also confronted to the witness during the investigation and make the most part of the Show Cause notice. However, DRI has evaded to supply to the Noticee the documents referred by the witnesses during interrogation.

19. With reference to para 5 of the Show Cause Notice, it is alleged that the statement of Shri Harish Vaniya (RUD 3) was recorded under section 108 of the Customs Act, 1962 wherein he has mentioned that the container was booked by M/s. Al Mehrab General Trading LLC, Sharjah, UAE, whose owner was Jagjit Singh, herein the Noticee No.3 (Ph-971508617956) mail ID caryclaNtal@gmail.com. It is acclaimed that he had confirmed telephonically from Shri Vivek Pandey, Branch Manager of M/s Muskaan Shipping LLC at Dubai. The Bill of Lading No. MSL/JBL/MUN/123/17 was allegedly collected by the person sent by Shri Jagjit Singh through mail request to be their counterpart.

It is further acclaimed that the consignee M/s. Param Equipments Private Limited made the payment of Mundra Port import local charges and then they released the delivery order to Customs Broker as told by the consignee. The Noticees refute all these allegations levelled by the issuing authority of the show cause notice. It is a matter of record that the copy of the Bill of Lading the telephone records and email communications which evince the communication between Shri Harish Vaniya and Shri Jagjit Singh receipt indicating the payment of Mundra Port Import local charges at the instance of Noticees delivery order released to the Customs Broker List of arrived containers of M/s Param Equipments provided by Shri Harish Vaniya as mentioned in para 5 of the Show Cause Notice, all are missing from the Relied Upon Documents, though they are referred to as evidence. It is submitted that the notice seeks indulgence of the Ld. Adjudicating Authority to provide the copies of the aforementioned document.

20. With reference to para 6 of the SCN, Sunil F Sharma vide his statement dated 24.05.2017 (RUD 4) recorded under section 108 of the Customs Act, 1962, whereby he stated that their operation agent M/s. Samsara Shipping Agencies Private Limited sent an arrival notice of the Container No. IALU2244230 pertaining to the Bill of Lading No. MSL/JBL/MUN/123/17 and further acclaimed that they filed import advance list and the copy of manifest which was submitted by M/s. Muskan Container Line Private Limited. It is a matter of record that none of the aforementioned documents are supplied though they are referred and relied upon in material particulars. It is therefore requested that the copies of the documents mentioned in paragraph 6 of the Show Cause Notice must be supplied so that an efficacious reply can be filed to the SCN as directed.

21. With Reference to para 7 (Rud 5), Ms. Hirai D Desai, 'F' card holder of Customs Broker, M/s. Ribhus International Private Limited was examined by the Investigating Officer. She referred about her active involvement into the business as a director of the company. It is specifically submitted that no correspondence/communication between M/s. D.K. Logistics and the M/s. Ribhus International Private Limited is placed on record. In absence of the aforesaid documents, it is not possible for the Noticee to make any comment on the content of the aforesaid communication. It is, therefore, requested that the investigating officer may be directed to produce the communication between D K logistics and M/s Ribhus International Pvt. Ltd., as aforesaid communication is referred and relied upon by the issuing authority of show cause notice. Therefore, the cross examination of Ms Hirai Desai is requisite for the purpose of fair adjudication of the case.

22. With reference to Para 8 and 9 (Refer RUD 6) , statement of Shri Deepak Sawlani was recorded wherein it is acclaimed that one Shri Manish Oberoi mailed the KYC, Bill of Lading, Invoices, Packing List and Authority Letters of M/s. Param Equipments Private Limited. Furthermore, Mr Sawlani produced the mail correspondence between the Forwarder, King Shipping Services and DK Logistics related to the importer, M/s. Param Equipments Private Limited. None of these documents have been made a part of the Show cause notice. The statement of Shri Santosh T Sawlani has been considered as incriminating evidence against the Noticee. Therefore, the Noticee seeks the opportunity to cross examine Shri Sawlani which is crucial for the purpose of fair adjudication of the case. It is further requested to kindly supply the copy of the aforementioned documents.

Documents Seized vide Panchnama dated 13.05.2017

23. Heavy Reliance is placed on the Panchnama dated 13.05.2017 (RUD 9) in a subtle manner, which was drawn at the premises of Shri Harnek Singh (Noticee no. 2) situated at EB-135, EB 133 and EB 141, Maya Enclave, Hari Nagar, New Delhi. It is recorded therein that one laptop of HP brand, model No. RT3290 and Serial No. 5CD2414YXK were seized and two other computer hard disks were taken into custody by the seizing officer as mentioned in Annexure 'A' to the Panchnama dated 13.05.2017. The issuing authority of the show cause notice failed to supply the hard copy of the contents of the said computer and the hard disks. The show cause notice tends to usurp the provisions of the Information Technology Act, 2000 and Section 65B of the

Indian Evidence Act, 1872. The Noticee seeks the indulgence of Hon'ble Adjudicating Authority to direct the DRI to provide the copies of the aforesaid electronic evidence in accordance with the law of land. It must be ferreted out whether the same digital records were subjected to the forensic investigation or not.

Un-Relied or Non -Relied Upon Documents

24. Furthermore, it is reiterated that vide Annexure A to panchnama dated 13.05.2017, several documents and electronic devices were allegedly seized during the investigation which included Pen Drive, DVR, Hard disc, computer and bank accounts details and also cheque books bearing name of Noticee Jagjit Singh. Further, it has also been mentioned that CCTV Cameras, Digital Video Recorder has also been resumed and are sent for further investigation. As a matter of right, the copy of the extract of these documents/devices must also be supplied to the Noticee which has not been done till date. No report on the investigation of DVD or CCTV cameras has even been put before the Ld. Adjudicating Authority.

25. The aforesaid digital records are quintessential for the purpose of filing an efficacious reply to the Show Cause Notice. It is a matter of fact that the same digital records are not mentioned in the captioned Show Cause Notice and in this scenario, the same are considered to be Non-Relied Upon Documents/material. Therefore, the noticees are entitled to retrieve the possession of those Non-relied upon digital records. Therefore, the Noticee seeks indulgence of the Ld. Adjudicating Authority to issue the directives to DRI to render the Non RUDs in original and the legible photocopy of all the referred and relied upon documents.

26. It is a settled law that if a document is seized from the possession of Noticee, then he is entitled for the copy of the document, in case the same is relied upon while issuing the Show Cause Notice. In case the said documents are not relied upon, then it is obligatory on the part of the DRI to return the aforesaid documents. The Issuing Authority of Show Cause Notice failed to discharge its duty to provide the copies of the relied upon documents and further failed to return the non-relied documents. This fact alone indicates that the DRI usurped the law of natural justice. Therefore, It is not possible for the Noticees to file an efficacious reply without reading these referred and relied upon documents and non-relied-documents. No reply to the Show Cause Notice can be filed without reading and referring to their evidentiary value. Therefore, the Noticee seeks indulgence of the Ld. Adjudicating Authority to issue directives to DRI to render the Non RUDs in original and the legible photocopy of all the Relied upon documents.

27. The evasion of supply of such vital documents is causing the travesty of justice and the same must be supplied by the Honourable Adjudicating Authority, whilst conducting the quasi-judicial proceedings. The veracity of the documents must be tested at the touchstone of the cross examination.

ALL THE STATEMENT ARE TYPED - NO SECTION 65B Indian Evidence Act

28. It is submitted that the statement of Shri Sunil F Sharma was typed. In his statement, Shri Sunil F Sharma has admitted that he can read and write in English, but he requested to get the same typed by the offices of DRI. The said statement is not accompanied with the certificate under Section 65B of the Indian Evidence Act, 1872. In the absence thereof, the computer printout of the statement is not admissible in law. The Noticees strongly refute and it is specifically submitted that no such instructions were issued to him. It appears to be trap of some individuals so that they can get away buy implicating the poor Noticees. The humble Noticee requests Ld. Adjudicating Authority to provide for, the inspection of the computer, so that, the timing of the recording of the statement and the veracity and sanctity can be ascertained

CROSS EXAMINATION OF WITNESSES

29. The noticee has the right to conduct cross examination of various officials of DRI who are involved into the investigation of the matter in hand. As stated herein before this Hon'ble Adjudicating authority, no investigation was conducted by the offices of DRI inasmuch as the proper service of summons was never opted the investigators never ferreted about any investigation being conducted at the premises of Noticee either in Sharjah or Dubai. Therefore, it is neglected on the part of the Investigating officer who was supervising the

investigation in this matter. Further, as a preliminary submission, the present investigation heavily relies upon Harnek Singh's statement dated 13.05.2017 and 14.05.2017 recorded by the Senior Investigating Officer, DRI-Delhi Zonal Unit. Therefore, the noticee seeks to cross examine the Investigating Officers/ Seizing Officers, Senior Investigating Officer of DRI- Gandhidham Regional Unit and the Officers, who recorded the statements of various persons. A bare perusal of the Show Cause notice mentions certain names of the Investigating Officers such as Shri Sarvana Raj, IO, Gandhidham, Regional Unit, (RUD 1) Shri S.J. Singh (Deputy Director (GRU-DRI) who recorded the statements) Shri Shashank Shekhar JD, DRI-DZU (refer RUD 9), Shri Manoj, IO, DI-DZU.

30. Further statements of number of witnesses have been relied upon by the DRI, hence the noticee also seeks to cross examine these witnesses. Few paragraphs of the Show Cause Notice quote extracts of the statements of Custom Brokers recorded under section 108 of Customs Act 1962. They have cleared the consignments of the 'M/s Param Equipments Pvt. Ltd'. However, all these custom brokers have stated that they were not aware of any illegal items being smuggled in these import consignments. Therefore, it is requested to kindly grant opportunity to cross examine these customs brokers namely Shri Harish Vaniya, Shri Vivek Pandey (Branch Manager, M/s Muskaan Shipping LLC, Dubai), Shri Sunil F. Sharma, Smt. Hirai D. Desai. Moreso, the Noticee yearns to conduct cross examination of the Panch witnesses during various Panchnama proceedings.

Right To Seek Relevant Documents

The Noticee relies upon the following case laws to fortify his request to supply the relevant documents-

- (1) In the case of CCE and Land Customs v. Sanawarmal Purohit, [1979 (4) E.L.T J613 (S.C)],
- (2) In Crescent Computers (P) Ltd. v. CCE, New Delhi, [2002 (149) E.L.T 1399 (T)],
- (3) In Tribhovandas Bhimji Zaveri v. CCE, [1997(92) E.L.T 467 (S.C)],
- (4) In Engser Ltd. v. Asst. Commissioner of Customs, [2004 (163) E.L.T 412 (Cal.)]
- (5) In the case of Rathi Udyog Ltd. v. CCE, Meerut, [2000 (123) E.L.T 880(T)],

In the light of these judgments, the adjudicating authority is expected to render the fair adjudication as flown from the constitution and reflected in various judgments of the Apex Court and Tribunals.

Right To Seek Un-relied Upon Documents

Attention is further invited towards the law laid down by different courts in the following judgements which tends to emphasis the relevancy of Un-Relied Upon Documents-

- (a) In Naresh Kumar Jain v. Union of India and Ors. [176(2011) DLT 730]
- (b) In Hindustan Dyeing and printing Works Vs. Commissioner of C. Ex [2013(297) ELT55(Tri.-Delhi)],

Law Relating To Right to seek Cross Examination

The noticee tends to rely upon several judicial pronouncements to fortify his request to exercise his right to seek opportunity of cross examination of various persons pertaining to the investigation as already stated in the above said paragraphs.

1. State of Kerala v. K.T. Shaduli Grocery Dealer, (1977) 2 SCC 777,
2. J and K Cigarettes Ltd. v. Collector of Central Excise reported in 2009 (242) ELT 189 (Del)
3. Basudev Garg v. Commissioner of Customs
4. R.R. Shah v. Commissioner of Central Excise, 2016 SCC OnLine CESTAT 3607, a bench of CESTAT observed -

Right to Fair adjudication/Fair Trial The noticee relies upon the following judgments to exercise his right to fair adjudication right to fair trial.

- 1 Noor Aga v. State of Punjab, (2008) 16 SCC 417 (2010) 3 SCC (Cri) 748
2. Pooja Pal vs. Union of India (UOI) and Ors. (22.01.2016 - SC) (2016) 3 SCC 135
- Vijay Tyagi v. Irshad Ali @ Deepak and Ors. MANU/SC/1101/2012 (2013) 5 SCC 762 .

