



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.	: F.No. VIII/48-28/Adj./Pr.Commr./MCH/17-18
B. Order-in- Original No.	: MUN-CUSTM-000-COM-20-18-19
C. Passed by	: Shri Sanjay Kumar Agarwal Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order / Date of issue	: 10.12.2018/10.12.2018
E. SCN No. & Date	: S/43-02/SIIB/CHM/Bhagyoday/2017-18 dated 16.01.2018
F. Noticee(s)/Party/ Importer	: 1. M/s. Bhagyoday Enterprise, A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat, holding IEC No. 0815907371. 2. Shri Ramnarayan S. Laddha, B-41, Krishna Kutir, Jain Colony, Near Tera Pant Bhawan, Shahibaug, Ahmedabad. 3. Shri Sanjay M. Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2 nd Floor, Neil Kanth Plaza, Shahibaug, Ahmedabad.



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- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए- 3 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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:
"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवा कर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्रीमील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद 380 004"
"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो -/5000, रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal 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.

Sub: SCN F. No: S/43-02/SIIB/CHM/Bhagyoday/2017-18 dated 16.01.2018 issued to M/s. Bhagyoday Enterprise, A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat, holding IEC No. 0815907371.

BRIEF FACTS OF THE CASE:

M/s. Bhagyoday Enterprise (Proprietor Shri Dipak Jayantibhai Thakor), A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat (IEC No. 0815907371) (herein after referred as 'the importer' for the sake of brevity), engaged in import of goods through Mundra port. The importer had filed a Bill of Entry No. 2458081 dated 14.07.2017 through CHA M/s. Arihant Shipping Pvt. Ltd. for clearance of 23.60 MT of Heavy Metal Scrap contained in the container no. TTNU 2689561 imported from M/s. Metal World FZE, Sharjah, UAE.

2.1 Whereas, during the course of examination of cargo declared as Heavy Metal Scrap, Qty. 23.6 MTs, contained in the container no. TTNU 2689561 imported vide Bill of Entry No. 2458081 dated 14.07.2017, the officers of Docks Examination under the supervision of Deputy Commissioner (Docks) found some yellow metal appeared to be gold. Thereafter, a panchnama dated 19/20.07.2017 have been drawn at Seabird CFS in presence of two independent panchas, Shri Lokendra Sharma, Operation Manager, Seabird CFS and Shri Meet M. Shah, 'H card' holder of M/s. Arihant Shipping Pvt. Ltd.

2.2 Whereas, during the course of panchnama dated 19/20.07.2017 drawn at Seabird CFS, Mundra, it was found that the cargo declared as "Heavy Metal Scrap" has been imported by the importer from M/s. Metal World FZE, PO Box 122927, Sharjah, UAE, in container No. TTNU 2689561; that the container was found sealed with seal no. 646351, which was cut open for examination; that the panchas tallied the container No. and seal No. with the import documents viz. BoE and Bill of Lading, which was found correct; that the officers informed the panchas that polyethene bag was found inside the container in duly packed condition using tape, which could be seen on opening of the container; that on removing the tape and opening the bag they found two metal keys and 03 yellow metal bars appeared to be gold which were marked as INTERNATIONAL PRECIOUS METAL REFINERS, 1 KILO 995 GOLD, A058304, A058311 and A058318, with a circular picture on the top; that the officers marked the rear side of the bars for identification purpose as under:

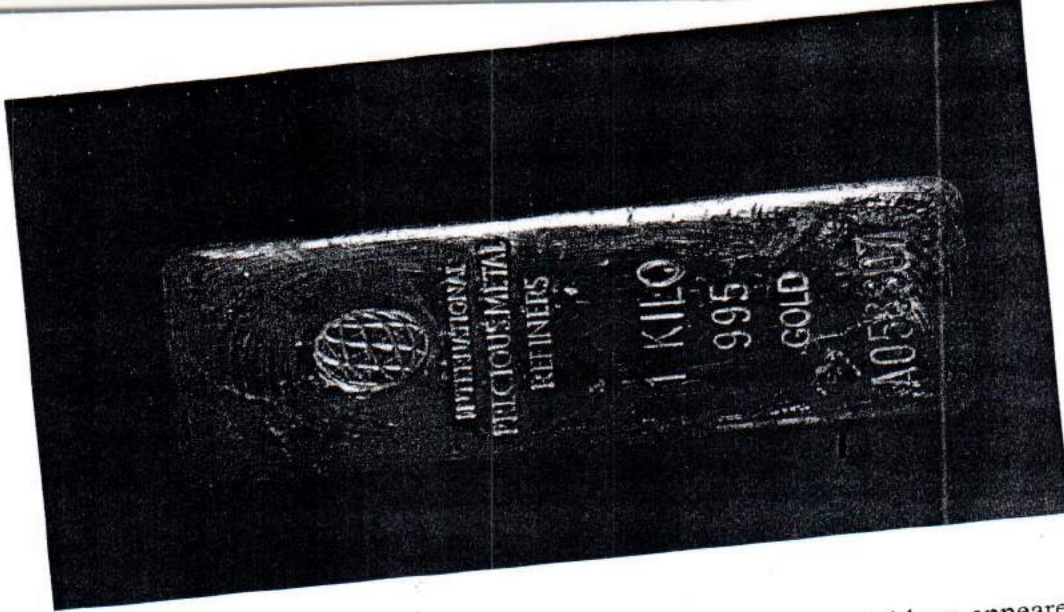
Sr. No	Marking on the Metal bar INTERNATIONAL PRECIOUS METAL REFINERS, 1 KILO 995 GOLD,	Marking given by the officer
1	A058304	1
2	A058311	2
3	A058318	3

2.3 The officers also showed the panchas the metals keys and the gold bars and a polyethene bag which was found printed as "LIFE, Proud winner of Voted Superbrand, UAE Choice, 2011-2015, Winner DSF 2010 Award Best Retail Customer Service, Images Retail Me Award 2015" on both sides and on top left corner on one side in a rectangle it was found printed as "ECAS, OXO-Biodegradable complying with UAE Standard 5009:200,

COC no. # 16-04-1839, E 15-10-006622Prod. On Jan. 2017, Used by Dec. 2017". The cargo inside the container was Iron pieces compressed in cuboid shape/bales and Iron plates/rods/bars. While de-stuffing the cuboid pieces/bales of Iron metals of the cargo, a metal box in locked condition fell down, during which the box was deformed and the upper part of its locking systems was broken, though the lower part and the lock was intact. As the metal box fell down some metal bars also fall out of the box, while some was remained inside the metal box, all the metal bars were seen shining in yellow colour. The officers collected and counted all the metal bars that were present inside the box which were found 24 nos. in total. On close examination of the bars, each bar was found marked as INTERNATIONAL PRECIOUS METAL REFINERS, 1 KILO 995 GOLD. The metal bars were also found marked as A058637, A058291, A058319, A058307, A058316, A058320, A058300, A058309, A058310, A058323, A058314, A058306, A058321, A058302, A058301, A058315, A058313, A058308, A058317, A058303, A058299, A058312, A058322 and A058305 (24 bars), all of them were having a similar circular picture on the top as were present on the 03 bars already recovered by the officers. The officers marked the rear side of the bars for identification purpose as under:

Sr. No	Marking on the Metal bar INTERNATIONAL PRECIOUS METAL REFINERS, 1 KILO 995 GOLD,	Marking given by the officer
1	A058637	4
2	A058291	5
3	A058319	6
4	A058307	7
5	A058316	8
6	A058320	9
7	A058300	10
8	A058309	11
9	A058310	12
10	A058323	13
11	A058314	14
12	A058306	15
13	A058321	16
14	A058302	17
15	A058301	18
16	A058315	19
17	A058313	20
18	A058308	21
19	A058317	22
20	A058303	23
21	A058299	24
22	A058312	25
23	A058322	26
24	A058305	27

The image of one of the metal bar was on which is appended hereunder:



2.4 During the course of panchnama, total 27 nos. of yellow metal bars appeared to be gold were recovered by the officers from the container. Thereafter, the officers examined the metal box. On close examination, the metal box was found marked as "4" in red colour on the top right corner on rear side. The lock present on the box was found marked as "GURKHA Star 40 35 MM 7 LVR" on the front and A 6 LEVERS ALIGARH ₹48.75 H8808 on its rear side. The officers tried to open the lock using the metal keys already recovered by them from the polythene. It was found that the lock could be opened by using both the metal keys.

2.5 On being asked, Shri Meet M. Shah could not provide any document for importing the 27 nos. of yellow metal bars appeared to be gold. At this stage the officers informed the panchas, Shri Lokendra Sharma and Shri Meet M. Shah, that since Gold in the form of bars was recovered from the polyethne and metal box concealed in the cargo declared as Heavy Metal Scrap, the 27 nos. of yellow metal bars (01 Kgs each) appeared to be gold along with the packing material i.e. the aforesaid polyethne, metal box, two metal keys along with the lock is also liable to confiscation under Section 111 and 118 of the Customs Act, 1962. Since the cargo was found mis-declared with regard to description, Quantity and valuation and 27 Kgs. of yellow metal bars appeared to be gold were found concealed in the cargo, the cargo was also liable to confiscation under Section 119 of the Customs Act, 1962. Thereafter, the Customs Officers placed the 27 nos. of yellow metal bars (01 Kgs each total 27 kgs) appeared to be gold along with the packing material i.e. the polyethne, metal box, 02 metal keys, the lock and the cargo under seizure in terms of section 110 of the Customs Act, 1962, under reasonable belief that the same was liable to confiscation under provisions Section 111, 118 and 119 of the Customs Act, 1962.

2.6 The remaining cargo which was de-stuffed again stuffed in the container. The container was re-sealed with one time bottle seal no. VE 391700. Thereafter the container was handed over to Sh. Lokendra Sharma of M/s. Seabird CFS for safe custody and he was instructed by the Customs Officers not to tamper with the seal. The panchas, Shri Lokender Sharma and Shri Meet M. Shah, put their dated signature on each page (total page from 1 to

29) of the import file, which was taken over by the Customs officers from Shri Meet M. Shah.

2.7 The valuation of 27 kg of gold seized under panchnama dated 19/20.07.2017 has been carried out under panchnama dated 20.07.2017 drawn at Room No. 301, PUB, Mundra, in presence of independent panchas, Sh. Devang Ratilal Soni, Govt. Approved Valuer Registration No. VIII/103/2003-2004 dated 11.04.2003 and Sh. Thakor Dipak bhai Jayanti bhai, the importer. The seized 27 yellow metal bars in two cloth pulindas which were sealed with Customs Seal were opened to ascertain purity and value of the aforesaid seized goods by a Government approved valuer. Shri Devang Ratilal Soni being a Government approved jewellery valuer, is expert in evaluating precious metals and he has been called to examine the above mentioned seized 27 yellow metal bars appeared to be gold in respect of purity, weight and value. The seals on both the cloth pulindas were examined by the Panchas, Sh. Soni and Sh. Dipak Bhai Thakor and were found in intact condition in such a way that the contents of the pulindas cannot be taken out without disturbing the seals. The Panchas and Sh. Thakor checked the signatures presented on the paper slips viz-a-viz the Panchnama dated 19/20.07.2017 and found in order. Shri Devang Soni carried out examination of aforesaid 27 yellow metal bars appeared to be gold in presence of Panchas and Shri Thakor. Shri Devang Soni examined each of the 27 aforesaid bar by the touch stone method and concluded that the 27 yellow metal bars were actually gold of purity 995 each and weighing 1 kg each. Accordingly, a report was prepared which was annexed to the Panchnama as Annexure – A wherein the details including the present market value were tabulated. Shri Devang Soni issued a certificate dated 20.07.2017 certifying the contents of gold bars in respect of its purity, weight and value as mentioned in annexure-A. Shri Soni certified the market price of 27 Kg of gold bars as on 20.07.2017, based on Bullion Market of Gujarat to Rs. 7,84,08,000/- (Rs. Seven Crore, Eighty Four Lakh and Eight Thousand only). The Panchas and Dipak Thakor perused the valuation data of gold bars as certified by Shri Devang Soni and put their dated signature on the same in token of having been seen and read.

3.1 Further, on the basis of intelligence developed by SIIB, Mundra, examination had been carried out for the goods stuffed in 2X20 FCL Container No. GATU 1260784 and TGHU 3084553 covered under Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 which arrived per MV Northern General (Voyage No. 0036) (IGM No. 2170022 dated 19.07.2017) and a panchnama dated 21.07.2017 was drawn at Sea Bird Container Freight Station in presence of independent panchas and Shri Bondi Kesav Rao, Sr Manager (Operations), Sea Bird CFS, Mundra. The following declaration has been made in the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017:

Bill of Lading No. & date	Consignor	Consignee & Notify Party	Cargo Description	Container Number/seal Number
DUBASRMU N6515 dated 13.07.2017	Metal World FZE PO Box No. 122927 Sharjah (UAE)	Bhagyoday Enterprise, A/2 Bhole Shive Compound, Singava, Tal Das Kroli, Ahmedabad	Heavy Melting Scrap	GATU1260784-646323 TGHU3084553-646327

3.2 During the course of panchnama, the container has been opened in presence of panchas and found that the container was stuffed with metal scrap in front side; that on destuffing the containers, some boxes packed in gunny bags bearing no marks are found duly packed using cello tape; that on opening one such gunny bag, it was found containing one brown coloured carton; that on opening of the carton, the same was found to be packed with six medium size boxes wrapped in brown colour paper and opening the paper cover, 10 cartons consisting 20 packets of cigarettes having 12 sticks each, having brand "GUDANG GARAM", was found, which was calculated to 2400 sticks of cigarettes in a single medium size box; that continuing with the examination, 85 master cartons packed in gunny bag were also opened and the officers again found these cartons packed with six medium size boxes wrapped in brown colour paper and opening the boxes 10 cartons, consisting 20 packets of cigarettes having 12 sticks each i.e. 2400 sticks in a single medium size box; that the box containing 20 small packets is having written 'Gudang Garam International' alongwith some other scripts "MADE UNDER AUTHORITY OF PT. GUDANG GARAM TBK., KEDIRI-INDONESIA"; that the small packet also contains words as 'Filter Kretek Cigarettes Gudang Garam International'; that there was no pictorial warning on any of the box/packets however, on side part of small packets there was a warning message as "SURGEON GENERAL'S WARNING SMOKING CAUSE LUNG CANCER HEART DISEASE, EMPHYSEMA AND MAY COMPLICATE PREGNENCY".

3.3 During the panchnama, the officers measured the length of cigarettes which was as per details given below:

Sr. No.	Brand of Cigarette	Packing details and No. Of Sticks	Length of Cigarette Stick
1.	GUDANG GARAM	85 X 6 X 10 X 240 = 12,24,000 sticks	6 cm + 2 cm (filter) = 8 cm

The officers found total 12,24,000 sticks of "GUDANG GARAM" cigarettes packed in 85 master cartons. As per prevailing wholesale market price of Gudang Garam Cigarettes, the per stick price was approx Rs. 7.50/- and the total price of 12,24,000 sticks of "GUDANG GARAM" cigarettes was approx Rs. 91,80,000/-

3.4 The quantity of metal scrap was arrived by deducting weight of cigarette (30.750 X 85) from total weight which come to 19716.250 Kgs and value of metal scrap, based on BE No. 2458081 dated 14.07.2017 of the same importer from same supplier & origin was

arrived at Rs. 3,75,364/-. The officers have drawn samples of three packets of "GUDANG GARAM" cigarette, consisting of 12 cigarettes each and properly sealed each of them in three separate envelopes, which were signed by panchas, representative of the CFS. After examination, 85 cartons of Cigarettes were stuffed back again in container No. GATU1260784 and sealed with CFS seal No. VE 391688. The metal scrap were kept outside the container at examination area near high value zone.

3.5 Thereafter container No. TGHU3084553 was taken up for examination. After seal cutting, the container has been opened in presence of panchas and found that the container was stuff with metal scrap in front side; that on de-stuffing the containers, some boxes packed in gunny bags bearing no marks were found duly packed by using cello tape; that on opening one such gunny bag, it was found containing one brown coloured carton; that on opening of the carton, the same was found to be packed with six medium size boxes wrapped in brown colour paper and opening the paper cover, 10 cartons consisting 20 packets of cigarettes having 12 sticks each, having brand "GUDANG GARAM", was found, which is calculated to 2400 sticks of cigarettes in a single medium size box; that continuing with the examination total 90 master cartons packed in gunny bag were also opened and the officers found these cartons packed with six medium size boxes wrapped in brown colour paper and opening the boxes 10 cartons, consisting 20 packets of cigarettes having 12 sticks each i.e. 2400 sticks in a single medium size box; that the box containing 20 small packets was having written 'Gudang Garam International' alongwith some other scripts seems to be Arabic on one side which the officers are unable to read; that on another side, 'Gudang Garam International' was found written along with 'Pt. Perusahaan Rokok Tjap "Gudang Garam", Tbk., Kediri-Indonesia'; that the small packet also contains words as '12 Clove Cigarettes'; that the pictorial warning and warning message on packets in total is containing only approx 50% of total area on the cigarette packets.

3.6 During the course of panchnama dated 21.07.2017, weight of one master carton was found to be approx 30.750 Kgs; that officers also measured the length of cigarettes which was as per details given below: "

Sr. No.	Brand of Cigarette	Packing details and No. Of Sticks	Length of Cigarette Stick
1.	GUDANG GARAM	90 X 6 X 10 X 240 = 12,96,000 sticks	6 cm + 2 cm (filter) = 8 cm

3.7 The officers found total 12,96,000 sticks of "GUDANG GARAM" cigarettes packed in 90 master cartons. As per prevailing wholesale market price of Gudang Garam Cigarettes, the per stick price is approx Rs. 7.50/- and the total price of 12,96,000 sticks of "GUDANG GARAM" cigarettes was approx Rs. 97,20,000/-. The quantity of metal scrap was arrived by deducting weight of cigarate (30.750 X 90) from total weight which come to 19062.5 Kgs and value of metal scrap, based on BE No. 2458081 dated 14.07.2017 of the same importer from same supplier & origin was arrived at Rs. 3,75,364/-.

3.8 The officer have drawn samples of three packets of "GUDANG GARAM" cigarette, consisting of 12 cigarettes each and properly sealed each of them in three separate envelopes, which are signed by panchas and representative of the CFS. After examination, 90 cartons of Cigarettes were stuffed back again in container No. TGHU3084553 and sealed with CFS seal No. VE 391694. The metal scrap were kept outside the container at examination area near high value zone. The undeclared goods i.e. "Gudang Garam" cigarette is undeclared and concealed behind 'Brown corrugated paper rolls' to avoid customs duty and on reasonable belief, liable to confiscation under the Customs Act, 1962, the officer seized the said goods under section 110 of Customs Act, 1962. The metal scrap used to conceal the offending goods totally weighing 38778.75 Kgs are also liable to seizure section 110 of Customs Act, 1962.

3.9 Whereas, for the purpose of valuation of Cigarettes sized vide panchnama dated 21.07.2017, inspection had been carried out by Shri Anwar Y. Kukad, Chartered Engineer and Govt. approved valuer in presence of independent panchas and drawn panchnama dated 06.09.2017 at Room No. 206, PUB, Customs House, Mundra. During the panchnama, Shri Anwar Y. Kukad has produced his valuation report vide letter AYK:VAL:0527:2017 dated 06.09.2017. Shri Anwar Y. Kukad submitted the whole sale market price of Rs. 7.50/- per stick of Gudang Gram Brand Cigarettes of 8.5 mm Dia, 15 mm Filter length, 65 mm length of remaining part filed with tobacco, and 80 mm total length.

4. During the course of investigation, searches at the various premises relating to this case were conducted under the search warrant issued by the Assistant Commissioner of Customs (Prev.), Ahmedabad and panchnama have been drawn in presence of independent panchas. The details of panchnamas drawn are as under:

- (i) Panchnama dated 19.07.2017 drawn at residential premises of Shri Dipak J. Thakor at Flat No. 176/11 L.R. Apptt., Near Railway Crossing, Opp. Police Commissioner Office, Shahibaug, Ahmedabad. During the course of panchnama, Shri Kamleshbhai Mohanbhai Thakor stated that he has been residing in this flat with his family since 2005; that Thakor Dipak bhai is son of his brother and he is not residing at this place; that he is residing at Rakhiyal village, Thakorvash.
- (ii) Panchnama dated 19.07.2017 drawn at Flat No. 601, M.V. House, Shahibaug, Ahmedabad, wherein it was found that said premises was locked.
- (iii) Panchnama dated 24.07.2017 drawn at residential premises of Shri Sanjay Mulchchand Shah *alias* Sanjay Khatod, at Flat No. A/102, Manali Appartment, Shahibaug, Ahmedabad. During the course of panchnama, Shri Mulchand Shah, father of Shri Sanjay Khatod stated that they reside originally at 3, Jayeshwar Society, Near Shahibaug Railway Station, Ahmedabad where the repairing work was under process. During the course of panchnama, some documents along with three mobile phone have been seized. During the course of panchnama, the office premises situated at 203, 2nd Floor, Neelkanth Plaza, Opp New

Madhupura Marker, Shahibaug, Ahmedabad, has been sealed by the officers as the key was not available with Shri Mulchand Shah and the same was with Shri Sanjay Shah.

- (iv) Panchnama dated 24.07.2017 drawn at 3, Jaishwar Society, Near Railway Crossing, Sahibaug, Ahmedabad, wherein it was found that the said premises was under maintenance.
- (v) Panchnama dated 24.07.2017 drawn at A-31, Krishna Kutir, Jain Colony, Sahibaug, Ahmedabad in presence of Smt. Lalitha, who residing at this residential premises since 15.06.2015.
- (vi) Panchnama dated 25.07.2017 drawn at office premises of M/s. Somnath Metals Pvt. Ltd., Flat No. 203, Nilkanth Plaza, Shahibaug, Ahmedabad. During the course of panchnama, the seal pasted under panchnama dated 24.07.2017 found intact. The officers seized the two 'CPU' and certain documents as per Annexure-A to the panchnama for further investigation.
- (vii) Panchnama dated 25.07.2017 drawn at residential premises of Shri Dipakbhai Jayantibhai Thakor, at House No. 284, Rakhiyal Village, Ahmedabad. During the course of panchnama, Smt. Dimpal ben w/o Shri Dipak J. Thakor stated that she was not aware about the nature and place of job of Shri Dipakbhai.
- (viii) Panchnama dated 25.07.2017 drawn at M/s. Somnath Metal Pvt. Ltd, A/15/2, Zaveri Industrial Estate, Kathwada, Singarva Road, Ahmedabad.
- (ix) Panchnama dated 25.07.2017 drawn at residence of Shri Ramnarayan S. Laddha, at B-41, Krishna Kutir, Shahibaug, Ahmedabad. During the course of panchana, the officers seized five mobile phones and certain documents as mentioned in panchnama.
- (x) Panchnama dated 28.07.2017 drawn at M/s. Anjali Stainless Steel Pvt Ltd., Block No. 820, Kuvadthal Village, Nr. Mahakali Temple, Taluka- Daskoi, Ahmedabad. During the course of panchnama, Shri Rahul Sonami, Watchman, stated that Shri Bahirulal Ramlal Laddha has running a business from this premises in the name of M/s. Anjali Stainless Steel Pvt Ltd.
- (xi) Panchnama dated 28.07.2017 drawn at 601, M.V. House, Shahibaug, Ahmedabad. During the course of panchnama, the said premises found sealed on 19.07.2017 and the officers searched the premises in presence of Smt. Lilaben Laddha and seized the documents mentioned in panchnama dated 28.07.2017.

5. Statements of relevant persons recorded during the investigation:

5.1 Statement of **Shri Dipak Jayantibhai Thakor**, Proprietor of M/s. Bhagyoday Enterprise, A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad, Gujarat, was recorded on **20.07.2017** under Section 108 of Customs Act, 1962 wherein he inter-alia stated that he studied up to 10th std.; that he can read, write and understand English, Hindi and Gujarati languages; that he joined in a godown as labourer and used to do sorting of the scrap; that he got experience and progressed step by step and become supervisor; that he was staying at 284, Rakhiyal village, Ahmedabad; that he thought of starting a company on his own though he did not have enough money; that he started M/s. Bhagyoday Enterprise in March, 2016. His further statement in questionnaire form is reproduced as under:

Q. 1. What is your PAN No. and your role/designation in M/s. Bhagyoday Enterprise?

Ans: My PAN No. is AKSPT3920E and I am proprietor of M/s. Bhagyoday Enterprise, A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad, Gujarat. I am looking after all the works of the company. I was shown a copy of my IEC no. 0815907371 issued on dated 11.03.2016 on which I had put my dated signature.

Q.2. What is your company Business entity? What type of goods you are importing?

Ans: I am indulging in import of Heavy Metal Scrap from UAE (Dubai) only. We are trading the same to local buyers in and around Ahmedabad only. The buyers are not fix and I do not know their name.

Q.3. Who is your Heavy Metal Scrap supplier in UAE (Dubai)? How you Contact him?

Ans: I use to procure the scrap from one Shahazad and I come in his contact through one Mr. Saleem, whose address and contact no. I do not know. Saleem used to contact Shahazad and used to inform me usually in person on my godown in A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad.

Q. 4. How you came in contact with Saleem?

Ans. I do not want to answer.

Q.5. How many your previous consignments of Heavy Metal Scrap from were cleared from this port and any other port?

Ans. I do not know how many consignments have been imported by me.

Q. 6. At what time you used to be available during day time at your office cum godown in Singarva?

Ans. I do not have any fix time for visiting my godown and I used to go there as and when I got some job.

Q.7. How does Mr Saleem used to contact you?

Ans. He used to come in person on my godown in Singarva, generally he comes on his own and I do not have any prior information for that.

Q.8. How does Saleem helped you in your business?

Ans. This was my first deal with Saleem. He convinced me to import scrap and offered me on the bases of commission for using my IEC. Generally, for allowing the use of my IEC, I used to get 20-30 thousand for one container, however, Saleem offered me Rs. 50 – 60 thousand for this consignment.

Q.9. Do you take advance for allow the use of your IEC?

Ans. No.

Q.10. How do you send money to the supplier?

Ans. I do not know. I used to get my commission for allowing the use of my IEC.

Q.11. Since how long do you know Mr. Saleem?

Ans. I met him around 1-1½ months back in Singarva at a tea stall. There I came to know that he is in the same business line i.e. Metal scrap and he offered me some good deals which I accepted. He used to come to me on his black coloured Splender bike, whose registration number is not known to me.

Q.12. How many containers you have imported for Saleem prior to the present shipment under B/E 2458081/14.07.2017?

Ans. I have imported around 11 containers for Saleem in past.

Q.13. Are you aware that GPCB certificate is mandatory for the import of Scrap?

Ans. Yes I am aware and I got a GPCB Certificate during April, 2016.

5.2 Further statement of **Shri Dipak Jayantibhai Thakor**, Proprietor of M/s. Bhagyoday Enterprise, A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad, Gujarat, was recorded on **21.07.2017** under section 108 of Customs Act, 1962 wherein he *inter-alia* stated that he have been shown a copy of his earlier statement dated 20.07.2017 and he stated that this was his voluntarily statement and he put his dated signature on the last page of it in token of having seen and the correctness of the statement. His further statement in questionnaire form is reproduced as under:

Q.1. How many consignments / containers imported by you have ordered and yet to arrive at Mundra Port?

Ans. I do not remember.

Q.2. How you come to know that a case of seizure of Gold from scrap made by Customs in respect of Cargo under B/E no. 2458081/14.07.2017 imported under your IEC/Licence?

Ans. As per telephonic talk with Shri Kamlesh, my Customs Broker, license holder of M/s. Arihant Shipping Agencies I come to notice of seizure of Gold has booked by Customs in respect of Cargo under B/E No. 2458081/14.07.2017. He told me to come at Mundra Customs.

Q.3. Had you allowed any one to use your IEC for free or to import outside your knowledge?

Ans. No.

Q.4. For how many import containers / Qty of scrap is imported by you through to be imported from Dubai, had you dealt with Saleem?

Ans. Approx. 200 - 250 Mts. I am to get Rs. 3 /Kgs for every import, that too in cash.

Q.5. How many containers have you imported for Saleem at this port or at Ahmedabad or at any other port?

Ans. I do not remember the no. of containers port wise. However, I can say that I have imported 10-11 containers apart from the present consignment.

Q. 6. Who was arranging for Customs Clearance and PSIC etc. for the scrap imported by you?

Ans. For the consignments imported by me for Saleem, he was arranging for customs clearance and other expenses. For the prior consignments the actual buyer was arranging for such things.

Q.7. Who was the actual user for the previous consignments imported at this port apart from Saleem?

Ans. I do not know.

Q.8. How many bank accounts do you or your family members have?

Ans. One account in Axis bank Shahibaug, Ahmedabad in the name of my firm. One S/B account in my name in Bank of India, Shahibaug and one bank a/c in the name of my wife in Nutan Nagrik Bank, Rakhiyal, Ahmedabad.

Q.9. What is your permanent residence address?

Ans. I reside at 284, C/o Jashodaben W/o Anup Bhai, Rakhiyal Village, Ahmedabad, but I do not have any proof for that address as it is my in-laws house. I with my family and my mother resides at address.

As per Govt. Records my permanent address is 11. LR Apartment, Near Railway Crossing, 1st floor, Opp. Police Commissioner Office, Shahibaug, Ahmedabad. My uncle and cousin resides at this address.

Q.10. Do you own any property?

Ans. I do not have any property in my name. The godown in Singarva is on rent of Rs. 30,000 p.m.

Q.11. Do you have any other source of income?

Ans. I used to trade on commission basis other than my company business. I am earning about Rs. 45-50 thousand per month.

Q.12. Can you provide any other details about Saleem or Shahzad?

Ans. I don't know the name address and mobile no. of Mr. Saleem. I am only getting Rs. 50-60,000/- in cash per import container from Mr. Saleem. I do not know anything about Shahzad, as Saleem only used to contact him. Saleem always comes to meet me at my scrap godown, where I usually sit, there only I get money from him. Saleem is around 30-35 yrs. old, height 5 and half feet, fair colour, black hair and usually clean shaved.

Q.13. Did any other person also contact you for import of the scrap consignment imported for Saleem?

Ans. Yes, I was contacted by one Ramnarayan Ladda and one Sanjay apart from Saleem, whose contact nos. I do not remember.

Q.14. Who was the master mind of concealment of Gold in scrap?

Ans. It must be Saleem. As per my knowledge Saleem has no godowns. He used to come to Mundra at the time of clearance of goods and led the containers to the destination as per his will. The last container was imported 10-12 days back.

Q.15. Do you factually receive any cargo at your godown ever?

Ans. No cargo container was received at my godown ever. I do want to disclose the name of importers for whom I have imported the containers in past, prior to Saleem.

Q.16. Who is you residing at the address registered in your IEC?

Ans. It is my uncle who is residing at that address.

Q. 17. When did you took the Godown A-2, Bholeshiv Compound, Singarva on rent and how much security / advance was given by you?

Ans. I took this godown on rent around one year back and had given Rs. 30,000 in cash as advance for which I have made an agreement also.

Q.18. Who gave you idea to start Bhagyodaya Enterprise?

Ans. It was my own idea and I have invested myself and some money was also taken from friends. The total investment is around Rs. 1.00 Lac in this company

5.3.1 Statement of **Shri Ram Narayan Laddha** was recorded on **23.07.2017** wherein *inter-alia* he stated that he was well-versed with Hindi/English Language; that he started his firm M/s. HB Metals Corporation at 107, 1st floor, MV House, Hazipura Garden, Shahibaug, in which he was the only Prop. and used to deal in Metal Scrap only; that this company was closed in 2006-07; that thereafter he started Shri Hari Bol Metals Pvt Ltd. in the year 2006-07 and started trading of Metal Scrap; that M/s. Shri Hari Bol was closed in year 2012-13; that thereafter, he started M/s. SHB Metals Pvt. Ltd. for the trading of Metal Scrap which was also closed in the year 2016; that there was another director namely Sh. Mukesh Bhai Ahmedabad in both firms with him viz. M/s. Shri Hari Bol and M/s. SHB Metals; that Sh. Mukeshbhai got separated his business interests in 2016 and M/s. SHB Metals was closed in Dec. 2016; that the office address of M/s. Shri Hari Bol was 701, 7th floor, M V House, Hazipura Garden, Shahibaug; that he got two separate accounts for Shri Hari Bol and M/s. SHB metals; that Shri Mahesh Devpura was his chartered Accountant, who is associated with him since 2002-03.

5.3.2 On being asked Shri Ram Narayan Laddha stated that he always trade locally from both the above said firms; that he never did any import or export through any of his firm; that he have a Passport issued from Ahmedabad office at his above stated address; that he had visited to Malaysia 5-7 times and also visited Europe once in the year 2012-13. His further statement in questionnaire form is re-produced as under

Q.1. Since when you are trading in Metal Scrap?

Ans. As I remember I am trading in Metals Scrap since 1995-96, that was at Ahmedabad level. Gradually I opened the company viz. M/s. Shri Hari Bol and M/s. SHB Metals and started dealing in Scrap at all India level. We used to procure the scrap from NTPC, GEB, MSPGCL and MPEB etc and used to sale it Jindal Steels Hissar, Shah Alloys Ahmedabad, AIA Engineering, Ahmedabad and Electrotherm at Samakhayali (Kutch) etc. As on today I do not have any company in my name. I started dealing in Import-Export of metal scrap since last 1-1½ yrs., though I do not have any IEC. I am an indenter and used to do indenting and give reference of importer to the CHA.

Q. 2. How many times you have visited Mundra Port?

Ans. I visited Mundra port 03 times in last one year when I started dealing in metal scrap. Two times in last two months and one time around 8-10 months back in connection with import of scrap.

Q. 3. How many bank accounts do you have?

Ans. I have one personal bank account in Axis Bank, Shahibaug, the balance in this a/c would be around 50-60,000, which is operative. The bank account of M/s. HB Metals was in State Bank of India, Shahibaug, which was closed. There are two Bank accounts of M/s. Shri Hari Bol Metals one at Axis Bank and another at SBI both at Shahibaug Branch, Ahmedabad (both a/c current). Also there are two Bank accounts of M/s. SHB Metals, one at Axis Bank and another at SBI both at Shahibaug Branch, Ahmedabad (both a/c current). All

these four account are still operative. The balance in each current a/c is around Rs. 25-30 thousand. There in one a/c in name of my wife Smt. Leeladevi in Axis Bank, Shahibaug and one a/c in the name of my daughter Miss Anjali Laddha in SBI, Shahibaug. However I do not remember any of the a/c nos. as of now.

Q. 4. What is your connection with the scrap imported by M/s. Bhagyoday Enterprise Ahmedabad run by Sh. Dipak Jayantibhai Thakor?

Ans. Around 1-1½ years back I gave the reference of M/s. Bhagyoday and Sh. Dipakbhai to Sh. Kamleshbhai, contact no. is +91-9925024190, who was working for CHA M/s. Bright Shipping Pvt. Ltd. at that time. Thereafter I came to know that Kamlesh bhai is working for Arihant Shipping. I told Kamleshbhai that Sh. Dipak Thakor is the only owner and Prop. of M/s. Bhagyoday and deals in import of scrap.

Q.5. How you came to know Sh. Dipak Thakor owner and Prop. of M/s. Bhagyoday?

Ans. One of my cousin brother Sandeep Khatod, contact No. 9825169614, R/o 3, Jaishewar Society, Nr. Railway Crossing, Shahibaug, Ahmedabad, informed me 8-10 months before about Sh. Dipak Thakor and told that Dipakbhai is also in scrap line and is interested in import of metal scrap. Dipakbhai asked me for some CHA and that's how I told him about Kamleshbhai.

Q.6. Who helped Dipakbhai in opening M/s. Bhagyoday?

Ans. I do not know.

Q.7. What are your contact nos. and e-mail Ids?

Ans. My e-mail Id is shbmetals@yahoo.com and contact nos. as above, however, the contact no. 9960583253 is inoperative since last 3-4 days. I came to know about recovery of gold by Mundra Customs in the containers imported by M/s. Bhagyoday for the clearance of which I contacted with Kamleshbhai, thereafter I was afraid so I closed that sim.

Q.8. Have you ever tendered any statement before any authority?

Ans. Yes, I have tendered statement before Central Excise officers, Ahmedabad, since the officers of Central Excise Prev. Ahmedabad, had raided my office of M/s. Shri Hari Bol Metals, however no SCN was issued. 2nd time I appeared before Sales tax authorities at Ahmedabad raided my office and I appeared before them for statement, the SCN is yet to come from Sales tax authorities.

Q.9. Do you know from where the Scrap was being imported by M/s. Bhagyoday Enterprise and where it was going?

Ans. As far as I knew that the containers will go to Mumbai where one Rajdeep Singh would take the contraband concealed and the scrap would be reverted back to me and Dipakbhai. I knew that the cargo was loaded by one Sazzad in Dubai.

Q. 10. Where did you meet Dipakbhai?

Ans. I used to meet Dipak bhai in Shahibaug area in Ahmedabad in person. I meet him 2-3 times.

Q. 11. Who was arranging for Customs clearance and transportation of containers?

Ans. As per as I know Sanjaybhai used to arrange for customs clearance and transportation of containers. I do not remember the name of the transporters.

Q.12. Who was giving documents to CHA?

Ans. It must be known to Dipakbhai or Sanjaybhai. Documents were used to be received by Dipakbhai.

Q.13. What was the role of Sanjaybhai?

Ans. Sanjaybhai Khatod is my cousin brother, contact no. 9978985672, R/o 3, Jaishewar Society, Nr. Railway Crossing, Shahibaug, Ahmedabad. He used to do Import noting, online from Ahmedabad on my saying for Dipakbhai. Sandeep and Sanjay are real brothers and my cousin (my bua's sons).

Q. 14. Who would be the main receiver of Gold and Cigarettes recovered from the containers?

Ans. As I told earlier I was informed by Dipakbhai that Mr. Rajdeep Singh in Mumbai would be the main receiver of Gold and Cigarettes. I knew that the containers would be moved to Mumbai after out of charge from Mundra Customs, though I do not know the location in Mumbai, where Mr. Rajdeep Singh would took out Gold and cigarettes and the remaining cargo would come back at Ahmedabad.

Q. 15. How you are contacting Kamleshbhai?

Ans. I met Kamleshbhai 2-3 times personally at Gandhidham along with Sanjaybhai. I called him 4-5 times over his mobile no. 9925024190 from my mobile no. 9960583253. Also he called me 2-3 times in past 2-3 days. He told me that Gold was recovered from the Scrap imported by M/s. Bhagyoday.

Q.16. What was your consideration money per container?

Ans. I used to get INR 40-50 thousand per container, that too in cash. I used to get this money from Dipakbhai.

Q.17. How many times you talked with Sanjay Khatod or met in last 06 months?

Ans. I met him around 20-25 times in past 06 months and used to talk to him once in 2-3 days. He is my cousin and also deals in metal Scrap. He has a trading company in Odhav, Ahmedabad.