17. Further written submission (Final submission) to the show cause notice was submitted by the Noticee No.1,2 and 3 vide their letter dated 03.08.2019 through their advocates M/s Law Chambers of Ramakant Gaur, New Delhi wherein he submitted that

"1. The present Show Cause Notice was issued by the Additional Director, DRI Delhi Zonal Unit, Department of Revenue Intelligence, Customs House, Mundra, Kutch, Gujarat pertaining to the alleged seizure of 51998.80 grams of gold vide Panchnama proceedings dated 20/21.05.2017. Thereupon, the Noticees have been requisitioned to show cause as to why confiscation of goods under section 111(d), 111(i), 111(o) and 111(p) of the Customs Act concealment of material under section 119 of the Customs Act should not be imposed upon the noticees vide Show Cause Notice No.DRI/DZU/34/Enq-3/2017/6048 dated 17.11.2017. The Noticees are further asked to show cause as to why the penalty should not be imposed upon them under the provisions of Section 112 of the Customs Act, 1962 for their alleged acts of omission and commission, as ascribed in the Show Cause Notice.

2. The Noticees have already submitted their interim reply dated 03.01.2018 and 04.05.2018 before the Ld. Adjudicating Authority. In the interim reply, it was requested that to supply legible copies of the Relied Upon Documents to the Noticees and to return the Non-relied Documents. The cross examination of the persons, whose statements were relied upon by the DRI, was also prayed for. On 28.03.2019, another Application for Cross-examination of the DRI officials and Panch-Witnesses was moved, wherein out of the ten names listed, the permission for cross examination of only four witnesses was granted vide letter dated 07.05.2019. The copy of the aforesaid letter is marked as Annexure 1. The contents of Interim reply dated 03.01.2018 and the Application dated 28.03.2019 are not repeated for the sake of brevity and the same may kindly be read as part and parcel of the present submissions. The present final submissions pertain to the factual matrix, allegations foisted by the DRI, evidence relied on by the DRI, analysis of such evidence and its credence thereof in the terms of law.

3. Another Show Cause Notice dated 11.11.2017 has already been issued to the notices by the Additional Director vide C. No. DZU/34/Enq-3/2017 for the alleged illegal import of 44 kgs of gold. It is submitted that the Investigating agency has made a case based on mere hallucinated presumptions and false premise. It is nothing but paradigm of wrongful allegations and shoddy investigation without presenting any credible or cogent evidence to prove the guilt of the Noticees. It is evidently clear that the allegations foisted by the DRI in the aforementioned 2 Show Cause Notices, it is alleged that the Noticees have smuggled the gold by concealing the same with other goods and that they were allegedly involved in sending money illegally to the supplier in Dubai via services of hawala operations . it is evidently clear that the investigating agency has completely copy paste the investigation and the observations of the SCN issued by DRI- DZU against the Noticees. In the absence of any specific investigation with respect to these basic points, there is nothing on record to support the claim of DRI in the present SCN (Mundra-52 Ks).

4. It is relevant to bring your kind attention towards the contents of paragraph 9 of the instant Show Cause Notice, wherein it is stated that the detailed investigation of the present case was transferred to DRI, DZU vide office letter number DRI/AZU/GRU/GOLD-PARAM/INT-25/214 dated 13.07.2017. The copy of the aforesaid letter has not been supplied till today. As a matter of record the DRI-DZU has also not conducted any investigation so far with respect to this seizure. Moreover, no summons have been issued by the DRI-DZU to any witnesses or noticees to call them to give evidence regarding this alleged seizure of gold at Mundra port.

Therefore, the investigation in the present case is paradigm of the shoddy investigation and that the non supply of the letter dated 13.07.2017 (transferring the matter to DRI, DZU) shows that it is nothing but shrugging of responsibility by the offices of DRI, GRU as well as DRI, DZU. In the absence of any investigation by either of the DRI offices regarding the present seizure, this SCN is liable to be quashed.

ARREST OF THE NOTICEE NO. 2

5. It is a matter of record that the noticees or their officials have never been summoned in relation to the seized gold. It is a matter of record that the Noticee no. 2 was arrested on 13.05.2017 by the officials of DRI, Delhi and was granted statutory bail by virtue of the order dated 14.07.2017 by the Ld. Chief Metropolitan Magistrate, New Delhi. The certified copy of the aforesaid order is hereby annexed and marked as Annexure 2. This very fact articulates that the Noticee no. 2, allegedly violating the law of the land, was incarcerated within four walls of the prison and hence, was always available to the investigators for the purpose of Investigation in relation to seizure of gold in Mundra, if they ever desired to do so. However, as a matter of record that Noticee no 2 Shri Harnek Singh was never interrogated about the seizure of the gold at Mundra Port, during the period of his incarceration. This very fact raises the suspicion of any independent investigation with respect to seizure of Gold at Mundra, that the same was never conducted by the investigating officers, who felt contented to pontificate by hurling some allegations, without substantiating the same with the help of corroborating evidence, in relation to the present show cause notice.

6. At the outset, all the allegations foisted upon the Noticees are vehemently denied and no part of the Show Cause Notice is admitted unless there is express admittance thereupon.

ALLEGATIONS

7. The officers of the Directorate of Revenue Intelligence Gandhidham Regional Unit (GRU) have alleged that the noticee no. 2 was indulged in and is allegedly the mastermind of smuggling and clandestine sale of gold, illegally imported via hawala transactions from Dubai, with the help of Noticee no. 3 and thus is allegedly carrying large scale smuggling of gold bars for the last three years or so.

8. It is further alleged that the Noticee no. 2 made the extraction and sale of gold "an individual affair" in India and used the import of incubators and brooding panels in the name of newly floated company M/s Param Equipments Pvt. Ltd. to camouflage the smuggling of gold in huge quantities that it is further alleged that the presence of gold was suppressed in the import and transport documents deliberately suppressed in the import and transport documents deliberately to avoid detection and seizure. It is also alleged that they are found to be repeatedly using the same modus operandi.

9. It is also alleged that as per ICES, 40 Bills of Entry have been filed between February 2015 to May 2017 and in all similar goods as one egg incubator and some brooding panels have been declared and that these are corroborated by the noticee no. 2's phone records, the bills of entry, and the statements of his staff, Custom Brokers and his own statements recorded under section 108 of the Customs Act, 1962.

10. It is further alleged that the noticee no. 2 was involved in sending money illegally to the supplier in Dubai using the services of Hawala operators. That he allegedly shielded the buyers of smuggled goods with the help of Noticee no. 3 and the hawala operators involved in remitting the payments in Dubai and thus are alleged to be liable for penal action under section 112a and 114AA of The Customs Act, 1962.

SUBMISSIONS NO INVESTIGATION WITH RESPECT TO THE PRESENT SEIZURE

11. As per para 13 (c) of the Show Cause Notice, Noticee no. 2 is being named as a habitual offender citing the details about the SCN issued on 11.11.2017 for illegal import of 44 kgs of gold (C.No. DZU/34/Eng-3/2017). The officials of the DRI, Delhi Zonal Unit has implicated the Petitioner pertaining to the alleged seizure of 44 kgs of Gold vide Panchnama proceedings dated 13.05.2017 from his residential premises and initiated the Show Cause Notice proceedings against the Noticees for the confiscation of goods and imposition of penalty invoking the relevant provisions of the Customs Act.

12. From the bare perusal of the present SCN along with its Relied Upon Documents (RUDs), it is clear that there is no separate or independent investigation done as to the alleged seizure at Mundra. It is submitted that DRI Mundra or DRI Delhi has not undertaken any investigation, specifically with

respect to this seizure at Mundra. There are no statements, searches or any investigation done specifically pertaining to the seizure.

13. It is submitted that SCN issued with respect to Delhi, an interim application has already been moved by the Noticees, and no other proceeding or personal hearing has been conducted as of now. It is to bring to your kind attention that a complaint has also been filed by the DRI Delhi with respect to that seizure in Delhi which is pending adjudication before the Ld. CMM, Patiala House Courts, New Delhi. Therefore, it is a clear case of harassment at the hands of the DRI. It is submitted that the Investigating agency has completely copy pasted the investigation and the observations of the earlier issued SCNs against the Noticees.

14. Despite the aforesaid issuance of SCN, the DRI has relied upon the same investigation in the captioned SCN. More than 2 years have passed, the DRI officials have failed to conduct any fresh incriminating investigation against the Noticees. In absence of any specific separate investigation, the same deserves to be quashed.

SHODDY INVESTIGATION

15. Non Suppliance of Search warrants The factum of the case emanates with the issuance of authorisation to search, i.e, search warrants by the Competent Authority. The same is not present on record. This is the primary document from where the case started. In the absence of the said document, it is not feasible to conduct the search proceedings. The copy of search warrants/ authorisation has not placed on the record.

16. Non Corroboration of Section 108 Statements - It is pertinent to mention here that the Noticee no. 2 has been alleged to be the mastermind of smuggling and clandestine sale of gold illegally imported via Dubai and is carrying large scale smuggling of gold bars. But no investigation was conducted in a pragmatic perspective to the allegations. That DRI has implicated the noticees simply on the basis of the statements u/s 108 Customs Act 1962 which holds no corroborative evidentiary value in the eyes of law.

17. No Specific Investigation pertaining to International Route It is alleged that 52 gold bars bearing foreign markings, weighing 1kg each were recovered as recorded under Panchnama dated 20/21.05.2017. But no further investigation with regards to clearance of gold during the international transit is put up on the record or mentioned in the SCN. It has been alleged by the DRI that the Noticee no. 3 used to procure gold in Sharjah and conceal them in the Poultry Egg Incubator and on the other hand, the Noticee no. 2 would receive the alleged consignment and further sale the smuggled gold. However, there has been no material put forth to support the above fact, no trail of communications with these operators and no investigation pertaining to these Hawala operators have been undertaken to track the Hawala route in Dubai and Sharjah. The investigation is silent about the business relation between Noticee no. 3 and the alleged Hawala operators.

18. Credibility of the Valuation Certificate dated 22.05.2017 It is further alleged that the aforesaid 52 gold bars were examined by Shri Devang Ratilal Soni, Government approved Gold/ Jewellery Valuer, who issued the Valuation Certificate dated 22.05.2017 in respect of seized gold. It is submitted that the manner of examining the purity and the issuance of the Certificate about the valuation of gold is not credible at all.

19. It is an admitted fact that the Noticees were never confronted with the seized gold and the purity of the same was not examined in their presence. The Noticees yearns to point out the absurdity of the Valuation report, which was prepared in haste, under the diktat of the DRI officials. It is averred that it is merely a typed report, which was prepared on the computer located at the office of Investigating Officer.

20. Denial of Cross examination of DRI Officers Further, as a preliminary submission, the present investigation heavily relies upon Harnek Singh's statement dated 13.05.2017 and 14.05.2017 recorded by the Senior Investigating Officer, DRI-Delhi Zonal Unit. Therefore, the noticees requested to cross examine the Investigating Officers/ Seizing Officers, Senior Investigating Officer of DRI-Gandhidham Regional Unit and the Officers, who recorded the

statements of various persons. But the request of the Noticee no. 2 to cross examine the officials was rejected vide letter dated 07.05.2019 stating that it is mere tactics of the noticees to delay the adjudication process.

21. *Improper service of summons* - The noticees have the right to conduct cross examination of various officials of DRI and panch witnesses who are involved in the investigation of the matter at hand. As stated herein before this Hon'ble Adjudicating authority, no investigation was conducted by the offices of DRI inasmuch as the proper service of summons was never opted.

22. It is also necessary that no relevant seizure/ detention order has been passed under section 110 of the Customs Act 1962 with respect to the alleged seizure and recovery of gold until today.

INVESTIGATIONS and RELIED UPON EVIDENCE IN ADJUDICATION PROCEEDINGS

23. The case of the Directorate of Revenue Intelligence is that the Gandhidham Regional Unit (GRU) allegedly received an intelligence about the smuggling of gold and concealing of these goods. Therefore, the seizure of foreign gold is the most significant perspective of this case. During the aforesaid enquiry/investigation, DRI-GRU collected and relied upon several documentary and digital evidence which constituted the RUDs along with the Show cause Notice.

24. It is submitted that the Noticees made several requests pertaining to supply of RUDs and return of Non RUDs, but the same has not been supplied. It is a matter of record that the copy of the Bill of Lading, the telephone record which evinces any communication between various witnesses, receipt indicating the payment of import local charges at Mundra Port at the instance of Noticees, whereby the delivery order was released to the Customs Broker referred as evidence but are missing from the Relied Upon Documents. DRI relied on the emails and their attachments extracted from Shri Harish Vaniya's email account. It is mentioned in the Show Cause Notice that Shri Sunil F Sharma submitted the copy of manifest which was submitted by M/s. Muskan Container Line Private Limited. It is a matter of record that none of the documents mentioned in the statement of Shri Sunil F Sharma are supplied to the Noticees along with the Show Cause Notice, though they are heavily referred and relied upon in material particulars. It is specifically submitted that in reference to the statement u/s 108 Customs Act dated 05.06.2017 of Ms. Hiral D Desai, 'F' card holder of Customs Broker, M/s. Ribhus International Private Limited, no correspondence/ communication between M/s. D.K. Logistics and M/s. Ribhus International Private Limited has been placed on record, though referred and relied. In the statement of Shri Deepak T Sawlani, the Branch Manager of DK Logistics dated 23.05.2017, it is acclaimed that one Shri Manish Oberoi mailed the KYC, Bill of Lading, Invoices, Packing List and Authority Letters of M/s. Param Equipments Private Limited. However, no such document is enclosed with the Show Cause Notice, which are the soul of the statement. The correspondence between the Forwarder, M/s King Shipping Services and DK Logistics related to the importer, M/s. Param Equipments Private Limited, the mail communication thereof has neither been made part of the Show Cause Notice nor supplied to the Noticees.

25. *WhatsApp Messages*- The chat between Noticee no. 2 Shri Harnek Singh and Noticee no. 3 Shri Jagjit Singh, was allegedly extracted from the software of WhatsApp installed in Shri Harnek Singh's iPhone and thereafter the printouts were taken. It is alleged that those 54 pages articulate about the conversation between the duo which constituted the evidence of the alleged illicit import of gold by violating the provisions of The Customs Act, 1962. Some photographs of these pages have been appended along with the show Cause Notice. Show Cause Notice is silent on the aspect as to what procedure was followed by the investigators to extract the text from the software of WhatsApp installed in the iPhone allegedly owned by Shri Harnek Singh.

26. *No Certificate under section 138 C Customs Act*- It is relevant to point out that the provisions of the Information Technology Act and the Indian Evidence Act 1872 were usurped by the officers of Directorate of Revenue Intelligence. There is no mention of the certificate under section 65B of the Indian Evidence Act or Section 138(C) Customs Act, as such the evidentiary value and veracity of said printouts is a matter of suspicion. No forensic evidence evincing the examination

of mobile phones has been made part of the record to fortify the occurrence of any conversation between two people by using mobile devices. Even if any, no reports have been put forth before this Ld. Adjudicating Authority.

27. It is quintessential to mention here that several vital documents have been referred and relied and inferred as evidence, were never confronted to the noticees during the investigation and are made the most part of the Show Cause notice.

28. It is pertinent is mention that the show cause notice is a foundational document and must contain detailed facts and evidence bolstering such facts along with the copy of the documents that have been relied upon. But in the present matter, several statements u/s 108 bearing incriminating references and evidences have been blindly relied upon and the Noticees have not been supplied with these references or evidence. It is submitted that the paramount material ranging from the Email extraction, Copies of ICES 40 Bill of Entry, Bill of Lading, Invoices, Packing List, telephonic records, receipt indicating the payment of Mundra Port import local charges, extraction from the software of WhatsApp installed in Shri Harnek Singh's iPhone, no details of overseas bank transactions have been placed on record. Therefore, with the absence of such vital references and evidence, it is trite law that the department cannot travel beyond the scope of the show cause notice

As stated above, the SCN has merely referred and relied upon few documents/alleged evidence but in the absence of any corroboration as to their existence even, the adjudicating authority cannot travel beyond the scope and ambit of the SCN and place reliance upon any documents/ evidence which does not form a part of the SCN in issue. Therefore the caption Show Cause Notice is liable to rescind.

HEAVY RELIANCE UPON THE RETRACTED STATEMENT OF SHRI HARNEK SINGH and NO STATEMENT OF THE NOTICEES PERTAINING TO THE PRESENT SEIZURE AT MUNDRA

29. As stated above, the Noticees have never been investigated in relation to the present seizure pertaining to 52 kgs of Gold. That as per para 11.2 of the SCN, the DRI DZU has relied upon the confession made by Shri Harnek Singh (noticee no. 2) vide statements dated 13.05.2017 and 14.05.2017 (RUD 10 and RUD 11) recorded u/s 108 Customs Act. It is pertinent to mention that Harnek Singh retracted his statement on 31.05.2017 before the Ld. Chief Metropolitan Magistrate, Patiala House Courts, New Delhi and the Ld. CMM was pleased to take the same on record. The typed-copy of the retracted statement is marked and annexed as Annexure 3. In his retraction statement on 31.05.2017, the Noticee no.2, pontificated that he was subjected to extreme harassment, wherein he was tortured and physically abused by the DRI officials. The officials forcefully took away the mobile phone of his wife and daughter. Further, he was made to sign on many blank papers and typed sheets. He was forcibly made to answer dozens of questions.

30. It is relevant to state that the Ld CMM vide its order dated 31.05.2017 further directed the DRI to file a reply to the said retraction statement of the Noticee. To the best of knowledge of noticees, no reply to the retraction statement has been filed till date. The DRI has suppressed the aforesaid facts of the retraction from the Ld. Adjudicating Authority and have placed no material proving the same. In view of the same, it tends to raise finger of suspicion onto the whole investigation process. That DRI has implicated the noticees simply on the basis of the statement which hold no corroborative evidentiary value in the eyes of law. The copy of the order dated 31.05.2017 is hereby marked and annexed as Annexure 4.

31. It is pertinent to mention that Harnek Singh (Noticee 2) has been involuntarily made to sit and undergo excruciating events including the harassment by the officers in their custody and the statements thus made under threat, duress and coercion are involuntary in nature and cannot be relied upon as substantial pieces of evidence. Also, the statement of Shri Harnek Singh is the computer generated print out and the same was typed on the computer installed in the office of DRI-DZU. It is specifically submitted that the said statement was typed beyond the office hours, whilst the Noticee was kept in illegal custody. The provision of section 108 of the Customs Act, 1962 and admissibility thereof shall

cease its effect as the statement of Shri Harnek Singh was recorded under duress, threat and coercion.

32. The Investigating agency has arrayed Shri Jagjit Singh as Noticee No 3. However, as a matter of fact, the statement of Noticee no.3 was never recorded under the provisions of Section 108 Customs Act 1962. In the absence of any such investigation pertaining to Shri Jagjit Singh, foisting the allegation of gold smuggling is merely building castles in the air. Thereby the SCN deserves to be quashed in the absence of any investigation.

33. Though, the statement of Shri Harnek Singh has been relied upon heavily and supplied to the Noticees, however, the certificate under section 65B of the Indian Evidence Act, 1872 or section 138 C Customs Act which is important for the statement to be proved authentic and not doctored is missing. In light of the facts mentioned herein above, it is submitted that the retracted statement cannot be relied upon if the same is not substantiated with the help of corroborative evidence as held by the Hon'ble Supreme Court in various judgments.

Relevant Case Law on Corroboration of Retraction Statement

34. The Supreme Court in the Case of in Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras [(1999) 6 SCC 1], held that

“whereupon reliance has been placed by the High Court, this Court had used retracted confession as a corroborative piece of evidence and not as the evidence on the basis whereof alone, a judgment of conviction could be recorded.”

Also the Supreme Court relying on the above judgment held in the case of Noor Aga v State of Punjab and Another(2008 (16) SCC 417)

“Clause (3) of Article 20 of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. Any confession made under Section 108 of the Customs Act must give way to Article 20(3) wherefor there is a conflict between the two. A retracted confessional statement may be relied upon but a rider must be attached thereto namely if it is made voluntarily. The burden of proving that such a confession was made voluntarily would, thus, be on the prosecution.”

Also in the case of Vinod Solanki v. Union of India case (2008 (15) SCC 537) the Supreme Court discussing the evidentiary value of retracted confessional statement held that

“It is trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidence, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. {See Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras [(1999) 6 SCC 1]}”

ANALYSIS OF THE EVIDENCE

35. During the course of the personal hearing, some of the evidence gathered by the officers of the DRI were tested on the touchstone of cross examination. The outcome of the cross-examination has exposed the frivolity of the evidence, shoddy investigation, arbitrary pontification, as illustrated below

36. During the cross examination dated 21.05.2019, Shri Sunil F. Sharma, Executive Sales in M/s. Sea Consortium Shipping India Pvt Ltd., Gandhidham did mention that he had supplied documents received by him from Muskan Container Line Pvt Ltd to the DRI officials but the copy of the same is not put on record by the Investigating Agency. The following question were put to him and the answers given thereby indicate the level of investigation-

"Q.6 Were you asked to supply any document by the IO, DRI in relation to this case?"

A. The summon was sent to my company and in compliance thereof I appeared and gave them a documents called IGM, IAL."Ltd to the DRI officials?"

"Q.7 Did you supply the documents received by you from Muskan Container Line Pvt.

A. I received the copy of Manifest from Muskan Container Line Pvt Ltd through E Mail. I submitted the documents to the DRI through e mail and gave hard copies when my statement was recorded. I gave the copy of the e- mails received from Muskan Container Line Pvt Ltd and the attachments. I have not brought the said documents today.

Q.8 The summon dated 24.05.2017 is issued to Xpress Fedders who authorized you to appear before the DRI and make statement whereas you work for the company named M/s Sea Consortium Shipping India Pvt. Ltd? Is there any authority vested in you by way of Board resolution?"

A. No, I don't have any such authority letter."

From the perusal of the cross-examination of Mr. Sunil F. Sharma dated 21.05.2019, it is clear that the DRI has done an arbitrary and high handedness where they have taken statement of a witness without him having an authorised letter to represent the summoner company. This definitely puts a question on the validity of such a statement as evidence.

37. Similarly, Shri Harish Vaniya, Branch Manager in M/s. Muskan Line Pvt. Ltd in his cross-examination dated 21.05.2019, has specifically mentioned about the documents supplied by him to the DRI and the same as usual was not put on record-

"Q3. What documents did you hand over to the investigating officials of the DRI in relation to the present case?"

A. I handed them over the copy of Import Advance List, Copy of the correspondence with our counter part at Dubai along with the Bill of Lading."

"Q.7 Did you give the copy of the e-mails received from Muskan Shipping LLC, Dubai to the IO, DRI?"

A. Yes, I gave the same to the DRI officer to Shri Shravan Raj."

"Q 16 Did you hand over the emails received from M/s poultrydayal@gmail.com.to IO, DRI?"

A. Yes, handed over the emails received from M/s poultrydayal@gmail.com to IO, DRI. No receiving was issued by IO,DRI against the delivery of copy of the emails."

"Q.17 Did you hand over the documents relating to 42 shipments of Param Equipments Pvt Ltd to IO, DRI and did they issue any receiving against the same?"

Ans Yes, I handed over the abovementioned documents. No receiving was given by the DRI."

38. A bare perusal of the aforesaid statement would evince that the aforementioned documents were given by Shri Sunil Sharma, however, the same were never put forth on record before the Ld adj. Authority.

39. On further analysis of the cross examination of Shri Harish Vaniya, signatory to the Panchnama drawn on 20/21.05.2017 is enumerated herein after -

Cross-examination of Shri Harish Vaniya reveals that he is completely unaware about any documents in relation to the Muskan Shipping LLC, Dubai and Al Mehrab General Trading LLC, Sharjah, UAE or any Bill of Lading for payment as mentioned in his statement regarding the consignment in the present matter, therefore no reliance can be placed upon the same and as such Panchnama cannot be considered as an evidence against the Noticees. Following excerpt of his cross-examination would demonstrate the stark contravention of the law in relation to the drawl of the Panchnama.

"Q.5 Did you participate in the Panchnama proceedings? Did you sign the Panchnama whilst witnessing the examination proceedings of the Container no. IALU2244230 at All Cargo CFS, Mundra on 20/21.09.2017 as mentioned in your statement ?

THE QUESTION IS NOT ALLOWED BY THE ADJUDICATION AUTHORITY"

Attention is drawn to this particular question wherein the counsel for the noticees asked the witness about the Panchnama proceedings but the question was denied by the Adjudicating authority, without giving any cogent reasons for such denial. Therefore, noticees were barred from their right of an effective defence, this is prejudicial to the interest of the noticees and against the laws of natural justice.

"Q.10 Have you seen the documents of registration of Muskan LLC Dubai?

A. No.

Q.11 Which document was the basis of your statement in paragraph 1 of page 2 of RUD 3, whereby you mentioned that Muskan Shipping LLC, Dubai is a branch of Muskan Container Line pvt. Ltd .

A. I did not see any documents in this regard

Q12. Did you see any document reflecting that Jagjeet Singh was the owner of Al Mehrab General Trading LLC, Sharjah, UAE ?

A. I did not see any such document.

Q.13 In para 2 of page 2 of RUD 3 you stated that Al Mehrab General Trading LLC, Sharjaha, UAE paid the freight and local charges by cash for the booking of the container at Jabel Ali. Have you got any document/receipt as an evidence for the above payment?

A. Muskan Container Line pvt Ltd does not have any document in this regard.

Q.14 Did Muskan Shipping Line LLC inform you that BOL was collected by the person sent by Shri Jagjeet Singh through Mail request to the said company?

A. Nobody informed me about this."

The perusal of the above cross examination reveals that he hasn't even read the documents which are the basis of his evidence, such revelation shows that the DRI has manipulated the evidence.

"Q.18 How many times was your statement recorded?