Q. 18. Do you know any person by name Saleem?

Ans. No.

Q.19. Had you ever contacted with Sazzad or any person Shahzad in Dubai?

Ans. Dipak told me that one Sazzad was arranging for cargo in Dubai.

Today in the SIIB room I was confronted with one person at around 1530 hrs. whom I identified as Sh. Kamlesh Sharma who is residing at Gandhidham, this is the same person whom I have referred in my above pages as Kamleshbhai. I token of my saying I put my dated signature on copy of Driving License of Kamleshbhai.

I was shown two statements dated 20.07.2017 and 21.07.2017, comprising of total six pages, tendered by Sh. Dipak Jyantibhai Thakor. I agree with both statements, but I think that the name Shahzad as told by Sh. Dipakbhai is actually Sazzad. I put my dated signature on the last pages of both the statements in token of having seen.

5.4 Statement of Shri **Kamlesh Sharma**, Authorised signatory cum Power of attorney of M/s. Harshit Logistics (Clearing forwarding and Shipping Agent), 2nd Floor, Pt No. 244,

Sector 1/A, Opp. Kutch Uday Press, Gandhidham, Kutch, Gujarat-370201 was recorded on **23.07.2017**. His statement recorded in questionnaire form is re-produced as under:

Q. 1. What is your PAN No. and what is your profession and your firm name?

Ans: My Pan No. is BBWPS5380K. I am working as Clearing forwarding and Shipping Agent. I am the Authorised signatory cum Power of attorney of M/s. Harshit Logistics, 2nd Floor, Pt No. 244, Sector 1/A, Opp. Kutch Uday Press, Gandhidham, Kutch, Gujarat-37020.

Q.2. What is your company Business?

Ans: Our Company/myself is working as Clearing forwarding and Shipping Agent. Generally Importers were contacted me directly or through any other known importer for the Clearance of their Imported Cargo. Further, I got the import documents from the importer and forward the same to CB previously to M/s. Bright Shiptrans Private limited and later on to M/s. Arihant Shipping Agencies only for the clearance of imported goods at Mundra port.

Q.3. Your role/relation in M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham?

Ans.: Directly I don't have any role in M/s. Arihant Shipping agencies and M/s. Bright Shiptrans Private Limited, Gandhidham, however being Clearing forwarding and Shipping Agent all the Customs Clearance work of mine is done by them.

Q4. How do you know about M/s. Bhagyoday Enterprise, Ahmedabad and who contacted you 1st time for the Clearance of Heavy Melting Scarp from Mundra Port and other port? And how he contacted you?

Ans. Mr. Dipak Jayanti Bhai Thakor Proprietor of M/s. Bhagyoday Enterprise, Ahmedabad first time contacted me telephonically around 12 Months before and informed that he want to import HMS from UAE and also informed that all my import related work will be done by Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., Shahibaug, Ahmedabad. On the very same date Mr. Sanjay M Shah telephonically informed me that he will look after all import related work of Mr. Dipak Jayanti Bhai Thakor.

Q.5 How do you know Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad and how long?

Ans. I know very well about Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad from last one year. I hereby peruse his Photograph & identified him as Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd and put my dated signature on it. I have done the clearing & forwarding work for the import of HMS imported by M/s. Mahindra Trading Company from UAE through CB M/s. Bright Shiptrans Private Limited. Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., also involved in the import of HMS from UAE at Mundra Port.

Q.6 Please provide the details of IEC No. and Importer name for which you have done the work?

Ans. I have done clearing forwarding work for the clearance of HMS (Heavy Melting Scrap) & SS imported from UAE through M/s. Bright Shiptrans Private Limited (Previously)

and M/s. Arihant Shipping Agencies for the Importer (i) M/s. Mahindra Trading Company (ii) M/s. Somnath Metals Pvt Ltd and (iii) M/s. Bhagyoday Enterprise. Importer's IEC with my dated signature is produced.

Q.7. Please provide the names, address, Contact Numbers & Email details of the persons who have contacted you in clearance of goods in respect of Bhagyoday Enterprises?

Ans. Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad is the only person contacted/in touch with me for the import clearance of goods in respect of Bhagyoday Enterprises. Sometime Mr. Ramnarayan Shyamlal Laddha also contacted me for the same.

Q.8 Who is Mr. Ramnarayan Shyamlal Laddha & how do you know him and how long?

Ans. Mr. Ramnarayan Shyamlal Laddha was the subordinate person of Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. Mostly Mr. Sanjay was the person who in regular touch with me. He used to direct me to file the Bill of entry and status thereof. Sometime Mr. Ramnarayan Shyamlal Laddha also inquired for the same. Today in the SIIB Room I was confronted with one person at around 15.30 hrs whom I identified as Mr. Ramnarayan Shyamlal Laddha who residing as Ahmedabad, this is the same person whom I have referred in statement as Mr. Ramnarayan Shyamlal Laddha. I put my dated signature of his ID – Driving License No. GJ01/206710/06.

Q.9 What is the relationship between Dipak Thakor, Proprietor of M/s. Bhagyoday Enterprise and Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., as per your knowledge?

Ans. Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd was the only person who was looking after clearance of Cargo i.e. HMS imported from UAE by M/s. Bhagyoday Enterprise. As per my knowledge Mr. Sanjay M Shah, Director of Somnath Metals Pvt Ltd, 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad was the main person involved in the Import of Scrap i.e. HMS from UAE.

Q.10. For Custom clearance who submits the import documents viz. BL/ Invoice/ Packing List, PSIC etc. and what is the mode of document submission to you viz. email/courier or postal or any other mode. When you received the original Documents?

Ans. For Custom clearance copy of import documents were received through email id bhagyodayent144@gmail.com on my id ganesham_mundra@yahoo.com and get original import documents later on.

Q.11. Have you checked importers KYC Documents? Have you followed KYC norms as per CBLR, 2013? Have you checked the functioning of your client's declared address through any reliable independent sources?

Ans: I have verified the IEC No.0815907371 with DGFT website and also verified the KYC details with DGFT website, Bank details & Light Bills (of Jan, 2016). I didn't verify the address physically. From the Bank verification letter, it is revealed that we have verified by an independent source.

Q.12 Have you filed Prior IGM B/E or Post IGM Bills of Entry and till date how many Bills of Entry has been filed by you in respect of M/s. Bhagyoday Enterprise? Under whose direction bills of Entry were filed?

Ans. All the Bills of Entry are filed after IGM only. Approx. 11 Bills of Entry in respect of M/s. Bhagyoday Enterprise were filed by us. The Bills of Entry were filed mostly on the direction and import documents provided by Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. Sometime Mr. Ramnarayan Shyamlal Laddha also directed me to file B/E.

Q.13 When you meet personally to Mr. Sanjay M Shah and Mr. Ramnarayan Shyamlal Laddha and how many times you meet with them?

Ans. Sir, personally I meet Mr. Sanjay M Shah and Mr. Ramnarayan Shyamlal Laddha, 1st time - 10 to 11 Months before and 2nd - in first week in June, 2016. Both the times they meet together. Except these all the times they informed the facts telephonically. Mostly Mr. Sanjay M Shah, Director of Somnath Metals Pvt Ltd provided the import documents and directed me to file the Bills of Entry for the scrap - HMS imported from UAE.

Q.14 What is the mode of transportation of the imported cargo? How and who make arrangement for the transportation? Please give the details of destination for the goods. What are the name & address & contact no of Transporters?

Ans. M/s. Ram Krishna Transport - Mobile No. 9824509651 was the transporter who makes the arrangement of transport from Mundra CFS to Ahmedabad as per direction of Mr. Sanjay M Shah, Director of Somnath Metals Pvt Ltd.

Q.15 How do you come to know that the Gold was detected was Custom Mundra in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017). Have you further informed the facts to any one?

Ans. Mr. Shyam Sharma, Loading/unloading person in Seabird CFS informed me that the Gold was detected was Custom Mundra in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017). Immediately, I tried to inform the facts to Mr. Sanjay M Shah on his mobile - 9978985672 but could not talk him. Later on I again tried on same number then Mr. Ramnarayan Shyamlal Laddha received the Phone. I told him that Gold was detected was Custom Mundra in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017). I scolded him for the act and told them to come at Custom House Mundra immediately. Later on mobile - 9978985672 get switch off. Further, on this I frequently call Mr. Ramnarayan Shyamlal Laddha and scolded him and told him to come at Mundra Port immediately along with Importer viz Bhagyoday Enterprises.

Q.16. For your clearance service how you are getting payments from Importer?

Ans. I got Rs. 5000/- + Service Tax per Container for the clearance through the importers Bank account but on the direction of Mr. Sanjay M Shah.

Q.17. What was the reaction of the Importer/person? What directions were given by importer/person to you?

Ans. Mr. Ramnarayan Shyamlal Laddha told me it is not possible the Gold was found in their container. Further, He stated not to tell his name anywhere and direct to take care for the issue.

Q.18 How do you come to know that the Cigarettes were caught by Mundra Custom in Container No. GATU1260784 & TGHU3084553 (B/L DUBASRMUN6515). Have you further informed the facts to any one?

Ans. I come to notice through local Gujarati new paper that the Cigarettes were caught by Mundra Custom. For Container No. GATU1260784 & TGHU3084553 (B/L DUBASRMUN6515) I have not received any import documents from the importer or Mr. Sanjay M Shah. Gold was detected was Custom Mundra in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017) after that Mr. Sanjay M Shah not contacted me and I am tried to contact him but his mobile no. 9978985672 is still switch off.

Q.19 Who are the masterminds behind these smuggling as per your knowledge?

Ans: Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. is the mastermind behind these smuggling of gold and also cigarettes. They met us two times, Gandhidham. No other importer cares so much for HMS container as the value of the cargo compared to other scrap like Copper; Brass & Zinc is very low. I am saying this from my experience.

Q.20 Do you know about Mr. Saleem or Mr. Rajdeep Singh? Provide the full name, address and mobile no. of Mr. Saleem ?

Ans: I don't know. Today I have heard their name first time.

5.5 Statement of Shri **Ketan Hiralal Shah**, 'F Card' holder of M/s. Arihant Shipping Agencies, 1st Floor, Office No. 2, New Laxmi Building, Above Sun Medical, Ward 12B, Gandhidham, Gujarat was recorded on **23.07.2017**. His statement recorded in questionnaire form is re-produced as under: ..

Q. 1 What is your PAN No.; your profession, your firm name, the constitution of the firm & e-mail ID?

Ans: My PAN Card No. AIHPS9429C. I am the F-Card Holder in the year 2004 at Kandla Custom House. My firm's name is M/s. Arihant Shipping Agencies and it is a partnership firm. There are three partners; myself, my wife & Shri Dilip Sinh Rathod. Me & Shri Dilip Sinh Rathod both are active partners. Our official email ID is docs@arihantshipping.com.

Q.2 What is your firm's Business profile?

Ans: Mainly engaged in Custom House Agent/Custom Broker and rarely transportation services are also provided.

Q.3 Your role/designation in M/s. Bright Shiptrans Pvt. Ltd., Gandhidham?

Ans: I am executive manager of M/s. Bright. I used to look after the documentation works for which I am paid.

Q.4 How do you know about M/s. Bhagyoday Enterprise, Ahmedabad and who contacted you 1st time for the Clearance of Heavy Melting Scrap from Mundra? And how he contacted you?

Ans: As per my knowledge, two representatives of M/s. Bhagyoday Enterprise namely Shri Ram Narayan (M. No. 09960583253) & Shri Sanjay M Shah (M. No. 09978985672) have twice visited the office of M/s. Harshit Logistics, Gandhidham for the purpose of customs clearances related work. The said fact of visit was informed by Shri. Kamlesh Sharma. I have not met them personally yet.

Q.5 How you got the clearances related work of M/s. Bhagyoday Enterprise?

Ans: We have got clearances related work of M/s. Bhagyoday Enterprise through M/s. Harshit Logistics, Gandhidham. M/s. Harshit Logistics is proprietor firm of Ms. Kalpana Sharma, wife of Shri. Bajrang Sharma (Executive Director of M/s. Bright Shiptrans Pvt. Ltd., Gandhidham). Shri. Kamlesh Sharma is an authorized signatory.

Q.6 Please provide the name/s of the persons and their details who have contacted you in clearance of goods in respect of M/s. Bhagyoday Enterprise.

Ans: Shri Kamlesh Sharma (M.No. 09925024190) is the only person whom I contacted for customs clearances related work. Further, I have contacted Shri Ramnarayan first time when the gold bar was found in the import consignment on 19.07.2017, in which the Bill of Entry was filed by M/s. Arihant Shipping Agencies. I have asked him to come to the Mundra Custom for giving clarification.

Q.7 What is the relationship between Dipak J Thakor (Proprietor of M/s. Bhagyoday Enterprise), Shri Ramnarayan Shyamlal Laddha & Shri Sanjay Shah as per your knowledge?

Ans: As per my knowledge, Shri Ramnarayan & Shri Sanjay M Shah both are representatives of M/s. Bhagyoday Enterprise. But I have no any documents which show them as representatives of the firm.

Q.8 For Custom Clearances work in respect of M/s. Bhagyoday Enterprise, who submits the import documents viz. BL/ Invoice/ Packing List, PSIC etc. and what is the mode of document submission to you viz. email/courier or postal or any other mode. When you receive the original Documents?

Ans: We used to receive the documents through M/s. Harshit Logistics. Shri Kamlesh Sharma or his staffs physically gives the documents to us. We used to receive original documents within one or two days before landing of the container.

Q.9 Have you checked importers KYC Documents? Have you followed KYC norms as per CBLR, 2013? Have you checked the functioning of your client's declared address through any reliable independent sources?

Ans: I have verified the IEC No.0815907371 with DGFT website and also verified the KYC details with DGFT website, Bank details & Light Bills (of Jan, 2016). I didn't verify the address physically. From the Bank verification letter, it is revealed that we have verified by an independent source.

Q.10 Before filing the Bill of Entry in EDI System what are the process followed by you and how you authenticate the same? And how the importer or their representative confirm that same?

Ans: We verify the documents like Invoice, Packing list, BL, PSIC, COO, Sales Contract etc. before filing the Bill of Entry. Before submitting the final Bill of Entry, a check list is generated through software and same is given to M/s. Harshit Logistics for verification physically and on their confirmation, the final Bill of Entry is filed.

Q.11 Have you filed Prior IGM B/E or Post IGM Bills of Entry and till date how many Bills of Entry has been filed by you in respect of M/s. Bhagyoday Enterprises? Under whose direction Bills of Entry were filed?

Ans: On the basis of documents received, we generally file the Bill of Entry after filing of IGMs. Seven Bills of Entry have been filed till date by M/s. Arihant Shipping Agencies and its details are Bills of Entry Nos. 9594533 dated 06.05.2017, 9636593 dated 10.05.2017, 9636606 dated 10.05.2017, 9826756 dated 25.05.2017, 2124422 dated 16.06.2017, 2297719 dated 03.07.2017 & 2458081 dated 14.05.2017. In the Bill of Entry No. 2458081 dated 14.05.2017, it is come to know that 27 Kgs gold was found in the import consignment. I used to file the Bills of Entry as per the direction of M/s. Harshit Logistics. Four Bills of Entry have been filed through M/s. Bright Shiptrans Pvt. Ltd.

Q12. What is the charge for processing per documents i.e. Bill of Entry, through which mode you get the payments? Is there any extra charges/benefits received for clearances related work of M/s. Bhagyoday Enterprise.

Ans: I used to receive Rs. 250/ per container from M/s. Harshit Logistics and that is through Cheque only. We are not receiving any extra amount for clearances work.

Q.13 What is the mode of transportation of the imported cargo? How and who makes the arrangement for the transportation? Please give the details of destination for the goods. What is the name, address & contact no. of Transporters?

Ans: The importer's appointed transporter is M/s. Ramakrishna Freight Carrier, Gandhidham (co-ordinator Shri Laxman Rao, M.No. 09824509651). Cargoes were delivered through loaded container after clearance from Mundra Customs through roadways. I don't know about the destination of the cargoes and it may be known to the transporter during my telephonic discussion.

Q.14 How do you come to know that the Gold was detected at Custom Mundra in Container No.TTNU 2689561 (B/E No. 2458081/14.07.2017). Have you further informed the facts to any one?

Ans: I came to know through Shri Bajrang Sharma of M/s. Bright at Gandhidham personally that during the examination, the gold was found. First of all, I informed the fact to Shri Kamlesh Sharma and I have asked him to communicate with Shri Ramnarayan to verify the fact. Shri Ramnarayan has denied the fact of mis-declaration in the imported cargoes.

Q.15 Have you come to know that in two containers bearing no. GATU1260784 & TGHU3084553 (B/L DUBASRMUN6515) imported by M/s. Bhagyoday Enterprise, Cigarettes were concealed behind the HMS Scrap. Have you received any documents in respect of the Bill of Lading? Please comment.

Ans: I came to know the smuggling of cigarettes through Newspaper in respect of M/s. Bhagyoday Enterprise. We have not got any documents or information for processing the Bill of Entry in respect of the said Bill of Lading.

Q.16 What was the reaction of the Importer/person? What directions were given by importer/person to you?

Ans: On 20.07.2017, in the morning, I personally met Shri Dipak Thakor of M/s. Bhagyoday Enterprise, he told that he don't have any idea of smuggling of gold. When I asked regarding the presence of Shri Ramnarayan & Shri Sanjay M Shah, Shri Dipak

Thakor has told me not to disclose the name of Shri Ramnarayan & Shri Sanjay M Shah in the gold smuggling case.

Q.17 Who are the masterminds behind these smuggling as per your knowledge?

Ans: Shri Ramnarayan, Shri Sanjay M Shah, Shri Dipak Thakor & the supplier M/s. Metal World FZE, P.O. Box 122927, Sharjah, UAE are the masterminds behind these smuggling of gold and also cigarettes. As they had come all the way from Ahmedabad to Mundra for HMS scrap. They met us two times. No other importer cares so much for HMS container as the value of the cargo compared to other scrap like Copper, Brass & Zinc is very low. I am saying this from my experience.

Q.18 Do you know about Mr. Saleem or Mr. Rajdeep Singh? Provide the full name, address and mobile no. of Mr. Saleem?

Ans: I don't know. Today I have heard their name first time.

5.6 Statement of **Shri Prakash Mishra**, Proprietor of M/s. Shree Rama Krishna Freight Carrier [Fleet Supplier (Broker)], 24, Meritime, Plot-45, Sector-9, Gandhidham, Kutch, Gujarat-370201, was recorded on **24.07.2017**. The relevant portion of his statement recorded in questionnaire form is re-produced as under:

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Q.5 What about GPS system in Trucks? Are all trucks equipped by the GPS system?

Ans. Yes we have GPS system installed in our Trucks. In 58 vehicles the system of GPS is installed.

Q.6 Since when have you installed the GPS system?

Ans. We have installed the GPS system in five vehicles on 29.09.2015, 18 vehicles in 2016 and 35 vehicles in 2017.

Q.7 Who is handling Booking of transportation? Is done directly by you or any other person?

Ans. Mr Laxman Rao Operation manager of my transportation company handles the day to day booking of transportation.

Q.8 Do you also handle transportation booking?

Ans. Yes I also handle the transportation booking

Q.9 Are you involved in day to day booking of the vehicles?

Ans. I and my Son Mr Prabhakar Mishra are involved in day to day bookings

Q.10 What is the procedure of booking of trucks?

Ans. The owner of the material imported request us for booking of Truck on phone. Then we contact the Customs Broker on the number and name given by the owner of material. The Custom Broker then informs us about the out of charge of the material and supplies to us the following documents; Form VI, Bill of Entry after which our office peon comes inside to the CFS area to collect the above mention documents, and deposits the same to our office at 106- Ashapura Complex, Rangoli, Mundra. After that Mr Laxman Rao prepares the duty list of truck drivers in order to collect the containers from the CFS.

Q.11 How does the truck move from CFS to destination?

Ans. The Truck driver collects the container from CFS and reports to our office at -106-Ashapura Complex, Rangoli, Mundra for preparation of the Consignment Note. Once the consignment note is prepared, it is handed over to the driver, who then moves to the destination.

Q.12. Do you know about Custom Broker M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham?

Ans: No, I don't know about Custom Broker M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham.

Q.13 Do you know owner of Custom Broker M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham?

Ans. No, I don't know the owners of CB M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham.

Q.14 In the consignment Note No- 2153/07.04.2017, 2196/08.04.2017, 2419/14.04.2017 and 2423/14.04.2017 submitted by you consigner is shown as M/s. Bright Shiptrans Private Limited? Please offer comments?

Ans. We have received the necessary documents for transportation directly from M/s. Bright Shiptrans Private Limited.

Q.15 In the consignment Note No - 3718/17.05.2017, 3719/17.05.2017, 3720/ 17.05.2017, 3762/16.05.2017, 3673/16.05.2017, 3726/17.05.2017, 3726/ 17.05.2017, 3737/17.05.2017, 3728/17.05.2017, 3739/17.05.2017, 3740/ 17.05.2017 and 3773/18.05.2017 submitted by you consigner is shown as M/s. Arihant Shipping Agencies? Please offer comments?

Ans. We have received the necessary documents for transportation directly from M/s. Arihant Shipping Agencies.

Q.16 Since when you are doing business with Custom Broker M/s. Bright Shiptrans Private Limited?

Ans. We are doing business with Custom Broker M/s. Bright Shiptrans Private Limited from past 18 Months.

Q.17. Since when you are doing business with Custom Broker M/s. Arihant Shipping Agencies?

Ans. We are doing business with Custom Broker M/s. Arihant Shipping Agencies from past 12 Months.

Q.18 Even after working with the Customs Brokers M/s. Bright Shiptrans Private Limited and M/s. Arihant Shipping Agencies from past 18 Months you don't know the owners?

Ans. Yes, I know the owners of M/s. Bright Shiptrans Private Limited as Mr. Bajrang Sharma & Raj Yadav (M.No.-9979873190) and for Custom Broker M/s. Arihant Shipping Agencies I have been informed Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad to contact Mr. Raj Yadav (M. No.-9979873190).

Q.19 How do you know Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad and how long?

Ans. I know very well about Mr. Sanjay M Shah (M No. 9825169614), Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug.

Ahmedabad from past twenty years. I had done the transportation work for his father Shri Moolchand Shah (65 Years). I am on being shown a Photograph, identify him as Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd and put my dated signature on it.

Q.20 Whom else do you know in the family of Mr. Sanjay M Shah?

Ans. I know Mr. Sandeep M. Shah, who is the younger brother of Mr. Sanjay M Shah. First time I meet him at the godown of M/s. Somnath Metals Pvt. Ltd. I have family relation with Mr. Sanjay M Shah. Many times I have attended his family functions at Rajasthan Seva Samiti, Ahmedabad as far as I know they stay in a joint family system.

Q.21. Do you know the importer M/s. Bhagyoday Enterprise? Had you ever transported the Import/Export cargo of M/s. Bhagyoday Enterprise?

Ans.: Yes, I come to know about M/s. Bhagyoday Enterprise, Ahmedabad through Mr. Sanjay M Shah for the last ten Months. As per direction of Mr. Sanjay M Shah I have done the work of transportation of imported HMS Scrap imported from UAE from CFS to their destination at Kathwada, Singarva falling under district of Ahmedabad. Nearly 25 Containers of imported HMS/MM Scrap of M/s. Bhagyoday Enterprise; Ahmedabad had been transported by me from Mundra port to Kathwada, Singarva falling under district of Ahmedabad.

Q.22 How & for what you had been directed by Mr. Sanjay M Shah?

Ans. Mr. Sanjay M Shah has directed me for the transport of imported Cargo from the port to their destination for the import of HMS Scrap imported by M/s. Bhagyoday Enterprise and M/s. Somnath Metals Pvt. Ltd.

Q.23 Under whose direction you had transported the imported goods of M/s. Mahindra Trading Company from port to destination?

Ans. For M/s. Mahindra Trading Company Mr. Ramnarayan Shyamlal Laddha (M. No-9974022224) directed me for the transportation of goods from port to Ahmedabad.

Q.24 Have you personally visited the godown of M/s. Bhagyoday Enterprise and M/s. Somnath Metals Pvt Ltd?

Ans. Yes, I have personally visited the godown at - 1A/15/2, Zavri Industrial Estate, Kathwada- Singrva Road, Ahmedabad of M/s. Somnath Metals Pvt Ltd owned by Mr. Sanjay M Shah. Regarding M/s. Bhagyoday Enterprise I have not personally visited their godown but have rough idea regarding the location as it falls in the locality of M/s. Somnath Metals Pvt. Ltd.

Q.25 Have you personally visited the godown of M/s. Mahindra Trading Company?

Ans. I have not personally visited the godown of M/s. Mahindra Trading Company but have rough idea regarding the location as it falls in the locality of M/s. Somnath Metals Pvt. Ltd.

Q.26 How and when you know that the container & truck reached at the destination?

Ans. We are regularly following up with the driver on phone morning and evening and in additional we have installed GPS System for monitoring the movement of the trucks.

Q.27 What was the route of transportation of Containers of HMS Scrap imported from Dubai by M/s. Bhagyoday Enterprise/ M/s. Somnath Metals Pvt. Ltd./ M/s. Mahindra Trading Company from port to destination ?

Ans. Sir, Route of Transportation of Containers of HMS Scrap imported from Dubai by M/s. Bhagyoday Enterprise is as follows;

CFS Mundra Port --- Gandhidham – Malia, Halvad ----Ahmedabad – Kathwada (GIDC), Singvara --- Godown (A-2, Bholeshiv Compound, Singrava, Kathwada, Ahmedabad).

I am submitting the two sample copies of GPS print duly signed by me.

Q.28 Has your vehicle with the container ever moved from port to Mumbai and then Ahmedabad?

Ans. No.

Q.29 How do you know about Mr. Dipak Jayanti Bhai Thakor M/s. Bhagyoday Enterprise, Ahmedabad and who contacted you 1st time for the Transportation of the Imported HMS Scrap? How he contacted you?

Ans. I have never contacted Mr. Dipak Jayanti Bhai Thakor Proprietor of M/s. Bhagyoday Enterprise, Ahmedabad. I come to know about M/s. Bhagyoday Enterprise, Ahmedabad only through Mr. Sanjay M Shah. He told me that he was handling the entire work of M/s. Bhagyoday Enterprise and given me the work of transportation the imported Crago i.e. HMS/MS Scrap from port to Kathwada, (A-2, Bholeshiv Compound, Singarva) Ahmedabad. As per the direction of Mr. Sanjay M Shah. I have transported the goods (HMS/MS Scrap imported from UAE) of M/s. Bhagyoday Enterprise for which I got the payment through Cheques.

Q.30 Please provide the details of IEC No. and Importer name for which you have done the transportation work? Provide the name of driver, Container No. , Trailer Number and others details in respect of transport of Container had been done?

Ans. I have done transporting work of Containers of HMS (Heavy Melting Scrap) & SS imported from UAE by the Importer (i) M/s. Mahindra Trading Company – IEC No. 0815011768 (ii) M/s. Somnath Metals Pvt Ltd - 0811013502 (iii) M/s. Bhagyoday Enterprise – 0815907371. I have provided the requisite details and put my dated signature on it. Mr. Ramnarayan Shyamlal Laddha directed me for the transportation work of M/s. Mahindra Trading Company and Mr. Sanjay M Shah directed me for the transportation work of M/s. Somnath Metals Pvt Ltd and M/s. Bhagyoday Enterprise.

Q.31. For your transport service how you are getting payments from Importer?

Ans. I got Rs. 30000/- per Container for the transport through Cheque on the direction of Mr. Sanjay M Shah only. I also got Rs. 2000/- per day as detention charges at factory in cases where unloading of Cargo was delayed. Till date I got total Rs. 5,54,400/- from M/s. Bhagoday Enterprises through Cheque No. 565694/12.06.2017 (Rs. 2,00,000/-), 565696/12.06.2017 (Rs. 2,04,400/-) and 565695/12.06.2017 (Rs. 1,50,000/-) in my Axis Current Account No. 178010200002714, Bank Circle, Gandhidham.

Q.32 What is the relationship between Dipak Thakkor, Proprietor of M/s. Bhagyoday Enterprise and Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., as per your knowledge?

Ans. Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd was the only person who was looking after clearance of Cargo i.e. HMS imported from UAE by M/s. Bhagyoday Enterprise. As per my knowledge Mr. Sanjay M Shah, Director of Somnath Metals Pvt Ltd,

203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad was the main person involved in the Import of Scrap i.e. HMS from UAE.

Q.33 How do you come to know that the Gold was detected by Custom Mundra imported by Bhagyoday Enterprises. Have you further informed the facts to any one?

Ans. Mr. Shailash (Mobile No - 9824519655), Container operation person of my company informed me that the Gold was detected by Mundra Customs in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017). On the very next day I telephonically told the facts to Mr. Sanjay M Shah on his mobile – 9825169614, but he told me that the Cargo was of Mr. Dipak Thakkor, Proprietor of M/s. Bhagyoday Enterprise, it was not mine. Further, has told me not to disclose his name i.e Shri Sanjay M Shah in the gold smuggling case. Also pleaded not to give his name i.e Shri Sanjay M Shah in statement.

Q.34 How do you come to know that the Cigarettes were caught by Mundra Custom. Have you further informed the facts to any one?

Ans. I come to notice through local Gujarati new paper that the Cigarettes were caught by Mundra Custom. I had not received any transport order from the importer or Mr. Sanjay M Shah. After detection of Gold by Mundra Customs in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017) Mr. Sanjay M Shah had not contacted me.

Q.35 Who are the masterminds behind these smuggling as per your knowledge?

Ans: All the times Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd has directed me for the transport of imported Cargo i.e. HMS/MS Scrap from port to Kathwada, (A-2, Bholeshiv Compound, Singrava, Kathwada, Ahmedabad). Many times he meets me together with Mr. Ramnarayan Shyamlal Laddha. Gold was detected by Mundra Customs in HMS Scrap imported by M/s. Bhagyoday Enterprise. Mr. Sanjay M Shah himself directed me for the transportation work of goods i.e. HMS Scrap imported by M/s. Bhagyoday Enterprise and as per Mr. Sanjay M Shah direction I got the payment from M/s. Bhagyoday Enterprise and he was the only person in regular touch with me and on detection of gold he told me not to disclose his name in the gold smuggling case and pleaded not to give his name in statement. Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. is the mastermind behind these smuggling of gold and also cigarettes.

Q.36 Is Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd and Mr. Sanjay M Khatod are the same person or different?

Ans. Yes, Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd and Mr. Sanjay M Khatod are the same person. The surname Khatod is their gotra as per hindu religion.

5.7 Statement of Shri Mukesh M. Makwana, Branch Manager of M/s. ASR India Pvt. Ltd, Office No. 201, 2nd Floor, Nilesh Owners Association, Plot No. 80, Near Gymkhana, Gandhidham, Gujarat-370201, was recorded on 25.07.2017. His statement recorded in questionnaire form is re-produced as under:

Q.1 What are your profession and its brief details?

Ans: I am working in M/s. ASR India Pvt. Ltd. since November, 2015 as a Branch Manager and its main branch/registered office is located at Mumbai. Shri Rajendra Singh Rao is the

director of our company. Our official email ID is docsmun@asrlogistics.co (Branch Manager ID for Mundra port) & mundra@asrline.com (Shipping Line operating ID for Mundra port). I have been looking after the work of export Bill of Lading release, Bookings of export related containers, to verify documents related to imports and exports & to release import Delivery Order. I am also looking after the CHA/CB related work of M/s. ASR Logistics India Pvt. Ltd. at Mundra port as a branch manager.

Q.2 What is your Company's Business profile?

Ans: Our Company is mainly engaged in the business of Non Vessel Operating Container Carrier (NVOCC). We are having approx. 1200 containers & booking slots in foreign going Cargo vessels.

Q.3 What is the Procedure involved in the transportation of Container through Ocean in both the cases i.e. Export & Import and its payment mode?

Ans: Export – first of all we get the e-mail from CHA/Exporter for booking container for exports. In the e-mail, we get all the details viz. description of the goods, its qty, no. of containers required, port of destination etc. Accordingly, we offer to them Freight Charges, Terminal Handling Charges, Bill of Lading (B.L) Charges, Line Seal Charges etc. If they agreed with our terms and conditions, we release containers for stuffing of cargos; it may be factory or CFS stuffing. After loading of container/s to the destination port, then we issue B.L after shipped on board. We receive the payment for our services through Cheque/DD/NEFT/RTGS only but not by any cash transactions.

Import: Our Company at any branch receives mail communication through our branch e-mail ID from the shipper or their agent for container booking and shipment of cargoes. In the e-mail, they get all the details viz. description of the goods, its qty, no. of containers required, port of destination etc. Our company accordingly, plans the vessel to the destination port. After shipped on board, then they issue B.L. They receive the payment through Cheque/DD/NEFT/RTGS only. Our Dubai (Jebel Ali) branch allotted e-mail ID is haresh@asrline.com and sometimes they communicate also through Whatsapp (+971523809133).

Q.4 How do you provide the Delivery Order in the case of import?

Ans: We provide the Delivery Order on the basis of documents received i.e. original B/L, copy of Bill of Entry, Bond indicating the responsibility, Container Insurance, Importer's KYC and payment of local charges by CHA/Importer/Authorized representative. On this basis, we issue Delivery Order generally to their appointed CHA/CB.

Q.5 What do you know about the importer M/s. Bhagyoday Enterprise, Ahmedabad?

Ans: I know M/s. Bhagyoday Enterprise, Ahmedabad is the importer from the documents submitted by their CHA M/s. Arihant Shipping Agencies & B.L. I have no contacts with the importer personally. All the correspondences with the importer are done through e-mail only.

Q.6 How you got the shipping line related work of M/s. Bhagyoday Enterprise?

Ans: We have got shipping line related work of M/s. Bhagyoday Enterprise from M/s. Harshit Logistics, Gandhidham. First time M/s. Harshit Logistics, Gandhidham has approached for issuance of Invoice for the Bill of Lading No. DUBASRMUN6314 dated

12.06.2017 through their e-mail ID i.e. ganesham_mundra@yahoo.com on 19.06.2017. I submit the duly certified copy of the same.

Q.7 Have you verified the Know Your Customer (KYC) norms in respect of M/s. Bhagyoday Enterprises, Ahmedabad?

Ans: Yes, we have verified the IEC No.0815907371 from DGFT website, also verified their Bank details, Light Bills (of Jan, 2016) & GST Registration Certificate. I didn't verify the address physically. From the Bank verification letter, it is revealed that we have verified from an independent source.

Q.8 Please provide the name/s of the persons and their details who have contacted you in respect of M/s. Bhagyoday Enterprise.

Ans: We have got the shipping line work through M/s. Harshit Logistics. Hence, we have no any telephonic contacts with the importer personally. All the document correspondences are done through M/s. Harshit Logistics and through e-mail only. However, on 15.07.2017, our employee Shree Pradeep Rupani has received a call from mobile no. 9978985672 and requested us to shift the Container No. GATU1260784 & TGHU3084553 (Bill of Lading No. DUBASRMUN6515 dated 13.07.2017) to Seabird CFS. Shree Pradeep Rupani has requested him to convey the said communication through e-mail. I am submitting the duly endorsed copy of the same. On searching of the details of mobile no. through true caller it shows as Sanjay, however while communicating in the e-mail to us it is personified as DIPAK THAKOR.

Q.9 To whom you are issuing Delivery Order in respect of M/s. Bhagyoday Enterprise?

Ans: We are giving Delivery Orders to M/s. Arihant Shipping Agencies as per the Bill of Entry's appointed CHA/CB.

Q.10 How many Bills of Lading have been processed by your company for Mundra port in respect of M/s. Bhagyoday Enterprise and also in other ports and its details?

Ans: Our company's shipment from Jabel Ali port to Mundra port and its details as under,-

Bill of Lading No. & Date	IGM No. Date	Delivery Order Date	Container No.	Description of the Goods	Found un-declared goods
DUBASRMUN6314 dated 12.06.2017	2167200/14.06.2017	28.06.2017	MOAU0327861	Heavy Melting Scrap	----
DUBASRMUN6398 dated 24.06.2017	2168147/26.06.2017	05.07.2017	WHLU2446440	--do--	----
DUBASRMUN6454 dated 06.07.2017	2169449/12.07.2017	18.07.2017	TTNU2689561	--do--	27 Kgs of Gold Bar
DUBASRMUN6515 dated 13.07.2017	2170022/19.07.2017	D.O not issued yet	GATU1260784 TGHU3084553	--do--	25,20,000 Nos of Cigarette Sticks

I hereby submit documents (copies) of above referred details. Our company is not engaged except for Mundra port in respect of M/s. Bhagyoday Enterprise.

Q11. What is the mode of payment for your services at Mundra port? Is there any extra charges/benefits received in respect of import of M/s. Bhagyoday Enterprise? From whom you are getting the payments?

Ans: For shipping line charges, we received Demand Drafts for one shipment & online payment for other two shipments. We are not receiving any extra amount from anyone except shipping line charges. I am submitting duly endorsed documents in token of the same.

Q.12 What is the mode of transportation of the imported cargo? How and who makes the arrangement for the transportation?

Ans: We are not concerned with the transportation of the imported goods. Our work is completed after issuing Delivery Order.

Q.13 How do you come to know that the Gold was detected at Mundra Custom House in your shipping line's Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017) and Cigarettes in Container Nos. GATU1260784 & TGHU3084553 (Bill of Lading No. DUBASRMUN6515 dated 13.07.2017)? Have you enquired the facts from the importer/CHA/CB/?

Ans: I came to know the smuggling of gold through local news on 19.07.2017 and the smuggling of cigarettes also through local news on 20.07.2017. I have not enquired the facts of smuggling from anyone.

Q.14 How many Bill/s of Lading or documents have been processed by your company at Dubai in respect of M/s. Bhagyoday Enterprise, from Jebel Ali port to Mundra port other than as shown above? What is their present status of the cargoes?

Ans: Our company has processed two documents at Jebel Ali port and its details are as under,-

Bill of Lading No. & Date	Container No.	Declared Description of the Goods	Present Status as on 25.07.2017
DUBASRMUN6559	RWAU2521500	Heavy Melting Scrap	Containers are lying at Jebel Ali port, as the shipper is not approving the final B.L. The shipper has approached M/s. ASR Cargo LLC, Dubai (shipping line) to hold the consignment/containers as their consignee in India is not sending the payments as per the terms and conditions.
DUBASRMUN6546	TTNU3545738 WHLU2449389	--do--	

I submit the details of the same including details of Whatsapp & e-mail communications.

Q.15 It is seen that in every Bills of Lading in respect of M/s. Bhagyoday Enterprise, the shipper is M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E. Please provide the names of the persons and their details who have contacted your branch office at Jebel Ali/Dubai for shipment to Mundra port.

Ans. Shri Haresh Kumar Kuwar, branch head at Dubai/Jebel Ali is looking after the work. As per my knowledge, Ms. Elvira Rodrigues (M.No. +971506502903) residing in Dubai has

contacted our company for shipping the cargos to Mundra port on behalf of M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E. As per my knowledge, she is an agent. We are not dealing the shipper directly. We have no complete address of her. She communicates through her e-mail ID elvyrodrigues@gmail.com & Whatsapp. I submit the same. We have no other information in respect of the shipper.