A. Two times. I don't remember the dates"

It is further submitted that the cross examination of Mr Harish Vaniya reveals that he has been interrogated twice, however, the present SCN mentions only about one statement dated 23.05.2017 u/s 108 Customs Act. Further, he is not aware about the another statement. This is merely a 'pick and choose' policy adopted by the DRI officials.

JUSTICE SHOULD NOT ONLY BE DONE, BUT ALSO SEEN TO BE DONE- DENIAL OF CROSS-EXAMINATION

40. As a matter of record, the Ld. Adjudicating Authority denied the cross-examination of the Investigating Officer and other relevant witnesses, whose statements have been relied upon by the DRI in prosecuting the Noticees stating it to be merely delaying tactics in Adjudication proceedings. It is submitted that the Ld. Adjudicating Authority has totally misconstrued and failed to appreciate the right of the noticees to conduct cross examination.

41. It is submitted that right must be made available for the purpose of cross examination so that justice is not only done but also seen to be done. The law of natural justice confers the right of fair prosecution, adjudication, and trial of the instant case and therefore, the cross-examination of the above-mentioned DRI officials can reveal the reality and unravel the knots of the fictional story managed and staged by the investigators.

42. It is pertinent to mention here that the Cross Examination of Shri Sarvana Raj, IO, DRI, GRU Gandhidham, Shri S J Singh DD GRU and Shri Jitendra Kumar Meena IO DRI GZU, who were the investigating officer supervising the investigation was vehemently denied along with the cross examination of the panchas Pravin K Rathod and Mayur K Sharma of the panchnama proceedings through which the alleged smuggled gold was seized. Moreover, Ms. Hiral D. Desai of M/s Ribhus International Pvt. Ltd., Mundra was also not allowed to be cross examined without any justified cause. These actions of the adjudicating authority, in turn, hampered the rights of the noticees to effectively defend themselves and thus defied the established norms of natural justice. The judicial pronouncements in the case enumerate the right of cross examination *State of Kerala v. K.T. Shaduli Grocery Dealer*, (1977) 2 SCC 777 J and *K Cigarettes Ltd. v. Collector of Central Excise* reported in 2009 (242) ELT 189 (Del) R.R. Shah v. Commissioner of Central Excise, 2016 SCC OnLine CESTAT 3607.

43. The Central Board of Excise and Customs in the case of *Vaidyanath Agency* 1981 ELT page 94 (CBEC) held that "the denial of cross-examination of the officer who conducted the inspection of stock is denial of natural justice. As stated earlier what is required to be considered is not as to whether the party has the right to cross-examine a witness but to consider whether the facts and circumstances of the case justify granting of such a request made by the party who was required to rebut the charges and was to establish his defence."

44. In the case of *Sunil Mehta and Ors. vs State of Gujarat and Ors.* the Supreme Court has held that

"Whether or not a case is made out against him, can be decided only when the accused is allowed to cross-examine the witnesses for otherwise he may not be in a position to demonstrate that no case is made out against him and thereby claim a discharge Under Section 245 of the Code. It is elementary that the ultimate quest in any judicial determination is to arrive at the truth, which is not possible unless the deposition of witnesses goes through the fire of cross-examination. In a criminal case, using a statement of a witness at the trial, without affording the accused an opportunity to cross-examine, is tantamount to condemning him unheard. Life and liberty of an individual recognised as the most valuable rights cannot be jeopardised leave alone taken away without conceding to the accused the right to question those deposing against him from the witness box."

NO EXAMINATION W.R.T. HAWALA ROUTE/CHANNELS

45. In his statement (later retracted) allegedly recorded under section 108 of the Customs Act, 1962, Shri Harnek Singh (noticee no. 2) stated that it was one 'Mr Agarwal' who used to call him from different numbers and used to take the deliveries of the gold. However, it has been alleged that the payment in respect of the alleged gold used to be sent to the Noticee, Shri Jagjit Singh at Dubai by using Hawala means. Shri Harnek Singh was further forced to admit that the said Hawala was being done by one 'Shri Gupta' who used to send him the proceeds of smuggling via Dubai based Hawala operators whose particulars were not known to him. However, there has been no trail of communications with these operators and no investigation pertaining to these Hawala operators have

been undertaken till this day to track the alleged Hawala route in Dubai and Sharjah.

46. The investigation is silent about the business relation between Noticee no. 3 Jagjit Singh and the alleged Hawala operators. Furthermore, no documents have been placed before the Ld. Adjudicating Authority to corroborate about any investigation in Dubai with respect to the alleged Hawala Transactions.

47. It is evidently clear that the investigators failed to nab the real accused and his nexus of buyers and alleged hawala operators and preferred to foist all the allegations on the heads of the Noticees without ascertaining the nature of evidence against the Noticee.

NO INVESTIGATION WITH RESPECT TO SHARJAH AND DUBAI

48. It has been alleged that the consignments were ordered by the noticee in Sharjah, however, there is no whisper about any investigation being carried by the DRI with overseas authorities in Sharjah. It has been alleged by the DRI that the Noticee no. 3 used to procure gold in Sharjah and bought the Poultry Egg Incubator to conceal them. However, there has been no material put forth to support the above fact. More so, there is no evidence about any kind of concealment of gold amidst the incubators at the hands of Noticee. There is no mention about any investigation being carried with respect to firm M/s Al Mehrab General Trading LLC in Sharjah. DRI failed to trace the procedure of gold procurements and have wrongfully concocted and foisted allegations unto the Noticee. Furthermore, if there has been any investigation undertaken, there shall be certain internal note-sheets which were to be maintained during the course of investigation. Even these have not been put on record.

RIGHT TO FAIR INVESTIGATION OF THE NOTICEES

49. The instant case is a paradigm of shoddy investigation where two poor persons are persecuted (Noticee no. 2 and 3) whilst the real accused is moving freely and the such lackadaisical conduct is ostensible on the record. It is submitted that the basic tenet of constitution, the right to life envisages right to fair investigation and fair adjudication under Article 21 of the Indian Constitution. It is humbly submitted that the right to fair investigation/adjudication of the Noticee which is being hampered owing to the arbitrary attitude of the officials of the DRI where the evidence produced before the court is nothing but the result of lousy investigation.

50. It is further submitted that the Noticee no. 3 Shri Jagjit Singh has never been summoned under section 108 of the Customs Act by the Department of Revenue Intelligence. No appropriate materials/supporting documents have been provided to the noticee which are explained further in detail. Present Show Cause notice was sent to the parental address of the Noticee no. 3 Shri Jagjit Singh at Ludhiana, which is not his place of abode. On one hand, the issuing authority of the show Cause Notice feigned that Noticee no. 3 is present in Dubai and was sending the consignment of seized gold and on the other hand, the Show Cause Notice was being served at Ludhiana.

51. It is quintessential to ascertain the credibility and dependability of the referred documents since the same are construed as the relied upon documents (RUDs). They were seized under the provisions of section 100 of the Code of Criminal Procedure read with Section 165 of The Customs Act. The provisions under section 110 of the Customs Act mandates that the copy of the seized documents must be supplied to the Noticees. There are a plethora of non-relied documents including digital records as well, reference of which can be made out of the RUDs. Therefore, it is averred that the Noticee has not been supplied all relied upon and neither have been returned the non-relied documents.

52. The Supreme Court in the case of Babubhai V/s State of Gujarat (2010) 12 SCC 254 held that

"The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of

mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth."

Also in the case of Mithilesh Kumar Singh v/s State of Rajasthan (2015) 9 SCC 795 the Supreme court emphasising on the importance of fair investigation held that

"Importance of a fair and proper investigation cannot be understated. In an adversarial system of administration of justice, fairness of investigation is the very first requirement for the fairness of a trial. A trial based on a partisan motivated, one sided, or biased investigation can hardly be fair. That is because while the trial itself may be procedurally correct, the essence and the purpose thereof may be vitiated by an unfair or ineffective investigation."

BURDEN OF PROOF

53. *It is submitted that section 123 of the Customs act places the Burden of Proof upon the other person but the DRI has failed to discharge the foundational proof and it belongs to the Noticees as they did not conduct any investigation regarding this seized gold. The onus to prove the allegations of smuggled gold lies unto DRI through the evidence collected by them during their investigations. Hence, the burden of proof lies on the DRI and not the Noticees.*

54. *It is submitted that Investigating Officer of the case was in a haste to foist the allegation under the presumption that he does not owe any duty to investigate and the principle of reverse burden of proof shall take care of its own. Section 123 of the Customs Act places the Burden of Proof upon the other person but the DRI has failed to discharge the foundational proof and it belongs to the Noticees as they did not conduct any investigation regarding this seized gold.*

55. *All fingers cannot be pointed out against the Noticees when lackadaisical attitude of the investigators is apparent on the record of investigation. It cannot be shifted for every flaw, and latches, uncorroborated shred of evidence in the investigation cannot be foisted onto the Noticees. The issuing authority tried to compile the loose shreds of allegations and uncorroborated evidence entrusted by them upon the Noticees. This is the paradigm of colourable exercise of power.*

55. *Since DRI failed to discharge its burden to prove the allegations and the contents of the Show Cause Notice are not corroborated with the tangible evidence, therefore the instant Show Cause Notice is liable to be rescinded immediately.*

18. *Further written submission (Final submission) to the show cause notice was submitted by the Noticee No.1,2 and 3 vide their letter dated 14.08.2019 (via email) through their advocates M/s Law Chambers of Ramakant Gaur, New Delhi wherein he re-iterated their submissions made earlier . In addition , he submitted that :*

3. *"It is submitted that the Investigating agency has made a case based on mere hallucinated presumptions and false premise. It is nothing but paradigm of wrongful allegations and shoddy investigation without presenting any credible or cogent evidence to prove the guilt of the Noticees. The relevant documents requested via interim reply by the Noticees have not been put on the record, therefore the documents which are not made the Relied Upon Documents cannot be read as evidence. The Ld. Adjudicating Authority cannot travel beyond the ambit of the Show Cause Notice or Relied Upon Documents and this SCN has merely referred and relied upon few documents/alleged evidence but they have not been corroborated as to their existence.*

4. *It is relevant to bring your kind attention towards the contents of paragraph 9 of the instant Show Cause Notice, wherein it is stated that the detailed investigation of the present case was transferred to DRI, DZU vide office letter number DRI/AZU/GRU/GOLD-PARAM/INT-25/214 dated 13.07.2017. The copy of the aforesaid letter has not been supplied till today. As a matter of record the DRI-DZU has also not conducted any investigation so far with respect to this seizure. Moreover, no summons have been issued by the DRI-DZU to any*

witnesses or noticees to call them to give evidence regarding this alleged seizure of gold at Mundra port.

Therefore, the investigation in the present case is paradigm of the shoddy investigation and that the non-supply of the letter dated 13.07.2017 (transferring the matter to DRI, DZU) shows that it is nothing but shrugging of responsibility by the offices of DRI, GRU as well as DRI, DZU. In the absence of any investigation by either of the DRI offices regarding the present seizure, this SCN is liable to be quashed.

15. From the bare perusal of the present SCN along with its Relied Upon Documents (RUDs), it is clear that there is no separate or independent investigation done as to the alleged seizure at Mundra. There are no inculpatory statements on the record or any investigation done specifically pertaining to the seizure of 52 kg of Gold.

16. It is pertinent to mention that the Noticee no. 2 is being named as a habitual offender citing the details about the SCN issued on 11.11.2017 for illegal import of 44 kgs of gold (C.No. DZU/34/Enq-3/2017) implicating the Noticees pertaining to the alleged seizure of Gold. It is submitted here that the allegation of being a habitual offender is wrong and bad as per law. More than 2 years have passed, the DRI officials have failed to conduct any fresh incriminating investigation against the Noticees. In absence of any specific separate investigation, the same deserves to be quashed.

ILLEGAL DISPOSAL OF THE SEIZED GOLD

17. It is relevant to bring your kind attention towards the illegal disposal of the alleged gold seized in the instant matter. It is pertinent to point out that the procedure for disposal of seized goods was not followed and the same was done in an illegal manner. The records reveal that the noticees were not served the mandatory notice with regards to disposal of the seized gold. The Noticees were never confronted with the seized gold and the purity of the same was not examined in their presence, which further strengthen the claim of the noticee about the illegal disposal. It is pertinent to mention that during the pendency of the adjudication proceedings, the confiscated goods could not have been auctioned/disposed without the prior permission of the authorities or the alleged owner of the property.

18. The law related to disposal of the goods is mentioned in the circular issued by The Central Board of Excise and Customs dated 14th February 2006 in this regard where it was impressed upon the field formations as under

CUSTOMS INSTRUCTION DATE 14/02/2006

Requirement of issuing Notice to the owner of goods- provisions of Section 150 of the Customs Act, 1962 – reg.