Q.16 Have your branch office at Dubai/Jebel Ali followed the KYC norms and if yes, then provide details?

Ans: As per my knowledge no such norms/guideline is required in Dubai/Jebel Ali. Hence, we have not taken any details.

Q.17 How your company receives the payments from the shipper i.e. M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E.? Please provide the details of Bank Account in respect of transactions, if any.

Ans: As per my knowledge, cash transactions were done. Hence, no Bank details are available with us. Generally, in Dubai most of the transactions are through cash only.

Q.18 Do you know anything about Mr.Saleem, Mr.Rajdeep Singh, Mr. Sanjay Shah & Mr. Ramnarayan? Provide their full name, address and mobile no. ?

Ans: I don't know them and also I have no information of them.

Q.19 Do you want to add/say anything?

Ans: Nothing to add.

5.8 Statement of **Shri Laxman Rao Pukala**, Operation Manager of M/s. Shree Rama Krishna Freight Carrier [Fleet Supplier(Broker)], 24, Meritime, Plot-45, Sector-9, Gandhidham, Kutch, Gujarat-370201, was recorded on **26:07.2017**. His statement recorded in questionnaire form is re-produced as under:

Q. 1. What is your PAN No/Driving License No.? and what is your profession and your firm name?

Ans.: My PAN No. AQPPP9309J & driving license no. is GJ12 20030505287. My Profession is of Transport Contractor and Commission Agent. I am the Operation Manager of M/s. Shree Rama Krishna Freight Carrier, 24, Meritime, Plot-45, Sector-9, Gandhidham, Kutch, Gujarat-370201.

Q.2. What is your company/firm Business? Give the registration Nos. of your firm with different departments?

Ans.: My Company is working as freight carrier and involved in the business of transportation. Importers as well as CHA contact me directly or through any other known importer for the transportation of their Imported Cargo from Mundra Port to their destination. Mostly 99% of my business is container movement. We are also doing transportation work for the Export cargo as per exporter order, and also transporting import containers from ICD Khodiyar and ICD Sanand mostly for metal importers.

Q.3. How many trucks/trailers your company had for transporting the import/export goods from and to Mundra?

Ans.: My Company is having 114 Trucks/trailers, out of which Mr. Prakash Mishra is the owner of the 86 Trucks, Mr Prabhakar P Mishra is the owner of 10 trucks, Mrs Bhanu Mishra is the owner of 8 trucks remaining 10 trailers/trucks is in the name of Mr. Diwakar P Mishra.

Q.4 What about GPS system in Trucks? Are all trucks equipped by the GPS system?

Ans. Yes we have GPS system installed in our Trucks. In 58 vehicles the system of GPS is installed.

Q.5 Since when have you installed the GPS system?

Ans. We have installed the GPS system in five vehicles on 29.09.2015, 18 vehicles in 2016 and 35 vehicles in 2017.

Q.6 Who is handling Booking of transportation? Is done directly by you or any other person?

Ans. I am as Operation manager of my transportation company handles the day to day booking of transportation in respect of Export Cargo only and in respect of Import Cargo transportation booking work was handled by Mr. Prakash Mishra only. Some time in absence of him transportation booking work in respect of Import Cargo was also handled by me.

Q.7 Do you also handle transportation booking?

Ans. Yes I also handle the transportation booking

Q.8 Are you involved in day to day booking of the vehicles?

Ans. I and Mr. Prakash Mishra and his Son Mr Prabhakar Mishra are involved in day to day bookings.

Q.9 What is the procedure of booking of trucks?

Ans. The owner of the material imported request us for booking of Truck on phone. Then we contact the Customs Broker on the number and name given by the owner of material. The Custom Broker then informs us about the out of charge of the material and supplies to us the following documents; Form VI, Bill of Entry after which our office peon comes inside to the CFS area to collect the above mention documents, and deposits the same to our office at 106- Ashapura Complex, Rangoli, Mundra. After that I as per direction of Mr. Prakash Mishra prepares the duty list of truck drivers in order to collect the containers from the CFS.

Q.10 How does the truck move from CFS to destination?

Ans. The Truck driver collects the container from CFS and reports to our office at -106- Ashapura Complex, Rangoli, Mundra for preparation of the Consignment Note. Once the consignment note is prepared, it is handed over to the driver, who then moves to the destination.

Q.11 Do you know about Custom Broker M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham?

Ans: No, I don't know about Custom Broker M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham.

Q.12 Do you know owner of Custom Broker M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham?

Ans. No, I don't know the owners of CB M/s. Arihant Shipping Agencies and M/s. Bright Shiptrans Private limited, Gandhidham.

Q.13 In the consignment Note No- 2153/07.04.2017, 2196/08.04.2017, 2419/14.04.2017 and 2423/14.04.2017 submitted by you consigner is shown as M/s. Bright Shiptrans Private Limited? Please offer comments?

Ans. We have received the necessary documents for transportation directly from M/s. Bright Shiptrans Private Limited.

Q.14 In the consignment Note No - 3718/17.05.2017, 3719/17.05.2017, 3720/ 17.05.2017, 3762/16.05.2017, 3673/16.05.2017 , 3726/17.05.2017, 3726/ 17.05.2017, 3737/17.05.2017 , 3728/17.05.2017, 3739/17.05.2017 , 3740/ 17.05.2017 and 3773/18.05.2017 submitted by you consigner is shown as M/s. Arihant Shipping Agencies ? Please offer comments?

Ans. We have received the necessary documents for transportation directly from M/s. Arihant Shipping Agencies.

Q.15 Since when you are doing business with Custom Broker M/s. Bright Shiptrans Private Limited. ?

Ans. We are doing business with Custom Broker M/s. Bright Shiptrans Private Limited from past 18 Months.

Q.16. Since when you are doing business with Custom Broker M/s. Arihant Shipping Agencies. ?

Ans. We are doing business with Custom Broker M/s. Arihant Shipping Agencies from past 12 Months.

Q.17 Even after working with the Customs Brokers M/s. Bright Shiptrans Private Limited and M/s. Arihant Shipping Agencies from past 18 Months you don't know the owners?

Ans. Yes, I know the owners of M/s. Bright Shiptrans Private Limited as Mr. Bajrang Sharma & Raj Yadav (M. No.-9979873190) and for Custom Broker M/s. Arihant Shipping Agencies I have been informed Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad to contact Mr. Raj Yadav (M. No.-9979873190).

Q.18 How do you know Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad and how long ?

Ans. I know about Mr. Sanjay M Shah (M No. 9825169614), Director of M/s. Somnath Metals Pvt. Ltd., 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad from past five years.

Q.19 Whom else do you know in the family of Mr. Sanjay M Shah?

Ans. I don't know.

Q.20. Do you know the importer M/s. Bhagyoday Enterprise? Had you ever transported the Import/Export cargo of M/s. Bhagyoday Enterprise?

Ans.: Yes, I come to know about M/s. Bhagyoday Enterprise, Ahmedabad through Mr. Sanjay M Shah for the last ten Months. As per direction of Mr. Sanjay M Shah I along with Mr. Prakash Mishra have done the work of transportation of imported HMS Scrap imported from UAE from CFS to their destination at Kathwada, Singarva falling under district of Ahmedabad. Nearly 25 Containers of imported HMS/MM Scrap of M/s. Bhagyoday

Enterprise; Ahmedabad had been transported by me from Mundra port to Kathwada, Singarva falling under district of Ahmedabad.

Q.21 How & for what you had been directed by Mr. Sanjay M Shah?

Ans. Mr. Sanjay M Shah has directed me and my boss Mr. Prakash Mishra for the transport of imported Cargo from the port to their destination for the import of HMS Scrap imported by M/s. Bhagyoday Enterprise and M/s. Somnath Metals Pvt. Ltd.

Q.22 Under Whose direction you had transported the imported goods of M/s. Mahindra Trading Company from port to destination?

Ans. No I don't know about M/s. Mahindra Trading Company. Mr. Prakash Mishra Proprietor of M/s. Shree Rama Krishna Freight Carrier is the person who is handling the transportation work.

Q.23 Have you personally visited the godown of M/s. Bhagyoday Enterprise and M/s. Somnath Metals Pvt Ltd?

Ans. No, I don't.

Q.24 Have you personally visited the godown of M/s. Mahindra Trading Company?

Ans. No, I don't.

Q.25 How and when you know that the container & truck reached at the destination?

Ans. We are regularly following up with the driver on phone morning and evening and in addition we have installed GPS System for monitoring the movement of the trucks.

Q.26 What was the route of transportation of Containers of HMS Scrap imported from Dubai by M/s. Bhagyoday Enterprise/ M/s. Somnath Metals Pvt. Ltd./ M/s. Mahindra Trading Company from port to destination?

Ans. Sir, Route of Transportation of Containers of HMS Scrap imported from Dubai by M/s. Bhagyoday Enterprise is as follows;

CFS Mundra Port --- Gandhidham - Malia, Halvad --- Ahmedabad - Kathwada (GIDC), Singarva --- Godown (A-2, Bholesiv Compound, Singarva, Kathwada, Ahmedabad).

I am submitting the copies of GPS print duly signed by me.

Q.27 Has your vehicle with the container ever moved from port to Mumbai and then Ahmedabad?

Ans. No.

Q.28 How do you know about Mr. Dipak Jayanti Bhai Thakor, Proprietor of M/s. Bhagyoday Enterprise, Ahmedabad and who contacted you 1st time for the Transportation of the Imported HMS Scrap? How he contacted you?

Ans. I have never contacted Mr. Dipak Jayanti Bhai Thakor Proprietor of M/s. Bhagyoday Enterprise, Ahmedabad. I come to know about M/s. Bhagyoday Enterprise, Ahmedabad only through Mr. Sanjay M Shah. Mr. Sanjay M Shah me that he was handling the entire work of M/s. Bhagyoday Enterprise and given me the work of transportation the imported Cargo i.e. HMS/MS Scrap from port to Kathwada, (A-2, Bholesiv Compound, Singarva) Ahmedabad. As per the direction of Mr. Sanjay M Shah. As per my knowledge Mr. Sanjay M Shah is Proprietor of M/s. Bhagyoday Enterprise. I have transported the goods (HMS/MS Scrap imported from UAE) of M/s. Bhagyoday Enterprise for which our company got the payment through Cheques.

Q.29 Please provide the details of IEC No. and Importer name for which you have done the transportation work? Provide the name of driver, Container No., Trailer Number and others details in respect of transport of Container had been done?

Ans. I as per direction of my boss Prakash Mishra have done transporting work of Containers of HMS (Heavy Melting Scrap) & SS imported from UAE by the Importer (i) M/s. Mahindra Trading Company – IEC No. 0815011768 (ii) M/s. Somnath Metals Pvt Ltd - 0811013502 (iii) M/s. Bhagyoday Enterprise – 0815907371. I have provided the requisite details and put my dated signature on it. Mr. Ramnarayan Shyamlal Laddha directed Mr. Prakash Mishra for the transportation work of M/s. Mahindra Trading Company and Mr. Sanjay M Shah directed my boss Prakash Mishra and me for the transportation work of M/s. Somnath Metals Pvt Ltd and M/s. Bhagyoday Enterprise.

Q.30 For your transport service how you are getting payments from Importer?

Ans. Our company got Rs. 30000/- per Container for the transport through Cheque on the direction of Mr. Sanjay M Shah only. Our company also got Rs. 2000/- per day as detention charges at factory in cases where unloading of Cargo was delayed. Till date Our company got total Rs. 5,54,400/- from M/s. Bhagyoday Enterprises through Cheque No. 565694/12.06.2017 (Rs. 2,00,000/-), 565696/12.06.2017 (Rs. 2,04,400/-) and 565695/12.06.2017 (Rs. 1,50,000/-) in my Axis Current Account No. 178010200002714, Bank Circle, Gandhidham.

Q.31 What is the relationship between Dipak Thakkor, Proprietor of M/s. Bhagyoday Enterprise and Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., as per your knowledge?

Ans. No, I don't know.

Q.32 How do you come to know that the Gold & Cigarettes were detected by Custom Mundra imported by Bhagyoday Enterprises? Have you further informed the facts to any one?

Ans. I come to notice through local Gujarati new paper that the Gold & Cigarettes were caught by Mundra Custom. Our company had not received any transport order from the importer or Mr. Sanjay M Shah.

Q.33 Who are the masterminds behind these smuggling as per your knowledge?

Ans: All the times Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd has directed me and my boss Mr. Prakash Mishra for the transport of imported Cargo i.e. HMS/MS Scrap from port to Kathwada, (A-2, Bholeshiv Compound, Singrava, Kathwada, Ahmedabad). Many times he meets my boss together with Mr. Ramnarayan Shyamlal Laddha. Gold was detected by Mundra Customs in HMS Scrap imported by M/s. Bhagyoday Enterprise. Mr. Sanjay M Shah himself directed me & my boss for the transportation work of goods i.e. HMS Scrap imported by M/s. Bhagyoday Enterprise and as per Mr. Sanjay M Shah direction my company got the payment from M/s. Bhagyoday Enterprise and he was the only person in regular touch with me & my boss Mr. Prakash Mishra and on detection of gold he told my boss Mr. Prakash Mishra not to disclose his name in the gold smuggling case and pleaded not to give his name in statement. Mr. Sanjay M Shah, Director of M/s.

Somnath Metals Pvt. Ltd. is the mastermind behind these smuggling of gold and also cigarettes.

Q.34 Is Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd and Mr. Sanjay M Khatod are the same person or different?

Ans. Yes, Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd and Mr. Sanjay M Khatod are the same person. The surname Khatod is their gotra as per hindu religion.

5.9 Statement of **Shri Dharmendra Rai**, driver of M/s. Rama Krishna Freight Carriers was recorded on **26.07.2017**. Relevant portion of his statement recorded in questionnaire form is re-produced as under:

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Q.4 What and where are you working?

Ans. I am working as a driver in M/s. Rama Krishna Freight Carriers.

Q.5 Since when do you working in this firm?

Ans. I am working in this firm since last eight months.

A.6 Where did you employed prior to this firm?

Ans. I worked in M/s. Bansla Trasnport as a Khalashi prior to M/s. Rama Krishna Freight Carriers where I worked for six months.

Q.7 Where did you carries the trucks of M/s. Rama Krishna Freight Carriers?

Ans. I carried the loaded truck to Jamnagar, Rajkot, Ahmedabad, Himmatnagar, Surat, Vadodara, etc.

Q.8 As per the description of Billyty issued by M/s. Rama Krishna Freight Carriers you have carried the container No. WHLU2446440 to M/s. Bhagyoday Enterprise, Ahmedabad. Do you agree?

Ans. Yes, I carried a container to Ahmedabad but container No. is not remembered.

Q.9 Do you remember the truck no. through which you carried the goods to Ahmedabad?

Ans. Yes, I carried the said container through truck No. GJ12AW 0267.

Q.10 Where did you loaded the container on said truck?

Ans. I loaded the container from Saurashtra CFS.

Q.11 Where did you get the Billyty showing delivery address and from whom?

Ans. I get the billyty from Shri Laxman bhai at Mundra office of M/s. Rama Krishna.

Q.12 In the billyty only M/s. Bhagyoday Enterprise was shown. How did you get the details delivery address?

Ans. Shri Laxman bhai gave me a mobile no. and told to contact for detail address after reching at Ahmedabad.

Q.13 Who is Shri Laxman bhai? Whether he told something else to you in addition to mobile no.?

Ans. Shri Laxman bhai is supervisor in M/s. Rama Krishna and sitting at Gandhidham office. He tols nothing else in addition to mobile no.

Q.14 Have you remembered the mobile No. gave by Laxman bhai?

Ans. No. I don't remember. But, Laxman bhai send that no. to my mobile no.

Q.15 Please state the mobile no. details send by Shri Laxman bhai after referring your mobile.

Ans. 9825169614. This no. belong to Sanjay Bhai.

Q.16 Did you get any instructions from any person between Mundra to Ahmedabad?

Ans. No. I did not receive any instructions.

Q.17 After reaching Ahmedabad what did you get instruction on contact to mobile no. send by Shri Laxman Bhai?

Ans. I have been asked to wait at Dhara Kanta, Kathwada.

Q.18 What happened after reaching at Dhara Kanta?

Ans. After reaching at Dhara Kanta, one person came on scooty and escorts me to a factory and kept standby my vehicle overnight outside the aid factory. At morning 10 o'clock same person came and bring my vehicle to a factory situated at village Kuvadthal where the container was unloaded.

Q.19. Have you remember the name of factory where you container lying overnight and where your container was unloaded?

Ans. No name was shown outside both factories. There was written Shubh Labh out side the factory where my truck laid over night. Factory was situated on the left side of a way to Ahmedabad – Kathlal near the sign board of Singarva. A small temple is near the factory. Om Sai Kanta, where the weighment of vehicle carried out, is situated in the neighborhood of factory where the container unloled. There is another factory between the Kanta and place of factory where container unloaded.

5.10 Statement of **Shri Rajendra Singh Rao**, Director of M/s. ASR India Pvt. Ltd, Room No. 26, Second Floor, Khandke Building, 282, S.B.S. Road, Mumbai – 01 (Gandhidham Branch is located at Office No. 201, 2nd Floor, Nilesh Owners Association, Plot No. 80, Near Gymkhana, Gandhidham, Gujarat-370201), was recorded on **01.08.2017**. His statement recorded in questionnaire form is re-produced as under:

Q.1 What are your profession and its brief details?

Ans: I am in business since 2004. I am one of the directors in M/s. ASR India Pvt. Ltd., Mumbai & M/s. ASR Logistics India Pvt. Ltd., Mumbai both are incorporated in 2004. M/s. ASR India Pvt. Ltd., Mumbai is engaged in the business of freight forwarding and Non Vessel Operating Container Carrier (NVOCC). We are having approx. 1200 containers & engaged in booking slots in foreign going cargo vessels. M/s. ASR Logistics India Pvt. Ltd., Mumbai is engaged as a Custom Broker and also it is permitted to work at Mundra Customs. These companies are based in India. Further, there are three companies based outside India namely M/s. ASR Container Lines PTE Limited, Singapore, M/s. ASR Container Lines SDN BHD, Malaysia & M/s. ASR Cargo LLC, Dubai. All these foreign based companies are engaged in shipping line business.

Q.2 As a director, what are you looking after in M/s. ASR India Pvt. Ltd., Mumbai?

Ans: I look after the overall business of the company. I am solely the major decision maker in the company.

Q.3 What is the Procedure involved in the transportation of Container through Ocean in both the cases i.e. Export & Import and its payment mode?

Ans: Export – first of all we get the e-mail from Agent/CHA/Exporter for booking container for exports. In the e-mail, we get all the details viz. description of the goods, its qty, no. of containers required, port of destination etc. Accordingly, we offer to them Freight Charges, Terminal Handling Charges, Bill of Lading (B.L) Charges, Line Seal Charges etc. If they agreed with our terms and conditions, we release containers for stuffing of cargoes; it may be factory or CFS stuffing. After loading of container/s to the destination port, then we issue B.L after shipped on board. We receive the payment for our services through Cheque/DD/NEFT/RTGS only but not by any cash transactions.

Import: Our Company at any branch receives mail communication through our branch e-mail ID from the shipper or their agent for container booking and shipment of cargoes. In the e-mail, they get all the details viz. description of the goods, its qty, no. of containers required, port of destination etc. Our company accordingly, plans the vessel to the destination port. After shipped on board, then they issue B.L. They receive the payment through Cheque/DD/NEFT/RTGS only. Our Dubai (Jebel Ali) branch allotted e-mail ID is haresh@asrline.com and sometimes they communicate also through Whatsapp (+971523809133).

But in Dubai mostly we transact business in cash.

Q.4 How do you provide the Delivery Order in the case of import?

Ans: We provide the Delivery Order on the basis of documents received i.e. original B/L, copy of Bill of Entry, Bond indicating the responsibility, Container Insurance, Importer's KYC and payment of local charges by CHA/Importer/Authorized representative. On this basis, we issue Delivery Order generally to their appointed Agent/CHA/CB.

Q.5 What do you know about the importer M/s. Bhagyoday Enterprise, Ahmedabad?

Ans: I know M/s. Bhagyoday Enterprise, Ahmedabad is the importer from the documents submitted by their CHA M/s. Arihant Shipping Agencies & Bill of Lading. I have no contacts with the importer personally. All the correspondences with the importer are done through e-mail only.

Q.6 Have you verified the Know Your Customer (KYC) norms in respect of M/s. Bhagyoday Enterprise, Ahmedabad?

Ans: Yes, we have verified the IEC No.0815907371 from DGFT website, also verified their Bank details, Light Bills (of Jan, 2016) & GST Registration Certificate. I didn't verify the address physically. From the Bank verification letter, it is revealed that we have verified from an independent source.

Q.7 To whom you are issuing Delivery Order in respect of M/s. Bhagyoday Enterprise?

Ans: We are giving Delivery Orders to M/s. Arihant Shipping Agencies as per the Bill of Entry's appointed CHA/CB.

Q.8 How many Bills of Lading have been processed by your company for Mundra port in respect of M/s. Bhagyoday Enterprise and also in other ports and its details?

Ans: Our company's shipment from Jebel Ali port to Mundra port and its details as under,-

Bill of Lading No. & Date	IGM No. Date	Delivery Order Date	Container No.	Description of the Goods	Found un-declared goods
DUBASRMUN631 4 dated 12.06.2017	2167200/ 14.06.2017	28.06.2017	MOAU0327861	Heavy Melting Scrap	----
DUBASRMUN639 8 dated 24.06.2017	2168147/ 26.06.2017	05.07.2017	WHLU2446440	--do--	----
DUBASRMUN645 4 dated 06.07.2017	2169449/ 12.07.2017	18.07.2017	TTNU2689561	--do--	27 Kgs of Gold Bar
DUBASRMUN651 5 dated 13.07.2017	2170022/ 19.07.2017	D.O not issued yet	GATU1260784 TGHU3084553	--do--	25,20,000 Nos of Cigarette Sticks

Our company is not engaged except for Mundra port in respect of M/s. Bhagyoday Enterprise, Ahmedabad.

Q.9 How do you come to know that the Gold was detected at Mundra Custom House in your shipping line's Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017) and Cigarettes in Container Nos. GATU1260784 & TGHU3084553 (Bill of Lading No. DUBASRMUN6515 dated 13.07.2017)? Have you enquired the facts from the importer/CHA/CB/?

Ans: I came to know the smuggling of gold & cigarettes through our local staffs from Gandhidham. I have not enquired the facts of smuggling from anyone.

Q.10 Have you received any message/communication from anyone regarding any amendments in the Bill of Lading No. DUBASRMUN6454 dated 06.07.2017 (Container No. TTNU2689561) & DUBASRMUN6515 dated 13.07.2017 (Container Nos. GATU1260784 & TGHU3084553) both imported by M/s. Bhagyoday Enterprise, Ahmedabad. If yes, please give its details.

Ans: We received a request for amendment in Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 from the shipper's appointed forwarder in Dubai through Whatsapp dated 21.07.2017 in respect of shipper's name and consignee, its details are as under,-

	From	To
Shipper's name	M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E.	M/s. Al Sahara General Trading LLC, P.O. Box 81329, Dubai, UAE
Consignee name	M/s. Bhagyoday Enterprise, Ahmedabad	M/s. Radhika Impex, 8, Anpurna Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad - 382430

In the Bill of Lading where the amendment was requested, the Cigarettes were concealed in the guise of Heavy Melting Scrap. We have not received any request for amendment in respect of Bill of Lading No. DUBASRMUN6454 dated 06.07.2017 (Container No. TTNU2689561) where the gold was detected.

Q.11 Further, have you received any message/communication from anyone regarding any amendments in the Bills of Lading Nos. DUBASRMUN6559 (container no. RWAU2521500) & DUBASRMUN6546 (containers nos. TTNU3545738 & WHLU2449389), the containers presently located at Jebel Ali Custom area in respect of M/s. Bhagyoday Enterprise, Ahmedabad. If yes, please give its details.

Ans: We received request for amendment in the said two Bills of Lading from the shipper's appointed forwarder in Dubai through Whatsapp dated 21.07.2017 in respect of shipper's name and consignee, its details are as under,-

	<i>From</i>	<i>To</i>
<i>Shipper's name</i>	<i>M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E.</i>	<i>M/s. Al Sahara General Trading LLC, P.O. Box 81329, Dubai, UAE</i>
<i>Consignee name</i>	<i>M/s. Bhagyoday Enterprise, Ahmedabad</i>	<i>M/s. Radhika Impex, 8, Anpurna Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad - 382430</i>

Q.12 Peruse the Bill of Lading No. ERSLINNSA0021, Shipped on Board date 17.07.2017, what is the relationship between M/s. Ever Radiant Shipping PTE LTD, Singapore & M/s. ASR India Pvt. Ltd., Mumbai & the process involved between your company and the Singapore based company. What are the mode of communication & payments?

Ans: M/s. Ever Radiant Shipping PTE LTD, Singapore is our agent in Singapore. All communication is through our company's e-mail only (e-mail ID impnum@asrline.com) and also I am submitting the details of the communication with our agent. Our agent in Singapore has booked these containers on behalf of the shipper M/s. Applied Logistics PTE Ltd., 27, Penjuru Lane, #05-02, Singapore-609195. As per the Bill of Lading, final place of delivery is ICD Ahmedabad and description of the goods is HMS Scrap. We have not received any payments for our services since the Original Bill of Lading is not issued. Our agent at Singapore has informed (11.47 hrs) us on 20.07.2017 that the shipper has requested for return on board (ROB) in respect of B.L. No. ERSLINNSA0021 (four containers). I submit the e-mails details in support of the shipper's request.

Q.13 In the Bill of Lading No. ERSLINNSA0021, Place of Receipt of the goods is shown as Singapore. Is the goods is originated from Dubai or otherwise?

Ans: As per the last voyage information, these four containers were shipped to Singapore only. I cannot be sure about any transshipment of these goods but I am sure that we have not done any transshipment of the concerned goods.

Q.14 How you come to know that in the Bill of Lading No. ERSLINNSA0021, betel nuts containing 21.42 MTs were concealed in the imported cargoes in the guise of Heavy Melting Scrap (in four containers)?

Ans: Our local staff Shri Mukesh Makwana has informed the concealment of betel nuts in the guise of HMS Scrap.

Q.15 As per your knowledge, what is the relationship between the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 (Container Nos. GATU1260784 & TGHU3084553)

issued by your company and the Bill of Lading No. ERSLINNSA0021 issued from Singapore?

Ans: As per the Shipper's request through their appointed forwarder in Dubai had requested for amendment in the consignee name from M/s. Bhagyoday Enterprise, Ahmedabad to M/s. Radhika Impex, 8, Anpurna Industrial Estate, Near Zaveri Estate, Kathwada Gam. Ahmedabad - 382430 in respect of Bill of Lading No. DUBASRMUN6515 dated 13.07.2017. Further, in the Bill of Lading No. ERSLINNSA0021 issued from Singapore, the consignee is also same as M/s. Radhika Impex, Ahmedabad. Moreover, it is also found that both the consignees' sir name is same i.e. Thakor, both the person's residential & office addresses are in the same vicinity at Ahmedabad, Gujarat, both the consignees' are maintaining the Bank Account at Axis Bank Limited, Shahibaug Branch Ahmedabad, Nilkanth Plaza, Opp. New Madhupura Market, Police Commissioner Road, Shahibaug, Ahmedabad. Further, in both the case, the modus of concealment of goods found in the guise of HMS Scrap. In view of the above, I believe that both the companies are operated by the same person who master minded the smuggling of gold, cigarettes & betel nuts.

Q.16 Is there any cargoes lying at Jebel Ali Port in respect of M/s. Bhagyoday Enterprise?

Ans: Our company has processed two documents at Jebel Ali port and its details are as under,-

Bill of Lading No. & Date	Container No.	Declared Description of the Goods	Present Status as on 25.07.2017
DUBASRMUN6559	RWAU2521500	Heavy Melting Scrap	Containers are lying at Jebel Ali port, as the shipper is not approving the final B.L. The shipper has approached M/s. ASR Cargo LLC, Dubai (shipping line) to hold the consignment/ containers as their consignee in India is not sending the payments as per the terms and conditions.
DUBASRMUN6546	TTNU3545738 WHLU2449389	--do--	

As on date, the cargo is lying at Jebel Ali port. The shipper is approaching our company at Dubai through their forwarder to get their three containerized cargo back to town, as they do not want to ship the cargoes to India. As per Mundra Customs direction, we are not allowing back to town.

Q.17 It is seen that in every Bills of Lading in respect of M/s. Bhagyoday Enterprise, the shipper is M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E. Please provide the names of the persons and their details who have contacted your branch office at Jebel Ali/Dubai for shipment to Mundra port.

Ans. As per my knowledge, Ms. Elvira Rodrigues (M.No. +971506502903) residing at Burdubai, near Al Fahidi Metro Station, Dubai has contacted our company for shipping the cargoes to Mundra port on behalf of M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E. As per my knowledge, she is a forwarding agent. We are not dealing the shipper directly. She communicates through her e-mail ID elvyrodrigues@gmail.com & Whatsapp.

Q.18 Are you having any other information with regard to the shipper M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E?

Ans: When we contacted Ms. Elvira Rodrigues (forwarder at Dubai) for further information regarding the shipper M/s. Metal World FZE, she informed that one person i.e. Shri Kamlesh Ratanshi has introduced to the shipper and he told that M/s. Metal World FZE will look after our day to day works. She also provided his copy of Passport No. Z2058191 issued by Republic of India and its details are as under,-

Passport No.	Z2058191
Old Passport No. with Date and Place of Issue	G0198716, 14/02/2007 & DUBAI
Surname	SONAGELA
Given Name(s)	KAMLESH RATANSHI
Nationality	INDIAN
Sex	Male
Date of Birth	24/12/1969
Date of Issue & Place of Issue	22/08/2010 & Dubai
Name of Father/ Legal Guardian	RATANSHI KAKUBHAI SONAGELA
Name of Mother	HIRUBEN KAMLESH SONAGELA
Name of Spouse	LABDHI KAMLESH SONAGELA
Address	LOHANA STREET, NALIYA, KACHCHH, GUJARAT - 370655

As per my knowledge, Shri Kamlesh Ratanshi could be the actual shipper.

Q.19 Have your branch office at Dubai/Jebel Ali followed the KYC norms and if yes, then provide details?

Ans: As per my knowledge no such norms/guideline is required in Dubai/Jebel Ali. Hence, we have not taken any details.

Q.20 How your company receives the payments from the shipper i.e. M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E.? Please provide the details of Bank Account in respect of transactions, if any.

Ans: As per my knowledge, cash transactions were done through Ms. Elvira Rodrigues. Hence, no Bank details are available with us. Generally, in Dubai most of the transactions are through cash only.

Q.21 Do you know anything about Mr.Saleem, Mr.Rajdeep Singh, Mr. Sanjay Shah, Mr. Sandeep Shah & Mr. Ramnarayan Laddha?

Ans: I don't know them.

Q.21 Do you want to add/say anything?

Ans: Nothing to add.

5.10 Further Statement of **Shri Ramnarayan Laddha** was recorded on **10.08.2017** in the Jail office, Palara khas Jail, Bhuj. His statement recorded in questionnaire form is reproduced as under:

Q.:1 What is your permanent residential address?

Ans: My permanent address is A-31, Krishna Kutir, Jain Colony, near Terapanth Bhavan behind Rajasthan Hospital, Shahi Baug, Ahmedabad. Though presently my family is not residing at this address, as this flat has been given on rent to one Sanjay bhai since last 15 months approx. My family is presently residing at B-41 Krishana Kutir, Jain Colony, near Terapanth Bhavan behind Rajasthan Hospital, Shahi Baug, Ahmedabad.

Q.2 How many companies do you own or had shares or working for or had any other interest either directly or indirectly?

Ans.(i) M/s. HB Metals Corporation, Ahmedabad (closed since 2007-08), we had no branches of this company. It was a Proprietorship company and I was whole sole director of this company.

(ii) M/s. Shree Haribol Metal and alloys Pvt. Ltd., Ahmedabad, (closed since 2013); we had no branches of this company. It was a Partnership company and myself and Mukeshchandra Laddha (my cousin) were directors of this company

(iii) M/s. SHB Metals Pvt. Ltd. Ahmedabad, we had branches of this company in Pune and Bhilwara. The Ahmedabad branch is closed since Dec. 2016, Bhilwara branch is closed since last 1-2 years. I gave directions to close this company to my person who is my sales tax advocate, whose name I do not remember now. It was a Partnership company and myself and Mukesh chandra Laddha (my cousin) were directors of this company.

Q. 3 Do you have any other company apart from these three companies as told above?

Ans. I was working for M/s. H B Metals Pvt. Ltd. As Director, but I resigned after 2-3 month. However, I do not remember now as to how much time before I resigned. Shri Bhairulal laddha (my uncle — Chacha) is present director of this Company.

Q.4. Do any other person in your family owns any company?

Ans. There is no company in the name of my daughter, my son, my wife or my father-in-law.

Q.5 Is there any other company for which you were working directly or indirectly or had any interest?

Ans. There is no such company.

Q.6. Did you ever worked for the following companies?

M/s. CK Enterprises, Shreeji Tradelink, RP Mavar & company, RP Trading Company, Mahavir Corporation, Mayank Joshi & Co. M B Steel Suppliers, Shivani Impex, Nitin Traders, Kinnari Enterprise, RSS Enterprise, Shree Balaji Trading Company, Gajanand Corportaion, Bhavani Trading company, Mahender Trading Company, B V Enterprise, Jay Engineers, Jay Traders, Balaji trading company, Suraj enterprise, Sulekha Enterprise, RMP Metals, RSS Enterprise, Anuj Enterprise, Shree Ji Traders, SN Enterprise, Shree Balaji Trading Company, Akshat Metal and alloys, Aryan Stainless Pvt. Ltd., Shree Krishna alloys, Shree Ambica Metals and Anjali stainless Pvt. Ltd.

Ans. I had never worked for these companies neither as Proprietor nor as Director, there might be some domestic sale purchase from these companies, however I do not remember as of now from which company (of mine) I had made those transactions. I only knew that the owner cum Director of M/s. Anjali Stainless Pvt. Ltd. Sh. Bhairulal Laddha. Also I had not employed any of my person in any of these companies.

Q.7. Do you have any interest/stakes in M/s. Somnath Metals pvt. Ltd, M/s. Bhagyoday Enterprise?

Ans. I have no interest/stakes in M/s. Somnath Metals pvt. Ltd. or M/s. Bhagyoday Enterprise. Also I had not employed any of my person in any of these companies.

Q.8. Do you own any godown in India your name or in the name of family members?

Ans. I do not own any godown in my name. There is one godown in Odhav, Ahmedabad in my wife's name at 236/237, Bhikshuk Gruh, Near Water Tank (pani ni tanki), Odhav, Ahmedabad (the address as I could remember as of now). The godown for Shree Haribol was taken on rent by me and the same was transferred to M/s. SHB subsequently. There is no godown in the name of my children.

Q.9. Do you know the following persons or had ever worked for them or employed any of your person in their companies?

Virender Laddha, Ramniwas Laddha, Vipul Ajmera, Uttam Sen, Mukesh Chandra Laddha, Vijay Jethaliya, Vikas Jethalia, Rajesh Nai and Bhairulal Laddha.

Ans. Virender Laddha is my cousin staying at Ahmedabad, we had never worked together. I do not know his present address.

Ramniwas laddha is my cousin (Tau's son), perhaps he is Director in M/s. H B Metals Pvt. Ltd. He is nephew of my chacha Bhairulal laddha. He is dealing in scrap (ferrous and non-ferrous). His present residential address is A-21, Krishna kutir, Jain colony, Near terapanth Bhawan, B/h Rajasthan Hospital, Shahibaug, Ahmedabad.

Vipul Ajmera is son of my brother —in-law. He is of 20-21 yrs and left studies few months back. As per my knowledge he does not have any company. He resides at Bhilwara, I do not know his address.

Uttam Sen — One Uttam is employee for my chacha Bhairulal and used to look after his accounts. He resides at Ahmedabad, but his address is not known to me. Mukesh Chandra Laddha- He is my cousin and was working as Director with me in M/s. Shree Hari Bol Pvt. Ltd. and M/s. S H B Metals Pvt. Ltd. He resides at A-21, Krishna kutir, Jain colony, Near terapanth Bhawan, B/h Rajasthan Hospital, Shahibaug, Ahmedabad.

Vijay Jetaliya is my brother-in-law (husband of my real sister), however i do not share any business interest with him. He resides at Ahmedabad in Ranip, but his address, I do not remember.

Vikas Jetaliya is brother of Vijay Jethalia, however i do not share any business interest with him. He resides at Ahmedabad in Ranip, but his address, I do not remember.

Rajesh Nai — He is a Scrap broker in Ahmedabad. I might have done some business dealing with him. He resides at Ahmedabad, but his address, I do not remember.

Bhairulal Laddha- He is my chacha. I had worked with him in M/s. H B Metal Pvt. Ltd. He resides at A-11, Krishna kutir, Jain colony, Near terapanth Bhawan, B/h Rajasthan Hospital, Shahibaug, Ahmedabad.

Q.10. Do you have any godown (on rent or owned) at Singapore, Malayasia, Dubai or in any foreign country?

Ans. No there is no such godown.

Q.11. Are you operating any E-mail Id?

Ans. As of now I could remember only one e-mail Id of my company as shbmetals@yahoo.co.in. My other companies also have e-mail Ids but I do not remember their address. My e-mail Ids were being operated by the employees / persons of my Chartered accountant Mahesh Devpura of Ahmedabad.

Q. 12. Please name your employees in your companies?

Ans. I used to have two employees in my companies one was Waghji Bhai and Suresh Chapmawat. They are not working presently with me. They used to prepare bills / invoices and maintenance of accounts for me in M/s. SHB Metals. I did not help any person in getting any job in any company.

Q.13. How many properties do you own or in your family members name or in the name of any of your employees?

Ans. I do not own any property, though I own two four wheelers one Vento and one Fortuner (both on Bank loan) and one Activa.

My wife Mrs. Leela Devi, owns one Godown at 236/237 Odhav as stated earlier, and one flat at A-31, Jain Colony, Terapath Bhawan, B/H Rajasthan Hospital, Shahbuag, Ahmedabad. She also own an office at A-308, Nilkanth Plaza, Shahibaug, Ahmedabad.

My children also do not own any property.

I do not have any property in the name of any of my employee.

Q. 14. How many cases have been booked against you by Govt. Agencies other than Mundra Customs?

Ans. The Guj. Vat department had booked one case against me. Though the case was not against me directly. The case was against one Mukesh Mehta and jignesh Mehta, who just named me in their statement and one FIR was lodged against me. I applied for anticipatory bail, which was rejected by High court. I pleaded for quashing of FIR but it was not quashed. The Pipavav Customs had also taken my statement in one case booked by them (for smuggling of supari; in HMS scrap), few days back in jail. They had booked case against M/s. Mahendra Trading company. I referred one Altaf to the CHA Mr. Ashwin Bhai of M/s. Velji P & Sons. Altaf told me he wants to import Scrap and asked me to refer one CHA for Customs clearance, and thus I arranged a meeting between Ashwin bhai and Altaf. Altaf resides at Amreli.

Q.15. How do you know Mr. Ashwin bhai of Velji P & Sons?

Ans. One Puran Singh, a Business man / Scrap dealer of Jamnagar had referred me of Ashwin bhai. I know Puran Singh since last 2-3 years as we are in same business line.

Q.16. Mr. Kamlesh bhai as you referred in your last statement is a CHA or forwarder?

Ans. I knew only that he used to do Customs Clearance at Mundra port.

Q.17. Are you aware that Kamleshbhai has entrusted the Customs Clearance of M/s. Bhagyoday Enterprise at Mundra Port to any other CHA/ customs Broker.

Ans. I do not know whether Kamlesh had employed any other CHA/CB for clearance of Cargo imported by M/s. Bhagyoday at Mundra Port.

Q. 18. What is the name of company of Kamlesh Sharma @ Kamlesh Bhai?

Ans. I had never asked his company's name.

Q.19. Do you know any person by name Ketan Shah who used to do Customs Clearance?

Ans. I do not know any such person.

Q.20. Have you ever heard of M/s. Harshit Logistics?

Ans. I have never heard of any such company.

Q.21. I have been shown my earlier statement and statement of Sh. Kamlesh Sharma both dated 23.07.2017, wherein you have stated that you had referred Dipakbhai of Bhagyoday to Kamleshbhai, which Sh. Kamlesh Sharma denies, please state the truth on this aspect?

Ans. I just told Kamleshbhai that one person from Bhagyoday would contact him (Kamleshbhai) telephonically.

Q.22. How do you know Dipakbhai Thakor of M/s. Bhagyoday enterprise and how many times you met him, prior to 23rd July, 2017?

Ans. I do not know Dipakbhai directly, his friend Sandeep Kathod (my cousin) told me that he (Dipak) wants to Import HMS scrap at Mundra and asked to refer some CHA/CB for customs clearance. I might have called Kamleshbhai after 5-6 days thereafter. I talked Kamleshbhai initially over phone regarding Bhagyoday. After first meeting between me and Dipakbhai, arranged by Sandeep Kathod, I had never met Dipakbhai thereafter. I do not know who contacted Dipakbhai thereafter.

Q.23. Who was transporting the Goods of M/s. Bhagyoday Enterprise after Customs Clearance?

Ans. I do not know about this.

Q.24 How do you know about Kamleshbhai @ Kamlesh sharma?

Ans. I dont remember as of now.

Q.25. What do you know about social status of Dipakbhai Thakor?

Ans. I do not know anything about his social status.

Q.26. Where do you met Dipakbhai Thakor for the first time?

Ans. That was around one year before. I do not remember where I met Dipakbhai Thakor whether I met him over phone or on a Road or tea-stall or restaurant. I do not remember of the people who were present in that meeting.

Q. 27. When do you met last time Dipakbhai Thakor and where?

Ans. Kamleshbhai informed me that Gold was recovered from the container of M/s. Bhagyoday Enterprise and I met Dipakbhai on road near Delhi Darwaja, in Ahmedabad at around 2200 hrs on 19th

July, 2017. I was with my friends one Mukesh Bharwad and one Gopal Nathawat. There were 1-2 people with Dipak at that time whom I do not know.

Q.28. On whose saying Dipakbhai came to meet you and who told you to go to Delhi Darwaja to meet him?

Ans. I do not remember as to whom had instructed me to go to Delhi Darwaja and who had asked Dipakbhai to come over there.

Q.29. Do you met Sanjay M Kahtod @ Sanjay M Shah, Sandeep M Kathod @ Sandeep M Shah, Virender Laddha, Ramniwas Laddha, Vipul Ajrnera, Uttam Sen, Mukesh Chandra Laddha, Vijay Jethaliya, Vikas Jethalia, Rajesh Nai, Bhairulal I addha or Mulchand Kathod @ Mulchand Shah between 19-22 July, 2017?

Ans. I Met Sanjay M Kathod either on 20th or on 21st at the residence of Jagdish Bhai Shantilal in Shahibaug (who is a relative of Sanjay). The other persons present at that time were Mulchand Shah (Sanjay's father) and one Mathur Bhai (Sanjay's uncle). I do not remember the address as of now. Sanjay was already aware about the seizure of Gold and I do not remember as to how the meeting point (residence of Jagdish Bhai) was agreed upon between me and Sanjay. We discussed about the Dipakbhai and on whose instance the contraband (Gold) was smuggled.

Q.30. Who had invested in M/s. Bhagyoday Enterprise or in M/s. Somnath Metal Pvt. Ltd. Or in M/s. Mahindra Trading Company?

Ans. I do not know who had invested in M/s. Bhagyoday Enterprise or in M/s. Somnath Metal Pvt. Ltd. I do not anything about Mahindra Trading Company.

Q.31. Do you have any passport? Which foreign country you had visited?

Ans. Yes I have an Indian passport. I had visited Europe, Singapore, Thailand and Malaysia. I had never visited any Gulf country. I visited Malaysia in connection with my business of scrap.

Q.32. Do you know any transporter who used to transport the Customs Cleared cargo?

Ans. I do not know any such transporter.

Q.33. Do you know how many containers M/s. Bhagyoday Enterprise had imported prior to 19th July or how many containers were booked in the name of M/s. Bhagyoday, but not imported in India till date?

Ans. I do not know.

I have been shown a copy of statement dated 24.07.2017 of Sh. Prakash Mishra owner of M/s. Rama Krishna Transport Company, Gandhidham.

Q.34. Please read the question no. 23 and the answer thereof, wherein Sh. Praksh Mishra stated that for M/s. Mahendra trading company Mr. Ramnarayan Shayamlal Laddha directed me for the transportation of the goods from Port to Ahmedabad. Please offer your comments?

Ans. Though I know Sh. Praksh Mishra, however, I had not telephoned Sh. Prakash Mishra for m/s Mahendra Trading Company. I had not telephoned to any transporter for Mahindra trading company.

Q. 35 Do you know in which profession Sh Prakash Mishra is?

Ans. I know that Sh. Praksh mishra is working with RKRT transport company (container/truck/cargo from port to destination). I met him at many social functions since he used to visit such functions, at Ahmedabad and once I met him in my office.

Q. 36. Please see your answer to Q.14 in your statement dated 23.07.2017 wherein you have stated that the Container would move to Mumbai where one Rajdeep Singh would took out Gold and Cigarettes and the cargo would be back to Ahmedabad and the answers given by Sh. Prakash Mishra to Q. No. 26 to 28 in his statement dated 24.07.2017, wherein he affirmed that the cargo never goes out of Ahmedabad. Please offer your comments.

Ans. Dipakbhai told me that the Container would move to Mumbai where one Rajdeep Singh would took out Gold and Cigarettes and the cargo would be back to Ahmedabad. I have never talked with Mishraji about any transport.

- Q.37. What was your incentive / interest in searching the CHA/ CB for Dipakbhai of M/s. Bhagyoday or Altaf?
- Ans. I just introduced them to the CHA/CB. I do not get any incentive. I might have purchased Scrap domestically from Bhagyoday enterprise.
- Q.38. Do you know Chetanji the owner of Rahul Roadlines?
- Ans. I do not remember as of now. I might have procured scarp through him.
- Q.39. Which scrap do you purchased apart from HMS Scrap?
- Ans. I used to purchase Stainless steel, HMS, Nihard, Alloy steel, Sisceal coils 430 (used in mint for making coins).
- Q. 40. How many persons working for CHA/ CB do you know?
- Ans. I do not know any other CHA/CB personally apart from Kamleshbhai, I got reference of Ashwinbhai, from one Purim Singh. I do not remember as to how I got the reference of Kamlesh bnai.
- Q.41. Who was controlling the IEC of M/s. Bhagyoday Enterprise?
- Ans. I do not know.
- Q.42. Please name the companies based in Ahmedabad, about which you know that they are engaged in import of Scrap?
- Ans. I know M/s. Bhagyoday Enterprise. There are many companies in Ahmedabad which are engaged in import of Scrap but I do not remember their names.
- Q. 43. Did you ever talked with any shipping line agent or vessel agent?
- Ans. I never talked with any shipping line agent or vessel agent?
- Q. 44. Have you ever heard of M/s. Radhika Enterprise?
- Ans. I have never heard about this company.
- Q.45. Do you know that Areca Nuts (betel Nuts) was found concealed behind scrap in the import of M/s. Mahindra I fiding Co at Pipavav?
- Ans. Yes, the Pipavav Customs Officer recorded my statement in this connection.
- Q.46. Do you know anything about any person by name Tushar N Thakor brother of Dipakbhai Thakor?
- Ans. No I do not know any bother of Dipakbhai Thakor.
- Q.47. Who is the owner / Director of Haribol Group? Ans. There is no such group.
- Q.48. Do you know that Areca Nuts (betel Nuts) was found concealed behind scrap in the import of M/s. Radhika Enterprise at Mundra?
- Ans. I am not aware of this fact.
- Q.49. I am showing you a statement dated 01.08.2017 of Sh. Rajendra Singh Rao, Director of M/s. ASR India Pvt. Ltd. Shipping Line, wherein in question no. 10 he has replied that the shippers appointed forwarder has requested to amend the shipper's name from M/s. Metal world FZE to M/s. Al Sahara General trading LLC and the consignee's name from M/s. Bhagyoday Enterprise to M/s. Radhika Enterprise for B/L No. DUBASRMUN6454 dated 06.07.2017. please offer your comments.
- Ans. I do not know anything about this.

5.11 Further statement of **Shri Dipakbhai J. Thakor** was recorded on **16.08.2017** in Palara Khas Jail, Bhuj. His statement recorded in questionnaire form is re-produced as under:

Q: 1 Would you like to go through your earlier statement dated 20.07.2017 & 21.07.2017 tendered by you voluntarily?

Ans: Yes, I have gone through my earlier statements dated 20.07.2017 & 21.07.2017 and put my dated signature after having seen and understood.

Q:2 Do you know for what reason are you lodged in the jail?

Ans: Yes, I have been arrested and lodged in the jail for smuggling of gold.

Q: 3Are you the sole owner of M/s. Bhagyoday Enterprise?

Ans: yes, I am the sole owner of M/s. Bhagyoday Enterprise situated at A-2, Bhole Shiv Compound, PO- Singarva, TalukaDaskoi, Ahmedabad.

Q: 4Are you involved in the day to day work of M/s. Bhagyoday Enterprise?

Ans: Yes, I am involved in day to day work of M/s. Bhagyoday Enterprise.

Q:5Who else in your family is involved in the business of importing HMS Scrap ?

Ans: Yes, one of my cousin Mr. TusharNatubhaiThakor S/o Natubhai Mohanbhai Thakor who happens to be the son of my father's elder brother, is running a unit name M/s. RadhikaImpex at Ahmedabad.

Q;6 How often do you meet MrTusharNatubhaiThakor and what is your business relationship with him?

Ans: I meet MrTusharNatubhaiThakor at family functions and He is also involved in HMS Scrap Business so we remain in touch with each other.

Q:7 Do you have any Bank Account and amount available in those accounts?

Ans: Yes, I have one Bank Account in Axis Bank, Shahibaug, Ahmedabad in name of my firm. One Saving bank account in my name in Bank of India, Shahibaug and Saving Bank Account in the name of my wife MrsDimplebenDipakbhaiThakor in NutanNagrik Bank Rakhiyal, Ahmedabad. I do not remember the Bank Account Nos nor the amount available in those accounts. However I would like to specify that during de-monetisation period, we had deposited around 50 to 60 thousand rupees in my wife's

Q:8 Kindly peruse Axis Bank Current Account No. 916020013105318 statement for the period from 01.04.2016 to 01.08.2017 showing Customer No as 864525159 in the name of M/s. Bhagyoday Enterprise,A-2, Bhole Shiv Compound, PO- Singarva, TalukaDaskoi, Ahmedabad, Gujarat-382430?Does this Account belong to you?

Ans: Yes, I have perused the Axis Bank Current Account No. 916020013105318 statement for the period from 01.04.2016 to 01.08.2017 showing Customer No as 864525159 in the name of M/s. Bhagyoday Enterprise,A-2, Bhole Shiv Compound, PO- Singarva, TalukaDaskoi, Ahmedabad, Gujarat-382430 and this account belongs to me and I have signed on all of the pages in token of having perused.

Q: 9Who is operating your Axis Bank Current Account No. 916020013105318?

Ans: My Axis Bank Current Account No. 916020013105318 is being operated by Mr Sanjay M Shah, owner of M/s. Somnath Metal Pvt Ltd & Shri RamnarayanLaddha. I would accompany them to the bank and they would take my signature for the transactions.

Q: 10 In the earlier question at Sr. No.3, on being questioned about your day to day involvement in Bhagyoday enterprise, you have mentioned that you are involved in day to day activities, and now you are mentioning the name of Mr Sanjay M Shah, owner of M/s. Somnath Metal Pvt Ltd & Shri RamnarayanLaddha, please clarify?

Ans: I would like to state that Mr Sanjay M Shah, owner of M/s. Somnath Metal Pvt Ltd & Shri Ramnarayan Laddha are fully involved in the import of the HMS Scrap and various other scraps of Steel, Copper, Aluminum, by using my IEC Code and the name of M/s. Bhagyoday Enterprise. I am being paid approx. 50 to 60 thousand Rupees by Mr Sanjay M Shah, owner of M/s. Somnath Metal Pvt Ltd & Shri Ramnarayan Laddha. They were the brain behind the operation of M/s. Bhagyoday Enterprise and all instructions were coming through them.

Q: 11 Two Photographs are being shown for recognition, kindly recognize them?

Ans: The first colored photograph being shown to me is of Shri Sanjay M Shah, which I have recognized and put my dated signature. The second photograph in a driving license being shown to me I recognize him as Shri RamnarayanLaddha.

Q:12 Do you know how many containers of M/s. Bhagyoday carrying smuggled goods were in the pipeline to be imported in India after 20th July, 2017?

Ans: No, I do not know anything about the containers in pipeline to be imported as the entire activities were being controlled by Mr Sanjay M Shah, owner of M/s. Somnath Metal Pvt Ltd & Shri RamnarayanLaddha.

I have been shown a copy of statement dated 23.07.2017 of Sh. Ramnarayan Laddha.

Q:13 Please read the question No. 5 and answer thereof, wherein Sh. RamnarayanLaddha stated that he came to your contact through Sh. Sandeep Khatod. How do you know Sh. Sandeep Khatod?

Ans: I have read and signed, It is not correct that Sh. Sandeep Khatod had introduced me to Shri RamnarayanLaddha. I already know ShRamnarayanLaddha and sh. Sanjay M Shah since long. I know Sh. Sandeep Khatod, He is the younger brother of Sh. Sanjay M Shah.

Q:14 . Please read the question No. 14 and answer thereof, wherein Sh. Ramnarayan Laddha stated that you informed him that Mr. Rajdeep Singh in Mumbai would be the main receiver of Gold and Cigarettes. How do you know Mr Rajdeep Singh?

Ans: No, I do not know Mr Rajdeep Singh.

I have been shown a copy of statement dated 10.08.2017 of Sh. Ramnarayan Laddha.

Q:15 Please read question No. 49 incorporating the statement of ShRajendra Singh Rao, Director of M/s. ASR India Pvt Ltd, Shipping Line dated 01.08.2017 regarding the amendment of the shippers name from M/s. Metal World FZE to M/s. Al Sahara General Trading LLC and the consignee's name from M/s. Bhagyoday Enterprise to M/s. Radhika Enterprise for B/L No. DUBASRMUN6454 dated 06.07.2017. Please offer your comments?

Ans: I have read the question No. 49 as mentioned above and put my dated signature. I have mentioned earlier that Sh. Sanjay M Shah and Sh Ram Narayan Laddha was looking after

the day to day activity of M/s. Bhagodaya Enterprise, about the change in name from M/s. Bhagyoday Enterprise to M/s. Radhika Enterprise, it will be known only to Sh. Sanjay M Shah and Sh Ram Narayan Laddha. I have also replied in my earlier question about M/s. Radhika Enterprise which belongs to my cousin brother Sh. TusharNatubhaiThakor.

Q:16 Do you have anything more to say?

Ans: I may be pardoned as I have not committed any smuggling activity, entire activity had been controlled and supervised by Sh. Sanjay M Shah and Sh Ram Narayan Laddha.

5.12 Statement of **Shri Sandeep Moolchandbhai Shah**, Director of M/s. Somnath Metals Pvt. Ltd. was recorded on **24.08.2017** under Section 108 of Customs Act, 1962, wherein *inter-alia* he stated that his father used to run a company in the name of Shree Sai Baba Metals at 2nd floor, Neel Kanth Plaza, Shahibaug, Ahmedabad; that he used to import various types of Aluminium Scrap; that he do not know the customs station or the country from where the scrap was imported; that this company was closed by his father in year 2009-10; that his brother used to sit sometimes in the office of Shree Sai Baba and learnt some in/out of the scrap business from there; that he never attended the office of this company; that he do not know where the godown of M/s. Shree Sai Baba Metals was situated; that though he had visited the godown of Shree Sai Baba Metals but I never looked after the work related to godown. His statement recorded in questionnaire form is reproduced as under:

Q.1. What job you are doing these days/presently?

Ans. I used to look after/supervise the loading/unloading of the cargo at our godown situated at A-15, Zaveri Estate, Near GIDC Kathwada gam, Singarva, Ahmedabad.

Q.2. What is your company's name?

Ans. It is M/s. Somnath Metals Pvt. Ltd. (SMPL in short). The office is situated at 202, 2nd floor, Neel Kanth Plaza, Shahibaug, Ahmedabad.

Q.3. What is your position in this company i.e. M/s. Somnath Metals Pvt. Ltd.?

Ans. There are two directors in this company one is myself and the other is my elder brother Sanjay M Shah. We are dealing in scrap in this company. I state that I have never attended the office therefore I do not have detail knowledge about procurement and sale of the scrap.

Q.4. In which items you are dealing in or trading in this company?

Ans. We are dealing in/trading, in Stainless Steel Scrap (304 grade) and various types of Aluminium Scrap. We are importing the Aluminium Scrap but do not know from where we are importing. The SS Scrap (304) we are purchasing domestically mainly from Ahmedabad, Vadodara. We are also procuring some consignments from Surat, Indore and Ankleshwar. Our main customers of steel are M/s. Jindal Steel at Hissar, Haryana and Orisa. Few consignments we also sold to M/s. Lascon Steel at Bavala, Ahmedabad. I have no idea where the imported Aluminium scrap was being sold, since the procurement and sale of imported Aluminium scrap was dealt by my elder brother Sanjay M Shah.

Q.5. What do you know about Dipak Jayantibhai Thakore?

Ans. He used to reside near our house in Shahbaug, so I met him sometimes being my neighbour. I do not have any knowledge about his profession.

Q.6. What do you know about Ramnarayan Laddha?

Ans. He is my cousin brother* and resides at Jain colony, Shahibaug Ahmedabad. I knew that he deals in HMS and SS Scrap. As per my knowledge he mostly procures scrap domestically. Sometime he imports the scrap also.

Q.7. Where were you on 19 to 21, July, 2017?

Ans. I was in Ahmedabad till the evening of 21st July, 2017. I, Sanjay and his wife left for Ambaji in the evening of 21st July, 2017. We travelled on foot all the way from Ahmedabad to Ambaji. We did not carry any means of communication with us. I came back on 27th July, 2017 and Sanjay and his wife returned on 28th July, 2017.

Q.8. Are you aware that Dipakbhai Thakore had any company in his name?

Ans. I know that Dipakbhai has one company M/s. Bhagyoday Enterprise in his name and he also deals in/trading in HMS scrap.

Q.9. Are you aware that Ramnarayan Laddha had any company in his name?

Ans. I know that Ramnarayan Laddha has only one company M/s. Anjali Steel, 2nd floor Neel Gagan Plaza, Opp. Shabaug Police Commissioner's office, in his name. This company also deals in HMS and SS scrap. He procures domestic scrap as well as imported scrap in this company. As per my knowledge either Ramnarayan Laddha supervises overall work of this company.

Q.10. Are you aware that Dipakbhai Thakore and Ramnarayan Laddha both used to deal in/trading in HMS Scrap?

Ans. Yes, I know that they are dealing in HMS and SS scrap.

Q.11. Which mobile contact number you are using presently?

Ans. I was using 9825047094 since 6-7 years. I am not using this number since last 01 month. My residence contact no. is 079-25628260.

Q.12. When you got knowledge that summonses were issued in your name by Mundra Customs?

Ans. I was told by my father on 02.08.2017 that summonses were issued in my name by Mundra Customs.

Q.13. Who is looking after your account books in your office?

Ans. I have no idea only Sanjay can tell about this.

Q.14. Who told you that summonses were issued in your name by Mundra Customs?

Ans. My father only told me in person about the summonses.

Q.15. What job your father is doing these days?

Ans. He used to stay at home only or doing some society welfare work.

Q.16. What are your office timings?

Ans. Generally I remain at godown between 1100 to 1800 hrs (06 days week), Sunday/festival holiday remains off.

Q.17. Who looks after / attends the work (loading/unloading) in your absence at your godown?

Ans. I am only one, who is looking after / attending the loading unloading work at godown. In my absence no one looks after this work. There were 2-3 people at godown who attend the loading/unloading work in my absence, but they left the job 2-3 months ago.

Q. 18. Who looks after/attends the office work of M/s. SMPL in absence of Sanjay?

Ans. No one looks after/attends the office work in his absence.

Q. 19. Do you own any property in your name, your wife's or your sons' name?

Ans. One Activa (02 wheeler) is in my name. There is one Swift Desire (04 wheeler) but I am not sure it is in whose name. Apart from this we do not own any property.

Q. 20. Do your father own property in his name?

Ans. The godown and office of M/s. SMPL is in the name of my father. The residential property at 3, Jayeshwar Society, Shahibaug, Ahmedabad is either in my father's name or in my mother's name.

Q. 21. Do you have any Bank accounts in your name, your wife's or your sons' name?

Ans. I have one savings bank account in Axis bank, Shahibaug, Ahmedabad, in my name but I do not remember its account number. My bank account is being operated by Sanjay and I used to put my signatures on the documents as and when asked by Sanjay. My wife also has one savings bank account in Axis bank, Shahibaug, Ahmedabad and my sons do not have any bank account.

Q. 22. Do you have any Pan Card, Passport, Credit and debit Card in your name? Have you ever visited any foreign country?

Ans. I have one Pan card and Passport (issued from Ahmedabad) in my name, but I do not remember the number of Pan Card or Passport. I got my passport renewed lastly 1-1½ years ago. I visited Dubai 2 times once with my friends and second time I visited with the members of Metal Association, Ahmedabad. Sanjay was not with me when I visited Dubai with the members of Metal Association.

Q. 22. Who started M/s. Somnath Metals Pvt. Ltd?

Ans. My elder brother Sanjay started Somnath Metals Pvt. Ltd. 6-7 years ago.

Q. 23. What is the staff strength of M/s. Somnath Metals Pvt. Ltd.?

Ans. The company has two directors only. One (Sanjay) is sitting in office and another (myself) at godown. There were 2-3 people at the godown, who were working as labour (loading/unloading of scrap manually) but they left 2-3 months ago. There is no other person in the staff of the company.

Q. 24. Where is the bank a/c of M/s. Somnath Metals Pvt. Ltd?

Ans. The bank a/c of Somnath Metal is at Axis Bank, Shahibaug, Ahmedabad.

Q. 25. What do you know about M/s. Bhagyoday Enterprise or M/s. Radhika Enterprise?

Ans. I do not know anything about the activities of these companies. But I know Dipakbhai as my neighbour and his cousin, as we were residing in the same area/neighbourhood and used to chat / talk sometimes personally.

Q. 26. Why you named Dipakbhai and his cousin in your answer to Q. 25?

Ans. I know that Dipakbhai has got one company in his name namely Bhagyoday Enterprise and his cousin has also one company namely M/s. Radhika Enterprise.

Q.27. Are you aware that Ramnarayan Laddha is in jail presently? Do you know the reasons why he is in jail?

Ans. Yes, I am aware. I got the news through TV news and newspaper. I know that he was arrested in connection with smuggling of Gold and Cigarettes by Mundra Customs.

Q.28. Are you aware that Dipakbhai Thakor is in jail presently? Do you know the reasons why he is in jail?

Ans. Yes, I am aware. I got the news through TV news and newspaper. I know that he was arrested in connection with smuggling of Gold and Cigarettes by Mundra Customs.

Q.29. What is the qualification of your brother Sanjay?

Ans. I do not know exactly but he is also B. Com (S.Y.).

Q. 30. Who was dealing with the transporters in Somnath Metals Pvt. Ltd. for loading / unloading of the scrap?

Ans. My brother Sanjay was dealing with the transporters.

Q. 31. Are you filing the Income Tax returns?

Ans. I only knew that my ITRs are being filed by my brother Sanjay. I used to put my signatures on the ITRs after going through it.

Q.32. Do you use computers / e-mails/ whats App/ face book etc.?

Ans. I use whats app. But I do not use computers/e-mails/face book etc.

Q.33. Do you know that Ramnarayan Laddha and Dipakbhai knew each other? Did you arrange any meeting between the two?

Ans. I do not know. I had not arranged any meeting between them.

5.13 Further statement of **Shri Ramnarayan Laddha** was recorded on **30.08.2017** at Customs Division Bhuj. His statement recorded in questionnaire form is reproduced as under:

Q.1 Please peruse your statement dated 23.07.2017 and 10.08.2017?

Ans.1 I have seen my earlier statements dated 23.07.2017 and 10.08.2017 and put my signature on the last pages of both statements in token of having seen the same.

Q.2 Please peruse the statement dated 24.08.2017 comprises 5 pages of Sh. Sandeep Khatod alias Sandeep M Shah?

Ans. I have seen statement dated 24.08.2017 of Sh. Sandeep Shah and I put my dated signature on the last page in token of having seen the same.

Q.3 Please inform who introduced Sh. Dipak Thakor to you?

Ans. As per best of my knowledge and memory, Sh. Sandeep Shah gave reference of Sh. Dipak around 1½ years ago.

Q.4. Sh. Sandeep Shah denies the very fact about your claim that he gave reference of Dipak to you in Q. 33 of his statement dated 24.08.2017. Please explain?

Ans. I am sure about the fact that Sh. Sandeep gave reference of Sh. Dipak may be Sh. Sandeep have forgotten the fact during his statement.

Q.5. What was your role and interest in business of M/s. Bhagyoday Enterprise?

Ans. However, I helped Sh. Dipak by referring to CHA otherwise I don't have any role and interest in import business of M/s. Bhagyoday Enterprise may be I have procured some scrap in domestic.

Q.6 Please explain about your visits to Mundra Customs? and how long did you stay at mundra port?

Ans. I have visited in connection with import of scrap. I stayed for around 2-3 hours.

Q.7. Which vehicle you utilized for your visits to Mundra Port?

Ans. I used my personal vehicle i.e. Toyota Fortuner bearing No. GJ-01 4432.

Q.8 Who accompanied you, during your all visits to mundra port ?

Ans I along with my driver visited Mundra Port .

Q. 9 Do you know M/s. Radhika Impex, Ahmedabad?

Ans. I had never heard about M/s. Radhika Impex.

Q. 10 Who is Rajdeep Singh? Please inform?

Ans. I do not know about any Sh. Rajdeep Singh. I only heard the name of Sh. Rajdeep Singh from Sh. Dipak Thakor on 19.07.2017.

Q. 11 Who is Saleem. Please inform?

Ans. I do not know. I never heard the name.

Q. 12 Please inform about Jay Engineers?

Ans. I may have sale or purchased Scrap domestically.

5.14 Further statement of **Shri Dipak Jayantibhai Thakor**, proprietor of Importer was recorded on **30.08.2017** under section 108 of C.A., 1962 in the office of the Assistant/Deputy Commissioner of Customs Division, Bhuj. His statement recorded in questionnaire form is re-produced as under:

Q: 1 Please peruse and go through your earlier statement dated 20.07.2017, 21.07.2017 & 16.08.2017 tendered by you voluntarily?

Ans: Yes, today on 30.08.2017, I have perused and gone through my earlier statements dated 20.07.2017, 21.07.2017 & 16.08.2017 and put my dated signature in token of having seen and understood the same.

Q.2 Who is Saleembhai as stated by you in your earlier statement dated 20.07.2017 and for whom you had imported scrap containers? Give his address or his contact no.?

Ans: There is no such person by the name of Saleem as it is a fictitious character created by Sh. Sanjay M Kathod (also known as Sanjay M Shah) and Sh Ramnarayan S Laddha to mislead the investigation.

Q.3 Kindly peruse the following documents: KYC Form, "Namuno-4" IEC of M/s. Bhagyoday Enterprise on which your signature are there? There appears to be a difference in the signatures. Please clarify?

Ans: Sir, all these signatures are mine and there may be minor difference in signature. I have read, seen and signed on all said documents.

Q.4 How you know Sh. Ramnarayan S. Laddha and who arrange your meeting with him?

Ans: Sh. Sandeep M Shah is my neighbour and we met usually in our society. Sandeep M Shah and Sanjay M Shah are brother and I Met with Sanjay M Shah through Sandeep M

Shah only. About 15 months ago, Sh. Sanjay M Shah arranged a meeting with Sh. Ramnarayan S. Laddha regarding import of Scrap.

Q.5 Please explain the transaction between Somnath Metal and your firm M/s. Bhagyoday Enterprise?

Ans: Some times we sold scrap procured from local market to M/s. Somnath Metals and received payment for the same from M/s. Somnath Metals. Which was being regulated by Sh. Sanjay M Kathod (Sanjay M Shah) and Sh. Ramnarayan S. Laddha.

Q.6 Who is the owner of M/s. Jay Engineers? How you contacted to M/s. Jay Engineers?

Ans: Sir, I don't know the owner of M/s. Jay Engineering. I had never contacted to any Jay Engineers. But it may be known to Sh. Sanjay M Kathod and Sh. Ramnarayan S Laddha as they were handling day to day activity of M/s. Bhagyoday Enterprise.

Q.7 Please peruse statement of your Axis Bank current account no. 91420013105318 of M/s. Bhagyoday Enterprise for the period 01.04.2017 to 01.08.2017. Explain the reasons for transaction between M/s. Bhagyoday Enterprise and M/s. Jay Engineers?

Ans: I have gone through statement of my Axis Bank current account no. 91420013105318 and put my dated signature. The entire transactions were being controlled/operated by Sh. Sanjay M Shah and Sh. Ramnarayan S Laddha.

Q.8 Kindly once again go through the statement of Axis Bank current account no. 91420013105318 entry dated 12.05.2017 BRN Ref No. 0510FIGS170273 USD 24003.40/RLZ showing a debit of Rs.1868181.37 and the earlier credit of Rs. 19,00,000/- by M/s. Somnath Metals in your account. The amount of USD 24003.40 amounting to Indian Rs. 1868181.37 exactly refers to Bill of Entry No. 9594533 dated 06.05.2017. Please clarify?

Ans. I have gone through the statement and said Bill of Entry and put my dated signature. As I have earlier stated that Sh. Sanjay M Shah and Sh. Ramnarayan S Laddha are entirely handling my bank accounts and would take my signature on the my bank documents. I would only accompany them, the entire work would be handled by them.

Q.9 Kindly once again go through the statement of Axis Bank current account no. 91420013105318 entry dated 01.06.2017 BRN Ref No. 0510FIDB170044 USD 37268.10/RLZ showing a debit of Rs.24,05,893.02 and the earlier credit of Rs. 73,30,000/- by M/s. H.B Metals in your account. The amount of USD 37268.10 amounting to Indian Rs. 24,05,893.02 exactly refers to Bill of Entry No. 9636606 dated 10.05.2017. Please clarify?

Ans. I have gone through the statement and said Bill of Entry and put my dated signature. As I have earlier stated that Sh. Sanjay M Shah and Sh. Ramnarayan S Laddha are entirely handling my bank accounts and would take my signature on the my bank documents. I would only accompany them, the entire work would be handled by them.

Q.10 Do you know Sh. Rajdeep Singh?

Ans: Sir, I don't know any person named Rajdeep Singh.

Q.11 What is the roll of Sh. Ramnarayan Laddha in your firm M/s. Bhagyoday Enterprise?

Ans: Sh. Ramnarayan Laddha arranged meeting with Shri Kamlesh Sharma, CHA/CB at Mundra. He was looking after all work related to import and dealing with the CHA/CB on behalf of my firm M/s. Bhagyoday Enterprise. Sh. Ramnarayan S Laddha alongwith Sh.

Sanjay M Kathod handled/controlled all day to day work of my firm M/s. Bhagyoday Enterprise.

Q: 12 What is your roll in your firm M/s. Bhagyoday Enterprise?

Ans: Sir, as I earlier told in reply to Q. No. 9 above and in my earlier statement dated 16.08.2017, Sh. Sanjay M Shah and Sh. Ramnarayan S Laddha are handling/controlling my bank accounts and looking after all works related to accounts and day to day work in my firm M/s. Bhagyoday Enterprise. I usually signed on the documents for which they asked to me.

Q.13 Who is the owner of M/s. Radhika Enterprise, Ahmedabad? How you know M/s. Radhika Enterprise?

Ans: Sir, the firm M/s. Radhika Enterprise is owned by my Cousin brother Sh. Tushar Nattubhai Thakor. My cousin brother and owner of the said firm told me that Sh. Sanjay M Kathod and Sh Ramnarayan S Laddha were looking after all day to day work and handled the account and transactions of M/s. Radhika Enterprise.

Q.14 Had you ever asked any person to amend Bill of Lading issued to your firm M/s. Bhagyoday Enterprise in favor of M/s. Radhika Enterprise?

Ans: I had never asked any person to do any amendment in Bill of Lading in favor of M/s. Radhika Enterprise. However, it will be known to Sh. Sanjay M Kathod and Sh. Ramnarayan S Laddha must asked for said amendments as per their suitability.

Q.15 Please also peruse and go through the statement dated 24.08.2017 of Sh. Sandeep M Kathod also known as Sandeep M Shah the director of M/s. Somnath Metals, Ahmedabad?

Ans: I have perused and gone through the statement of Sh. Sadeep M Shah dated 24.08.2017 the Director of M/s. Somnath Metals and I put dated signature on it, in token of having seen the same.

Q.16 How do you informed about your wellness to your near ones? Please give the contact no. of your near ones/family member?

Ans: I usually talked to my wife over her mobile phone no. 9558865283 and informed about my wellness.

Q.17 Do you have anything more to say?

Ans: I may be pardoned as I have not committed any smuggling activity, entire activity had been controlled and supervised by Sh. Sanjay M Shah and Sh Ram Narayan Laddha.

5.15.1 Shri Sanjay Moolchand Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd was appeared on 25.10.2017 in compliance to Hon'ble High Court of Gujarat Order dated 16.10.2017 in the Cr. Misc. Application (for Anticipatory Bail) No. 25454 of 2017. Statement of Shri Sanjay Moolchand Shah alias Sanjay Khatod was recorded on **25.10.2017** under section 108 of C.A., 1962 wherein *interalia* he stated that his father used to run a company in the name of Shree Sai Baba Metals at 2nd Floor, Neel Kanth Plaza, Shahibaug, Ahmedabad; that at this company he used to import various types of Aluminium Scrap mainly from gulf countries; that this company was closed by his father in year 2009-10; that he used to sit sometimes in the office of Shree Sai Baba and learnt some in/out of the scrap business from there; that the godown of Shree Sai Baba Metals was

situated at A-15/1, Zaveri Estate, Near GIDC Kathwada Gam, Singarva, Ahmedabad; that though he had visited the godown of Shree Sai Baba Metals but never looked after the work related to godown.

Q.1. What job you are doing these days/presently?

Ans. I used to look after all work related to import of scrap only and my brother Sandeep is looking after the loading/unloading of the cargo at our godown situated at A-15/1, Zaveri Estate, Near GIDC Kathwada Gam, Singarva, Ahmedabad.

Q.2. What is your company's name?

Ans. It is M/s. Somnath Metals Pvt. Ltd. (SMPL in short). The office is situated at 203, 2nd floor, Neel Kanth Plaza, Shahibaug, Ahmedabad.

Q.3. What is your position in this company i.e. M/s. Somnath Metals Pvt. Ltd.?

Ans. I am one of the Directors in our firm M/S. Somnath Metals Pvt. Ltd. along with my younger brother Sandeep M Shah. We are dealing in scrap in this company. I state that I am looking after the work related to Import of Scrap and Accounts in our firm i.e. M/s. Somnath Metals Pvt. Ltd.

Q.4. In which items you are dealing in or trading in this company?

Ans. We are dealing in/trading, in Stainless Steel Scrap (304 Grade) and various types of Aluminium Scrap. We are importing the Aluminium Scrap and SS Scrap mainly from Gulf countries and sometimes from UK. We are also procuring SS Scrap (304) from domestically market i.e. mainly from Ahmedabad and Vadodara. We are also procuring some consignments from Surat, Indore and Ankleshwar. Our main customers of steel are M/s. Jindal Steel at Hissar, Haryana and Orisa. Few consignments we also sold to M/s. Laxcon Steel at Bavla, Ahmedabad. The imported Aluminium scrap was being sold to our customers at Dist. Surat and Ahmedabad.

Q. 5. Please peruse statements dated 20.07.2017, 21.07.2017, 16.08.2017 and 30.08.2017 of Shri Dipak JayantiBhai Thakor S/o Shri JayantiBhai Thakor ?

Ans. Yes, today on 25.10.2017, I have perused and gone through statements dated 20.07.2017, 21.07.2017, 16.08.2017 and 30.08.2017 of Shri Dipak JayantiBhai Thakor S/o Shri JayantiBhai Thakor, the proprietor of M/s. Bhagyoday Enterprise, Ahmedabad and put my dated signature on all pages of each statement in token of having seen and understood the same.

Q.6. Please peruse statements dated 23.07.2017, 10.08.2017 & 30.08.2017 of Shri Ram Narayan Laddha S/o Sh. Shyam Lal Laddha?

Ans. Yes, today on 25.10.2017, I have perused and gone through statements dated 23.07.2017, 10.08.2017 & 30.08.2017 of Shri Ram Narayan Laddha S/o Sh. Shyam Lal Laddha and put my dated signature on all pages of each statement in token of having seen and understood the same.

Q.7. Please peruse statement dated 23.07.2017 of Sh. Shri Ketan Hiralal Shah S/o Shri Hiralal M Shah?

Ans. Yes, today on 25.10.2017, I have perused and gone through statement dated 23.07.2017 of Sh. Shri Ketan Hiralal Shah S/o Shri Hiralal M Shah and put my dated signature on all pages of statement in token of having seen and understood the same.