An instance has recently been brought to the notice of the Board where seized goods were disposed of without issuing notice to the owner of the goods. The seizure having been set aside by the adjudicating authority, the owner of the goods sought their return but was advised to obtain the sale proceeds, which were significantly lower than the seizure value. In subsequent proceedings, the High Court has directed the refund of an amount higher than the sale proceeds, as well as payment of interest. The loss to the exchequer has resulted from a failure to comply with the requirements of Section 150 of the Customs Act, 1962.

2. It is impressed upon field formations that where any goods, not being confiscated goods, are to be sold under any provision of the Customs Act, they shall be sold by public auction or by tender or in any other manner after notice to the owner of the goods.

3. It is further clarified that the requirement to issue notice to the owner of the goods shall also obtain in case of goods that have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods.

F.NO.711/4/2006- Cus(AS)

19. As mentioned in point 3 of the aforesaid circular, a notice should be sent to the owner of the goods even in the case of confiscated goods when the legal remedy is not yet exhausted. As a matter of fact, the goods in the present case are confiscated goods and is pending adjudication, therefore making the noticees liable to receive the notice on behalf of the disposing authority. But the same has not been received by the noticees. It is submitted here that the manner in which the Department has conducted the entire investigation and also disposed of the gold without any prior notice to the Noticees or the Adjudicating Authority leaves no doubt that both the acts are unsustainable and arbitrary in law.

20. The customs act under section 110 (1) mentions about the disposal of the goods perishable or hazardous in nature

“[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.”

21. In the present case, the seized goods were not perishable or hazardous, being gold bars, there was no reason for the Department to have hurriedly disposed it off and that too without notice to the Noticees. Therefore, the noticee seeks explanation on the part of the department as to why they were constrained to dispose of seized gold when it was neither perishable nor hazardous.

22. The noticees would like to place reliance on- *Zhinat Banu Nazir Dadany Vs. Union of India and Ors.* 2019 SCC OnLine DeL 8626

“23. In the present case with the seized material not being perishable, being gold bars, there was no reason for the Respondents to have hurriedly disposed it off and that too without notice to the Petitioner. When it was plain that even the SCN was not served upon the Petitioner, there was no reason to proceed with disposal of the seized gold without notice. It also appears that the Respondents hurriedly went ahead and passed an adjudication order more than four years after the gold was seized only after the present petition was filed. As pointed out by the Petitioner, during the time when the proceedings were in progress before the criminal court and the Petitioner was also attending those proceedings, no attempt was made to serve a copy of the SCN upon her there. The entire manner in which the Respondents have proceeded to pass the adjudication order and also dispose of the gold without notice to the Petitioner leaves no doubt that not only the disposal of the seized gold, but the adjudication order as well, are both unsustainable in law.

24. Accordingly the adjudication order dated 15th January, 2019 is hereby set aside. As far as the return of the seized gold is concerned, the Court has been presented with a *fait accompli*, with the Respondents already having hurriedly disposed of the said gold. Mr. Satish Aggarwal on instructions states that the proceeds collected during the auction were equal to the value of the gold being an amount of Rs. 93,34,783/-.

25. The Court accordingly directs that the Respondents will refund to the Petitioner the aforementioned sum of Rs. 93,34,783/- (or the precise amount recovered by the Respondents by auction/sale proceedings) not later than 30th June 2019 failing which the Respondents will pay simple interest at 6% p.a. on the said sum for the period of delay. ”

23. It is submitted that the proceeds of disposal of the goods is not on the records and the details have not been supplied to the Noticees, since the act of disposal is against the existing departmental instructions and is not in good taste, the noticees hereby urge that the seized gold be produced before the adjudicating authority and the noticees.”

PERSONAL HEARING

19. Personal hearing in this case was fixed on 03.01.2019 . The Noticee

No. 1 and 2 vide letter dtd. 31.12.2018 of their advocate requested to supply the RUD and non RUD and to allow cross examination .

Further personal hearing was fixed on 06.03.2019 . The Noticee No. 1 and 2 vide letter dtd. 05.03.2019 of their advocate, requested for adjournment .

Again personal hearing was fixed on 28.03.2019 . Shri Sumit K. Dixit , Advocate on behalf of Noticee No. 1 , 2 and 3 appeared for personal hearing . Shri Dixit requested for cross examination of 3 DRI officers , 2 Panchas , 1 Valuer and other witnesses , without furnishing any finalisation for the same , his request included a fresh P.H. after disposal of his request for Cross examination.

Further personal hearing was fixed on 16.07.2019 and informed to the Noticee No. 1,2 and 3 vide letter dated 01.07.2019 .

Further personal hearing was fixed on 01.08.2019 and informed to the Noticee No. 1,2 and 3 vide letter dated 17.07.2019 . Adv. Ramakant Gaur on behalf of Noticee No. 1 and 2 , vide email dated 23.07.2019 again requested to adjourn the personal hearing .

Further personal hearing was fixed on 09.08.2019 and informed to the Noticee No. 1,2 and 3 vide letter dated 25.07.2019. Shri Sumit K. Dixit , Advocate on behalf of Noticee No. 1 , 2 and 3 appeared for personal hearing. Shri Dixit referred to his written submission dated 03.08.2019 and added that "*the goods disposed of by the department in this case, no intimation / confrontation to the notice for regarding the alleged smuggled goods was done.*"

CROSS EXAMINATION

20. M/s Law Chamber of Ramakant Gaur on behalf of noticee No. 1 and 2 vide their letter dtd. 28.03.2019 , further requested to allow cross examination of 3 officers of DRI , 2 Pancha witnesses , 1 valuer and 4 other witnesses and cited some case laws.

Cross examination of Sh. Devant Ratilal Soni (Valuer) , Sh. Harish Vaniya, (Branch Manager of M/s Muskan Container Line Pvt. Ltd., Gandhidham) Sh. Sunil F. Sharma (Executive sales in M/s Sea Consortium Shipping India Pvt. Ltd., Gandhidham) and Shri Deepak T. Sawlani (Branch Manager of M/s D.K.Logistics, Gandhidham) was allowed for 21.05.2019 and communicated to the noticee No. 2 and 3 vide letter F.No. VIII/48-35/Adj/ADC/ MCH/17-18 dated 07.05.2019 .

Cross examination of Sh. Sunil F. Sharma and Sh. Harish Vaniya by Shri Ramakant Gaur along with Ms Sneha Arya, Advocates (Representative of M/s ParamEquipments) was held and recorded before the Additional Commissioner of Customs , Mundra on 21.05.2019 .The record of Cross examination held is as below

Cross examination of Shri Sunil F Sharma, S/o Fakir Chand Sharma, Executive Sales in M/s. Sea Consortium Shipping India Pvt Ltd., Gandhidham

The witness is confronted with the statement (RUD 4) and he confirms that it is his statement.

Q.1 What is your education? Can you read and write English?

A. I am a graduate. I did my MBA (distance learning from Sikkim Manipal University). Yes, I can read and write English.

Q.2 Were you able to write your own statement on 24.05.2017?

A. I would have written the statement had I been asked to do so.

Q.3 Were you aware about the seizure of the gold bars allegedly concealed in the iron frames of the egg incubators as mentioned in your statement at para 3 ? Did DRI officers apprise you about the said seizure?

A. I did not have any personal knowledge about the seizure of the gold the DRI officials apprised me about the seizure of the same.

Q.4 Did you see the seizure Memo mentioned in the paragraph 3 of your statement?

A. No, I did not see the seizure memo.

Q.5 What is your role in your company?

A. I am Sales Executive.

Q.6 Were you asked to supply any document by the IO, DRI in relation to this case?

A. The summon was sent to my company and in compliance thereof I appeared and gave them a documents called IGM, IAL.

Q.7 Did you supply the documents received by you from Muskan Container Line Pvt Ltd to the DRI officials?

A. I received the copy of Manifest from from Muskan Muskan Container Line Pvt Ltd through E Mail. I submitted those documents to the DRI through e mail and gave hard copies when my statement was recorded. I gave the copy of the e mails received from Muskan Container Line Pvt Ltd and the attachments. I have not brought the said documents today.

Q.8 The summon dated 24.05.2017 id issued to Xpress Fedders who authorized you to appear before the DRI and make statement whereas you work for the company named M/s Sea Consortium Shipping India Pvt. Ltd? Is there any authority vested in you by way of Board resolution?

A. No, I don't have any such authority letter.

Cross examination of Shri Harish Vaniya, S/o Shri Meghijibhai Vaniya, Branch Manager in M/s. Muskan Line Pvt. Ltd.

The witness is confronted with the statement (RUD 3) and he confirms that it is his statement.

Q.1 What is your education? Can you read and write English?

A. I have studied up to 10th class. Yes, I can read and write English.

Q.2 Were you aware about the seizure of the gold bars allegedly concealed in the iron frames of the egg incubators as mentioned in your statement at para 3 ? Did DRI officers apprise you about the said seizure?

A. I did not have any personal knowledge about the seizure of the gold the DRI officials apprised me about the seizure of the same.

Q3. What documents did you hand over to the investigating officials of the DRI in relation to the present case?

A. I handed them over the copy of Import Advance List, Copy of the correspondence with our counterpart at Dubai along with the Bill of Lading.

Q.4 At what time and through which mode IO DRI called you for participating in the examination proceedings of the container as mentioned in para 5 of your statement (RUD 3)?

Ans- Mr. Sarvana Raj, IO, DRI, GRU called me over the phone to witness the examination proceedings of the container. I was not served with any directive in writing.

Q.5 Did you participate in the Panchnama proceedings? Did you sign the Panchnama whilst witnessing the examination proceedings of the Container no. IALU2244230 at All Cargo CFS, Mundra on 20/21.09.2017 as mentioned in your statement?

THE QUESTION WAS NOT ALLOWED BY THE ADJUDICATION AUTHORITY

Q.6 Which document did you sign evidencing your participation in the examination of the aforesaid container?

A. I appended my signature on some documents evidencing my presence at DRI office.

Q.7 Did you give the copy of the emails received from Muskan Shipping LLC, Dubai to the IO, DRI?

A. Yes, I gave the same to the DRI officer to Shri Sarvan Raj.

Q.8 Who authorized you to appear before the DRI and make? Is there any authority vested in you by way of Board resolution?

A. No, there is no authorization of the Board of the company.

Q.9 Are you aware of the distinction between a Pvt. Ltd company and a Limited Liability company?

A. No, I am not aware of the distinction between the two.

Q.10 Have you seen the documents of registration of Muskan LLC Dubai?

A. No.

Q.11 Which document was the basis of your statement in paragraph 1 of page 2 of RUD 3, whereby you mentioned that Muskan Shipping LL, Dubai is a branch of Muskan Container Line pvt Ltd

A. I did not see any documents in this regard.

Q.12. Did you see any document reflecting that Jagjeet Singh was the owner of Al Mehrab General Trading LLC, Sharjaha, UAE?

A. I did not see any such document.

Q.13 In para 2 of page 2 of RUD 3 you stated that Al Mehrab General Trading LLC, Sharjaha, UAE paid the freight and local charges by cash for the booking of the container at Jabel Ali. Have you got any document/receipt as an evidence for the above payment?

A. Muskan Container Line pvt Ltd does not have any document in this regard.

Q.14 Did Muskan Shipping Line LLC inform you that BOL was collected by the person sent by Shri Jagjeet Singh through Mail request to the said company?

A. Nobody informed me about this.

Q.15 Did anyone make payment of Mundra Port Local charges for the release of the delivery order?

A. In case of present consignment the CHA did not raise any request and hence no bill was issued to Param equipments Pvt Ltd. And hence there is no question of making payment for it.

Q.16 Did you hand over the emails received from M/s poultrydayal@gmail.com to IO, DRI?

A. Yes, I handed over the emails received from M/s poultrydayal@gmail.com to IO, DRI. No receiving was issued by IO, DRI against the delivery of copy of the emails.

Q.17 Did you hand over the documents relating to 42 shipments of Param Equipments Pvt Ltd to IO, DRI and did they issue any receiving against the same?

Ans Yes, I handed over the abovementioned documents. No receiving was given by the DRI.

Q.17 Was any certificate u/s 138 C of the Customs act or u/s 65B of the Evidence Act evidencing the authenticity of the electronic documents mentioned in your statement?

A. No such certificate was given by us or asked by DRI.

Q.18 How many times was your statement recorded?

A. Two times. I don't remember the dates.

Further , Cross examination of Shri Devang Ratilal Soni and Sh. Deepak T. Sawlani was allowed for 18.06.2019 and communicated to the noticee No. 2 and 3 vide letter F.No. VIII/48-35/Adj/ADC/ MCH/ 17-18 dated 22.05.2019.

Sh. Harish Vania , Branch manager of M/s Muskan Container Line Pvt. Ltd. , Gandhidham vide their letter dated 22.05.2019 , submitted copy of Bill of Lading No. MSL/JBL/MUN/123/17 dt. 12.05.2017 and IGM No. 2164976 dt. 17.05.2017 .

M/s Ramakant Gaur (Advocates for noticee No. 1 and 2) vide their letter dtd. 17.06.2019 requested to postpone the Cross Examination.

Sh. Devang Ratilal Soni presented himself for Cross examination on 18.06.2019 .

Further , Cross examination of Shri Devang Ratilal Soni and Sh. Deepak T. Sawlani was allowed for 26.06.2019 and communicated to the noticee No. 2 and 3 vide letter F.No. VIII/48-35/Adj/ADC/ MCH/ 17-18 dated 19.06.2019.

Sh. Devang Ratilal Soni vide letter dt. 24.06.2019 informed being unable to present himself on 26.06.2019 for Cross examination.

DISCUSSION and FINDINGS

21. I have carefully gone through the case records and defence submission of the advocates on behalf of all the three noticees . Further, I find that the

summery of the case is :

(i) 44 gold bars were seized by DRI officers of Delhi vide panchnama dated 13.5.2017 drawn at Delhi. Shri Harnek Singh, director of M/s Param Equipments Pvt Ltd, New Delhi who, in his statements dated 13,14-05-2017 recorded u/s 108 of Customs Act 1962(RUD-10,11), have admitted to have smuggled the gold bars by adopting the modus operandi of concealing the gold in poultry equipment imported by his firm M/s Param Equipments Pvt Ltd. Shri Harnek Singh also admitted that the gold was being arranged and concealed in the Poultry equipments by his brother in law, Shri Jagjit Singh in Sharjah through his firm M/s Al Mehrab General Trading LLC, Sharjah, UAE.

(ii) Based on the intelligence from DRI Delhi, regarding smuggling of gold in container No. IALU2244230, bill of lading No. MSL/JBL/MUN/123/17 dated 12.5.2017, DRI Gandhidham by M/s Param Equipments Pvt. Ltd, 52 gold bars were found concealed in the Poultry Equipments. The same were seized vide panchnama dated 20/21-05-2017. The case was forwarded by the DRI Gandhidham to DRI Delhi for necessary investigation.

(iii) Shri Harnek Singh was arrested on 13.05.2017 and was granted bail on 14.07.2017.

(iv) Two show cause notices were issued to the noticees, namely, (1) M/s Param Equipments Pvt. Ltd. (2) Sh. Harnek Singh (3) Sh. Jagjit Singh vide F.No. DRI/DZU/34/Enq-3/2017 dated 11.11.2017 with respect to the seizure of 44 gold bars in Delhi by DRI Delhi, and the instant show cause notice, F.No. DRI/DZU/34/Enq-3/2017 dated 17.11.2017 with respect to 52 gold bars found concealed in container No. IALU 2244230 with Poultry equipments answerable to The Additional Commissioner, Customs House, Mundra (As per the corrigendum was issued bearing file No. DRI/AZU/34/Enq-3/2017 dated 30.11.2017).

I find that the personal hearing has been granted on 03.01.2019 , 06.03.2019 , 28.03.2019, 16.07.2019, 01.08.2019 and 09.08.2019 and cross examination of four persons have been granted to the notices and hence principle of natural justice have been fulfilled in this case . The issues involved are :

(a) Whether the gold seized in this case illegally imported (smuggled) is liable for confiscation under provisions of 111(d),11(b),111(o) and 111(p) of the Customs Act, 1962.

(b)The concealing material viz. Poultry egg Incubators and iron Brooding Panels seized vide panchnamas dated 20.21-05.2017 are liable for confiscation under provisions of section 119 of the Customs Act, 1962 and

(c) The beneficiaries of such illegal import of gold (Noticee No. 1,2 and 3) are liable for Penal action under provisions of section 112(a),112(b) and 114(AA) of the Customs Act, 1962 against the involved persons / firm in this case .

22. The Noticee No. 1,2 and 3 vide their written submissions (interim and final) have submitted their defence submissions. They have contested the charges framed against them in the Show Cause Notice. They requested to quash down the Show Cause Notice. I hereby discuss the points raised by the Noticees.

22.1. Arrest of Shri Harnek Singh without independent investigation of the seizure of 52 Gold Bars at Mundra : The Noticees vide their final submission dated 03.08.2019 (Para No.5) have submitted that no independent investigation with respect to seizure of Gold at Mundra , that the same was never conducted by the investigating officers, who felt contented to pontificate by hurling some allegations , without substantiating the same with the help of corroborating evidences, in relation to the present show cause notice .

In this connection, I find from the records, that the Noticee No.2 was arrested on 13.05.2017 and his statements were recorded on 13,14.05.2017 wherein he confessed the modus operandi of smuggling of gold by them . As a consignment with concealed gold was seized at Delhi on 13.05.2017. During the investigation , the information of the modus operandi of gold smuggling was came out and on basis of the same , another container of their consignment with concealed Gold (52 Bars) was seized at Mundra vide seizure memo dated 21.05.2017 . Hence , I find that the second seizure was in persuasion of the seizure dated 13.05.2017 and hence no separate investigation was necessary and the plea of the defence is baseless .

22.2 The Noticees vide their final submission dated 03.08.2019 (Para 6) has mentioned that the allegations foisted upon the Noticees are denied and no part of Show Cause Notice is admitted unless there is express admittance thereupon.

In this connection, I reproduce the portion of the statement dated 13.05.2017 of Sh. Harnek Singh recorded under section 108 of the Customs Act, 1962 :

“Now, I have been asked about the recovery of 44 kg gold bars today i.e. on 13.05.2017 by the officers of DRI in my presence which were concealed in a consignment of Automatic Poultry Egg Incubator Poultry & Egg Brooder Panels imported vide Bill of Entry No. 9568462 dated 05.05.2017 in the name of M/s. Param Equipment Pvt. Lid (IEC: 0513077227). On being asked I state that as my younger brother Sh. Harcharan Singh also has his share in the profits of M/s. Dayal Poultry Appliances beside my mother, who is its proprietor and me; I tried to venture some new business where I could earn huge money in short time period. For this purpose, I consulted my brother-in-law Jagjit Singh has been settled in Sharjah since around 2004 where he is engaged in business of interior designing. Jagjit Singh suggested that we should start bringing gold from UAE to India which would fetch us huge profit. However, to avoid being caught by the law enforcement agencies, we decided not to bring the gold through traditional route of gold smuggling i.e. through Airport and decided to bring the same through sea-route as it was less prone to be caught by the agencies such as Customs and DRI. Thereafter, I floated a company named M/s. Param Equipment Pvt. Lid and it is having its office at WZ-16, Lajwanti Garden, New Delhi 110046 wherein I and my wife are Directors. As I had been dealing with poultry industry for a long time, I decided to import Poultry Egg Incubator Poultry & Egg Brooder Panels from Sharjah and to conceal the gold in the same. Further, being a well known person in the market of poultry equipment market, it would appear quite normal for me importing items related to poultry equipments and no one would be suspicious of me importing gold. The first such consignment was imported by me in around March, 2014. These consignments of Poultry Egg Incubator & Egg Brooder Panels are sent from Sharjah (UAE) by my brother-in-law Jagjit Singh through his firm Mis. Al Mehrab General Trading LLC, PO Box No. 4112, Sharjah (UAE). On being asked, I state that Jagjit Singh has been settled in Sharjah since around 2004 where he is engaged in business of interior designing. Earlier his younger brother Avtar Singh (also my brother-in-law) was also assisting him in his interior designing business in Sharjah but in around 2014. Avtar Singh moved to Canada and is settled with his family where he is also having the business of interior designing.”

I find that the Noticee No. 2 Sh. Harnek Singh himself had accepted his role in illegal import of Gold. He has also accepted the ownership of the seized gold bars. Further, he also accepted about the modus operandi in practice by them which is mentioned at para 11.3 and 11.4 of the Show Cause Notice.

22.3. No investigation with respect to the present seizure: The Noticees vide their final submission dated 03.08.2019 (Para No.12), have submitted that there are no statements, searches or any investigation done specifically pertaining to present seizure.

In this connection, I find that, on perusal of the present show cause notice and relied upon documents, it appears on para 9 of the show cause notice, it is mentioned as

*“In the said consignment, officers of DRI, DZU has recovered 44 kgs Gold having foreign markings. The same modus operandi was used in the subject consignment. As DRI, DZU is doing the detailed investigation the case of seizure of 52 kg Gold vide seizure memo dated 21.05.2017 was transferred to DRI, DZU vide office letter number **DRI/AZU/GRU/GOLD-PARAM/INT-25/ 2147** dated 13.07.2017”.*

Further, para 13.1(c) of the Show cause notice describes as

“Further inquiry in the matter has revealed that Harnek Singh is a habitual offender. A Show cause Notice dated 11.11.2017 for illegal import of 44 kgs of gold has already been issued to him vide C. No. DZU/34/Enq-3/2017 dated 11.11.2017. He has also been found to have imported gold repeatedly using the said modus operandi.”

From the above, it emerges that the point raised by the defense has no merits. A consignment with concealed gold was seized at Delhi on 13.05.2017. During the investigation, the information of the modus operandi of gold smuggling came out and on basis of the same, another container of their

consignment with concealed Gold (52 Bars) was seized at Mundra vide seizure memo dated 21.05.2017. Hence, I find that the second seizure was in persuasion of the seizure dated 13.05.2017 and therefore it is clear that the plea of the Noticees is not sustainable.

22.4. Non supplies of search warrants : The noticees in their final submission dated 03.08.2019 (Para No.15) , submitted that *“Copy of search warrant not placed on the record”* .

I observe that the container IALU244230 whose bill of lading mentioned the consignee as M/s Param Equipments Pvt. Ltd. and consigner as M/s Al Mehrab Trading LLC , Sharjah UAE was examined by DRI Gandhidham on 20,21.05.2017 under panchnama proceeding (RUD-1) . Thereby the point raised by the defense is not relevant here.

22.5. Non corroboration of Section 108 statements : The Noticees in their final submission dated 03.08.2019 (Para No.16) have submitted that *“the DRI has implicated the Noticee simply on basis of the statement u/s 108 of the Customs Act, 1962 which holds no corroborative evidentiary value in the eyes of law.”*

I observe that statement recorded under section 108 of the Customs Act, 1962 has evidencing value. Plain reading of the below mentioned case of : MULTIMAKE SYSTEMS Versus COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI published in 2018 (363) E.L.T. 344 (Tri. - Mumbai) ,wherein it was pronounced that : *“Statement recorded under Section 108 of the Customs Act, 1962 being admissible in evidence, the goods were confiscated and subject to redemption fine as well as penalty.”*

22.6. No specific investigation pertaining to International Route : The Noticees in their final submission dated 03.08.2019 (Para No.17) have submitted that there is no investigation conducted regarding business relation between the Noticee no. 3 and the alleged Hawala operators .

In this connection, I find that the Noticee No.2 has already confessed their involvement in illegal import which is already recorded in their statements recorded under section 108 of the Customs Act, 1962 wherein they have already given all the information regarding hawala route. Therefore , the point raised by the defense has no merit .

22.7. Credibility of the Valuation Certificate dt. 22.05.2017: I observe that the opportunity to cross examine the valuer , Shri Devang Ratilal Soni, Govt. approved valuer was granted on 18.06.2019 . Shri Devant Ratilal Soni , Valuer appeared in this office . However ,Shri Ramakant Gaur , Advocate informed to this office on 17.06.2019 about his inability to appear on 18.06.2019 and sought another day for the proceedings. Therefore, a second chance of cross examination was again granted on 26.06.2019, however, advocate chose not to appear in this office on 26.06.2019 and they did not inform about their absence on the second occasion.

Therefore, I find that the defense is raising this point which has no merit.

22.8. No relevant seizure / detention order has been passed :The noticees in their final submission dated 03.08.2019 (Para No.22) have submitted that no relevant seizure/ detention order has been passed under section 110 of the Customs Act 1962 with respect to the alleged seizure and recovery of gold until today .

In this connection, I find that the seized 52 gold bars were put under seizures vide seizure memo bearing F.No. DRI/GRU/GOLD-PARAM/INT-25/2017 dated 21.05.2017 issued by the Intelligence Officer , GRU, Gandhidham , Directorate of Revenue Intelligence (DRI) under provisions of Section 110(1) of the Customs Act, 1962 and the Show Cause Notice was issued on 17.11.2017 i.e. within six months of seizure . Hence the point raised by the Noticees is baseless.

22.9. Investigations and relied upon evidence in adjudication proceedings: The noticees in their final submission dated 03.08.2019 (Para No.23,24) have submitted that several documentary and digital evidence and records of conversation , photographs which constituted the RUDs along with the Show Cause Notice regarding that , all the relevant documents have not been provided to them .