Q.8 Please peruse statement dated 23.07.2017 of Mr. Kamlesh Sharma S/o Shri Prabhu Sharma ?

Ans. Yes, today on 25.10.2017, I have perused and gone through statement dated 23.07.2017 of Mr. Kamlesh Sharma S/o Shri Prabhu Sharma and put my dated signature on all pages of statement in token of having seen and understood the same.

Q.9. Please peruse statement dated 24.07.2017 of Mr. Prakash Mishra S/o Shri Bejnath Mishra ?

Ans. Yes, today on 25.10.2017, I have perused and gone through statement dated 24.07.2017 of Mr. Prakash Mishra S/o Shri Bejnath Mishra and put my dated signature on all pages of statement in token of having seen and understood the same.

Q.10. Please peruse statement dated 01.08.2017 of Shri Rajendra Singh Rao S/o Shri Sukhdeo Singh Rao ?

Ans. Yes, today on 25.10.2017, I have perused and gone through statement dated 01.08.2017 of Shri Rajendra Singh Rao S/o Shri Sukhdeo Singh Rao and put my dated signature on all pages of statement in token of having seen and understood the same.

Q.11 Please peruse statement dated 24.08.2017 of Shri Sandeep Moolchandbhai Shah S/o Sh. Moolchandbhai Shah ?

Ans. Yes, today on 25.10.2017, I have perused and gone through statement dated 24.08.2017 of Shri Sandeep Moolchandbhai Shah S/o Sh. Moolchandbhai Shah and put my dated signature on all pages of statement in token of having seen and understood the same.

Q.12. What do you know about Dipak Jayantibhai Thakore?

Ans. About 4-5 Year back, Diakbhai J. Thakore was residing near our house at Shahbaug, so I met him sometimes being my neighbor. He is the proprietor of M/s. Bhagyoday Enterprise, Ahmedabad and his firm is also dealing in Salse/Purchase/Import of Scrap.

Q.13. What do you know about Ramnarayan Shyamlal Laddha?

Ans. He is my cousin brother (Mama's Son) and resides at Krishna Kutir, Jain Colony, Shahibaug Ahmedabad. He is running one company namely M/s. Anjali Stainless Steel Pvt. Ltd. At Ahmedabad and his firm is dealing in HMS and SS Scrap. As per my knowledge they are importing scrap and might be procuring scrap from domestic market also.

Q.14. Where were you on 19th to 21st July, 2017?

Ans. I was at Ahmedabad till the evening of 21st July, 2017. I along with my wife and younger brother Sandeep left for Ambaji in the evening of 21st July, 2017. We travelled on foot all the way from Ahmedabad to Ambaji. We did not carry any means of communication with us and returned to Ahmedabad on 28th July, 2017.

Q.15. Are you aware that Dipakbhai Thakore had any company in his name?

Ans. As I told earlier in response to question no. 12 above Dipakbhai has one company M/s. Bhagyoday Enterprise in his name and he also deals in /trading in HMS Scrap and SS Scrap.

Q.16. Are you aware that Ramnarayan Laddha had any company in his name?

Ans. I know that Ramnarayan Laddha running one company M/s. Anjali Steel Pvt. Ltd. situated somewhere in Neel Gagan Plaza, Opp. Shabaug Police Commissioner's office. This company also deals in HMS and SS scrap. He procures domestic scrap as well as imported scrap in this company. As per my knowledge Ramnarayan Laddha supervises overall work of this company.

Q.17. Are you aware that Dipakbhai Thakore and Ramnarayan Laddha both used to deal in/trading in HMS Scrap?

Ans. Yes, I know that they are dealing in HMS and also dealing in SS scrap.

Q.18. Which mobile contact number you are using presently?

Ans. I was using 9825169614 since 10-12 years. I am not using this number since 25.07.2017. My residence contact no. is 079-25628260.

Q.19. When and how you come to know that summons were issued in your name by Mundra Customs?

Ans. I was told by my father on 02.08.2017 that summonses were issued in my name by Mundra Customs for remaining present on 03.08.2017 at 14:30 Hrs for tendering my statement.

Q.20. Did you ever Summoned by any department for tendering your statement before 31.07.2017?

Ans. No, I had never summoned by any officer of any department before the summoned by the Customs Mundra.

Q.21. Why did you not present before this office to tendering your statement even after receipt of three Summonses?

Ans. I was shocked and afraid of the Summons received on my name. Thereafter, I had left home and travelling here and there in cities viz. Udaipur, Nimach, Vadodara & Ahmedabad since 3 months because of afraid of arrest at any time/any place in the case of smuggling of gold.

Q.22. Do you aware that action could be initiated against you for non-compliance of Summonses issued to you under the provision of Section 174/175 of IPC, 1860, as also mentioned in the Summonses issued to you?

Ans. Yes, I completely aware about the action could be taken against me for non-compliance of Summonses. Since, I was not available at Ahmedabad and due to stress; I was on religious tours during the period.

Q.23. Who is looking after your account books in your office?

Ans. Sh. Jaminbhai Bhagat, residing somewhere at Raipur Darwaza, Ahmedabad was looking after the work related to accounts in our firm and he left our firm in the month of May, 2017, thereafter, I personally was looking the account books of my firm M/s. Somnath Metals Pvt. Ltd.

Q.24. What job your father is doing these days?

Ans. My father is attending social work and not attending any business work.

Q. 25. What are your office timings?

Ans. It is 11:00 am to 8:00 pm.

Q.26. Who looks after / attends the work (loading/unloading) at your godown?

Ans. My younger brother Sh. Sandeep M. Shah looks/attends work related to loading/unloading at our godown.

Q. 27. How many employees working in your firm?

Ans. There are no salaried person in our firm and my brother looking the work at godown and he might hire the persons for loading/unloading on daily basis.

Q. 28. Do you own any property in your name, your wife's or your sons'/daughters' name?

Ans. I have owned one two wheeler Honda Activa and one for wheeler Swift Dzire taken on loan on my name only. Apart from this we do not own any property.

Q.29. Do your father own property in his name?

Ans. The godown, office of M/s. SMPL and residential property at 3, Jayeshwar Society, Shahibaug, Ahmedabad are in the name of my father.

Q. 30. Do you have any Bank accounts in your name, your wife's or your sons' name?

Ans. I have one savings bank Account No. 911010060771454 in Axis Bank, Shahibaug, Ahmedabad, in my name. I am also operating bank account of Sandeep, generally he put his signature on checks as and when asked by me. My wife also has one savings bank account No. 911010060770088 in Axis Bank, Shahibaug, Ahmedabad and my son/daughter does not have any bank account.

Q.31. Do you have any Pan Card, Passport, Credit and debit Card in your name? Have you ever visited any foreign country?

Ans. I have Pan Card No. ASZPS7322Q and Passport No. J5161114 dated 12.03.2011 valid till 11.03.2021 (issued from Ahmedabad) in my name. I visited Dubai two times for personal reasons.

Q. 32. Who started M/s. Somnath Metals Pvt. Ltd?

Ans. I had started Somnath Metals Pvt. Ltd. in the year of 2011-12.

Q.33. Where is the bank a/c of M/s. Somnath Metals Pvt. Ltd?

Ans. The Current Bank A/c No. 91102003866311 and CC Account No. 911030046298823 of Somnath Metal is at Axis Bank, Shahibaug, Ahmedabad.

Q.34. What do you know about M/s. Bhagyoday Enterprise and M/s. Radhika Enterprise?

Ans. As I told earlier Sh. Deepakbhai J. Thakore is the proprietor of M/s. Bhagyoday Enterprise and Sh. Tushar Thakore is the proprietor of M/s. Radhika Impex both firms are situated at Kathwada GIDC, Ahmedabad. We had purchased SS Scrap from M/s. Bhagyoday Enterprise two to three times during 2016-17. We had never make any business transaction with M/s. Radhika Impex. Sh. Tuhsar Thakore is residing at Sahibaug near our residence. We met several times near our residence (i.e. formal meeting) but never talked/met regarding business.

Q. 35. Are you aware that Ramnarayan Laddha is in jail presently? Do you know the reasons why he is in Jail?

Ans. Yes, I am aware of that. I got the news through TV and newspaper. I know that he was arrested by Mundra Customs in connection with smuggling of Gold, Cigarettes and Betel Nuts concealing in Scrap.

Q.36. Are you aware that Dipakbhai Thakor is in jail presently? Do you know the reasons why he is in jail?

Ans. Yes, I am aware of that. I got the news through TV and newspaper. I know that he was arrested by Mundra Customs in connection with smuggling of Gold, Cigarettes and Betel Nuts concealing in Scrap.

Q. 37. Who was dealing with the transporters in Somnath Metals Pvt. Ltd. for loading / unloading of the scrap?

Ans. I was dealing with the transporters regarding loading/unloading of imported scrap in Somnath Metals Pvt. Ltd.

Q. 38. Are you filing the Income Tax Returns?

Ans. Yes, I am filing Income Tax Returns through our Chartered Accountant i.e. Mahesh Devpura & Co., MV House, Nr. Shahibaug, Hajipura Garden, Ahmedabad.

Q. 39. Do you use computers/E-Mails/ WhatsApp/Facebook etc.?

Ans. I use whatsapp and computer for opening mails of our firm i.e. smpl9444@gmail.com of M/s. Somnath Metals Pvt. Ltd. But, I do not use face book.

Q. 40. Do you know that Ramnarayan Laddha and Dipakbhai knew each other? Did you ever arrange any meeting between the two?

Ans. Ramnarayan Laddha and Dipakbhai know each other very well; however I had not arranged any meeting between them.

Q. 41. Kindly go through the Ans. to Q. No. 04 to 09 and 11 to 14 of Statement dated 30.08.2017 of Sh. Deepak J. Thakor. What you say about the same?

Ans. I go through the Question and reply to Q. 4 to 9 and Q. 11 to 14 in statement dated 30.08.2017 of Sh. Dipak J. Thakor and I had already signed on all pages in token of having seen the same. In this regard, I state that, I had neither arrange any meeting of Dipak J. Thakor with Ramnarayan Laddha nor looking/handling any type of work of M/s. Bhagyoday Enterprise and M/s. Rdhika Impex. On request of Sh. Dipak J. Thakor and Sh. Ramnarayan S. Laddha, I had just asked or requested to Sh. Kamlesh Sharma (Custom Broker) for clearance of their scrap imported at Mundra Port.

Q. 42. What is your interest for customs clearance of their cargo at Mundra Port?

Ans. I have no interest; I was just helping these two as Sh. Ramnarayan Laddha is my cousin brother (Mama's son) and Dipak J. Thakor being my neighbour.

Q. 43. Who are the main Custom Broker at Mundra Port to which you dealt with for clearance of imported scrap/cargo of your firm M/s. Somnath Metals Pvt. Ltd. and M/s. Bhagyoday Enterprise, M/s. Radhika Impex and M/s. H.B. Metals or any other?

Ans. I was contacted/dealing with M/s. Shakti Forwarders and Rama Shipping & Logistics for clearing the imported Scrap in the name of M/s. Somnath Metals at Mundra Port. Whereas, regarding clearance of Scrap in the name of M/s. Bhagyoday Enterprise I usually asked Sh. Kamlesh Sharma of M/s. Arihant Shipping. I had never cleared any imported cargo of M/s. Radhika Impex and M/s. H.B. Metals.

Q. 44. How many consignment of Scrap had been imported by your company M/s. Somnath Metals Pvt. Ltd. through Mundra Port during last two years and name the Custom Broker and the contact persons of the same?

Ans. I have no idea about exact no. of containers but roughly 25 containers of Scrap have been imported through Mundra Port and about 60% of these were cleared through M/s.

Shakti Forwarders and remaining 40% were cleared through M/s. Rama Shipping & Logistics. In Shakti forwarder, I used to talk with Sh. Pareshbhai at contact no. 02836-223521 and don't remember the mobile no. of Sh. Pareshbhai and used to talk with Rajeshbhai of M/s. Rama Shipping & Logistics, whose contact no. I don't remember.

5.15.2 Further statement of **Sanjay M Shah**, Director of M/s. Somnath Metals Pvt. Ltd., after proper overnight rest was recorded on **26.10.2017** in continuation to his earlier statement dated 25.10.2017. His statement recorded in questionnaire form is re-produced as under:

Q.45. Kindly go through your reply to Q. No. 21 of your statement dated 25.10.2017, wherein you stated that after hearing the seizure of gold at Mundra Port you had left home and travelling here and there in various cities for 3 months. Why you afraid of that incidence and what is your role in the smuggling of Gold, Cigarette and Areca Nuts for which you want to escape from arrest by Mundra Customs?

Ans. I, was afraid of arrest by Customs Authorities as Sh. Dipak J. Thakor and Sh. Ramnarayan S. Laddha (my cousin) was already arrested by Custom Mundra. I was working with these two persons and They gave my name to Customs Mundra as mastermind behind the smuggling of Gold, Cigarette and Betel Nuts.

Q.46. How you know that Sh. Dipak J. Thakor and Sh. Ramnarayan S. Laddha gave your name to Customs Mundra as mastermind behind the smuggling of Gold, Cigarette and Betel Nuts?

Ans. I got the news through TV and newspaper that they were arrested by Mundra Customs in connection with smuggling of Gold, Cigarettes and Betel Nuts concealing in Scrap. I thought they might be gave my name to Mundra Customs as involvement behind the smuggling of Gold, Cigarette and Betel Nuts.

Q.47. Sh. Ketan Shah in reply to Q. No. 7 of his statement dated 23.07.2017 informed that Sh. Ramnarayan and Shri Sanjay M Shah both are representatives of M/s. Bhagyoday Enterprise. What you say about his statement?

Ans. I, once again peruse his reply to Q. No. 7. I had never met with Sh. Ketan Shah. I used to contact Sh. Kamlesh Sharma for clearance of Imported Scrap of M/s. Bhagyoday Enterprise at Mundra Customs.

Q. 48. Sh. Ketan Shah under Q.17 of his statement dated 23.07.2017 informed that Sh. Ramnarayan, Sh. Sanjay M Shah, Sh. Dipak Thakor & the supplier M/s. Metal World FZE, P.O. Box 122927, Sharjah, UAE are the masterminds behind these smuggling of gold and cigarettes. What is your percentage in smuggling of gold and Cigarette?

Ans. I, once again peruse his reply to Q. No. 17. As I told earlier that I was handling the work related to clearance of imported scrap of M/s. Bhagyoday Enterprise on the request of Sh. Ramnarayan S. Laddha.

Q.49. Who is saleem?

Ans. I don't know any Saleem.

Q.50. Who is Rajdeep singh?

Ans. I don't know any person namely Rajdeep Singh.

Q.51. Sh. Kamlesh Sharma in reply to Q. No. 4 of his statement dated 23.07.2017 had stated that Mr. Dipak Jayanti Bhai Thakor contacted him around 12 Months ago and Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., Shahibaug, Ahmedabad will attend all import related work of his firm and on same day Mr. Sanjay M Shah informed him that he will look after all import related work of Mr. Dipak Jayanti Bhai Thakor. What is your submission in this regard?

Ans. I, once again peruse his reply to Q. No. 4. I met Sh. Kamlesh Sharma alongwith Sh. Ramnarayan S. Laddha at Gandhidham in the month of May/June, 2017. Thereafter, I talk with Sh. Kamlesh Sharma, regarding import of Scrap in the name of M/s. Bhagyoday Enterprise.

Q.52. Sh. Kamlesh Sharma in reply to Q. No. 7 of his statement dated 23.07.2017 had stated that Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd., is the only person contacted/in touch with him for the import clearance of goods in respect of M/s. Bhagyoday Enterprise. What was your interest to attend the import work of M/s. Bhagyoday Enterprise?

Ans. I, once again peruse his reply to Q. No. 7. I completely agreed the fact that I used to contact Sh. Kamlesh Sharma for clearance of imported Scrap of M/s. Bhagyoday Enterprise. I have no interest in doing the work of M/s. Bhagyoday Enterprise. Sh. Ramnarayan S. Laddha arranged meeting with Sh. Kamlesh Sharma and thereafter, Ramnarayan asked me to handle the custom clearance of imported goods of M/s. Bhagyoday Enterprise through Sh. Kamlesh Sharma. We are also importing Scrap from gulf countries through M/s. Shakti Forwarder (Custom Broker). Sh. Ramnarayan Laddha is warranted by Sales Tax Department in some case and to escape from Sales Tax department, he was not using his phone. Therefore, he asked me for help for clearance of his cargo at Mundra Port. On his request, I, just helping Sh. Dipak and Sh. Ramnarayan for clearance at Mundra Port.

Q.53. In reply to Q. No. 43 of under statement dated 25.10.2017 that you were contacted/dealing with M/s. Shakti Forwarders and Rama Shipping & Logistics for clearing the imported Scrap in the name of M/s. Somnath Metals at Mundra Port. Why you allotted the custom clearance work of M/s. Bhagyoday Enterprise to Sh. Kamlesh Sharma?

Ans. On record M/s. Bhagyoday Enterprise is not my firm and Sh. Ramnarayan Laddha through Sh. Dipak Thakor was holding the business in the name of M/s. Bhagyoday Enterprise. I just followed the instructions of Sh. Ramnarayan S. laddha in this regard.

Q.54. Sh. Kamlesh Sharma in reply to Q. No. 12 of his statement dated 23.07.2017 had stated that the 11 Bills of Entry were filed by them on the direction and import documents provided by Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd? Why you only?

Ans. I, once again peruse his reply to Q. No. 12. I agreed with his statement and I state that I had directed and provided documents to Sh. Kamlesh Sharma for filing the Bills of Entry No. (i) 9594533 dated 06.05.2017, (ii) 9636593 dated 10.05.2017, (iii) 9636606 dated 10.05.2017, (iv) 9826756 dated 25.05.2017, (v) 2124422 dated 16.06.2017, (vi) 2297719 dated 03.07.2017 & (viI) 2458081 dated 14.05.2017. In the Bill of Entry No. 2458081 dated 14.05.2017, it is come to know that 27 Kgs gold was found in the import consignment. Four Bills of Entry were filed through M/s. Bright Shiptrans Pvt. Ltd and rest Bills of Entry were

filed through M/s. M/s. Arihant Shipping Agencies. Total 11 Bills of Entry of M/s., Bhagyoday Enterprise were filed by me through Sh. Kamlesh Sharma.

Q.55. Kindly peruse a Driving Licence No. GJ01/206710/06. Could you recognized the person showing in the picture?

Ans. I, perused the Driving License No. GJ01/206710/06. I identified him as Mr. Ramnarayan Shyamlal Laddha who residing at Ahmedabad, this is the same person whom I have referred in statement as Mr. Ramnarayan Shyamlal Laddha. I put my dated signature of his ID – Driving License No. GJ01/206710/06.

Q.56. Sh. Kamlesh Sharma in reply to Q. No. 19 of his statement dated 23.07.2017 had stated that Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. is the mastermind behind these smuggling of gold and also cigarettes. They met us two times at Gandhidham. No other importer cares so much for HMS container as the value of the cargo compared to other scrap like Copper; Brass & Zinc is very low. What is your statement in this regard?

Ans. I, once again peruse his reply to Q. No. 19. In this regard I state that we are also importing scrap in our own firm M/s. Somnath Metals Pvt. Ltd. through M/s. Shakti Forwarder (CB). I never came to Gandhidham to meet with our Custom Broker M/s. Shakti Forwarder in this regard, but I came to meet to Sh. Kamlesh Sharma with Sh. Ramnarayan Laddha. I don't know why he came to meet Sh. Kamlesh Sharma, the reasons are well known to Sh. Ramnarayan Laddha, only.

Q. 57. Do you know Shri Prakash Mishra of M/s. Rama Krishna Freight Carrier, Gandhidham?

Ans. Yes, I knew Sh. Prakash Mishra very well. He is dealing the transportation of my imported Scrap since, we started import at Mundra Port. We are having good family relations also.

Q.58. Sh. Prakash Mishra in reply to Q. No. 21 in his voluntary statement dated 24.07.2017 had stated that he come to know about M/s. Bhagyoday Enterprise, Ahmedabad through Mr. Sanjay M Shah for the last ten Months and as per direction of Mr. Sanjay M Shah they have done the work of transportation (25 containers) of HMS Scrap imported by M/s. Bhagyoday Enterprise from UAE from CFS to their destination at Kathwada, Singarva. What is your statement in this regard?

Ans. I, once again peruse his reply to Q. No. 21, I admit the same. In this regard, I state that I had directed Sh. Prakash Mishra to transport the import Scrap cargo of M/s. Bhagyoday Enterprise from CFS at Mundra Port to "Dhra Kanta" at Kathwada from where Sh. Ramnarayan Laddha through Sh. Dipak or his representative get the container to their desired place.

Q.59. Have you talk or Transporter Sh. Prakash Mishra talk with you immediately after detection of Gold by Mundra Customs in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017) ?

Ans. Yes Sh. Prakash Mishra talk with me immediately after detection of Gold by Mundra Customs in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017) & I told him that the Cargo was of Mr. Dipak Thakkor, Proprietor of M/s. Bhagyoday Enterprise, it was not

mine. Further, also told him not to disclose his name i.e Shri Sanjay M Shah in the gold smuggling case. Also pleaded not to give his name i.e Shri Sanjay M Shah in statement.

Q.60. Sh. Prakash Mishra in reply to Q. No. 33 in his voluntary statement dated 24.07.2017 had stated that on the very next day after detection of Gold by Mundra Customs in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017), I telephonically told the facts to Mr. Sanjay M Shah on his mobile – 9825169614, but he told me that the Cargo was of Mr. Dipak Thakkor, Proprietor of M/s. Bhagyoday Enterprise, it was not mine. Further, has told me not to disclose his name i.e Shri Sanjay M Shah in the gold smuggling case. Also pleaded not to give his name i.e Shri Sanjay M Shah in statement? What is your statement in this regard?

Ans. I, once again peruse his reply to Q. No. 33, I admit that Sh. Prakash Mishra on the very next day after detection of Gold by Mundra Customs in Container No. TTNU 2689561 (B/E No. 2458081/14.07.2017) talked with me and told him not to disclose his name i.e Shri Sanjay M Shah in the gold smuggling case. Also pleaded not to give my name in his statement because I afraid of arrest by Customs Authorities.

Q.61. Sh. Prakash Mishra in reply to Q. No. 35 in his voluntary statement dated 24.07.2017 had stated Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. is the mastermind behind these smuggling of gold and also cigarettes? What is your statement in this regard?

Ans. I, once again peruse his reply to Q. No. 35, in this regard, I state that every time I had directed him for the transport of imported Cargo i.e. HMS/MS Scrap from Mundra Port to Kathwada, (A-2, Bholeshiv Compound, Singrava, Kathwada, Ahmedabad). Many times he meets me together with Mr. Ramnarayan Shyamlal Laddha. Gold was detected by Mundra Customs in HMS Scrap imported by M/s. Bhagyoday Enterprise. Every time I directed Sh. Prakash Mishra for the transportation work of goods i.e. HMS Scrap imported by M/s. Bhagyoday Enterprise and as per my direction he got the payment from M/s. Bhagyoday Enterprise and I am the only person in regular touch with him and on detection of gold I told him not to disclose my name in the gold smuggling case and pleaded not to give my name in statement, therefore he might be saying like this that I am the mastermind behind these smuggling of gold and also cigarettes.

Q.62 Do you know Sh. Rajendra Rao director of M/s. ASR India Pvt. Ltd, Mumbai?

Ans. No, I don't know and never contacted any Rajendra Rao and any other person of M/s. ASR India Pvt. Ltd. Mumbai.

Q.63. Kindly peruse Current Account bank statements of M/s. Bhagyoday Enterprise at Axis Bank, Shahibaug, Ahmedabad (Account No. 916020013105318) for the period (i) From 01.04.2016 to 31.03.2017 and (ii) From 01.04.2017 to 01.08.2017. On simply going through the same it appears that there are various transactions between M/s. Bhagyoday Entrprise and your firm M/s. Somnath Metals Pvt. Ltd. What is your statement regarding the same?

Ans. I peruse Current Account bank statements of M/s. Bhagyoday Enterprise at Axis Bank, Shahibaug, Ahmedabad (Account No. 916020013105318) for the period (i) From 01.04.2016 to 31.03.2017 and (ii) From 01.04.2017 to 01.08.2017 and put my dated signature in token of having seen the same and correctness. In this regard, I state that these

transactions were made towards the advance payments for purchasing the scrap from M/s. Bhagyoday Enterprise which they are importing from gulf countries.

Q. 64. The Bank statements referred in question No. 63 above shows that you were regularly transacting with M/s. Bhagyoday Enterprise. Is M/s. Bhagyoday Enterprise is your regular customer/client? How many times your firm M/s. Somnath Metals Pvt. Ltd. had purchased Scrap or any other goods from them?

Ans. We are regularly purchasing Aluminium/HMS/SS Scrap from M/s. Bhagyoday Enterprise since last year i.e. 2016-17. Presently I don't know exact no. of containers/consignments we purchased from them but I will inform you after looking our records. I will provide the copies of RG-23D register for last two years within a week time. We had ordered M/s. Bhagyoday Enterprise for Scrap only. As I told earlier I am also handling the import related work of M/s. Bhagyoday Enterprise since last one year on request of Sh. Ramnarayan Laddha (my cousin/Mama's son).

Q. 65. Who is the Owner of M/s. Jay Engineers? How did you contacted to M/s. Jay Engineers? Please give the address of M/s. Jay Engineers?

Ans. Sh. Rajendra Kumar Yadav is the proprietor of M/s. Jay Engineers, Himmatnagar. We are purchasing only SS Scrap (Grade 304) from M/s. Jay Engineers. We are in contact since last 9 month only. I will provide the address and contact no. of M/s. Jay Engineers within a week period.

Q.66. Who is the Owner of M/s. H B Metal Private Limited? How did you contacted to M/s. H B Metal Private Limited? Please give the address of M/s. H B Metal Private Limited?

Ans. M/s. H B Metal Private Limited is my Mama's company, the exact owner of company I don't know at present time. We are purchasing only SS Scrap (Grade 304) from M/s. H B Metal Private Limited. We are in contact since last three years. I will provide the address and contact no. of M/s. H B Metal Private Limited within a week period on your office email id. siibmundra@gmail.com. It is also pertinent to mention that Sh. Ramnarayan Laddha is my Mama's son.

Q.67. Sh. Dipakbhai Thakor in reply to Q. No. 7 in his voluntary statement dated 30.08.2017 had stated that the entire transactions of his firm M/s. Bhagyoday Enterprise were being controlled/operated by Sh. Sanjay M Shah and Sh. Ramnarayan S. Laddha.? What you state about the same?

Ans. Sir, I state that I had never handled/controlled the current Account of M/s. Bhagyoday Enterprise. Further I state that I don't know by whom his Accounts was handled/controlled. The same facts can be verified from Axis Bank Shahibaug, Ahmedabad.

Q.68. Kindly once again go through the statement of Axis Bank current account no. 91420013105318 entry dated 12.05.2017 BRN Ref No. 0510FIGS170273 USD 24003.40/RLZ showing a debit of Rs.1868181.37 and the earlier credit of Rs. 19,00,000/- by M/s. Somnath Metals in M/s. Bhagyoday account. The amount of USD 24003.40 amounting to Indian Rs. 1868181.37 exactly refers to Bill of Entry No. 9594533 dated 06.05.2017. Please clarify?

Ans. I have gone through the statement and said Bill of Entry and put my dated signature. As I have earlier stated that I don't know by whom Accounts of M/s. Bhagyoday was

handled/controlled. The same facts can be verified from Axis Bank Shahibaug, Ahmedabad. On request of Shri RamNarayan Ladha, I credited/gave Rs. 19,00,000/- in advance against the payment of HMS /SS Scrap will be purchasing from M/s. Bhagodaya Enterprises. Shri RamNarayan Ladha told me for the advance payment and also ensured that if imported cargo i.e. HMS/SS Scrap is not upto mark in quality or not upto satisfaction of you, your advance amount Rs. 19,00,000/- will be returned to you.

Q.67 Who is the owner of M/s. Radhika Impex, Ahmedabad? How you know M/s. Radhika Impex?

Ans: Sir, the firm M/s. Radhika Impex is owned Sh. Tushar Nattubhai Thakor, cousin brother of Dipak Thakor.

Q.68. Sh. Dipakbhai Thakor in reply to Q. No. 17 in his voluntary statement dated 30.08.2017 that I may be pardoned as I have not committed any smuggling activity, entire activity had been controlled and supervised by Sh. Sanjay M Shah and Sh Ram Narayan Laddha. Please offer your comments?

Ans. No Comments.

Q.69. Do you know from where the Scrap was being imported by M/s. Bhagyoday Enterprise and where it was going?

Ans. HMS/SS Scrap was being imported by M/s. Bhagyoday Enterprise from gulf countries mainly from UAE and is going from CFS at Mundra Port to "Dhra Kanta" at Kathwada from where Sh. Ramnarayan Laddha through Sh. Dipak received/get the container to their desired place.

Q.70. Do you met Shri Ram Narayan Ladha between 19-22 July, 2017?

Ans. Yes, I met Shri Ram Narayan Ladha either on 20th or on 21th at my residence 102, Manali Apartment, Shahibaug, Ahmedabad along with my father & my uncle.

Q.71 Do you have anything more to say?

Ans: I may be pardoned as I have not committed any smuggling activity; entire activity had been controlled and supervised Sh Ram Narayan Laddha & Dipak Thakor.

5.16 Further statement of Shri **Sanjay M Shah**, Director of M/s. Somnath Metals Pvt. Ltd., was recorded on **07.11.2017** under Section 108 of C.A., 1962. His statement recorded in questionnaire form is re-produced as under:

Q.1: Do you know Mr Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, Daskaroi, Ahmedabad?

Ans: Yes, I know, he was my neighbor.

Q.2 What is the business of Shri Dipak J Thkor at present? How do you associated with with his business?

Ans: Dipak J Thakor is engaged in the business of Metal. I have purchased scrap from him in 2016-17.

Q.3 Do you purchase imported scrap from M/s. Bhagyoday Enterprise?

Ans: I have purchased imported scrap from him in 2016-17. We purchased this scrap under the cover of excise invoice issued by him and we further sold to our customers under excise invoice.

Q.4 How did you help M/s. Bhagyoday Enterprise for import clearances?

Ans: I have helped him in clearance since last six months. I used to handed over the documents to CHA which was given by Shri Dipak. At first the documents were sent through mail and the mail ID was of M/s. Bhagyoday which was used by Dipak. I did this act on the request of Ramnarayna bhai and Dipak as a help.

Q.5 Have you helped Shri Dipak J. Thakor in Banking related operations?

Ans: No, I have not helped in Banking operations to Shri Dipak.

Q.6 From whom computer did you e-mail the copies of import documents? Where was that computer installed?

Ans: I have e-mailed those documents from my office computer which were bring to my office by Shri Dipak e during last six months. Those documents were e-mailed from my office computer.

Q:7 Kindly peruse the statements of Dipak J Thakor dated 20.07.2017, 21.07.2017,16.08.2017 and 30.08.2017 and offer your comments?

Ans: After reading and understanding the statements, I put my signatures on the statements of Dipak J Thakor dated 20.07.2017, 21.07.2017,16.08.2017 and 30.08.2017,. In this respect, I state that I have helped him in CHA & transport related works only since last six months on the request of Ramnarayan and Dipak. Apart from that, I have not helped him in any other work.

Q:8 Shri Dipak J Thakor in reply to Q. No. 7 & 9 of his statement dated 30.08.2017, stated that Axis Bank A/c No. 91420013105318 which is in the name of M/s. Bhagyoday Enterprise was operated and controlled by Shri Sanjay M Shah and Shri Ramnarayan S Laddha? Please comment?

Ans: I perused the statement of Dipak J Thakor dated 30.08.2017 and in this respect, I state that I have never operated his Bank Account and I do not know even the password of the account.

Q:9 Do you know any firm namely "M/s. Radhika Impex" which is situated at 8, Annapurna Industrial Estate, Near Zaveri Estate, Kathwadagam, Ahmedabad? If yes, tells about the proprietor/Director of the firm. Please also tell about your business and family relations with this firm?

Ans: Yes, I know Shri Tushar Thakor, the proprietor of M/s. Radhika Impex since last ten years. His main business is of scrap.

Q:10 Did Dipak J Thakor employed to your firm ?

Ans: No, Dipak J thakor never worked in my firm.

Q:11 Did you know any firm in the name of Jay Engineers? If yes, please tell full address of that firm?

Ans: Yes, I know the firm M/s. Jai engineers which is situated at below mentioned address:

7, Krishna Complex,
1846, Opp. Civil, Himmatnagar,
Gujarat, Mob.No. 9960583253

Q:12 Please tell, from which ports did you clear the Import consignment of M/s. Somnath Metals?

Ans: I had cleared the import consignments of M/s. Somnath Metals from Mundra Port and ICD Ahmedabad. I had imported some containers from Nhavasheva Port during two years ago.

Q:13 Please tell the name of the transporters who are engaged in transport of your import clearances?

Ans: I availed transport services of M/s. Radhakrishna Freight Carriers only.

Q:14 Please tell the name of the transporters whose services are taken for transportation of sold goods?

Ans: My main transporters are:

(i) M/s. Nalwa Transport

(ii) Anil Transport

(iii) Khandelwal Transport

(iv) Bafta Transport

Q:15 Please produce following records of your firm for last two years.

(i) Purchas Invoice & Sales Invoice

(ii) RG 23 D Register & Excise Dealer Returns

(iii) Sales Register

Ans: The records are not available at present. The same will be submitted within ten days.

5.17 Statement of **Shri Sanjay M Shah**, was recorded on **07.11.2017** under Section 108 of C.A., 1962 before the Senior Intelligence officer, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad in case booked against M/s. Radhika Impex, Ahmedabad. Shri Sanjay M Shah stated in his statement that he was residing with my family permanently at 3, Jayeshwar Society, Near Railway Crossing, Shahibaug, Ahmedabad -380004, but at present there in renovation work is going on at his permanent address, therefore he temporarily residing at 102, Manali Appartment, Near Railway Crossing, Shahibaug, Ahmedabad - 380004 at present; that his official name is "Sanjay Shah" and he also known as "Sanjay Kumar Khatod" among his friends, relatives and business contacts.

5.18.1 Further statement of **Shri Sanjay M Shah**, was recorded on **08.11.2017** before the Senior Intelligence officer, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad wherein he *inter-alia* stated that he involved with following firms as owner or director or had business relationship or controled the following firms/companies and he looked after purchase-sale, import, banking, administration and finance related works of the following firms:

(i) M/s. Somnath Metals Private Limited having Office at 203, Nilkanth Plaza, Infront of Madhopura Market, Shahibaug, Ahmedabad-380004. Godown:- A/15/2, Zaveri Industrial Estate, Kathwada-Singarva Road, Kathwada, Ahm,edabad-3824300. He had taken Importer-Exporter code No. 0811013502 dated 07.09.2011 in the name of this company. This company having its Bank Account No. 911020038663111 in Axis Bank, Nilkanth Plaza, Shahibaug, Ahmedabad-380004. he and my brother Shri Sandeep Kumar Mulchandshah are

the two directors of this company. Earlier his father Shri Mulchand Shah and his uncle Shri Mathuralal Shah were the director of this firm now they have resigned from their posts.

(ii) Shri Saibaba Metals: He further stated that this firm was situated at Lunsawad , Dariyapur. This company having its Bank Account in Axis Bank, Nilkanth Plaza, Shahibaug, Ahmedabad-380004. Now the company is non-operative and its bank account is also non-operative.

(iii) M/s. Shivkripa Metals Pvt Ltd., 203 Nilkanth Plaza, Infront of Police Commissioner's Office, Shahibaug, Ahmedabad-380004. His uncle Shri Chhatarlal Shah and Rameshwar Shah are the two directors of this company. This company also having its Bank Account in Axis Bank, Nilkanth Plaza, Shahibaug, Ahmedabad-380004.

(iv) M/s. Ashirwad Metals, Kubadthal, Ahmedabad: His cousin Shri Chirag Shah is the owner of this firm and this company also having its Bank Account in Axis Bank, Nilkanth Plaza, Shahibaug, Ahmedabad-380004.

(v) M/s. Sanjay Mulchand Shah-HUF, 3, Jayeshwar Society, Near Railway Crossing, Shahibaug, Ahmedabad-380004. There is very minimal business in this firm and this firm having its Bank Account No. 510010100016579 in Axis Bank, Nilkanth Plaza, Shahibaug, Ahmedabad-380004.

5.18.2 On asking more about M/s. Somnath Metals Pvt. Ltd., he stated that this company is engaged in business of selling metal scrap; that Import Export Code has also been issued in the name of the company and they have imported metal scrap under the said IEC; that they also purchase and sale metal scrap from the local market; that he looked after all the official works i.e. sale and purchase, banking, financial, administrative work etc related to the said company and all the work related to Godown i.e. delivery of goods, transport etc are looked after by his brother Shri Sandip Kumar Shah; that two employees namely Shri Dharmendra Surti (Mob. No. 9727890800) and Shri Jaimin Soni (Mob. No. 8401855209) are working in the office of this firm situated at Shahibaug; that Shri Viajyrbhai & Shohan singh would work in our Godown; that his e-mail IDs are sanjaykhatod1244@gmail.com, saibabametal_9@yahoo.co.in, somnathmetals@yahoo.com, smp19444@gmail.com, and he use these e-mail IDs in business of M/s. Somnath Metals.

5.18.3 On being asked he stated that he knew Mr Thushar Natubhai Thakor who resides at B-1/7, Raghukul Society, Near Railway Crossing, Shahibaug, Ahmedabad; that they became friend after shifting from Surat to Ahmedabad; that he is his neighbor in Ahmedabad; that Shri Tushar Thakor is also known as "Rinku" in his friend and relatives; that his mobile No. is 9724169844; that earlier he used to work as Photographer in marriages and other functions, but, he established a firm in the name of M/s. Radhika Impex, 8-Annapurna Industrial Estate, Near Zaveri Estate, Village- Kathwada, Ahmedabad-382430 since April, 2017 which deals in import of scrap and its trading; that the said firm having its Account No. 917020025386537 in Axis Bank, Nilkanth Plaza, Shahibaug, Ahmedabad; that Shri Tushar Takhor is known to his maternal brother Shri Ramnarayan Shyamlal Laddha (Mob. No. 9824079705); that Shri Tushar Thakor was introduced to Shri Ramnarayan Laddha by

Shri Dipak Thakor who is cousin of Shri Tushar Thakor; that he knew this because Shri Tushar Thakor told him about this; that Shri Tushar Thakor used to come in his office situated at 203, Nilkanth Plaza, Shahibaug in the matter of import related work of M/s. Radhika Impex; that Shri Ramnarayan Laddha told him that he has started a firm namely M/s. Radhika Impex and he wanted to do import of Metal Scrap from that firm, but due to some reasons , he has started this firm in the name of Shri Tusharbhai Thakor; that as Shri Ramnarayna Laddha was the owner of M/s. Radhika Impex, he had invested his own money in all the business of M/s. Radhika Impex; that Shri Ramnarayna Laddha would look after all the works i.e. Banking, Trading, Finance, Administration etc of M/s. Radhika Impex and the name of Shri Tushar Thakor would be used in official papers only; that Shri Ramnarayna Laddha as well as Shri Tushar Thakor has informed him about this; that Shri Ramnarayna Laddha has informed him that Shri Tushar Thakor is not much literate and he has less knowledge of computer and internet; that as there is a big offence case booked by Sales Tax Department against Shri Ramanarayna Laddha so he was unable to handle day to day work viz Import related work, banking related work, CHA related work , Customs related work , Transport related work of M/s. Radhika Impex; that this was the reason he himself handled all these works of M/s. Radhika Impex on the request of Shri Ramnarayan Laddha; that he had appointed M/s. Guruprakash Enterprise, C.G.Road, Ahmedabad, Custom House Agent to look after the customs and import related work of his own firm M/s. Somnath Metal Pvt Ltd; that he contacted Shri Ajay Dutt who used to work in M/s. Guruprakash Enterprise for the import related work of M/s. Radhika Impex, but Shri Ajay Dutt informed him that he had left M/s. Guruprakash Enterprise and joined M/s. Sayani & Sons which was situated at 211, Shanay-2, in front of Gandhigram Railway Station, Ashram Road, Ahmedabad and he stated that he would done all the import related work of M/s. Radhika Impex through M/s. Sayani & Sons, CHA; that Shri Ajay Dutt also informed that there was a company namely M/s. Xpress Maritime Pvt Ltd which is engaged in the work of logistics and transport and the office of M/s. Xpress Maritime Pvt Ltd is also situated at the address of M/s. Sayani & Sons; that due to this reason, he had also given the work of transport and freight forwarding of M/s. Radhika Impex to Ajay Dutt; that all the business works of M/s. Radhika Impex were done through e-mail ID tushar.thkaor3480@gmail.com, radhikaimpex121@gmail.com, radhikaimpex9@yahoo.com, radhikaimpex7979@gmail.com, radhikaimpeximpo@gmail.com; that he had send the documents of first consignment of import of 102.370 MTS of HMS scrap imported in June, 2017 by M/s. Radhika Impex contained in five containers to Shri Ajay Bhatt, but later on the said containers were released in the name of the firm M/s. Bhagyoday Enterprise, Ahmedabad; that Shri Ramnarayna Laddha is the real owner of M/s. Bhagyoday Enterprise, but in government documents, the owner of the said firm is shown as Shri Dipak Thakor, cousin of Shri Tushar Thakor; that thereafter, in July 2017, six containers containing 101.394 MTS of HMS Scrap were cleared from ICD Khodiyar by Shri Ajay Dutt of M/s. Sayani & Sons; that he send the KYC documents and other documents related to this import to Shri Ajay Dutt by Shri Dharmesh Surti, an employee of his office; that he had made correspondences with Shri Ajay Dutt on his e-mail ID duttajay87@gmail.com from the e-mail ID radhikaimpo@gmail.com of M/s.

Radhika Impex and sent KYC related documents, Bill, Packing List, etc. to Shri Ajay Dutt for clearance of the cargo imported by M/s. Radhika Impex; that in respect of payment made to M/s. Sayani & Sons & M/s. Xpress Maritime Pvt Ltd for clearance of cargo imported by M/s. Radhika Impex, first my company M/s. Somnath Metals made transfer of Rs 4,50,000/- on 17.07.2017 and later Rs 4,00,000/- on 18.07.2017 in the Bank Account of M/s. Jay Engineers and then the said money was transferred to the Bank Account of M/s. Radhika Impex in Axis Bank, Nilkanth Plaza, Shahibaug from the account of M/s. Jay Engineers and then the said amount paid to Shri Ajay Bhatt; that M/s. Jay Engineers were also in the control of Shri Ramnarayna Laddha and all the banking, administrative and financial works of M/s. Jay Engineers were held by Shri Ramnarayan Laddha; that all the banking, administrative and financial works of following companies are controlled by Shri Ramnarayan Shyamlal Ladda:

- (i) M/s. Anjali Stainless Steel Pvt Ltd, Nilkanth Plaza, Shahibaug, Ahmedabad.
- (ii) H.B.Metals Pvt Ltd, 308, Nilkanth Plaza, Shahibaug, Ahmedabad.
- (iii) H.B.Metals Pvt Ltd, Puna Branch 308, Nilkanth Plaza, Shahibaug, Ahmedabad.
- (iv) S.H.B. Metals Pvt Ltd.,601, MV House, Infront of Hazipur Garden, Shahibaug, Ahmedabad.
- (v) Kinnari Enterprise, Ahmedabad
- (vi) R.S.S Enterprise, Ahmedabad
- (vii) Shri Ambika Metals, Kathwada,Ahmedabad (this firm is in the ownership of Vijay Jethaliya)
- (viii) Aryan Stainless Pvt. Ltd., Kathwada,Ahmedabad (this firm is in the ownership of Vijay Jethaliya)
- (ix) Shiv Metal Corporation, Zaveri Estate, Kathwada,Ahmedabad (this firm is in the ownership of Ghanshyam Somaji)
- (x) Jai Engineers, Himmatnagar, Gujarat, (shri Rajendra Kumar is shown as owner of this firm. However all the business of this firm is held by Shri Ramnarayan Laddha)

5.18.4 On being asked Shri Sanjay M. Shah stated that Shri Ramnarayan Laddha is also handling/ supervising the work of M/s. Bhagyoday enterprises, Bhole shiv compound, Singarva Ahmedabad and M/s. Mahendra Trading co., Near Hira Panna stadium Circle, Navrangpura, Ahmedabad; that the residential address of Shri Ramnarayan Laddha is A/31, Krishna Kutir, jain colony, shahibaug, Ahmedabad. He has been shown and explained a letter bearing NO. AXIS/SHB/TXB/Cert/17-18/41 dated 25.09.2017 issued by Axis Bank, Nilkanth Plaza, shahibaug, Ahmedabad that the letter bearing No. AXIS/SHB/TXB/Cert/17-18/18 dated 11.07.2017 was issued by Axis Bank, Shahibaug Branch certifying the signatures of Shri Dipak J Thakor in reference of Account No. 916020013105318 of M/s. Bhagyoday Enterprise, but by misusing the same, the same was used to issue a fake certificate in the name of Shri Tushar Thakor of M/s. Radhika Impex which was never issued by the Bank; that after aware of this, he informed that this certificate was also prepared in the computer of his office and it is known to me. !

5.18.5 Further, on being asked he stated that he knew the fact that the six containers which were imported by M/s. Radhika Impex at ICD Khodiyar declaring the said containers contained 107.330 MTS of HMS Scrap, but after detection by the DRI Officers it was found that the said containers were contained 35.8672 MTS of Betel Nuts and 67.4728 of HMS Scrap; that Shri Ramnarayna Ladda has created the firms in the name of M/s. Bhagyoday Enterprise and M/s. Radhika Impex for smuggling of gold and betel nuts; that as they did not want to do illegal activities through their operative firm M/s. Somnath Metals and M/s. H.B. Metals Private Limited and SHB Metals Pvt Ltd. so they created the firm M/s. Radhika Impex in the name of Shri Tushar Thakor and M/s. Bhagyoday Enterprise in the name of Shri Dipak Thakor; this is the reason when Mundra Customs caught Betel Nuts from the imported containers of M/s. Radhika Impex and Gold and Cigarette from the imported container of M/s. Bhagyoday Enterprise, they flew away Shri Tushar Thakor so that he could not be caught by Customs.

5.19 Further statement of **Shri Ramnarayan Laddha** was recorded on **19.12.2017**. His statement recorded in questionnaire form is reproduced as under:

Q.1. Please state your role in M/s. H.B. Metals Pvt. Ltd.?

Ans. M/s. H.B. Metals Pvt Ltd. is having two directors one Shri Bhairulal Laddha and another is Shri Ramnivash Laddha. However, I am looking after whole sole business of M/s. H.B. Metals Pvt. Ltd.

Q.2 Summons have been issued by this office to M/s. H.B. Metals Pvt. Ltd., to produce documents relating to sales/purchase made to/from M/s. Bhagyoday Enterprise but till date no response have been received. Please offer your comments?

Ans. We have not received summons issued by you. However, I received Summons dated 19.12.2017 issued by you and I assure that I will produce the said relevant documents before you on due date.

Q.3. Please state the business relations between M/s. H.B. Metals Pvt. Ltd & M/s. Bhagyoday Enterprise of Shri Dipak J. Thakor. .

Ans. We purchased and sold scraps to M/s. Bhagyoday Enterprise, Ahmedabad through agents only. We have shown the agent details in our bouchers maintained for the purpose of payments.

Q.4 Please peruse the answer to Q. No. 10 under statement dated 16.08.2017 of Shri Dipak J. Thakor and offer your comments.

Ans. I have perused the statement dated 16.08.2017 of Shri Dipak J. Thakor and put my dated signature in token of having seen and perused. In regards to answer to Q. No. 10 under said statement I state that I was not looking after the business of M/s. Bhagyoday Enterprise?

Q.5 Please peruse the statement dated 30.08.2017 of Shri Dipak J. Thakor wherein he stated in reply to various questions that you and Shri Sanjay M. Shah were handling the business of M/s. Bhagyoday Enterprise. Offer your comments

Ans. I have peruse the statement dated 30.08.2017 of Shri Dipak J. Thakor and put my dated signature in token of having seen and perused. In this regard, I state that I am not involved in the business of Shri Dipak J. Thakor.

Q.6 Please peruse statement dated 01.08.2017 of Shri Rajendra Singh Rao S/o Shri Sukhdeo Singh Rao and offer your comments? Do you know Shri Kamlesh Ratanshi Sonagela, Naliya?

Ans. I have perused the statement dated 01.08.2017 of Shri Rajendra Singh Rao and put my dated signature in token of having seen and perused. I do not know Shri Kamlesh Ratanshi Sonagela, Naliya.

Q.7 What do you know about M/s. Jay Engineers, Himmatnagar?

Ans. We have business dealing of scrap sales and purchase from M/s. Jay Engineers, Himmatnagar. However, I don't know about the owner of M/s. Jay Engineers as the dealing is done through agents only.

Q.8 Where is Tushar Thakor, proprietor of M/s. Radhika Impex?

Ans. I don't know.

Q.9 Please peruse the statement dated 25.10.2017, 26.10.2017 and 07.11.2017 of Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd and offer your comments?

Ans. I have perused the statement dated 25.10.2017, 26.10.2017 and 07.11.2017 of Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd and put my dated signature on last pages of said statements in token of having seen and perused. In this regard, I state that wherever, Shri Sanjay stated my name in the involvement of M/s. Bhagyoday Enterprise is not correct.

Q.10 Please peruse the copy of statement dated 07.11.2017 and 08.11.2017 of Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd. recorded before Senior Intelligence Officer, DRI, Ahmedabad, and offer your comments?

Ans. I have perused the statement dated 07.11.2017 and 08.11.2017 of Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd and put my dated signature on last page of said statements in token of having seen and perused. In this regard, I state that I am not agree with the submissions made by Shri Sanjay in respect of my role in M/s. Bhagyoday & M/s. Radhika Impex.

6.1 Summons bearing No. SK/04/2017 dated 15.11.2017 was issued to Shri Kamlesh Ratanshi Sonagela, Lohana Street, Naliya, Kutch to appear before the investigating officer and give statement in this case. He has sought for 30 days time through his advocate's letter dated 23.11.2017. Further, a Summons bearing No. SK/14/2017 dated 27.11.2017 was again issued to Shri Kamlesh Ratanshi Sonagela, Lohana Street, Naliya, Kutch to appear on 20.12.2017. Instead of appearance before the investigating officer, Shri Kamlesh Ratanshi Sonagela, preferred an application for Anticipatory Bail u/s 438 of Criminal Procedure Code. Further, Shri Alvia Crasta, the advocate of Shri Kamlesh R. Sonagela, vide letter dated 19.12.2017 requested to dispence the presence of his client till the application along with the appeal before the High Court of Gujarat is disposed off.

6.2 It appeared during the investigation that a substantial amount of fund has been received by the importer from Somnath Metals Pvt Ltd. and M/s. H.B. Metals Pvt. Ltd. It also appeared that the importer had paid a substantial amount to M/s. Jay Engineers, Himmatnagar also which was under the control of Shri Ramnarayn S. Laddha. Shri Sanjay M. Shah, director of M/s. Somnath Metals Pvt. Ltd. stated in his statement dated he will submit the documents relating to sales and purchase invoices issued by /to M/s. Bhagyoday Enterprise and M/s. Radhika Impex. But inspite of issuance of Summons bearing No. SK/23/2017 dated 06.12.2017 and SK/38/2017 dated 22.12.2017, M/s. Somnath Metals Pvt. Ltd has not submitted the relevant documents.

6.3 Whereas, summons bearing No. SK/03/2017 dated 07.11.2017, SK/12/2017 dated 27.11.2017 and SK/25/2017 dated 19.12.2017 was also issued to M/s. H.B. Metals Pvt. Ltd., Plot No. 201, Kathwada GIDC, Katwada, Ahmedabad to submit copy of sales and Purchase Invoices, Ledger account relating to transaction made with M/s. Bhagyoday Enterprise and M/s. Radhika Impex, Ahmedabad. Shri Ramnarayan S. Laddha in his statement dated 19.12.2017 accepted that he was looking after whole sole business of M/s. H.B. Metals Pvt. Ltd. and assure to submit the said documenta but the said documents have not been received.

6.4 Whereas, summons bearing No. SK/02/2017 dated 07.11.2017, SK/11/2017 dated 27.11.2017 and SK/37/2017 dated 22.12.2017 was also issued to M/s. Jay Engineers, 7, Krishna Complex, 1846, Opp Civil, Himmat nagar and called for copy of sales and Purchase Invoices, Ledger account relating to transaction made with M/s. Bhagyoday Enterprise and M/s. Radhika Impex, but the said documents have not been received.

7. Whereas, it appeared that Shri Dipak J. Thakor, Shri Ramnarayan Laddha and Shri Sanjay M. Shah with pre conceived and cool thought conspired to smuggle the gold and Cigarettes by way of concealing in their import consignment of Heavy Melting Scrap imported in the name of M/s. Bhagyoday Enterprise, a proprietor ship firm in the name of Shri Dipak J. Thakor. The details of import of gold and Cigarettes detected and seized concealed in the goods i.e. HMS imported by M/s. Bhagyoday Enterprise under the cover of Bill of Entry No. 2458081 dated 14.07.2017 in the container No. TTNU2689561 and Bill of Lading No. DUBASRMUN 6515 dated 13.07.2017 are as under:

Bill of Entry No./ Bill of Lading No. & date	Description of goods as per B.E /B.L	Qty. (MT) as per B.E /B.L	Assessable value declared in B.E. (Rs)	Qty. of goods smuggled by concealing in import consignment	Remarks
2458081 dt. 14.07.2017	Heavy Melting Scrap	23.60	458906	Gold -27 kg (27 bars of 1kg each)	Seized by SIIB, Mundra
DUBASRMUN 6515 dt. 13.07.2017	Heavy Melting Scrap	44.15	-	Cigarettes - 25.20 lakh sticks of Gudang Garam brand Cigarettes	Seized by SIIB, Mundra

8. Based on the investigation and statements of Shri Dipak J. Thakor, proprietor of M/s. Bhagyoday Enterprise, Ahmedabad and Shri Ramnarayan S. Laddha, both the persons were

arrested on 23.07.2017 for the commitment of an offence punishable under Section 132 and 135 of the Customs Act, 1962.

9. During the investigation, Bank accounts statement of M/s. Bhagyoday Enterprise for A/c No. 916020013105318 maintained with Axis Bank was called for for the period 01.04.2016 to 31.03.2017 and 01.04.2017 to 01.08.2017. On scrutiny of said bank account statement is appeared that said account was opened under scheme of 'Current Account-Business Advantage' on 06.04.2016 with a cash deposit of Rs. 22,000/-. It also appeared that before making payment of import consignment to overseas supplier and other legal expenses approximate equal amount of relevant consignment was funded by M/s. Somnath Metals Pvt Ltd, M/s. H.B. Metals Pvt. Ltd., etc. to the account of importer on same date. The initial transaction between the importer and M/s. Somnath Metals Pvt. Ltd and subsequently payment released to overseas supplier are shown as below as a sample basis:

Date of transaction	Amount paid by M/s. SMPL to importer	Amount paid to overseas supplier by importer (Rs.)	Amt in USD	Amt. paid to M/s. Rama Shipping by importer (Rs.)
07-04-2016	1425000	1178065.04	17689	232875
12-04-2016	300000			290401
13-04-2016	2050000	1736461.99	26081.40	321610
18-04-2016	2600000	2192120.06	32879.25	405434
25-04-2016	210000			210942
10-05-2016	200000			200000
21-06-2016	2450000	1593475.17	23558.25	
21-06-2016		860150.00	12703.50	
04-08-2016	150000			152278

10. Summary of the case:

10.1 The importer has filed a Bill of Entry No. 2458081 dated 14.07.2017 for clearance of 23.60 MT of Heavy Melting Scrap. During examination of cargo the docks officers recovered 27 numbers of gold bars of 1 Kg each having purity as 995 concealed in HMS scrap in container no. TTNU 2689561. Since the authorized person of the importers could not explain about the presence of these bars, all the 27 Gold bars along with the packing material and the scrap were placed under seizure under the provisions of Customs Act, 1962 under panchnama dated 19/20.07.2017. The seized bars were subsequently appraised on 20.07.2017, by the valuer who certified the bars as Gold of 1 Kg each having purity as 995 having market value of INR 7.84 Cr @ INR 29.04 lakh/Kg. The contraband was found concealed under H.M. Scrap which was exported by M/s. Metal World FZE, Sharjah, U.A.E. and imported by M/s. Bhagyoday Enterprise an Ahmedabad based firm.

10.2 Further, acting on an intelligence, a consignment of two containers declared in the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 as Heavy Melting Scrap have been examined on 21.07.2017 and found that total 175 cartoon of Gudang Garam brand Cigaretts have been concealed into the HMS. On details examination it was found that the

Consignee in the said Bill of lading was shown as M/s. Bhagyoday Enterprise, Ahmedabad and consignor/shipper as M/s. Metal World FZE, Sharjah. Since the Cigarettes found concealed in the HMS therefore, under a reasonable belief that the concealed goods i.e. 25.20 lakhs sticks of Gudang Garam brand Cigarettes imported in contravention of the provisions of Customs Act, and allied act viz. Cigarettes and Other Tobacco Act, 2003, are liable for confiscation and thus the said concealed goods and the scrap were placed under seizure under the provisions of Customs Act, 1962 under panchnama dated 21.07.2017. The seized cigarettes were subsequently appraised on 06.09.2017, by the valuer who certified the market price of Gudang Garam brand Cigarettes Rs. 7.50 /- per stick. Thus the total value of seized quantity of Cigarettes arrived at Rs. 189 lakh. It also appeared that the shipping line had received a request on whatsapp from the agent of shipper for change on the details of consignee and consignor without any documentary evidence with a clear intention to enter the contraband goods by hook or by crook.

10.3 Whereas, it appeared that the shipper i.e. M/s. Metal World FZE had approached the shipping line M/s. ASR Container Line PTE Ltd. through e-mail and whatsapp on 21.07.2017 for change in details of consignee and consignor in Bill of Lading No. DUBASRMUN 6515 dt. 13.07.2017, after detection of gold in previous consignment at Mundra port having similar consignee & consignor. The shipper had tried to change the following details in Bill of Lading No. DUBASRMUN 6515 dt. 13.07.2017:

Request for change details of	From	To
Shipper's name	M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E.	M/s. Al Sahara General Trading LLC, P.O. Box 81329, Dubai, UAE
Consignee name	M/s. Bhagyoday Enterprise, Ahmedabad	M/s. Radhika Impex, 8, Anpurna Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad - 382430

10.4. Whereas, it appeared during investigation that Shri Dipak J. Thakor, Proprietor of importer, admitted in his statements that he used to contact the with Shri Ramnarayan Laddha and Shri Sanjay Shah for importing the scrap consignments; that he used to get his share of monetary consideration on each container; that they used to pay him (Dipak) INR 50-60 thousand per container; that Shri Sanjay Shah and Shri Ramnarayan Laddha used to supervise the day-to-day business activity and banking relation operations of M/s. Bhagyoday Enterprise and Radhika Enterprise. From the bank account statement of the importer for current A/c No. 916020013105318, maintained with Axis Bank, it also appeared that the importer was funded by the firms M/s. Somnath Metals Pvt. Ltd., M/s. H.B. Metals Pvt. Ltd., etc. for the purpose of payment to overseas suppliers against the import made by importer. It also appeared that Shri Sanjay M. Shah is the director of M/s. Somnath Metals Pvt. Ltd. and Shri Ramnarayan Laddha has controlled the overall work of M/s. H.B. Metal Pvt. Ltd., M/s. Anjali Stainless Steel Pvt. Ltd.

10.5 Whereas, it appeared that Shri Sanjay M. Shah was actively involved in handling over the import documents to consignment agent/ CHA for clearance of imported goods pertained to importer. He was also decision making person for the purpose of filling of Bills of Entry and directed the C&F agent/CHA for filling the same. Shri Sanjay M. Shah also arranged transportation and decided the actual place of delivery of imported cargo. Shri Sanjay M. Shah, Shri Ram Narayan Laddha and Shri Dipak J. Thakor held a meeting at Delhi Darwaja, Ahmedabad at around 2200 hrs on 19.07.2017, after detection of Gold by Docks officer and decided to mis-lead the investigations by creating fictional characters like Saleem and Rajdeep Singh and by way of submission that the contraband would be transported to Mumbai, whereas the transporter confirmed that the cargo was going to Ahmedabad by providing necessary documentary evidences.

10.6 Whereas, it appeared that S/Sh. Dipak Thakor, Sanjay M. Shah and Ramnarayan Laddha all are part of this syndicate, the members of which are involved in nefarious activities e.g. smuggling of Gold, Cigarettes and Areca/Betel Nuts by way of concealment in HMS Scrap. The syndicate is engaged in smuggling of the goods by creating shadow companies and amending the import documents by amending the name of the consignee and the consigners, in favour of such shadow companies.

Role played by Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, Ahmedabad:

11. Shri Dipak J. Thakor has created a firm in the name of M/s. Bhagyoday Enterprise for trading of metal scraps and also engaged himself in import of HMS and other metal scraps and allotted IEC No. 0815907371. His initial investment in business was with a sum of amount of Rs. 1.00 lakhs ruppees and did not get any loan from financial institution for the purpose of running his business. Despite of the fact that he was fully aware about the provisions of Import -Export procedure, he agreed to play as puppet in the hands of Shri Sanjay M. Shah and Shri Ramnarayan Laddha. He places purchase order to the overseas supplier as per the instruction/direction of Shri Sanjay Shah and Ramnarayan Laddha. He has received a handsome amount from the firms/company handled by Shri Ramnarayan Laddha and Shri Sanjay Shah, in the bank account maintained in Axis Bank in the name of importer. During the investigation, Shri Dipak not replied the facts to the question with an intention to misguide the investigation as against the question regarding the payment to overseas supplier he answer "I do not know. I used to get my commission for allowing the use of my IEC". Shri Dipak Thakor was failed to submit the documentary evidence in relation to transaction of sales and purchase made with the firms controlled and supervised by Shri Laddha and Shri Sanjay Shah. He accepted that he was well aware about the use of his IEC and got an amount of Rs. 50 to 60 thousand for each container imported in the name of his firm. He was fully aware about the financial funding by the firms M/s. Somnath Metals Pvt. Ltd., controlled by Shri Sanjay M. Shah and M/s. H.B. Metals Pvt. Ltd. controlled by Shri Ramnarayan Laddha. He was aware about the purchase order placed to

M/s. Metal World FZE, Sharjah and aware about the supplier Mr. Sazzad. After detection of gold by the Customs officers at Mundra port, Shri Dipak mis-guided the investigation by way of creating fictitious characters with the help of Shri Ramnarayan Laddha and Shri Sanjay M. Shah. All the import documents and banking documents relating to importer were signed by Shri Dipak J. Thakore. He was fully aware about the smuggling of 27 kg of Gold concealed in the HMS imported by importer.

Role played by Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd., Ahmedabad:

12.1 Shri Sanjay M. Shah being neighbor of Shri Dipak J. Thakor, created a nexus with the help of Shri Ramnarayan Laddha. He funded the importer through his firm M/s. Somnath Metals Pvt. Ltd. for payment to overseas buyer as well as other legal expences viz. Customs duty, clearing and transportation charges, etc. for most of the import consignment imported by the importer. Shri Sanjay had admitted that he made advance payment to the importer against the consignment to be imported by the importer, but he failed to submit the documentaory evidence regarding purchase of imported goods from importer to establish his submission that he made payment in advance to the importer for the relevant consignment to be imported. Shri Sanjay Shah was the main person to take decision on behalf of importer and communicated his decision to M/s. Harshit Logistics, clearing and forwarding agent, CHA M/s. Arihant Shipping and transporter M/s. Shree Rama Krishna Frieght Carriers. There is no such person by the name of Saleem as it is a fictitious character created by Sh. Sanjay M Kathod (also known as Sanjay M Shah) and Sh Ramnarayan S Laddha with an intention to mislead the investigation. It also appeared that Shri Sanjay Shah had conveyed the decision to place the container in a particular CFS and also received delivery of past consignment of import made by importer at his desired place of delivery.

12.2 Shri Sanjay Shah played a vital role in the import made in the name of Importer. Insipte of joining the investigation against Summons issued to his under section 108 of C.A., 1962, he opted remedy of Anticipatory bail before the Hon'ble Courts. He appeared on 25.10.2017 in compliance to Hon'ble High Court of Gujarat Order dated 16.10.2017 in the Cr. Misc. Application (for Anticipatory Bail) No. 25454 of 2017.

12.3 Shri Sanjay M. Shah admitted in his statement that Shri Ramnarayna Ladda has created the firms in the name of M/s. Bhagyoday Enterprise and M/s. Radhika Impex for smuggling of gold and betel nuts. They do not want to do illegal activities through their operative firm M/s. Somnath Metals and M/s. H.B. Metals Private Limited and SHB Metals Pvt Ltd., so they created the firm M/s. Radhika Impex in the name of Shri Tushar Thakor and M/s. Bhagyoday Enterprise in the name of Shri Dipak Thakor. It appeared that Shri Sanjay Shah had made visit to Sharjah and made contact with M/s. Metal world FZE and convinced him to shipped the Gold and Cigarettes by way of concealment in the consignments of scraps. For the purpose of payment to the shippers, he has made advance payments to the

importer almost on the same date or prior to one or two days before the transaction. He also funded the importer for the purpose of legal fee or taxes. Shri Sanjay Shah shows purchasing the scrap by his firm from M/s. Bhagyoday Enterprise which they are importing from gulf countries and take delivery at Ahmedabad and unloaded the containers at his desired destination. He was well aware the contraband goods to be imported in the name of importer. It appeared that Shri Sanjay Shah being a financier would be the ultimate beneficiary in the case of clearance of instant import consignment.

Role played by Shri Ramnarayn S. Laddha, Active person of M/s. H.B. Metals Pvt. Ltd., Ahmedbad, M/s. Jay Engineers, Himmatnagar.

13. Shri Ramnarayna S. Laddha had played a role as mediator between the importer and their Supplier/customer. He plotted a nexus with the help of supplier situated a Sharjah and Shri Dipak J. Shah to smuggled Gold and Cigarettes in the name of Importer's IEC. Shri Ramnarayn Laddha had used his relation for funding the importer initially through M/s. Somnath Metals Pvt. Ltd. and his firm M/s. H.B. Metals Pvt. Ltd. Shri Ramnarayan Laddha accepted that he knew the shipper at Sharjah as "Sazzad" and he affirmed that the name of supplier narrated as 'Shahzad' by Dipak J. Thakor was actually the "Sazzad". It also appeared from the e-mail correspondense made between siibmundra@gmail.com and haresh@asrline.com that one Mr. Sajjad had e-mailed from metalworldfze786@gmail.com to haresh@asrline.com on 21.07.2017 at 15:08 hrs to hold the shipment under Bill of Lading No. DUBASRMUN6546 and DUBASRMUN6515 in Jabel Ali port. After detection of Gold in the containers imported in the name of importer, Shri Ramanarayan Laddha played a key role in attempt of change the name of consignee and consignor in the Bill of Lading No. DUBASRMUN 6515 dt. 13.07.2017 so that the cargo convered in said Bill of lading may not be detected or hold by the Customs, Mundra. It appeared that Shri Ramnarayan Laddha through Sh. Dipak Thakor hold the business in the name of M/s. Bhagyoday Enterprise as well other firms in the name of other persons. Shri Laddha also accepted that he looked after the work of M/s. H.B. Metals Pvt Ltd, Ahmedabad, in spite of no legal position he held in this company. He is also controlling over the other fimes viz. M/s. Jay Engineers, Himmatnagar. Shri Laddha has also plotted the nexus by visiting the offices of related persons viz. M/s. Harshit Logistics, a clearing and forwarding agent before the first time clearance of import consignment made by importer. Shri Laddha performed his role in the smuggling of Gold and Cigarettes in a well planned manner with the help of Shri Sanjay Shah. He directed Shri Sanjay Shah to make coordination with CHA, Clearaning and forwarding Agent and Transporter so that the import consginement may be cleared and reached their premises other than the premises mentioned in the import documents. Shri Laddha has failed to submit the documents relating to purchase of goods from importer as the huge amount of transcation with the firms controlled and supervised by Shri Laddha have been shown in the bank account of importer maintained with Axis Bank.

14. The relevant provisions of Customs Act, 1962, invoked in this case are reproduced as under:

14.1 As per Section 2 (39) "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;

14.2 SECTION 111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation : –

.....

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

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

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

14.3 SECTION 119. Confiscation of goods used for concealing smuggled goods. – Any goods used for concealing smuggled goods shall also be liable to confiscation.

Explanation. - In this section, "goods" does not include a conveyance used as a means of transport.

15. **Confiscation:**

15.1 The importer had smuggled total 27 kgs of gold bars by way of concealing it with their import consignment of heavy melting scrap of 23.60 Mts having declared assessable value of Rs. 4,58,907/- imported under the Bill of Entry No. 2458081 dated 14.07.2017. They have not declared the details of gold bars concealed in the HMS before the customs at the time of clearance of their aforesaid import consignment. The value of smuggled gold is derived by Shri Devang Soni, a Govt. approved valuer, considered on market rate of gold prevailed on the that date in Bullion Market of Gujarat, to Rs.7,84,08,000/- and submitted a certificate dated 20.07.2017 certified the value of the same. It appeared the act of importation of Gold bars by way of concealment is defined as smuggling in terms of Section 2 (39) of the Customs Act, 1962.

15.2 Since the gold is restricted item and cannot be imported without proper authorization from DGFT/RBI, the gold so smuggled was neither declared before the customs nor were included in bills of entry and value thereof do not correspond in the Bill of entry presented before the customs, are liable for confiscation. Therefore, the prohibited gold imported without proper authorization from DGFT/RBI and without declaration in Import General Manifest (IGM), is liable for confiscation under Sections 111 (f) 111 (i), and 111 (m) of the Customs Act, 1962.

15.3 Further, the 23.60 Mts of import consignment of "HMS" having assessable value of Rs 4,58,907/- imported under the Bill of Entry No. 2458081 dated 14.07.2017 being used as concealment of gold are also liable for confiscation under Section 119 of the Customs Act, 1962.

15.4 The importer had also smuggled total 25.20 lakhs sticks of Gudang Garam brand Cigarettes by way of concealing it with their import consignment of heavy mealiting scrap of 44.150 Mts having imported/ landed under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017. They have not declared the details of Cigarettes concealed in the HMS before the customs at the time of landing of their aforesaid import consignment. The total value of seized quantity of cigarettes comes to Rs. 189 Lakhs.

15.5 Whereas, the import of Cigarettes into India is subject to provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and Rules/ Notifications issued there under. Compliance with the Cigarettes Packaging and Labeling Rules is mandatory on imported cigarettes and tobacco products as a part of the Import Policy. Since in this case the packages of the illegally imported cigarettes did not contain prescribed pictorial warning, the consignment of cigarettes is covered under prohibited goods as defined under Section 2(33) of the Customs Act, 1962. The subject consignment of illegally imported cigarettes is liable to confiscation under Sections 111 (f), 111 (i), 111(j) and 111(m) of the Customs Act, 1962.

15.6 Further, the 38.778 Mts of import consignment of "HMS" having assessable value of Rs 7,50,728/- imported under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 being used as concealment of Cigarettes are also liable for confiscation under Section 119 of the Customs Act, 1962.

16. Penalty:

16.1 Shri Dipak J. Thakor, proprietor of importer, had imported the contraband goods by way of concealing the same in the cargo declared as HMS. He was fully aware about the illicit import of consignments as he was indulge in granting permission to other persons for use of his IEC after due negotiation on a hefty consideration in monetary terms. He was

also a part of nexus with other person viz. Shri Sanjay M. Shah and Shri Ramnarayan Laddha. He was financially funded by the firms controlled by Shri Sanjay M. Shah and Shri Ramnarayan Laddha. He was aware about the sales contract placed to M/s. Metal World FZE, Sharjah and aware about the supplier Mr. Sazzad. After detection of gold by the Customs officers at Mundra port, Shri Dipak mis-guided the investigation by way of creating fictitious characters with the help of Shri Ramnarayan Laddha and Shri Sanjay M. Shah. All the import documents and banking documents relating to importer were signed by him with an intention to get profit in monetary terms. He was fully aware about the smuggling of 27 kg of Gold and 25.20 lakh sticks of Gudang Garam brand cigarettes concealed in the HMS imported by him. He was having culpable mind of state that the act of omission and commission made on his part that the act of smuggled gold and Cigarettes were liable for confiscation and for the said act, importer is liable for penalty under Section 112 of the Customs Act, 1962.

16.2 Shri Sanjay M. Shah alias Sanjay Khatod had helped the importer to import the goods from Sharjah and other country by way of funding through his firm M/s. Somnath Metals Pvt. Ltd. Shri Sanjay Shah actively involved in clearance of import consignment made in the name of importer. He was entrusted by Shri Ramnarayan Ladda to take care of business run in the name of importer. He actively played role by way of making transport arrangement of containers to the destination of importer's premises and played a vital role in destuffing of cargo at the premises suitable to him as the cargo was funded by the firm viz. M/s. Somnath Metals Pvt Ltd. Shri Shah had played a vital role in smuggling of 27 Gold bars and 25.20 lakhs sticks of Gudang Garam brand cigarettes. He was having culpable mind of state that the act of omission and commission made on his part that the act of smuggled gold and Cigarettes were liable for confiscation and thus acts of abetting to smuggle gold and Cigarettes have rendered himself liable for penalty under Section 112 of the Customs Act, 1962.

16.3 Shri Ramnarayna Ladda has created the firms in the name of M/s. Bhagyoday Enterprise for smuggling of gold and Cigarettes. He had also made advance payments for purchasing the scrap to M/s. Bhagyoday Enterprise for the purpose of import from gulf countries and duties/taxes. Shri Laddha hold on the business and banking transaction of importer with the help of Shri Sanjay M. Shah. Shri Laddha had played a vital role in smuggling of 27 Gold bars and 25.20 lakhs sticks of Gudang Garam brand cigarettes in the name of importer. He appeared to having culpable mind of state that the act of omission and commission made on his part that the act of smuggled gold and Cigarettes were liable for confiscation and thus acts of abetting to smuggle gold and Cigarettes have rendered himself liable for penalty under Section 112 of the Customs Act, 1962.

17. Therefore, **M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor), A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat,** were called upon to show cause to the Commissioner of Customs, Mundra, as to why:

- (i) 27 numbers of Gold bar of 1 kg each (total 27 kg), valued at Rs. 7,84,08,000/- smuggled into India by way of concealment in the import consignment of 23.60 Mts of "Heavy Metal Scrap" under the Bill of Entry No. 2458081 dated 14.07.2017 should not be held liable for absolute confiscation under Section 111 (f) 111 (i), and 111 (m) of the Customs Act, 1962;
- (ii) The Heavy Metal Scrap of 23.60 Mts valued at Rs 4,58,907/- imported under the Bill of Entry No. 2458081 dated 14.07.2017 being used as concealment of gold should not be held liable for absolute confiscation under Section 119 of the Customs Act, 1962;
- (iii) The 25.20 lakh sticks of Gudang Garam brand Cigarettes, valued at Rs. 1,89,00,000/- smuggled into India by way of concealment in the import consignment of 38.778 Mts of "Heavy Metal Scrap" under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 should not be held liable for absolute confiscation under Section 111 (f) 111 (i), 111(j) and 111 (m) of the Customs Act, 1962;
- (iv) The Heavy Metal Scrap of 38.778 Mts valued at Rs 7,50,728/- imported under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 being used as concealment of Cigarettes should not be held liable for absolute confiscation under Section 119 of the Customs Act, 1962
- (v) Penalty should not be imposed on them under Section 112 (i) of the Customs Act, 1962 for the acts and omission on their parts, as discussed above.

17. **Shri Ramnarayan S. Laddha**, B-41, Krishna Kutir, Jain Colony, Near Tera Pant Bhawan, Shahibaug, Ahmedabad, was called upon to show cause to the Commissioner of Customs, Mundra, as to why –

- (i) Penalty should not be imposed on him under Section 112 (i) of the Customs Act, 1962 for the acts and omissions on their part, as discussed above.

18. **Shri Sanjay M. Shah alias Sanjay Khatod**, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2nd Floor, Nell Kanth Plaza, Shahibaug, Ahmedabad, was called upon to show cause to the Commissioner of Customs, Mundra, as to why –

- (i) Penalty should not be imposed on him under Section 112 (i) of the Customs Act, 1962 for the acts and omissions on their part, as discussed above.