In this connection, I find that on their request, the Investigation agency was

requested by the adjudicating authority to allow the Noticees to access all the documents related to this case. The Deputy Director, DRI, Delhi Zonal Unit, New Delhi vide letter F. No. DZU/34/ENQ-6/2017/Pt.I dated 08.02.2019 have informed that,

“RUDs have already been supplied along with subject SCN. However, the desired RUDs and Non-RUDs in respect of SCN dated 17.11.2017 issued to M/s. Param Equipments Pvt. Ltd. and others may be collected from their office either in person or through duly authorised representative” The photocopy of the same is as below



GOVERNMENT OF INDIA
DIRECTORATE OF REVENUE INTELLIGENCE
DELHI ZONAL UNIT
B-4, 6TH FLOOR, ANFYODAYA BHAWAN, CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110003
PHONE 011-24360739, FAX 011-24362669

DRI F. No. DZU/34/ENQ-6/2017/Pt.I / 7322 Dated: 18.02.2019

To,
1. Advocate Sumit Dixit,
D-289, LGE, Defence Colony,
New Delhi - 110024.

2. Shri Harnek Singh,
EB-135, Maya Enclave,
Hari Nagar,
New Delhi.

Subject: Application for seeking direction to supply of the copy of Relied upon Documents and Non-relied documents - reg.



Please refer to your letter 31.12.2018 addressed to the Additional/Joint Commissioner of Customs (Preventive), MP&SEZ, Mundra on the above subject.

2. It is to inform you that the RUDs have already been supplied along with the subject Show Cause Notice.

3. However, the desired RUDs and Non-RUDs in r/o DRI Show Cause Notice dated 17.11.2017 issued to M/s. Param Equipments Pvt. Ltd. and others may be collected from this office either in person or through duly authorized representative on any working day by giving prior intimation.

Yours sincerely,
(RAJARSHI KUMAR)
DEPUTY DIRECTOR
DRI, DZU

Copy to: The Additional Commissioner, Customs House, 5B, Port User Building, Mundra Port, Mundra, Gujarat, in compliance to letter vide F.No/VIII/48-35/Adj./ADC/MCH/2017-18/7832 dated 30.01.2019.

In view of the above, such point raised by the Noticees after that does not have any further relevance.

22.10 WhatsApp Messages: The noticees in their final submission dated 03.08.2019 (Para No.25) have submitted that the SCN is silent on the aspect as to what procedure was followed by the investigators to extract the text from the software of WhatsApp installed in the iPhone owned by Shri Harnek Singh .

In this connection, I find that the sufficient corroborative evidences have been enclosed to the SCN by the Investigating agency . This way, the Noticee also accepted the receipt of the RUDs as mentioned in the SCN. It is also submitted in their submissions that Sh. Harnek Singh was shown such documents during recording of his statements. Further , the method or details of technique is not supposed to be disclosed being the source of information in this case further the noticees could not submit any relevant provisions of law showing the same as essential in this case .

22.11. No certificate u/s 138 of the Customs Act or section 65B of the Indian Evidence Act:The noticees in their final submission dated 03.08.2019 (Para No.26,27 and 28) have submitted that there is no mention of the certificate under section 65B of the Indian Evidence Act or Section 138(C) of the Customs Act , as the the evidentiary value and veracity of said printouts is a matter of suspicion. **No forensic evidence evincing the examination of mobile phones has been made part of the record to fortify the occurrence of any conversation between two people have been put forth before the Ld. Adjudicating Authority.**

In this connection, I find it pertinent to discuss the provisions of the relevant acts as mentioned by the Noticees.

The section 65B of the Indian Evidence Act is reproduced below

Indian Evidence Act, 1872 65B. Admissibility of electronic records

“(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein or which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities

(c) throughout the materiel part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the functions of storing or processing information for the purposes of any activities of any regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computer, whether-

(a) by a combination of computers operating over that period or

(b) by different computers operating in succession over that period or

(c) by different combinations of computers operating in succession over that period or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers.

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate and for the purpose of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.- For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.]”

Further , the provisions of Section 138(C) of the Customs Act, 1962 are reproduced herein below

Section 138C in the Customs Act, 1962

“138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.—

(1) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not) or

(b) a facsimile copy of a document or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a “computer print out”), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely—

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the **function of storing or processing information** for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period or

(b) by different computers operating in succession over that period or

(c) by different combination of computers operating in succession over that period or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the document containing the statement and describing the manner in which it was produced

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purpose of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. Explanation.—For the purposes of this section,—

(a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculating, comparison or any other process.]

In view of the above mentioned provisions of the Evidence Act and The Customs Act, I do not find any contravention of provision of the Indian Evidence Act, 1872 and The Customs Act, 1962 as the computer typed statements 1962 which are duly signed by the persons recorded under section 108 of the Customs Act, who gave the statements and the officer who recorded the statement. There is no generation / extraction or reproduction of any information contained in any computer / computers as submitted by the Noticees and hence I find that there was no certificate required under provisions of u/s 138 of the Customs Act or section 65B of the Indian Evidence Act. I find that the plea of the notice is not sustainable.

I put my reliance on following judgment where it has been held that the proceeding under civil law is not same as it is under criminal law :

1. N.N. JAJODIA Versus COLLECTOR OF CUSTOMS, BOMBAY

Order No. 1386/85/WRB, dated 10-12-1985 [1986 (25) E.L.T. 968 (Tribunal)]

Wherein it was pronounced in the tribunal that “It is settled law that the nature and extent of proof in an adjudication proceeding is different from the nature and extent of proof in a criminal prosecution. The provisions of the Evidence Act and the Criminal Procedure Code are not made applicable to an adjudication proceedings”

Further I also find that the statements recorded under section 108 of the Customs Act, 1962 are completely valid in the court of law. Relevant provisions of the Customs Act define such statements as “Judicial proceedings” and hence retraction from such statements have no legal value. However, the corroborating evidences collected by the investigating agency and mentioned in the Show Cause Notice itself prove the authenticity of the investigation itself. It also appears that the Noticees have not availed the opportunity to inspect / access all the case records lying with the Investigating agencies even after informed to them to inspect/access to all the relevant documents and records.

In view of the above, I find that such contention made by the Noticees are not relevant in this case and these points are not acceptable in this case.

22.12. Heavy reliance upon the retracted statement of Shri Harnek Singh and no statement of the Noticees pertaining to the present seizure at Mundra: The

noticees in their final submission dated 03.08.2019 (Para No.29,30,31,32, 33 and 34) have submitted that the Noticees have never been investigated in relation to the present seizure pertaining to 52 kg of Gold . That as per para 11.2 of the SCN, the DRI DZU has relied upon the confession made by Shri Harnek Singh (Noticee No.2) vide statements dated 13.05.2017 and 14.05.2017 recorded u/s 108 of the Customs Act. It is pertinent to mention that Harnek Singh retracted his statement on 31.05.2017 before the Ld. Chief metropolitan Magistrate, Patiala House Courts, New Delhi and the Ld. CMM was pleased to take the same on record.

In this connection , I find that the authenticity of the statements recorded under provisions 108 of the Customs Act, 1962 has already been discussed in length in para 22.5 supra .

Further, I find that there is a contradiction in the submissions of the noticees . On one side, they submit that the statement and investigations does not pertain to the present case .On the other hand, they submit retraction from their statement and it shows that the investigation in present case has been carried out correctly and all the corroborative evidences have been collected by the investigation agency out of some of them and relied upon. Hence the plea of the Noticee that no statement of the noticees pertaining to the present seizure is not correct. If it is so, there was no need for any retraction from their statement. Further it is already discussed that the statements recorded under section 108 of the Customs Act, 1962 are completely valid in the court of law. Relevant provisions of the Customs Act define such statements as “Judicial proceedings”. Hence the plea of the Noticees is not proper.

Further , authenticity of the statement recorded under section 108 (Recorded by Customs Officers) from any person may be used as a substantive evidence . In this connection, I put reliance upon the case laws as mentioned below wherein the authenticity of the statements recorded under section 108 of the Customs Act,1962 has been endorsed by Hon’ble Courts in their judgements .

1. Naresh J. Sukhawani Vs union of India – 1995(11)TMI 106- SUPREME COURT OF INDIA
2. Collector of Customs Vs D. Bhoormull – 1974(4) TMI 33-SUPREME COURT OF INDIA
3. Commissioner of customs Vs Ghanshyam Gupta – 2010(3) TMI 1067- PATNA HIGH COURT
4. MD Akhtar Vs Commissioner of Central Excise , Customs and Service Tax, Patna – 2011(9) TMI 968- PATNA HIGH COURT.

I find that all the submissions of the Noticees regarding any relevance of statements recorded under section 108 of the Customs Act, 1962 have no relevance and hence not acceptable .

22.13. Analysis of the evidence :The noticees in their final submission dated 03.08.2019 (Para No.35 ,36,38) have submitted that during the cross examination dated 21.05.2019 of Sh. Sunil F. Sharma, Executive Sales in M/s Sea Consortium Shipping India Pvt. Ltd., Gandhidham , it was found that Shri Sharma was not summoned but he represented without any authority letter of summoned company and the documents given by Shri Sunil F. Sharma were not put forth on record before the Ld. Adjudicating authority.

In this connection , I find that this thing does not affect the correctness of the truth explained by Shri Sharma in his statement dated 24.05.2017 (recorded under provisions of Section 108 of the Customs Act, 1962) but no contradiction in the facts came out of the cross examination. Further I find that, the receipt of documents by the DRI from Sh. Sharma is on record.

The contention of the Noticees that the DRI has not put all the papers / documents collected by them on record has no merits .

The Noticee in their final submission dated 03.08.2019 (Para No.37,39) have submitted that during the cross examination of Sh. Harish Vaniya , Branch Manager in M/s Muskan Line Pvt. Ltd. in his cross examination dated 21.05.2019 , the Noticees pointed out that the documents supplied by Sh. Vaniya were not

put on record by the DRI. and the noticees also submitted that “panchnama cannot be considered as an evidence against the Noticees”.

In this connection, I find that the receipt of documents by the DRI from Sh. Vaniya is on record however. Further, I also find that regarding panchnama as an evidence against the Noticees , it is clear that the Panchnama dated 20.21.05.2017 is a circumstantial evidence in this case and it is also a necessary document for each case where search and /or seizures are effected . Further, corroborative evidences are also put by the DRI as Relied Upon Documents and the Panchnama is not the only evidence in this case and hence the objections raised by the Noticees , are vague and hence have no relevance in this case .

22.14. Justice should not only be done, but also seen to be done –denial of cross examination: The Noticee in their final submission dated 03.08.2019 (Para No.40,41,42,43 and 44) have objected the denial of cross examination of three officers of DRI and two panchas Sh. Pravin K. Rathod and Sh. Mayur C. Sharma and Ms. Hiral D. Desai was not allowed to them . The Noticees requested for cross examination of 10 persons . I reproduce the letter below vide which the cross examination was granted in respect of 4 persons and rejected in respect of 6 persons with reasons of rejection of the same . The relevant part of the letter VIII/48-35/Adj/ADC/MCH/17-18 dated 07.05.2019 is as below :

S. No.	Name	Ground seeking cross-examination	Cross-Examination	
			Allowed/Not Allowed	Not allowed on the ground
1	Sarvana Raj, IO,DRI, GRU, Gandhidham	Neglected on the part of the investigating officer who was supervising the investigation/Statement recorded of various person	Not Allowed	Officers of DRI had discharged functions Investigation/Seizure / recording of statement etc.) as part of their official duty based on present circumstances/evidences. Therefore, request for cross-examination is not based on any justifiable ground and seemingly aimed to delay in adjudication proceedings. In this regard kind attention is drawn to the decision of Kerala High Court in the case of N.S.Mahesh Vs.Commissioner of Customs, Cochin 2016 (331) E.L.T.402 (Ker.).
2	S. J. Singh, DD, GRU			
3	Jitendra Kumar Meena, IO,DRI, GRU, Gandhidham			
4	Pravin K. Rathod, Panch -1	No justifiable ground has been given for seeking cross-examination.	Not Allowed	Panchnama had been drawn by the DRI officers in the presence of two independent panchas and the representatives of the CFS and Shipping Line Agent. Neither the panchas nor any of the responsible persons who witnessed the panchnama proceedings have disputed the facts and the manner of verification of the imported consignments. All the witnesses and representatives present during panchnama proceedings have unanimously agreed with the fact of concealment of Gold in the imported consignments as detailed in the said Panchnama.
5	Mayur C. Sharma, Panch-2			
6	Ms. Hiral D. Desai, M/s. Ribhus International Pvt. Ltd., Mundra		Not Allowed	She is C.A. as qualification not practitioner. Statement has been recorded due to act as CHA who cleared one consignment on behalf of M/s. Param Equipments. Therefore, request for cross-examination is not based on any

				justifiable ground.
--	--	--	--	---------------------

Denial of Cross examination of DRI officers / Improper service of summons: The noticees in their final submission dated 03.08.2019 (Para No.20,21) have submitted that their request for cross examination of DRI officers which have been denied by the adjudicating authority.