DEFENCE REPLY:

19. M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor) submitted their defence reply, vide letter dated 05.09.2018, wherein they contended as under:-

- In reply to the SCN, they stated that reference is made to the Panchnama dated 19/20-2017, which is the basis of department's allegations in the matter. It is submitted that the said panchnama is a fabricated document. The said panchnama, having been typed, does not appear to have been prepared on the spot, which also creates doubt about the genuineness que its contents.
- They submitted that Shri Dipak J. Thakor is 10th standard Failed and he does not know English language. But the 108 statement is in English language and Shri Dipak J. Thakor only signed the ready statement and he does not know what was written in the typed statement in english. Thus, the 108 statement is not correct and it is false and hence it is requested to retract this statement. And on this sole ground itself the SCN would be set aside.
- They requested to check the call details or bank details of Sanjay or Ram narayan Laddha and their passport that both parson is main part of this offence. And both are heads of this firm.
- They submitted that Mr Sanjay Shah has called Shri Dipak J. Thakor to meet his realitive Ram Narayan Laddha; that Mr Sanjay and Mr Ram Narayan Laddha asked Shri Dipak J. Thakor to sign on blank paper. So Shri Dipak J. Thakor had signed on blank paper. Shri Dipak J. Thakor does not know how many papers he has signed. Shri Dipak J. Thakor is an innocent person. And the Department has falsely roped him in the said offence.
- They submitted that Shri Dipak J. Thakor is serving in Mr Sanjay Shah's office. And Mr Sanjay shah is giving salary of Rs. 15,000/- per month to him. And the work of Shri Dipak J. Thakor was only of sorting metal. Shri Dipak J. Thakor does not know what kind of use was taken for his signed papers. Mr Sanjay Shah is head of this firm and cheque book and passbook is in custody of Mr Sanjay Shah and Ram Narayan Laddha.
- They submitted that Shri Dipak J. Thakor is belonging to poor family. He is not directly or indirectly included or involved in this offence. He has never gone to any department and any bank. His signature was taken on blank paper. Mr Sanjay Shah has misused the said blank papers signed by Shri Dipak J. Thakor in said offence. Shri Dipak J. Thakor has not registered the firm Bhagyoday Enterprise. Also Shri Dipak J. Thakor had not registered for import-export code number.
- They submitted that Shri Dipak J. Thakor has been working since 15 years. He does not know about the consignment purchased by Mr Sanjay and it is he who has misused the blank papers which was signed by Shri Dipak J. Thakor for the said offence. Shri Dipak J. Thakor had not purchased any consignment and he did not have contact with any person.

- They contended that Section 119 is not applicable for this offence case as Shri Dipak J. Thakor is not an owner of goods and he had not purchased any goods and had not made any contact with any person or any officer. Further, the goods have been seized by the customs department and Shri Dipak J. Thakor never even claimed the said goods.
- They submitted that Shri Dipak J. Thakor cannot be penalized under section 112(i) as the department has no evidence proving that Shri Dipak J. Thakor in any way has done any of the action in the manner allegedly contrary to the provisions of the Customs Act.
- They requested for cross examination of the panch witnesses and departmental witnesses, more particularly to show that the said panchnama/seizure memo is a false and concocted document and that the said statements, alleged to have been recorded u/s 108 of the Act, are involuntary and incorrect.
- They further requested that a personal hearing be granted to them and having regard to the submissions made hereinabove, they requested to quash and set aside the impugned Show Cause Notice and not impose any penalty on M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor).

20. Shri Ram Narayan Laddha submitted his defence reply, vide letter dated 19.02.2018, wherein he submitted as under:-

- He denied each and every statements/ allegations/ averments made against him in the said show cause notice.
- He was arrested on 23/07/2017 and was released on 23/09/2017 upon furnishing default bail. He stated that his statements under section 108 of the Customs Act, 1962 were recorded once at customs office at Mundra and later in custody at Central Jail at Bhuj. He stated that his statements were not voluntary and the same was extracted under duress. He further stated that he is not at all involved in any illegal activities and he wishes to retract all his confessionary statements which were recorded under duress. Furthermore his statements have been misinterpreted by the Investigating officer and therefore the present Show Cause Notice has been issued against him.
- He stated that he is into the business of trading of scrap in domestic market. In the said transaction he earns commission of around Rs. 40,000 to Rs. 50,000/- per container. He is a Director of "M/s. SHB METALS PVT LTD and a Manger at M/s. H.B. Metal Pvt. Ltd. In the course of his business he had placed order of HMS scrap from M/s. Bhagyoday Enterprise on numerous occasions and has only made payments to M/s. Bhagyoday Enterprise with regards to the scrap purchased by him.
- He stated that he is not aware about any person with the name Mr. Rajdeep Singh in Mumbai and Mr. Sazzad in Dubai. There is no evidence on record to show that He knows or is in contact with Mr. Rajdeep Singh and Mr. Sazzad except his confessional statement recorded under duress which he desires to retract. He stated

he is not aware who was the exporter of the said consignments as he only contacted the importers i.e. M/s. Bhagyoday Enterprise to inquire about the status of the scrap. He denied that he has made any confession regarding earning Rs 40,000 – Rs. 50,000/- per container as consideration on import of contraband in the name of M/s. Bhagyoday Enterprise. Infact he reiterated that he was earning Rs. 40,000 – Rs. 50,000 per containers by buying and selling of the scrap purchased from M/s. Bhagyoday Enterprise. That he has not played any role as a mediator between the importer and the Supplier/ Customer of the said consignment. He denied that he had instructed to change the name of the consignee and consignor in the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017.

- He stated that with regard to the statement recorded of Mr. Dipak Jayantibhai Thakor, Proprietor of M/s. Bhagyoday Enterprise that he used to enquire about the scrap consignment which is true. He stated that the enquiries were made by him in relation to the said consignment only to know about the status of the scrap imported by him as he is into the business of trading scrap. He further stated that it is not true that he was aware about any contraband being imported concealed in the said scrap. He stated that it is not true that the Axis Bank Current account No. 916020013105318 of Mr. Dipak Jayantibhai Thakor were operated by him. He also stated that he never gave instructions nor paid any money to Mr. Dipak Jayantibhai Thakor for any illegal trade activity. He further stated that Dipak Jayantibhai Thakor who is the Proprietor of M/s. Bhagyoday Enterprise, solely used to control and supervise all the activities and operations of M/s. Bhagyoday Enterprise and that he had no role/ authority to manage or operate the day to day activities of M/s. Bhagyoday Enterprise.
- With regard to the statement given by Mr. Kamlesh Sharma, authorised signatory cum Power of attorney of M/s. Harshit Logistics (Clearing forwarding and Shipping agent), he stated that he is not a subordinate of Mr. Sanjay Shah, Director of M/s. Somnath Metals Pvt. Ltd. He stated that he was informed by Mr. Kamlesh Sharma who is a customs clearing agent on behalf of M/s. Bhagyoday Enterprise that Gold was found on examination of the Container No. TTNU 2689561 (B/E No. 2458081 dated 14.07.2017) at Mundra Port. It is true that he had denied the presence of gold in the said container. That he used to only enquire with Mr. Kamlesh Sharma about the scrap and was not aware about the presence of any contraband substance in the said consignment.
- With regard to the statement recorded of Mr. Ketan Hiralal Shah, “F” card holder of M/s. Arihant Shipping Agencies that is engaged in Custom House agent / Custom Broker and Transportation services. Mr. Ketan Hiralal Shah is also the Executive Manager of M/s. Bright Shiptrans Pvt. Ltd., Gandhidham. He stated that it is true that he has never met Mr. Ketan Hiralal Shah in person and that he used to only contact Mr. Kamlesh Sharma for customs clearance work. Mr. Ketan Hiralal Shah contacted him for the first time when gold was found in the import consignment on 19.07.2017

in which the Bill of Entry was filed by M/s. Arihant Shipping Agencies. It is true that he denied the presence of Gold in the said consignment.

- With regard to the statement recorded of Mr. Prakash Mishra, Proprietor of M/s. Shree Rama Krishna Freight Carrier and Mr. Laxman Rao Pukala, Operation Manager of M/s. Shree Rama Krishna Freight Carrier, He stated that it is not true that he had directed Mr. Prakash Mishra to transport the scrap (goods) belonging to M/s. Mahindra Trading Company from port to Ahmedabad. It is not true that he and Mr. Sanjay Shah, the Director of M/s. Somnath Metals Private Limited used to meet Mr. Prakash Mishra together. He stated that he had met Mr. Prakash Mishra once at his office and second time at social function.
- With regard to the statement recorded of Mr. Sandeep Moolchandbhai Shah, one of the Director of M/s. Somnath Metals Pvt. Ltd., he denied that he owns any company known as M/s. Anjali Steel.
- With regard to the recorded of Mr. Sanjay Moolchandbhai Shah, alias Sanjay Khatod other Director of M/s. Somnath Metals Pvt. Ltd., he stated that it is true that they are cousins. He denied that he is running a company with the name of M/s. Anjali Steel Pvt. Ltd. situated in Neel Gagan Plaza, Opposite Shabaug Police Commissioner Office. It is not true that he had arranged a meeting and requested Mr. Sanjay Moolchandbhai Shah to handle the work related to clearance of imported scrap of M/s. Bhagyoday Enterprise. He denied that he had instructed Mr. Sanjay Moolchandbhai Shah to credit/give Rs 19,00,000/- in advance against the payment of HMS/ SS scarp to be purchased from Bhagyoday Enterprise. He denied that he started a firm by the name as M/s. Radhika Impex in the name of Mr. Tusharbhai Thakor nor did he finance/ invest his money in the said firm.
- He further stated that he is not the owner of M/s. Bhagyoday Enterprise. He further stated that he is not the owner nor does he control/ manage the banking, administrative or financial works of the following companies with the name as follows:
 - a) M/s. Anjali Stainless Steel Pvt. Ltd.
 - b) Kinnari Enterprise, Ahmedabad
 - c) R.S.S. Enterprise, Ahmedabad
 - d) Shri Ambika Metals, Kathwada, Ahmedabad
 - e) Aryan Stainless Pvt. Ltd.
 - f) Shiv Metal Corporation, Zaveri Estate, Kathwada, Ahmedabad
 - g) Jai Engineers, Himmatnagar, Gujarat
 - h) M/s. Radhika Impex
- He denied that he owns/ operates/ manages the activities of the abovementioned firms/ companies. He stated that he is not involved in any illegal activities through the abovementioned firm/ companies.
- He is the Director of "M/s. SHB METALS PVT LTD and was the manger in M/s. H.B Metal Pvt. Ltd. but resigned later in the year 2016. He stated that he does not own any firm/ company in his wife's name. It is to be noted that he is neither the proprietor of M/s. Bhagyoday Enterprise nor a representative of the said firm.

- It is to be noted that the statement made by Mr. Dipak J. Thakor, Mr. Ketan Hiralal Shah, Kamlesh Sharma, Mr. Prakash Mishra, Mr. Laxman Rao Pukala, Mr. Sandeep Moolchandbhai Shah and by Mr. Sanjay Moolchandbhai Shah about his involvement in the said consignment is neither supported by any document showing him as shipper nor any bank transaction record has been produced showing that he had financed the said confiscated goods. Further he has neither confessed that he was aware about the import of the said contraband concealed in the said HMS scrap consignment.
- He stated that he is not in a position to either invest or finance such large sums for the said consignment seized by the department. It is only on the basis of the oral statement given by Mr. Dipak J. Thakor, Mr. Sandeep Moolchandbhai Shah and by Mr. Sanjay Moolchandbhai Shah that he is wrongly accused in the said matter, these are all bald statements without any concrete evidence. In view of the above, there is no case against him and thus the said allegations are no longer sustainable.
- He stated that he has never confessed about having the knowledge about the said contraband and the same is wrongly recorded and signed by him under duress. He stated that he is not involved in any illegal activities.
- He has been wrongly charged under section 112(i) of the Customs Act, 1962 which deals with penalty for improper importation of goods. He is neither the shipper nor the consignee of the said goods according to the Bill of Entry No. 2458081 dated 14.07.2017 and Bill of Lading No. DUBASRMUN6515 dated 13.07.2017. There is no evidence showing him to have any relation with the said confiscated goods which has been produced. Hence he cannot be held liable for any penalty under the said section.
- He has not knowingly or intentionally 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 purpose of this act. Hence he cannot be held liable for any penalty under the said section.
- He further wishes to be heard in person before the case is adjudicated and therefore requests for a personal hearing.

21. Shri Sanjay Shah submitted his defence reply, vide letter dated 19.08.2018, wherein he contended as under:-

- He is the Director of M/s. Somnath Metal Pvt. Ltd. which has been inter-alia engaged in business of import and trading of various types of metal scraps.
- He denied the charges and allegations levelled in the Show Cause Notice. He submitted that he did not have knowledge about contents of the consignments imported by M/s. Bhagyoday Enterprise. He assisted Shri Dipak J. Thakore, proprietor of M/s. Bhagyoday Enterprise for clearance and transportation of the

imported goods as he being friend and neighbor was new in the business and the Noticee was in the business of import of scrap for long time. The Noticee contacted Shipping Line, clearing & forwarding agent and transportation only for assisting and helping M/s. Bhagyoday Enterprise for clearance of the imported consignments.

- During the course of investigation, statements of the Noticee were recorded on 25.10.2017, 26.10.2017 and 07.11.2017. All these statements are exculpatory. Statements of the Noticee were later on recorded on 07.11.2017 and 08.11.2017 by Director of Revenue Intelligence in connection with import made by M/s. Radhika Impex which are not concerned with the captioned Show Cause Notice. Statement recorded on 07.11.2017 and 08.11.2017 by DRI are inculpatory, but the same were recorded under coercive action with a threat of arrest and therefore, the Noticee immediately retracted the statements before the Ld. Magistrate. Since the Noticee had no knowledge about the contents of the goods and assisted Shri Deepak Thakor only in clearance and transportation of the goods, it would not be said that the Noticee had abetted the offence for which the goods are liable for confiscation and liable for penalty under Section 112(i) of the said Act.
- His point-wise submissions in respect of the allegations made in the captioned Show Cause Notice is as under:
 - I. Wrongly alleged that the Noticee financed M/s. Bhagyoday Enterprise for import of the goods and payment of statutory duties:
 - (a) The Noticee denied the charges made in captioned Show Cause Notice that he funded M/s. Bhagyoday Enterprise for payment to overseas buyers and other statutory duties viz. customs duty, clearing and transportation charges etc. for most of the import consignments imported by M/s. Bhagyoday Enterprise. It is submitted that in many instances, the Noticee made advance payments to M/s. Bhagyoday Enterprise as Shri Dipak Thakor was neighbor of the Noticee and the Noticee knew him for a long time. The Noticee never funded to M/s. Bhagyoday Enterprise for import of the goods as the Noticee was regularly buying materials from M/s. Bhagyoday Enterprise. Advance payment made to Bhagyoday Enterprise was part of regular business transactions.

- (b) The Noticee submitted that upon purchase of materials from M/s. Bhagyoday Enterprise, M/s. Somnath Metal Pvt. Ltd being trader availed CENVAT credit in the books RG-23 Part-D and passed such credit to the buyers to whom the Noticee sold materials.
- (c) Similarly, the Noticee purchased Stainless Steel Scrap (S.S. Scrap) from M/s. Jay Engineers during the period 2016-17 and 2017-18. Therefore, the allegations made in the Show Cause Notice that the Company where the Noticee is one of the directors, made payment to M/s. Jay Engineers which in turn made payment to M/S. Radhika Impex to meet clearing and forwarding charges and transportation charges are factually incorrect and erroneous.
- (d) The Noticee made payment to M/s., Bhagyoday Enterprise and M/s. Jay Engineers in their regular course of business. The Noticee did not have any knowledge about use of the fund made to M/s. Bhagyoday Enterprise and M/s. Jay Engineers.

II. Allegation about non-submission of the documentary evidences regarding purchase of imported goods from M/s., Bhagyoday Enterprise;

- (a) The Noticee stated that the investigation authority did not direct him to submit the purchase invoices during the course of interrogation. He was asked to produce ledger copies of M/s. Bhagyoday Enterprise during the course of interrogations which was submitted at the time of recording his statements. It is further submitted that the Noticee was directed to produce a copy of Register of RG-23 Part D for the period of 2016-17 and 2017-18. The Noticee submitted these documents during the course of interrogation. In the absence of any directions to provide documentary evidences, the allegations made in the Show Cause Notice that the Noticee did not submit any documentary evidence regarding purchase of the imported goods from M/s. Bhagyoday Enterprise is factually incorrect.
- (b) It is further submitted that the Noticee was never issued any summons or notice directing him to produce documentary evidence showing purchase of goods from M/s. Bhagyoday Enterprise. Had the Noticee been issued such direction, the Noticee was bound to submit such documents as it was one of the conditions

of the anticipatory bail to co-operate during the course of investigation to the investigating authority. Burden lies upon the Revenue to prove that the Noticee failed to submit documents even though demanded. In the absence of any such demands for documents, allegation made in the Notice is bald and on assumption and presumption basis.

- (c) Without prejudice to the aforesaid, it is submitted that the Noticee has produced copies of the ledger accounts of M/s. Bhagyoday Enterprise and M/s. Jay Engineers in the books of accounts of the Company along with requisite invoices which shows that the Noticee purchased scrap in the normal course of business for which the Noticee made payment.

III. Wrongly alleged that the Noticee Visited Sharjah and contacted suppliers for import of Gold and Cigarettes:

- (a) The Noticee submitted that the allegation made in the Show Cause Notice that the Noticee visited Sharjah and contacted with Metal World FZE to convince to ship gold and cigarettes by way of concealment of scrap are illegal, unlawful and contrary to the facts. The Noticee submitted that he visited Sharjah twice only in 2013 and 2016. The goods in dispute was imported in the month of July 2017. The Noticee never visited Sharjah after the period August 2016 and therefore, the allegation made in the Show Cause Notice that the Noticee visited Sharjah to meet M/s. Metal World FZE for import of gold and cigarettes is factually incorrect and baseless.
- (b) Since passport of the Noticee has been taken into custody by the Ld. Magistrate Court, at Bhuj against one of the conditions for anticipatory bail, the Noticee is not in position to place on record photo-copies of the passport. The Noticee will submit photocopies of the passport to prove that the Noticee never visited Sharjah from August 2016 to July 2017 upon receipt of the same.

IV. Created fictitious character of Salim to mislead the investigation

- (a) The Noticee submitted that he never met Salim nor he ever used name of "Salim" during the course of investigation. It appears from statements of Shri Deepak Thakor recorded from time to time that he is the person who can provide details of Salim. Since he did not want to divulge details of Salim, Shri Deepak

Thakor in his statement recorded on 30.08.2017 stated the Noticee and Shri Ram Narayan Laddha created fictitious character of Salim. While recording statements of Shri Deepak Thakor on 20.07.2017 and 21.07.2017, he provided name of "Salim" to the investigating authority and he only stated that Salim is fictitious name at the time of recording his statement on 30.08.2017. Statements of Shri Deepak Thakor cannot be taken into consideration as he changed his version from time to time.

- (b) The Noticee should not be charged based on oral statement of Shri Deepak Thakor without any documentary evidence that the Noticee prompted Shri Deepak Thakor to use name of "Salim" during the course of investigation.
- The Noticee stated that statements of various persons were recorded during the course of investigation. Our reply to the depositions made by various persons wherein name of the Noticee has been used in their statements are as under:
- (i) Statements of Shri Dipak J. Thakor were recorded on 20.07.2017 and 21.07.2017 whereby he had not used name of the Noticee in connection with the import of scrap in the name of M/s. Bhagyoday Enterprise. Subsequent statements were recorded on 16.08.2017 and 30.08.2017 whereby he wrongly deposed that the Noticee handled M/s. Bhagyoday Enterprise. The Noticee stated that he assisted M/s. Bhagyoday Enterprise only for customs clearance and transport related works. He never handled bank accounts of M/s. Bhagyoday Enterprise nor involved in day-to-day transactions as alleged by Shri Deepak Thakor. His earlier two statements recorded on 20.07.2017 and 21.07.2017 are exculpatory and did not use name of the Noticee. Subsequent two statements recorded on 16.08.2017 and 30.08.2017 wrongly implicated the Noticee for import of the goods in dispute. As statements of Shri Dipak J. Thakore are self-contradictory, the Noticee would like to cross examine him to bring correct facts on record. In these facts, it is requested to kindly allow cross examination of Shri Dipak J. Thakore.
- (ii) Statements of Shri Ramnarayan Laddha recorded on 23.07.2017, 10.08.2017, 30.08.2017 and 19.12.2017: The Noticee submitted that statements of Shri

Ramnarayan Laddha were recorded on the above referred dates. Nowhere he deposed that the Noticee had knowledge about contents of the imported goods. He did not depose that the Noticee was indulged in import of gold and cigarettes found in the containers. His statements are exculpatory.

(iii) Statement of Shri Kamlesh Sharma, Power of Attorney Holder of M/s. Harshit

Logistics: The Noticee stated that he assisted M/s. Bhagyoday Enterprise for customs clearance as the Company was regularly importing scrap and had knowledge about the business of import of scrap. Being a neighbor of the Noticee, the Noticee assisted Shri Dipak Thakor for clearance of the goods. It does not mean that the Noticee was the mastermind behind smuggling of gold and cigarettes. Merely the Noticee contacted Shri Kamlesh Sharma for clearance of the goods on behalf of Bhagyoday Enterprise, does not mean that the Noticee was aware about contents of the consignments. It is stated that upon receipt of the instruction from Shri Dipak Thakor, the Noticee informed Shri Kamlesh Sharma for filing Bill of Entry on behalf of M/s. Bhagyoday Enterprise. Shri Kamlesh Sharma wrongly alleged name of the Noticee for smuggling of gold and cigarettes and therefore, the Noticee would like to cross examine him to bring correct facts on record. In these facts, it is requested to kindly allow cross examination of Shri Kamlesh Sharma.

(iv) Statement of Shri Ketan Hiralal Shah: It reveals from the statement dated 23.07.2017 of Shri Ketal Shah that since the Noticee visited the office of Harshit Logistics for the purpose of customs clearance work related to M/s., Bhagyoday Enterprise, he wrongly alleged that the Noticee was one of the masterminds for import of gold and cigarettes. The Noticee states that he never met nor instructed Shri Ketal Shah for filing Bill of Entries on behalf of Bhagyoday Enterprise. Even in his statement, he categorically stated that he got instructions for filing bill of entry for clearance of consignment from Harshit Logistics. It appears from the statement that he has wrongly used name of the Noticee on assumption and presumption basis without any substance of its contents. The Noticee would like to cross examine him to bring correct facts on record. In these facts, it is

requested to kindly allow cross examination of Shri Ketan Shah in the interest of justice.

(v) Statements dated 26.07.2017 of Shri Prakash Mishra, Proprietor of Shri Rama Krishna and Shri Lamxan Rao Pukala: The Noticee stated that Shri Prakash Mishra and Shri Lamxan Rao Pukala wrongly deposed that the Noticee is the mastermind behind the import of gold and cigarettes. Their allegations were made only on the premise that the Noticee used to give instruction to Shri Prakash Mishra and Shri Laxman Rao Pukala for transportation of goods imported in the name of M/s. Bhagyoday Enterprise. It is stated that merely, the Noticee assisted in transportation of containers from Port to Godown of M/s. Bhagyoday Enterprise does not mean that the Noticee had knowledge about contents of the goods in the container. Shri Prakash Mishra and Shri Lamxan Rao Pukala never deposed that the Noticee had knowledge about contents of the goods. In these facts, the Noticee would like to cross examine them to bring correct facts on record. In these facts, it is requested to kindly allow cross examination of Shri Prakash Mishra and Shri Lamxan Rao Pukala.

➤ The Noticee stated that his statements were recorded from time to time. His statements are exculpatory in connection with the import of goods in dispute. His statements were recorded on 25.09.2017, 26.09.2017, 07.11.2017 whereby he never accepted that he had knowledge about contents of the goods imported under Bill of Entry No. 2458081 dated 14.07.2017 as well as Bill of Lading No. DUBASRMUN6151 dated 13.07.2017. He categorically stated in his statement that he assisted M/s. Bhagyoday Enterprise for customs clearance and transportation of the containers. He acted under instructions of M/s., Bhagyoday Enterprise. After recording his statement on 07.11.2017, Director of Revenue Intelligence took him under custody from the office of Commissionerate, Mundra and brought him at office of DRI located in Ahmedabad. During his interrogation on 07.11.2017 and 08.11.2017 he was threatened for arrest if he did not sign on the pre-prepared statement produced before him. On the threatening of arrest, he signed his statements. He was later on arrested whereby he immediately retracted his statement

before the Ld. Magistrate at Ahmedabad and stated that his statements recorded on 07.11.2017 and 08.11.2017 were not voluntarily recorded.

- Without prejudice to the aforesaid, it is stated that his statements recorded on 07.11.2017 and 08.11.2017 by DRI cannot be relied upon for the captioned Show Cause Notice as their statements are not in connection with the import of goods in dispute. Both the above statements were recorded in connection with import made by M/s. Radhika Impex for import of scrap. The Noticee even did not instruct CHA for filing Bill of Entry nor transporters for transportation of the goods in the case of goods imported by Radhika Impex. The Noticee was not indulged in any activity in connection with the import of M/s. Radhika Impex and therefore, statements dated 07.11.2017 and 08.11.2017 cannot be relied upon for adjudication of the captioned Show Cause Notice.
- The captioned Show Cause Notice has not invoked specific provisions for imposition of penalty except proposing to impose Penalty under Section 112(i) which provides quantum of penalty. In the absence of any specific provision, the Noticee submits that penalty under Section 112(a) or (b) can be invoked in the following situations. Since none of the situations is covered in the present case, penalty under Section 112 cannot be imposed.
- It is stated that penalty under Section 112(a) can be imposed in a case when person, who in relation to any imported goods, does omits or do any act which acts or omissions would render goods liable to confiscation under Section 111 or abets their doing or omission of such act. The term "abetment" is defined under Section 107 of the Indian Penal Code 1860 as under:

"107. A person abets the doing of a thing, who First – Instigates any person to do that thing; or secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.:

Explanation 1 : A person who, by willful misrepresentation, or by willfully concealment of a material fact which he is bound to disclose, voluntarily

causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing"

In the present case, there are no evidence/documents which show that the Noticee had connivance with M/s. Bhagyoday Enterprise for importation of the goods in dispute. Penalty under Section 112(a) of the Act can be imposed only if it proves beyond doubt that the person concerned and by his act of omission or commission rendered the goods liable for confiscation or is held that the said goods with the knowledge or reason to believe that the same are liable for confiscation. In the present case, except statements of various persons, there are no any other evidences which show that the Noticee abetted the office for which the goods are liable for confiscation.

➤ Penalty u/s 112(b) of the Act can be imposed on person who acquires possession of or in any way concern in carrying, removing, depositing, selling, or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation u/s 111. Two conditions are required to be fulfilled before imposition of penalty u/s. 112. One of the conditions is that the person should have knowledge at the time of dealing of the goods that he is violating the provisions of the Act, which lead the goods be liable to confiscation u/s. 111. In the present case undisputedly, the Noticee did not have knowledge about contents of the goods in containers. Mens-rea is sine qua non for imposition of penalty u/s 112(b). In the absence of mens-rea, penalty u/s 112(b) can not be imposed. While the goods are liable to confiscation, no penalties can be imposed on the assessee u/s 112(b) if no evidence is adduced by the Revenue to show that the assessee had knowledge or reason to believe that the goods were liable to confiscation while dealing with goods. In the light of the above, there is no reason whatsoever to impose penalty on the Noticee.

(a) Nazir Ur Rehman Vs C.C reported in 2004 (174) ELT 493

(b) Imperial Trading LLc Vs C.C reported in 2004 (181) ELT 29

(c) C.C. Vs Kamal Kapoor reported in 2007 (216) ELT 21 (P & H)

- The present reply is an interim reply pending the cross-examination of various persons as sought herein above. The Noticee craves leave to file further submissions after conducting cross-examination.
- The Noticee requested that personal hearing be granted to them before the case is adjudicated upon.

PERSONAL HEARING & CROSS-EXAMINATION:

22. Personal Hearing was offered to all the noticees on 13.07.2018 but none of them appeared for the same. The next date of P.H. was fixed on 20.08.2018, on which date Shri Vibhor Cheplot, Advocate appeared on behalf of Shri Sanjay M. Shah. He made preliminary written submission and stated that as in the SCN his client is implicated on the basis of statements of certain persons, he wants to cross-examine them. In the written submission dated 19.08.2018, he highlighted the reasons for seeking cross-examination of the following persons:

1. Shri Dipak J. Thakor
2. Shri Kamlesh Sharma
3. Shri Ketan H. Shah
4. Shri Prakash Mishra

The cross-examination was permitted.

23. Shri M. B. Bhansali, Advocate, appeared on behalf of M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor), on the next date of P.H. i.e., 05.09.2018. He submitted a written reply dated 05.09.2018 and reiterated the contents therein. He stated that the firm M/s. Bhagyoday Enterprise was created by Shri Sanjay Shah & Shri Ramnarayan Laddha (the other two noticees in this case). His client i.e., Shri Dipak Thakor was working as metal sorter in the godown of Shri Sanjay Shah and was induced to lend his name for the firm on monetary consideration. He submitted that since his client had nothing to do with the subject import, he may be absolved.

24. Shri Manoj R. Khatri, Advocate, appeared on behalf of Shri Ramnarayan Laddha, on the next date of P.H. i.e., 17.09.2018. He referred to their written reply dated 19.02.2018 and submitted that as per Para 6 of the reply the ledger copy was to be enclosed which is not enclosed and therefore, submitted at the time of P.H. He stated that they had legitimate transactions with M/s. Bhagyoday Enterprise which are reflected in the ledger account. He further stated that there is no incriminating statement by Shri Dipak Thakor or Shri Kamlesh Sharma against his client or anybody else's statement incriminating his client. He stated that there is no documentary evidence against his client. He stated that the charge of abetment cannot be made against his client. He requested to drop the proceedings against his client.

He also added that in reply dated 19.02.2018, his client has retracted the statements recorded.

25. Cross-examination of the four witnesses, as requested by the advocate of Shri Sanjay Shah and permitted by the adjudicating authority during the course of P.H. dated 20.08.2018, was conducted on 17.09.2018, the record of which is reproduced hereunder:

Record of Cross examination of Shri Kamlesh Sharma, Power of Attorney Holder of M/s. Harshit Logistics, held before the Commissioner of Customs, Mundra as on 17.09.2018 at 1300 hours, done by Shri Amit Laddha, Advocate of Shri Sanjay M. Shah:

Q.1. Please provide the details of your company.

A.1. I am Power of Attorney holder of M/s. Harshit Logistics and we are engaged in clearing and forwarding and shipping business.

Q.2. What is your role in the company?

A.2. I receive the documents from the importer and forward it to CB for filing Bill of Entry.

Q.3. Is it necessary that the importer has to provide the documents for import of goods?

A.3. Yes, either from the importer or through their authorized representative.

Q.4. Who has given you the documents in this case?

A.4. As per telephonic talk with Shri Sanjay M. Shah, he sent the documents through e-mail id of M/s. Bhagyoday Enterprise.

Q.5. How can you confirm that Shri Sanjay M. Shah was operating the e-mail id of M/s. Bhagyoday Enterprise?

A.5. Before starting the work of M/s. Bhagyoday, I was also handling the clearing & forwarding work of M/s. Somnath Metals Pvt. Ltd. in which Shri Sanjay M. Shah was the director. That's when I came in contact with him in 2016. Subsequently, I received telephonic instructions from Shri Sanjay M. Shah and Shri Dipak Thakor of M/s. Bhagyoday Enterprise that Shri Sanjay M. Shah will be looking after all the work of M/s. Bhagyoday Enterprise also. In June, 2017, I also met Shri Sanjay Shah and Shri Ramnaryan Laddha in my office in Gandhidham for our general business activities.

Q.6. Whether you know the proprietor of M/s. Bhagyoday Enterprise?

A.6. I received telephonic call from Shri Dipak Thakor that he is the proprietor of M/s., Bhagyoday Enterprise and that all the work related to this firm will be looked after by Shri Sanjay M. Shah.

Q.7. Did Dipak Thakor share any Power of Attorney in the name of Shri Sanjay Shah with you?

A.7. No. As per general practice, the importer telephonically informs us that who is going to handle their work and no Power of Attorney is shared with us.

Q.8. Did you ask for the Power of Attorney/Authorization from Shri Dipak Thakor?

A.8. No.

Q.9. Did you complete the KYC formalities?

A.9. Yes. I got telephone call from Shri Sanjay Shah that they are sending the KYC documents and thereafter we received through courier the IEC (self-certified by Shri Dipak Thakor), Electricity Bill of Shri Dipak Thakor, Bank AD Code Letter, Shri Dipak Thakor's PAN Card and Customs Form.

Q.10. Did you face any other custom violation case of Shri Sanjay M. Shah in his earlier dealings?

A.10. No, I do not know about any past violation. This is the first instance.

Q.11. Did you know about the actual contents of the goods?

A.11. I was only aware about the goods as declared in the documents and the actual contents were known to Shri Sanjay M. Shah only.

Q.12. Do you have any evidence of alleged smuggling on the part of Shri Sanjay Shah?

A.12. No, I do not have any evidence but I know that Shri Sanjay Shah was looking after all the customs work of M/s. Bhagyoday Enterprise. On the day that the customs intercepted the gold, I received a call from the loading/unloading staff of the CB. Thereafter, I tried to contact Shri Sanjay Shah but he did not attend my call and when I tried second time, his phone was attended by Shri Ramnaryan Laddha who I know as an associate of Shri Sanjay Shah. Subsequently, Shri Sanjay Shah switched off his phone.

Record of Cross examination of Shri Ketan H. Shah, F-Card Holder of M/s. Arihant Shipping Agencies, held before the Commissioner of Customs, Mundra as on 17.09.2018 at 1330 hours, done by Shri Amit Laddha, Advocate of Shri Sanjay M. Shah:

Q.1. Please provide the details of your company.

A.1. I am F-Card holder of M/s. Arihant Shipping Agencies and we are engaged in Customs clearing activities as Custom Broker.

Q.2. What is your role in the company?

A.2. I am a partner and signing authority in M/s. Arihant Shipping Agencies.

Q.3. How did you receive the custom clearance work of M/s. Bhagyoday Enterprise?

A.3 We have received the work of M/s. Bhagyoday Enterprise through M/s. Harshit Logistics.

Q.4. Who has provided you the instructions from M/s. Harshit Logistics?

A.4. Shri Kamlesh Sharma of M/s. Harshit Logistics has given us the instructions.

Q.5. Do you know Shri Sanjay Shah and have you ever met him?

A.5. No, I have not met him personally.

Q.6. Do you have any evidence of past alleged activity of smuggling done by Shri Sanjay Shah?

A.6. No.

Q.7. Have you worked with Shri Sanjay Shah or M/s. Somnath Metals in the past?

A.7. No.

Q.8. Have you checked the import documents of M/s. Bhagyoday Enterprise?

A.8. Yes.

Q.9. Do you know the proprietor of M/s. Bhagyoday Enterprise?

A.9. Yes, I know Shri Dipak Thakor as the Proprietor of M/s. Bhagyoday Enterprise on the basis of KYC documents provided by the importer.

Q.10. Do you have any evidence of alleged smuggling on the part of Shri Sanjay Shah?

A.10. No, we don't have any evidence against Shri Sanjay Shah.

Record of Cross examination of Shri Prakashchand B. Mishra, Proprietor of M/s. Shri Ramakrishna Freight Carriers, held before the Commissioner of Customs, Mundra as on 17.09.2018 at 1400 hours, done by Shri Amit Laddha, Advocate of Shri Sanjay M. Shah:

Q.1. Please provide the details of your company.

A.1. I am the proprietor of M/s. Shri Ramakrishna Freight Carriers, which is engaged in transportation business.

Q.2. What is your role in the company?

A.2. I am the proprietor and looking after overall business activities.

Q.3. How did you receive the transportation work of M/s. Bhagyoday Enterprise?

A.3. Before handling the work of M/s. Bhagyoday, I was also handling the transportation work of M/s. Somnath Metals Pvt. Ltd. in which Shri Sanjay M. Shah was the director. That's why I knew him since a long time. Subsequently, I received telephonic instructions from Shri Sanjay Shah to handle the transport work of M/s. Bhagyoday and he gave me the contact details of the CHA person who has provided me the instructions for transportation. However, I did not receive any documents directly from Shri Sanjay Shah.

Q.4. Do you know Shri Dipak Thakor, proprietor of M/s. Bhagyoday Enterprise?

A.4. No.

Q.5. Do you have any evidence of past alleged activity of smuggling done by Shri Sanjay Shah?

A.5. No.

Q.6. Why have you stated in your statement dated 24.07.2017 that Shri Sanjay Shah is the mastermind behind smuggling of the gold?

A.6. I do not exactly remember the details of the statement given by me at that time but I can recall that Shri Sanjay Shah told me that he is not concerned with the gold detected in the import consignment of M/s. Bhagyoday Enterprise. It is a fact that as far as I know, Shri Sanjay Shah was handling all the work of M/s. Bhagyoday Enterprise. However, as I do not have any evidence of his involvement in smuggling of the gold, it is not proper for me to say that he is the 'mastermind'.

Q.7. Do you agree with the contents of your statement dated 24.07.2017?

A.7. Yes, I stand by my statement except to the extent of my reply to Q.6 above.

Record of Cross examination of Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, held before the Commissioner of Customs, Mundra as on 17.09.2018 at 1500 hours, done by Shri Amit Laddha, Advocate of Shri Sanjay M. Shah:

Q.1. Please provide the details of your company.

A.1. I was working as an employee in Shri Sanjay Shah's company M/s. Somnath Metals Pvt. Ltd. and looking after scrap sorting work for a monthly salary of Rs.10000/- since around the year 2000 upto 2016. After some time, Shri Sanjay Shah called me and offered to give me a monthly salary of Rs.15000/- for import of scrap in my name. Because of my trust in Shri Sanjay Shah, I signed the papers and cheque book given by him. I was actually not looking after any work of this company and the same was being handled by Shri Sanjay Shah and Shri Ramnaryan Laddha.

Q.2. Do you have any evidence to prove that Shri Sanjay Shah had asked you to sign the papers and cheque book for M/s. Bhagyoday Enterprise?

A.2. No, as Shri Sanjay Shah was handling all the activities of M/s. Bhagyoday Enterprise.

Q.3. Why did you work as per the instructions of Shri Sanjay Shah?

A.3. I was working with Shri Sanjay Shah since last sixteen years and he offered me higher salary to use my name for import of scrap.

Q.4. What is the mode of payment received by you from Shri Sanjay Shah?

A.4. Since the beginning of my employment in the year 2000 in M/s. Somnath Metals Pvt. Ltd., I have received payment from Shri Sanjay Shah in cash only.

Q.5. What is your educational qualification?

A.5. 10th fail.

Q.6. Can you read/write/understand English?

A.6. No.

Q.7. Were you made aware of the contents of your statements dated 20.07.2017 & 21.07.2017 given before the SIIB?

A.7. I was asked the questions by the officer recording the statement and I answered the same verbally in Hindi and that was typed by the officer in the computer. However, I was not read out the statement in Hindi after typing.

Thereafter, the adjudicating authority asked the officers present during the course of cross examination to read the statements dated 20.07.2017 & 21.07.2017 and translate in Hindi for Shri Dipak Thakor.

After reading of the statements in Hindi, the adjudicating authority asked Shri Dipak if he had given these answers during the course of his statement. In response, Shri Dipak agreed that the statement was as per his say.

Shri Dipak Thakor further added that he had been instructed by Shri Ramnaryan Laddha to take the name of Shri Saleem and Shri Shahzad as the persons involved in smuggling of gold in his statements before the SIIB.

Q.8. Were you made aware of the contents of your statement dated 16.08.2017 & 30.08.2017 given before the SIIB?

A.8. I was asked the questions by the officer recording the statement and I answered the same verbally in Hindi and that was typed by the officer in the computer. However, I was not read out the statement in Hindi after typing.

Thereafter, the adjudicating authority asked the officers present during the course of cross examination to read the statements dated 16.08.2017 & 30.08.2017 and translate in Hindi for Shri Dipak Thakor.

After reading of the statements in Hindi, the adjudicating authority asked Shri Dipak if he had given these answers during the course of his statement. In response, Shri Dipak agreed that the statement was as per his say.

Q.9. How did you place the orders for import of goods for your company M/s. Bhagyoday Enterprise?

A.9. Shri Ramnarayan Laddha was placing the import orders and also looking after all the work of M/s. Bhagyoday Enterprise.

Q.10. Who was handing the custom clearance work of M/s. Bhagyoday Enterprise?

A.10. I do not know exactly as all the work of M/s. Bhagyoday Enterprise was handled by Shri Ramnarayan Laddha & Shri Sanjay Shah.

26. Following the cross-examination, Shri Sanjay M. Shah submitted their final reply to the SCN, vide letter dated 02.11.2018, in which they contended as under:

- The Noticee has filed the above referred Interim reply dated 19.08.2018. Pursuant to which, the Noticee was granted cross-examination of various Co-Noticee's on 17.09.2018. Pursuant to such cross examination, certain new facts were evolved and therefore, the Noticee is filing the present Reply in furtherance to the Interim reply dated 19.08.2018.

I. STATEMENTS OF SHRI DIPAK THAKOR WERE INCONSISTENT IN NATURE

1. The Noticee submits that statements of Shri Dipak Thakor were recorded on 20.07.2017, 21.07.2017, 16.08.2017 and 30.08.2017 by the investigating authority. Shri Dipak Thakor in his statements deposed inconsistent replies which are self-contrary and therefore, the same cannot be relied for confirming the charges against the Noticee.
2. It is submitted that Shri Dipak Thakor in his statements dated 20.07.2017 and 21.07.2017 stated that the consignments were imported for "Saleem" who was arranging the customs clearance work. However, in his further statements dated 16.08.2017 and 30.08.2017, Shri Thakor urged name of the Noticee for the alleged offences without producing any documentary evidence to that effect.
3. During the course of cross examination of Shri Dipak Thakor on 17.09.2018, he stated that he was working in M/s. Somnath Metals Pvt. Ltd. from 2000 to 2016. The Noticee categorically refutes the said statement and submits that M/s. Somnath Metals Pvt. Ltd. was incorporated in March, 2010 itself and therefore, the said statement is not only contrary to the facts but also reveals the malafide intent of Shri Dipak Thakor to highlight the Noticee as a scapegoat to the alleged offence. A copy of certificate of incorporation of M/s. Somnath Metals Pvt. Ltd. is enclosed and marked as Annexure-A.

4. It is submitted that the Noticee was pursuing its B.A. Second year at Saraspur Arts & Commerce College, Ahmedabad in 2001 and not even completed his education and therefore, the question about commencement of business does not even arise. A copy of marksheet issued by Saraspur Arts & Commerce College, Ahmedabad is attached and marked as Annexure-B.
5. Pursuant to completion of education in 2002, the Noticee started working as an employee with M/s. Kalyan Metals for the period from 2002-2003. Subsequently, the Noticee worked with Kana Metal Corporation for the period from April, 2003 to 2009 and Shri Saibaba Metals for the period from April, 2009 to March, 2012. Copies of Income Tax Return alongwith Salary Certificate are enclosed herewith and marked as Annexure-C.
6. It is further submitted that Shri Dipak Thakor had never worked with M/s. Somnath Metals and the name of Noticee has been uttered within ulterior motive and with a malafide intent to put the Noticee as a mastermind in the alleged offence. Copies of salary register for the period from 01.01.2011 to 31.05.2017 are enclosed and marked as Annexure-D.

II. STATEMENTS OF SHRI PRAKASH CHAND B. MISHRA, SHRI KAMLESH SHARMA, SHRI KETAN H. SHAH CANNOT BE RELIED UPON

7. It is submitted that during the course of cross examination of Shri Prakash Chand B. Mishra, Shri Kamlesh Sharma, Shri Ketan H. Shah on 17.09.2018, it was questioned that whether they faced any other customs violation case against the Noticee in his earlier dealings. The Noticee submits that all the abovementioned persons categorically stated that they have not faced any other customs violation case against the Noticee and there is no evidence with respect to involvement of the Noticee in the alleged offence. Further, Shri Prakash Chand B. Mishra categorically stated that the Noticee was not the mastermind of the alleged offence and therefore in such circumstances, the statements of Shri Prakash Chand B. Mishra, Shri Kamlesh Sharma, Shri Ketan H. Shah cannot be relied upon.

III. STATEMENT OF CO-NOTICEE CANNOT BE RELIED

8. Without prejudice to above and even otherwise, it is submitted that the entire case has been made out against the Noticee only on the basis of statements of Shri Dipak Thakor (Co-Noticee) which were inconsistent in nature. It is a settled law that the statements of the co-accused cannot be relied upon for penalizing and the Revenue has to bring sufficient evidences to prove that the Noticee was involved in the smuggling activity. In the case of Mahabir Prasad Vs. CC reported in 2000 (126) ELT 803, it was held as follows:

"I have considered the submissions made from both sides. I find that the only basis for penalising the applicant/appellant is the statement of the persons from whose possession the gold has been recovered, which is in the nature of a statement of the co-accused. There is no other legal independent evidence on record to corroborate the charges made against the applicant/appellant. I also note that the applicant's/appellant's residential premises were put to search by the Customs Officers, which has not resulted into recovery of any incriminating documents or any other incriminating material against the applicant/appellant. Merely because Shri Rauniyar had disclosed the address and telephone number of the applicant/appellant, the same does not lend support to the Department's charge that the gold biscuits in question were to be delivered to the applicant/appellant."

9. The Noticee further relies upon the following decisions on the proposition that the statements of the co-accused cannot be relied upon to nail the assessee in absence of having any cogent evidences:
 - a) Sushil Kumar Kanodia Vs. CC, 2007 (218) ELT 453 [Affirmed in 2015 (319) ELT A 73.
 - b) Shafeek P.K Vs C.C. reported in 2015 (325) ELT 199 (T)
 - c) Narayan Das Vs. CC, 2004 (178) ELT 554.
 - d) Ganesh Chandra Basak Vs. CC, 2002 (140) ELT 275.
 - e) Kamal Hazra Vs. CC, 2002 (148) ELT 835.
 - f) Pradeep Kumar Vs. CC, 2000 (117) ELT 383.
10. In view of the above submissions, the Noticee prays that the allegations and charges levelled in the Show Cause Notice may kindly be dropped in the interest of justice.
11. The Noticee craves leave to add to, alter or amend any of the aforesaid submissions before any decision is taken or any orders are passed in the matter. In the event, any further information / documents / records / invoices are required for the adjudication of the present Show Cause Notice, the Noticee will be glad to furnish the same as applicable & available.
12. The Noticee further request that an opportunity of personal hearing may kindly be granted before the case is adjudicated.
27. As requested by the advocate of Shri Sanjay M. Shah in their final submission dated 02.11.2018, an opportunity for personal hearing was given on 12.11.2018, on which date Shri Amit Laddha, Advocate, appeared on behalf of Shri Sanjay M. Shah and reiterated the written submissions made vide their letters dated 19.08.2018 & 02.11.2018.

DISCUSSION AND FINDINGS:

28. I have gone through the entire case, Show Cause Notice, material evidence available on record, submissions made by the noticees as well as those stated during the course of cross-examination and personal hearing.

29. I find that the following issues are involved in the impugned Show Cause Notice, which are required to be decided:-

- (i) Whether the 27 numbers of Gold bar of 1 kg each (total 27 kg), valued at Rs.7,84,08,000/-, smuggled into India by way of concealment in the import consignment of 23.60 MTs of 'Heavy Metal Scrap' under the Bill of Entry No. 2458081 dated 14.07.2017, are required to be absolutely confiscated under Section 111(f), 111(i), and 111(m) of the Customs Act, 1962;
- (ii) Whether the Heavy Metal Srcap of 23.60 MTs, valued at Rs.4,58,907/-, imported under the Bill of Entry No. 2458081 dated 14.07.2017, being used for concealment of Gold, is required to be confiscated under Section 119 of the Customs Act, 1962;
- (iii) Whether the 25.20 lakh sticks of 'Gudang Garam' brand Cigarettes valued at Rs.1,89,00,000/- smuggled into India by way of concealment in the import consignment of 38.778 MTs of 'Heavy Metal Scrap' under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017, are required to be absolutely confiscated under Section 111(f), 111(i), 111(j) and 111(m) of the Customs Act, 1962;
- (iv) Whether the Heavy Metal Srcap of 38.778 MTs, valued at Rs.7,50,728/-, imported under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017, being used for concealment of Cigarettes, is required to be confiscated under Section 119 of the Customs Act, 1962;
- (v) Whether penalty is imposable upon M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor), A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat, under Section 112(i) of the Customs Act, 1962;
- (vi) Whether penalty is imposable upon Shri Ramnarayan S. Laddha, B-41, Krishna Kutir, Jain Colony, Near Tera Pant Bhawan, Shahibaug, Ahmedabad, under Section 112(i) of the Customs Act, 1962;
- (vii) Whether penalty is imposable upon Shri Sanjay M. Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2nd Floor, Neel Kanth Plaza, Shahibaug, Ahmedabad, under Section 112(i) of the Customs Act, 1962.

30. In regard to the seizure of smuggled gold and cigarettes, I refer to the two Panchnamas dated 19/20.07.2017 & 21.07.2017 drawn at Seabird CFS, Mundra, whereby it was revealed that the importer M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor) had smuggled 27 Gold Bars of 1 kg each and 25.20 lakh sticks of 'Gudang Garam' brand Cigarettes which were concealed in 03 containers said to contain Heavy Melting Scrap (HMS). The details regarding the containers, examination of goods, recovery of gold & cigarettes etc. have been exhaustively detailed in the said two Panchnamas dated 19/20.07.2017 & 21.07.2017, which have been relied upon in the SCN.

31. I find that both the said Panchnamas had been drawn by the Customs officers in the presence of two independent panchas, the representatives of the CFS and Custom Broker. I find that 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 and cigarettes in the HMS consignments as detailed in the said two panchnamas.

32. Thereafter, detailed investigations were conducted in order to find out the mastermind and financial beneficiary of the above smuggling activities. During the course of investigation, the statements of following persons were recorded under Section 108 of the Customs Act, 1962:

32.1 Statements of Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad, Gujarat, were recorded on 20.07.2017, 21.07.2017, 16.08.2017 & 30.08.2017 under Section 108 of Customs Act, 1962, wherein he *inter alia* stated he was engaged in import of Heavy Metal Scrap from UAE (Dubai) only; that he was trading the same to local buyers in and around Ahmedabad only; that the buyers were not fixed and he did not know their names; that he used to procure the scrap from one Shahazad; that he came in his contact through one Mr. Saleem (who he subsequently admitted was a fictitious character created to mislead the investigation), whose address and contact no. he did not know; that Saleem convinced him to import scrap and offered him commission for using his IEC; that generally, for allowing the use of his IEC, he used to get 20 to 30 thousand for one container, however, Saleem offered him Rs. 50 to 60 thousand for this consignment; that he has one account in Axis bank Shahibaug, Ahmedabad in the name of his firm and one S/B account in his name in Bank of India, Shahibaug; that Mr. Sanjay M. Shah, owner of M/s. Somnath Metal Pvt. Ltd. & Shri Ramnarayan Laddha are involved in the import of the HMS Scrap and various other scraps of Steel, Copper, Aluminum, by using his IEC Code and the name of M/s. Bhagyoday Enterprise; that Shri Ramnarayan S. Laddha alongwith Shri Sanjay M. Shah handled/controlled all day-to-day work of his firm M/s. Bhagyoday Enterprise.

32.2 Statements of Shri Ramnarayan S. Laddha were recorded on 23.07.2017, 10.08.2017, 30.08.2017 & 19.12.2017, wherein he *inter alia* stated that he visited Mundra port 03 times in last one year when he started dealing in metal scrap, two times in last two months and one time around 8-10 months back in connection with import of scrap; that around 1-1½ years back he gave the reference of M/s. Bhagyoday and Shri Dipakbhai to Shri Kamleshbhai, working for CHA M/s. Bright Shipping Pvt. Ltd. at that time; he used to get INR 40 to 50 thousand per container in cash from Dipak; that he knew that the cargo was loaded by one Sazzad in Dubai; that Shri Sanjay Shah is his cousin brother who does the Import noting online from Ahmedabad on his say for Dipakbhai and also used to arrange for customs clearance and transportation of containers; that he is looking after the wholesale business of M/s. H.B. Metals Pvt. Ltd; that they have business dealing of scrap sales and purchase from M/s. Jay Engineers, Himmatnagar and he doesn't know about the owner of M/s. Jay Engineers as the dealing is done through agents only.

32.3 Statement of Shri Kamlesh Sharma, Authorised signatory cum Power of attorney of M/s. Harshit Logistics (Clearing forwarding and Shipping Agent), 2nd Floor, Plot No. 244, Sector 1/A, Opp. Kutch Uday Press, Gandhidham, Kutch, Gujarat-370201, was recorded on 23.07.2017, wherein he *inter alia* stated that Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt Ltd was the only person who was looking after clearance of Cargo i.e. HMS imported from UAE by M/s. Bhagyoday Enterprise; that as per his knowledge Mr. Sanjay M Shah, Director of Somnath Metals Pvt Ltd, 203, Neelkanth Plaza, Opp Madhupura Market, Shahibaug, Ahmedabad was the main person involved in the Import of Scrap i.e. HMS from UAE; that the Bills of Entry were filed mostly on the direction and import documents provided by Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. Sometimes Mr. Ramnarayan S Laddha also directed him to file B/E; that Mr. Sanjay M Shah, Director of M/s. Somnath Metals Pvt. Ltd. is the mastermind behind the smuggling of gold and cigarettes; that they met him two times, Gandhidham and no other importer cares so much for HMS container as the value of the cargo compared to other scrap like Copper, Brass & Zinc is very low.

32.4 Statements of Shri Prakash Mishra, Proprietor of M/s. Shree Rama Krishna Freight Carrier (Fleet Supplier/Broker), 24, Meritime, Plot-45, Sector-9, Gandhidham, Kutch, Gujarat-370201, were recorded on 24.07.2017 & 05.01.2018, wherein he *inter alia* stated that he came to know about M/s. Bhagyoday Enterprise, Ahmedabad through Mr. Sanjay M Shah for the last ten months; that as per direction of Mr. Sanjay M Shah he has done the work of transportation of imported HMS Scrap imported from CFS to their destination at Kathwada, Singarva falling under district of Ahmedabad; that Shri Sanjay M Shah told him that he was handling the entire work of M/s. Bhagyoday Enterprise and given him the work of transportation of the imported cargo i.e. HMS/MS Scrap from port to Kathwada.

32.5 From the statement of Shri Mukesh M. Makwana, Branch Manager of M/s. ASR India Pvt. Ltd., it was noticed that 3 containers covered under Bill of Lading No.

DUBASRMUN6559 and DUBASRMUN6546 in the name of M/s. Bhagyoday Enterprise are lying at Jebel Ali port, as the shipper is not approving the final B.L. The shipper has approached M/s. ASR Cargo LLC, Dubai (shipping line) to hold the consignment/containers. Statement of Shri Rajendra Singh Rao, Director of M/s. ASR India Pvt. Ltd, Room No. 26, Second Floor, Khandke Building, 282, S.B.S. Road, Mumbai – 01 (Gandhidham Branch located at Office No. 201, 2nd Floor, Nilesh Owners Association, Plot No. 80, Near Gymkhana, Gandhidham, Gujarat-370201), was recorded on 01.08.2017, wherein he *inter alia* stated that they received a request for amendment in Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 from the shipper's appointed forwarder in Dubai through Whatsapp dated 21.07.2017 in respect of shipper's name and consignee, its details are as under:

Request for change details of	From	To
Shipper's name	M/s. Metal World FZE, P.O. Box 122927, Sharjah, U.A.E.	M/s. Al Sahara General Trading LLC, P.O. Box 81329, Dubai, UAE
Consignee name	M/s. Bhagyoday Enterprise, Ahmedabad	M/s. Radhika Impex, 8, Anpurna Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad - 382430

In the aforesaid Bill of Lading where the amendment was requested, Cigarettes were concealed in the guise of Heavy Melting Scrap. They had not received any request for amendment in respect of Bill of Lading No. DUBASRMUN6454 dated 06.07.2017 (Container No. TTNU2689561) in which the gold was detected; that Ms. Elvira Rodrigues (forwarder at Dubai) informed that one person i.e. Shri Kamlesh Ratanshi introduced the shipper and he told that M/s. Metal World FZE will look after their day-to-day work. She also provided his copy of Passport No. Z2058191 issued by Republic of India.

32.6 Shri Sanjay Moolchand Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., appeared on 25.10.2017 in compliance to Hon'ble High Court of Gujarat Order dated 16.10.2017 in the Cr. Misc. Application (for Anticipatory Bail) No. 25454 of 2017. Statements of Shri Sanjay Moolchand Shah alias Sanjay Khatod were recorded on 25.10.2017, 26.10.2017, 07.11.2017 & 31.01.2018. He stated that on request of Sh. Dipak J. Thakor and Sh. Ramnarayan S. Laddha, he had just asked or requested Shri Kamlesh Sharma (Custom Broker) for clearance of their scrap imported at Mundra Port; that on record M/s. Bhagyoday Enterprise is not his firm and Shri Ramnarayan Laddha, through Shri Dipak Thakor, was holding the business in the name of M/s. Bhagyoday Enterprise; that he just followed the instructions of Shri Ramnarayan S. Laddha in this regard. He also accepted that he procured scrap from M/s. Jay Engineers, Himmatnagar through Shri Ramnarayan Laddha.

32.7 Statement of Shri Sanjay M Shah was recorded on 07.11.2017 & 08.11.2017 before the Senior Intelligence officer, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, in another case booked against M/s. Radhika Impex, Ahmedabad, wherein Shri Sanjay M. Shah *inter alia* stated that Shri Ramnarayan Laddha is also handling/ supervising the work of M/s. Bhagyoday Enterprise; that Shri Ramnarayna Ladda has created the firm in the name of M/s. Bhagyoday Enterprise for smuggling of gold and cigarettes; that as they did not want to do illegal activities through their operative firms M/s. Somnath Metals, M/s. H.B. Metals Private Limited & M/s. SHB Metals Pvt Ltd., so they created the firm M/s. Bhagyoday Enterprise in the name of Shri Dipak Thakor.

33. Based on the aforesaid material evidence available on record, I find that Shri Sanjay M. Shah and Shri Ramnarayan Laddha (who are cousin brothers) hatched the conspiracy of smuggling of gold and cigarettes by way of concealment in HMS consignments. In order to ensure that their name did not appear anywhere on paper, they induced Shri Dipak J. Thakor (who was an employee of Shri Sanjay M. Shah) to lend his name for monetary consideration and created the firm M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor). Shri Sanjay M. Shah and Shri Ramnarayan Laddha retained the operational control over all the activities of M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor) and used the firm's IEC for smuggling of gold & cigarettes so as to escape any criminal liability if the smuggled goods are caught by the Customs. Subsequently, when the smuggled gold and cigarettes were intercepted by the Customs, Shri Sanjay M. Shah and Shri Ramnarayan Laddha have indulged in a blame game by shifting the responsibility on each other and Shri Dipak J. Thakor. Hence, I find that the investigation has very clearly established the criminal nexus between Shri Sanjay M. Shah, Shri Ramnarayan Laddha and their puppet Shri Dipak J. Thakor, for smuggling of gold & cigarettes by concealment in HMS consignments.

34. Further, I find that the investigation has uncovered that a substantial amount of fund has been received by M/s. Bhagyoday Enterprise from M/s. Somnath Metals Pvt. Ltd. and M/s. H.B. Metals Pvt. Ltd. Also, M/s. Bhagyoday Enterprise had paid a substantial amount to M/s. Jay Engineers, Himmatnagar which was also under the control of Shri Ramnarayan S. Laddha. On going through the Ledger Account of M/s. Somnath Metals Pvt. Ltd. for the period 01.04.2017 to 31.08.2017, it is observed that as on 31.08.2017, there is a credit outstanding balance of Rs.44,70,000/- in the account of M/s. Bhagyoday Enterprise. It is also observed that no goods have been purchased at all during this period from M/s. Bhagyoday Enterprise by M/s. Somnath Metals Pvt. Ltd. even though M/s. Somnath Metals Pvt. Ltd. have made payments totaling Rs.61,35,000/- to M/s. Bhagyoday Enterprise out of which only Rs.16,65,000/- have been paid back by M/s. Bhagyoday Enterprise during this period. In the cut-throat & low-margin business of metal scrap trading, such advance payments without any corresponding purchase of goods does not seem logical at all. Infact, it only points to the fact that Shri Sanjay M. Shah and Shri Ramnarayan Laddha were

financing the activities of M/s. Bhagyoday Enterprise and they were ultimate financial beneficiary of the smuggling of gold & cigarettes.

35. In their defence submissions, all the three co-noticees have claimed innocence and shifted the blame on the other co-noticees by contending that there is no documentary evidence specifically against them. Further, the noticees have also sought to retract their statements recorded under Section 108 of the Customs Act, 1962. In this regard, I find that this is a clear case of smuggling of gold & cigarettes into India, in a clandestine manner, therefore no one can expect any specific documentary evidence which would have been created by the persons involved. In such a situation, confessional and corroborative statements recorded under Section 108 of the Customs Act, 1962, are the only tools in the hands of the department to establish the role of the offenders. These statements recorded under Section 108 of the Customs Act, are in the nature of substantive evidence and culpability of the concerned persons can be based on the same. The scope of these provisions of law have been the subject matter of a large number of authoritative pronouncements of the Supreme Court and the High Courts, as under:

35.1 It has been held by the Hon'ble Supreme Court in the judgment in *Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar* - 1997 (96) E.L.T. 211 (S.C.):

"7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940, and K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 SCC 721."

35.2 The Hon'ble Supreme Court has observed in the case of *Naresh J. Sukhwani v. Union of India* - 1995 Supp. (4) SCC 663 = AIR 1996 SC 5 = 1996 (83) E.L.T. 258:

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculcating him in contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculcates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

35.3 A Constitution Bench of Apex Court of India in the matter of *Romesh Chandra Mehta v. State of W.B.* - (1969) 2 SCR 461 : AIR 1970 SC 940, held that the Customs Officers are entrusted with the powers specifically relating to the collection of customs duties and prevention of smuggling and for that purpose they are invested with the power to search any person on reasonable suspicion, to summon, X-ray the body of the person for detecting secreted goods, to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act, to obtain a search warrant from a Magistrate, to collect information by summoning persons to give evidence and produce documents and to adjudge confiscation. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve summons to produce a document or other thing or to give evidence and the person so summoned is bound to attend either in person or by an authorised agent, as such officer may direct, is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Customs Act. He is invested with the power to enquire into infringements of the Act primarily for the purpose of adjudicating forfeiture and penalty.

35.4 In the present proceeding, the case is based on the seizure of smuggled goods and the statements of the key persons involved in the smuggling activities recorded under Section 108 of the Customs Act, 1962. In these statements recorded under Section 108 of the Customs Act, 1962 there are clear and repeated reference to Shri Sanjay M. Shah and Shri Ramnarayan Laddha controlling & financing the activities of M/s. Bhagyoday Enterprise, which are reconfirmed by Shri Dipak J. Thakor. I find that it is settled law that statements made to an officer of Customs are admissible as evidence under Section 108 of the Customs Act, 1962. Apex Court of India in their judgment in case of *Gulam Hussain Shaikh Chougule v. S. Reynolds, Supdt. of Customs, Marmgoa*, reported in 2001 (134) ELT (SC), after quoting from several other judgments, has held that such statements are admissible in evidence. Further the admitted facts need not to be proved as held by Hon'ble High Court of Madras in the case of *Govindasamy Raghupati* reported in 1998 (98) ELT 50 (Mad.). Hon'ble Supreme Court in the case of *Surjeet Singh Chhabra Vs UOI* reported in 1997 (89) ELT 646 (SC) has also pronounced that confessional statement made before Customs officer under Section 108 of the Customs Act, 1962, though retracted, is an admission and binding since Customs Officers are not Police Officers. Further, in the case of *Gulam Hussain Shaikh Chougule Vs S. Reynolds, Supdt. Of Customs, Marmgoa* reported in 2001 (134) ELT 3 (SC), relying on various judgments of Apex Court of reported at AIR 1972 SC 1224, 2000 (120) ELT 280 (S.C.); 1999 (110) ELT 324 (S.C.); 1992 (60) ELT 24 (S.C.); 1999 (110) ELT 309 (S.C.); 1983 (13) ELT 1443 (S.C.); 1983 (13) ELT 1590 (S.C.), has further held that confessional statement recorded by Customs officer under Section 108 of Customs

Act, 1962 are not required to follow safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.

35.5 In view of the above, the statements under the present proceeding are material piece of evidence to establish the case for Revenue. Apex Court in the case of K.I. Pavunny Vs AC Chochin reported at 1970 (90) ELT 241 (SC) has held that when the material evidence establish fraud against the revenue, white collar crimes committed under absolute secrecy shall not be exonerated from penal consequence of law. Enactments like Customs Act, 1962, are not merely taxing statute but are also potent instruments in the hands of the Government to safeguard the interest of the economy. Preponderance of probability comes to rescue of Revenue and revenue is not required to prove its case by mathematical precision. The Supreme Court has observed in Kanhaiyalal Vs Union of India - (2008) 4 SCC 668, that specialized enactments, like Narcotic Drugs & Psychotropic Substances Act and Customs Act, are meant to deal with the special situations and circumstances.

35.6 In the case of Collector of Customs, Madras and Others Vs D. Bhoormull reported at 1983 (13) ELT 1546 (S.C.), the Apex Court held as under:

“30. It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-“all exactness is a fake”. El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man’s estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in Blatch v. Archar (1774) 1 Cowp. 63 at p. 65 “According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted”. Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove

facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

32. *Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned : and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty."*

35.7 Hon'ble Tribunal in the case of *Chandan Steel Ltd. Vs Commissioner Central Excise & S.T., Vapi* reported at 2014 (312) ELT 479 (Tri.-Ahmd.) has held that with regard to standard of proof in the departmental proceedings, revenue need not establish an offence case with mathematical precision as required in a criminal case, instead preponderance of probability is also sufficient in Revenue's case. Further Hon'ble Tribunal in the case of *Carpenter Classic Exim Pvt. Ltd. Vs Commissioner of Customs, Bangalore* reported at 2006 (200) ELT 593 (Tri.-Bang.) has also held that in a quasi-judicial case like this, we are concerned more with a pre-ponderance of probability rather than proof beyond reasonable doubt, as held by various judicial fora. Hon'ble Tribunal in the case of *Lark Chemicals Pvt. Ltd. Vs Commissioner of Customs, CSI Airport, Mumbai* reported at 2014 (301) ELT 138 (Tri.-Mumbai) has also held that it is a settled law that admitted facts need not be proved and no further evidence required.

35.8 I find that the observation made by Hon'ble Supreme Court in the case of *State of Gujarat Vs Mohanlal Jitmalji Porwal and Anr.* reported in AIR 1987 SC 1321 is squarely applicable in the present case, *in as much as*, Hon'ble Apex court observed as under:

"The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarter which view white collar crime with a permissive eye unmindful of the damage done to the National Economy and National Interest."

36. Here I would also refer to Section 123 of the Customs Act, 1962, as under:

SECTION 123. Burden of proof in certain cases. - (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be

- (a) in a case where such seizure is made from the possession of any person,
 - (i) on the person from whose possession the goods were seized; and*
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;**
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*

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

36.1 In the instant case, 27 Gold Bars of 1 kg each, total 27 kg gold, has been seized under the reasonable belief that the same are smuggled goods and therefore, burden of proving that the said Gold Bars are not smuggled goods is upon the Noticees from whose possession the same was seized. However, none of the co-noticees have disputed the fact of smuggling of said gold into India.

36.2 The gold has been brought into India by adopting illegal means, as well as in violation of the provisions of the FTP, in as much as, import of gold is subject to RBI regulations and as per RBI regulations import of gold is permitted to nominated banks or authorised agency by the RBI. Since, the co-noticees are neither representing nominated banks nor authorised agencies by RBI, the import of gold into India is in violation of the prohibition of import imposed under FTP by the RBI Regulations. Accordingly, gold is prohibited goods for import into India. The term prohibited goods is defined under rule 2(33) of the Customs Act, 1962, as under:

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

36.3 In case of import of gold, the same is regulated by RBI and only permitted to banks and agencies nominated/authorised by RBI. In the present case, the co-noticees smuggled gold into India and they are neither banks nor agencies nominated/authorised by RBI, thus the policy condition of import is not complied with in the present case of smuggling of gold

into India. Therefore, the said gold is appropriately covered by the definition of prohibited goods.

36.4 In view of the above, the gold smuggled into India is prohibited goods and in violation of prohibition/restriction imposed under FTP by RBI regulations, as well as in violation of the applicable provisions of Customs Act, 1962, in respect of import of goods into India, therefore, I find that the 27 numbers of Gold Bars, valued at Rs.7,84,08,000/-, smuggled into India by way of concealment in the import consignment of HMS under Bill of Entry No. 2458081 dated 14.07.2017, are liable for confiscation under the provisions of Section 111(f), 111(i) and 111(m) of the Customs Act, 1962.

36.5 Further, I find that the HMS totally weighing 23.60 MTs and valued at Rs.4,58,907/- had been used for concealment of the 27 Gold Bars attempted to be smuggled by the importer and therefore, the said HMS is liable for confiscation under the provisions of Section 119 of the Customs Act, 1962.

37. Further, I find that as per the provisions of the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009, as notified by the Ministry of Health & Family Welfare, all the cigarettes and tobacco products should mandatorily have the prescribed pictorial warning on all the packets for sale in India when imported.

37.1 In the instant case, the packages of illegally imported cigarettes did not contain the prescribed pictorial warning as per the provisions of the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009 and therefore, the said cigarettes are covered under prohibited goods as defined under Section 2(33) of the Customs Act, 1962.

37.2 In view of the above, the cigarettes smuggled into India are prohibited goods and in violation of the applicable provisions of Customs Act, 1962, in respect of import of goods into India, therefore, I find that the 25.20 lakh sticks of 'Gudang Garam' brand Cigarettes, valued at Rs.1,89,00,000/-, smuggled into India by way of concealment in the import consignment of HMS under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017, are liable for confiscation under the provisions of Section 111(f), 111(i), 111(j) and 111(m) of the Customs Act, 1962.

37.3 Further, I find that the HMS totally weighing 38.778 MTs and valued at Rs.7,50,728/- had been used for concealment of the 25.20 lakh sticks of 'Gudang Garam' brand Cigarettes attempted to be smuggled by the importer and therefore, the said HMS is liable for confiscation under the provisions of Section 119 of the Customs Act, 1962.

38. Further, I find that the co-noticees had engaged in the aforesaid act of smuggling in order to evade the Customs duty leviable on the imported gold and cigarettes. In view of the

blatant violation of the Customs Act and outright attempted smuggling of gold and foreign origin cigarettes, I do not consider this case to be appropriate where the goods can be allowed to be redeemed on payment of redemption fine and hence, I hold that the seized goods are liable for absolute confiscation.

39. In regard to the proposal for imposition of penalty on the importer M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor), A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat, I find that the importer has attempted to smuggle the gold and foreign origin cigarettes in blatant violation of the Customs Act, 1962 which has rendered the said imported 27 numbers of Gold Bars valued at Rs.7,84,08,000/- and 25.20 lakh sticks of 'Gudang Garam' brand Cigarettes valued at Rs.1,89,00,000/-, liable for confiscation under Section 111 of the Customs Act, 1962 and consequently, the same are to be treated as "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. Also, the Heavy Metal Scrap totally weighing 62.378 MTs and valued at Rs.12,09,635/- used for concealment of gold and cigarettes attempted to be smuggled by the importer is liable for confiscation under the provisions of Section 119 of the Customs Act, 1962. Further, I find that Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, had attempted to smuggle the contraband goods by way of concealing the same in the cargo declared as HMS. The investigation has brought out that Shri Dipak J. Thakor was fully aware about the illicit import of consignments and he had permitted other persons to use his IEC for monetary consideration. He was also a part of nexus with the other co-noticees viz. Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha. He was financially funded by the firms controlled by Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha. He was aware about the order placed to M/s. Metal World FZE, Sharjah and aware about the supplier Mr. Sazzad. After detection of gold by the Customs officers at Mundra Port, Shri Dipak J. Thakor misguided the investigation by way of creating fictitious characters in connivance with Shri Ramnarayan S. Laddha and Shri Sanjay M. Shah. All the import documents and banking documents relating to the instant illegal imports were signed by Shri Dipak J. Thakor with an intention to get monetary benefit. He was fully aware about the smuggling of 27 kg of Gold and 25.20 lakh sticks of 'Gudang Garam' brand cigarettes concealed in the HMS imported by M/s. Bhagyoday Enterprise. The aforesaid acts of omission and commission on his part have rendered the smuggled Gold and Cigarettes liable for confiscation and therefore, I find that the said contraventions on the part of M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor) constitute an offence of the nature as described under Section 112 of the Customs Act, 1962 and hence, rendered them liable for imposition of penalty under Section 112(i) of the Customs Act, 1962.

40. In regard to the proposal for imposition of penalty on Shri Ramnarayan S. Laddha, B-41, Krishna Kutir, Jain Colony, Near Tera Pant Bhawan, Shahibaug, Ahmedabad, I find that Shri Ramnarayan S. Laddha was actively engaged in creating the firm in the name of M/s. Bhagyoday Enterprise for smuggling of Gold and Cigarettes. He had also made advance payments to M/s. Bhagyoday Enterprise for the purpose of financing the import and

payment of duties/taxes. Shri Ramnarayan S. Laddha controlled all the business and banking transactions of M/s. Bhagyoday Enterprise along with his cousin Shri Sanjay M. Shah. I find that Shri Ramnarayan S. Laddha had played a vital role in the smuggling of 27 Gold bars and 25.20 lakhs sticks of 'Gudang Garam' brand cigarettes by using the IEC of M/s. Bhagyoday Enterprise. The aforesaid acts of omission and commission on his part have rendered the smuggled Gold and Cigarettes liable for confiscation and therefore, I find that the said contraventions on the part of Shri Ramnarayan S. Laddha constitute an offence of the nature as described under Section 112 of the Customs Act, 1962 and hence, rendered him liable for imposition of penalty under Section 112(i) of the Customs Act, 1962.


41. In regard to the proposal for imposition of penalty on Shri Sanjay M. Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2nd Floor, Neil Kanth Plaza, Shahibaug, Ahmedabad, I find that Shri Sanjay M. Shah had helped the importer to import the contraband goods by way of funding through his firm M/s. Somnath Metals Pvt. Ltd. Shri Sanjay Shah was actively involved in the clearance of import consignment made in the name of M/s. Bhagyoday Enterprise. The investigation has revealed that he, along with his cousin Shri Ramnarayan Laddha, controlled the entire business run in the name of M/s. Bhagyoday Enterprise. Shri Sanjay Shah was actively involved in the illegal import by way of giving the instructions for filing the Bill of Entry and making arrangement for transportation of the containers. He was the person who e-mailed import documents of M/s. Bhagyoday Enterprise from his office to the CHA and he was the main person who took the decisions on behalf of importer and communicated his decisions to M/s. Harshit Logistics (Clearing and Forwarding Agent), CHA M/s. Arihant Shipping and transporter M/s. Shree Rama Krishna Freight Carriers. The smuggled goods had been financed by his firm M/s. Somnath Metals Pvt. Ltd. and he was the ultimate financial beneficiary of the illegal import. The aforesaid acts of omission and commission on his part have rendered the smuggled Gold and Cigarettes liable for confiscation and therefore, I find that the said contraventions on the part of Shri Sanjay M. Shah alias Sanjay Khatod constitute an offence of the nature as described under Section 112 of the Customs Act, 1962 and hence, rendered him liable for imposition of penalty under Section 112(i) of the Customs Act, 1962.

In view of the above discussions and findings, I pass the following order:-

::: ORDER :::

- (i) I order absolute confiscation of the 27 numbers of Gold Bars, valued at Rs.7,84,08,000/-, smuggled into India by way of concealment in the import consignment of HMS under Bill of Entry No. 2458081 dated 14.07.2017, under the provisions of Section 111(f), 111(i) and 111(m) of the Customs Act, 1962.
- (ii) I order absolute confiscation of the Heavy Metal Scrap, totally weighing 23.60 MTs and valued at Rs.4,58,907/-, used for concealment of gold, under Section 119 of the Customs Act, 1962.

- (iii) I order absolute confiscation of the 25.20 lakh sticks of 'Gudang Garam' brand Cigarettes, valued at Rs.1,89,00,000/-, smuggled into India by way of concealment in the import consignment of HMS under the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017, under the provisions of Section 111(f), 111(i), 111(j) and 111(m) of the Customs Act, 1962.
- (iv) I order absolute confiscation of the Heavy Metal Scrap, totally weighing 38.778 MTs and valued at Rs.7,50,728/-, used for concealment of foreign origin cigarettes, under Section 119 of the Customs Act, 1962.
- (v) I impose penalty of Rs.50,00,000/- (Rupees Fifty Lakhs only) on M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor), A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat, under Section 112(i) of the Customs Act, 1962.
- (vi) I impose penalty of Rs.2,00,00,000/- (Rupees Two Crore only) on Shri Ramnarayan S. Laddha, B-41, Krishna Kutir, Jain Colony, Near Tera Pant Bhawan, Shahibaug, Ahmedabad, under Section 112(i) of the Customs Act, 1962.
- (vii) I impose penalty of Rs.2,00,00,000/- (Rupees Two Crore only) on Shri Sanjay M. Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2nd Floor, Neil Kanth Plaza, Shahibaug, Ahmedabad, under Section 112(i) of the Customs Act, 1962.


(Sanjay Kumar Agarwal)
Commissioner of Customs
Custom House Mundra

To;

Date:10.12.2018

1. M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor),
A2, Bhole Shiv Compound,
Singarava, Tal. Daskoi,
Ahmedabad, Gujarat.
2. Shri Ramnarayan S. Laddha,
B-41, Krishna Kutir, Jain Colony,
Near Tera Pant Bhawan,
Shahibaug, Ahmedabad.
3. Shri Sanjay M. Shah alias Sanjay Khatod,
Director of M/s. Somnath Metals Pvt. Ltd.,
203, 2nd Floor, Neil Kanth Plaza,
Shahibaug, Ahmedabad.

Copy to:

- (i) The Chief Commissioner of Customs, CCO, Ahmedabad.
- (ii) The Deputy/Assistant Commissioner (SIIB), Custom House, Mundra.
- (iii) The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
- (iv) The Deputy/Assistant Commissioner (Disposal), Custom House, Mundra.
- (v) The Deputy/Assistant Commissioner (Recovery Cell), Custom House, Mundra.
- ✓(vi) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
- (vii) Guard file.