In this connection, I find it pertinent to discuss that cross examination of four persons (Valuer and other three persons) was allowed by the adjudicating authority and communicated to them well in time. However cross examination of only two persons could be recorded and regarding further two persons (including Valuer), nobody appeared from the Noticee's side for cross examination of them and could not be conducted. Further, I put reliance upon below mentioned case law where, it has been held that : "*cross-examination is not mandatory in each and every matter*" COMMISSIONER OF CENTRAL EXCISE, INDORE Versus NATIONAL STEEL INDS. LTD. 2004 (178) E.L.T. 771 (Tri. - Del.) .

22.15. No examination w.r.t. hawala route /channels : The Noticee in their final submission dated 03.08.2019 (Para No.45,46,47 and 48) have submitted that no investigation pertaining to these Hawala operators have been undertaken till this day to track the alleged hawala route in Dubai and Sharjah . They further submitted that the investigation is silent about the business relation between the Noticee No. 3 and the alleged Hawala operators and no documents put forth before the Adjudicating authority.

In this connection, I find that this point has already been discussed at para No. 22.6.

22.16. Right to fair investigation of the Noticees: The Noticees in their final submission dated 03.08.2019 (Para No.49 and50) have submitted that the right to fair investigation /adjudication of the Noticees which is being hampered owing to the arbitrary attitude of the officials of the DRI where the evidence produced before the court is nothing but the result of lousy investigation.

In this connection, I find that the article 21 of the Indian Constitution reads as :

"No person shall be deprived of his life or personal liberty except according to a procedure established by law."

The right of the noticees to have a fair investigation is a very well recognized. However, in the instant case. The noticees have been supplied the RUDs as per DRI's letter F.No. DZU/34/ENQ-6/2017/Pt.I dated 08.02.2019 reproduced at para No. 22.08 supra and also given the opportunity to inspect the non RUDs . Therefore, I find that the investigation by the department is fair and the noticee's right to have a fair investigation is not infringed.

I find that the point raised by the Noticees that their right to have fair investigation is hampered has no proper grounds as the Noticees have been given sufficient chances to submit their defense reply , cross examination and also personal hearings allowed to them and also availed by them . The DRI has submitted the documents which have been put as "relied upon documents" in this case and hence I find no violation of the Article 21 of the Indian Constitution in this case.

22.17. Burden of proof: The Noticee in their further written submission dated (para 54,55) have submitted that as per provisions of section 123 of the Customs Act 1962.

The provisions of Section 123 of the Customs Act, 1962 are reproduced herein below

Section 123 of the Customs Act, 1962 Burden of proof in certain cases.

(1) "*Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -*

(a) *in a case where such seizure is made from the possession of any*

person, -

- (i) on the person from whose possession the goods were seized and
 - (i) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person
- (a) in any other case, on the person, if any, who claims to be the owner of the goods so seized.
- (2) This section shall apply to gold and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify. "

The Noticees have submitted that as DRI's has not conducted the investigation, the burden of proof as per section 123 does not lie with the noticees.

I find the argument of the defence, in view of the detention and seizure the gold bars and admission of having smuggled gold in to the country by adopting the stated modus operandi , is frivolous .

22.18. Disposal of seized gold :The notices vide their further written submission dated 14.08.2019 (Submitted through e-mail) and during personal hearing dated 09.08.2019 have objected the disposal of seized gold . In this connection I find that the provisions regarding disposal of seized gold as per Customs Notification No. 31/1986 dt. 05.02.1986 (as amended)

"In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature, of the goods, mentioned in the Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section.

4A. Gold in all forms including bullion, ingot, coin, ornament, crude jewellery."

From the above, it is clear that the plea of the Noticees that *"the seized gold cannot be disposed of as it is not perishable"* , is liable to be dismissed as the above referred notification clearly puts the Gold in any form in the schedule to be disposed of . Further, I find that the DRI , has obtained permission from the jurisdictional Magistrate for disposal of the seized gold bars.

23. Conclusion: From the case records and discussions in paras supra , it clearly comes out that :

- (a) the seized 52 kg gold was imported illegally (Smuggled) intentionally by the Noticees into India .
- (b) The statements of Noticee as well as other persons and corroborative documents clearly show that the gold was being smuggled into India by the notices under camouflage of the goods *"All Automatic Poultry Egg Incubator 336 in the Eggs Capacity, Poultry Egg Brooder Panel"* .
- (c) Further from the statements dated 13,14.05.2017 of the Noticee No. 2 and evidences collected and mentioned by the investigating agency, it clearly shows that the Noticees are habitual to such illegal import of gold into India.

24. Legal Provisions

The relevant statutory provisions as appear to be applicable in this case are as under:-

- (ii) As per Section 2 (23) of the Customs Act, 1962 defines import in the following words *"Import' with its grammatical variations and cognate expressions, means bringing into India from place outside India"*
- (ii) As per Section 2(33) of the Customs Act, 1962, *"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with*

(iii) As per Section 2(39) of the Customs Act, 1962 defines smuggling in the following words '*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 of the Customs Act, 1962

Power to prohibit importation or exportation of goods by central government is dealt in the section 11 of the Customs Act, 1962 which provides that "*import or export of goods of any specified description may be prohibited either absolutely or subject to such conditions (to be fulfilled before or after clearance) for several purposes including the prevention of smuggling the conservation of foreign exchange and the safeguarding of balance of payments.*"

(iv) As per Section 11A (a) of the Customs Act, 1962, "*illegal import means the import of any goods in contravention of the provisions of this act or any other law for the time being in force*"

(v) SECTION 46 of the Customs Act, 1962. Entry of goods on importation.

(1) *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.....*

(2) *Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.*

(3)

(4) *The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods .*

(vi) Section 110 of the Customs Act, 1962- Seizure of goods, documents and things.

(1) *If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods*

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) *Where any goods are seized under sub-section (1) and no Notice in respect thereof is given under clause (a) of Section 124 within six months of seizure of the goods, the goods shall be returned to the person from whose possession they were seized*

Provided that the aforesaid period of six months may, on sufficient Cause being extended by the Commissioner of Customs for a period not exceeding six months.

(3) *The proper officer may seize any document or thing which, in his opinion, will be useful for, or relevant to, any proceedings under this Act.*

(vii) Section 111 of the Customs Act, 1962- Confiscation of improperly imported goods, etc. The following goods brought from a place outside India shall be liable to confiscation-

(a).....(b).....(c).....

(d) *any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force*

(e)..... (f)..... (g)..... (h).....

(i) *any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof*

(j)..... (k)..... (l)..... (m)..... (n).....

(o) *any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed*

unless the non-observance of the condition was sanctioned by the proper officer

(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened

(viii) Section 112 of the Customs Act, 1962 Penalty for improper importation of goods, etc.- any person-

(b) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater

(iii)..... (iv)..... (v).....

(ix) Section 114AA of the Customs Act, 1962: Penalty for use of false and incorrect material.- If a person knowingly, intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

(x) Section 119 of the Customs Act, 1962-Confiscation of goods used for concealing smuggled goods.-Any goods used for concealing smuggled goods shall also be liable to confiscation.

(xi) Section 121 of the Customs Act, 1962- Confiscation of sale-proceeds of smuggled goods. - Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale proceeds thereof shall be liable to confiscation.

(xii) Section 123 of the Customs Act, 1962 Burden of proof in certain cases.

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

(a) in a case where such seizure is made from the possession of any person, -

(ii) on the person from whose possession the goods were seized and

(iii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person

(c) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

(xiii) Section 124 of the Customs Act, 1962 Issue of Show Cause Notice before confiscation of goods, etc. - No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a Notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the Notice against the grounds of confiscation or imposition of penalty mentioned therein and

(c) is given a reasonable opportunity of being heard in the matter

Provided that the Notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

(xiv) Whereas in terms of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, no export or import shall be made by any person except in accordance with the provisions of the Act the rules and orders made there under and the Foreign Trade Policy for the time being in force.

(xiv) In terms of the guidelines for import of gold and gold bars vide circular RBI/2013-14/187, AP (DIR Series) Circular No.25 dated 14.08.2013 as revised, issued by the Reserve Bank of India, henceforth, gold shall be permitted to be imported only by the agencies notified by DGFT, which as of now are as follows- (i) MMTC (ii) HHEC (iii) STC (iv) PEC (v) STCL Ltd (vi) MSTC Ltd (vii) DIL (viii) GandJ EPC (ix) A Star Trading House (x) Any other agency authorised by Reserve Bank of India.

(xvi) As defined in Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 "no export or import shall be made by any person except in accordance with the provisions of the Act the rules and orders made there under and the Foreign Trade Policy for the time being in force."

25. As the impugned goods (52 foreign marked Gold Bars totally weighing 51998.80 grams having market value of Rs. 14,97,56,544/- seized vide panchnama datd 20/21.05.2017 drawn at All Cargo CFS , Adani Port and SEZ , Mundra are liable for confiscation under provisions of section 111(d) , 111(i) , 111(o) and 111(p) of the Customs Act, 1962.

In view of the above discussion, it appears that the subject goods i.e. 52 gold bars were illegally imported by way of concealed in import containerised cargo and hence liable for confiscation under provisions of section 111(d) , 111(i) , 111(o) and 111(p) of the Customs Act, 1962 .

26. I find that the Noticee No.1 M/s Param equipment Private Limited , Noticee No. 2 Sh. Harnek Singh and Noticee No. 3 Sh. Jagjit Singh being involved in smuggling of gold and being true beneficiaries of gold smuggled by them and have rendered themselves liable for imposition of penalty on them under provisions of Section 112(a) .

Further , I find that the noticee No. 2 and 3 , Sh. Harnek Singh and Shri Jagjit Singh have knowingly and intentionally have caused incorrect and false documents related to the import of their declared goods for the purpose of their Act. Therefore , they have rendered themselves liable for penalty under section 114AA of the Customs Act, 1962 .

27. In view of the forgoing discussions and findings, I pass the following order-

ORDER

- (i) I order absolute confiscation the foreign marked Gold Bars weighing 51998.80 grams having market value of Rs. 14,97,56,544/- (Rupees Fourteen Crores Ninty Seven Fifty Six Thousand Five Hundred and Forty Four only) smuggled by M/s Param Equipment Private Limited seized vide panchnamas dated 20/21.05.2017 drawn at All Cargo CFS ,Adani Port and SEZ , Mundra liable for confiscation under provisions of section 111(d) , 111(i) , 111(o) and 111(p) of the Customs Act, 1962 .
- (ii) I order absolute confiscation of the concealing materials viz. Poultry egg Incubators and Iron Brooding panels seized vide panchnamas dated 20/21.05.2017 under provisions of section 119 of the Customs Act, 1962.
- (iii) I impose penalty of Rs.1,00,00,000/- (Rs. One Crores only) on M/s. Param Equipment Private Limited, under Section 112(a) of the Customs Act, 1962.
- (iv) I impose penalty of Rs.1,00,00,000/- (Rs. One Crores only) on Shri Harnek Singh, under provisions of section 112(a) of the Customs Act, 1962.
- (v) I impose penalty of Rs.2,00,00,000/- (Rs. Two Crores only) on Shri Harnek Singh, under provisions of section 114AA of the Customs Act .

- (vi) I impose penalty of Rs.1,00,00,000/- (Rs. One Crores only) on Shri Jagjit Singh, under provisions of section 112(a) of the Customs Act 1962
- (vii) I impose penalty of Rs. 2,00,00,000/- (Rs. Two Crores only) on Shri Jagjit Singh, under provisions of section 114AA of the Customs Act .

(Amarjeet Singh)
Additional Commissioner
Customs House Mundra

F. No. VIII/48-35/Adj/ADC/MCH/17-18

Date: 30.08.2019

BY Speed Post A.D

To,

1. M/s Param Equipment Private Limited , WZ-17 , Lajwanti Nagar , New Delhi .
2. Shri Harnek Singh S/o Sh. Ram Singh, EB-133, Maya Enclave, Harinagar , New Delhi-110064.
3. Shri Jagjit Singh , H. No. 10955, Gali No. 6 , Pratap Nagar, Ludhiana-141003.

Copy To

- 1) The Additional Director, Directorate of Revenue Intelligence, Directorate of Revenue Intelligence, Delhi Zonal Unit , Antyodaya Bhawan , CGO Complex, Lodhi Road 7th Floor, D Block, I.P. Bhawan, I.P. Estate, New Delhi – 110002.
- 2) The Additional /Joint Commissioner of Customs (Preventive), New Customs House, Near IGI- Airport, New Delhi-110037.
- 3) The Deputy/Assistant Commissioner (RRA) Customs House, Mundra.
- 4) The Deputy/Assistant Commissioner (Recovery Cell) Customs House, Mundra.
- ✓ 5) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
- 6) Guard File.

