



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

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| A. File No. | F.No. VIII/48-07/Adj./Comm./MCH/18-19 |
| B. Order-in-Original No. | MUN-CUSTM-000-COM-24-18-19 |
| C. Passed by | Shri Sanjay Kumar Agarwal Principal Commissioner of Customs Custom House, AP & SEZ, Mundra |
| D. Date of order / Date of issue | 25.02.2019/25.02.2019 |
| E. SCN No. & Date | S/43-05/SUB/CHM/Radhika/2017-18 dated 18.08.2018 |
| F. Noticee(s)/Party/ Importer | 1. M/s. Radhika Impex (Proprietor Shri. Tushar N. Thakor), 8. Annapurna Estate, Near Zaveri Estate, Kathwada, Ahmedabad-382430. 2. Shri Dipak J. Thakor (Proprietor of M/s. Bhagvoday Enterprise), A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat. 3. Shri Sanjay M. Shah alias Sarjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2nd Floor, Neil Kanth Plaza, Shahibaug, Ahmedabad. 4. Shri Ramnarayan S. Laddha, B-41, Krishna Kutir, Jain Colony, Near Tera Pant Bhawan, Shahibaug, Ahmedabad |

OFFICE OF THE PRINCIPAL
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MUNDRA
25.02.2019
CUSTOMS HOUSE, MUNDRA

RO (C.D.F.)
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24/03/19

- यह अपील आदेश संबंधित 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 5(1) के साथ पठित सीमा शुल्क अधिनियम 1962 का धारा 129 A (1) के अंतर्गत प्रपत्र सीए-3 में चार प्रतियों में नोटिफ बतार गए पत्र 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, मंजुश्रीमिल कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद 380 004"
"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Banumali Bhawan, Manjushree Mill Compound, Near Giridharnagar Bridge, Giridharnagar PO. Ahmedabad 380 004"
- उक्त अपील यह आदेश भेजने की तिथि 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 रूप में 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 क्षेत्र अंतर्गत 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 lakhs) 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 का कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 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 चाहिए।
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 तब तक अनुत्पन्न शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष एन शुल्क का 1.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 1.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Sub.: Show Cause Notice F.No. S/43-05/SUB/CHM/Radhika/2017-18 dated 18.08.2018 issued to M/s. Radhika Impex (Proprietor Shri Tushar N. Thakor), 8, Annapurna Estate, Near Zaveri Estate, Kathwada, Ahmedabad-382430, holding IEC No. 0817501754

BRIEF FACTS OF THE CASE:

Intelligence was gathered by Special Intelligence and Investigation Branch (SIIB), Custom House, Mundra, that one M/s, Radhika Impex, 8, Annapurna Estate, Nr. Zaveri Estate, Kathwada, Ahmedabad-382430 (IEC No. 0817501754) would smuggle 'some contraband goods' under Bill of Lading No. ERSLSINNSA0021 by way of concealing them in four containers of 'HMS Scrap' arriving from Singapore to ICD, Khodiyar.

2. Therefore, a letter F.No. 43/05/SIIB/CHM/17-18 dated 26.07.2017 was written to M/s. Seabird Maritime Agencies Pvt. Ltd, M/s. ASR India Pvt. Ltd, the Terminal Manager, Adani Port and MICT Terminal, Mundra, with instructions that the said four containers bearing No. CHLU3518799, FSCU3288625, RWAU2404931 and TGHU3380576 be offloaded at Mundra port on arrival of vessel Hyundai Faith voyage No. 65w.

3.1 The said four containers were examined under Panchnama dated 29/30.07.2017 drawn at Landmark Container Freight Station, Mundra, in the presence of independent panchas, Shri Mukesh M. Makwana, Line Agent of ASR Line and Shri Tarkeshwar Kumar, Dy Manager of Landmark Container Freight Station. During the course of panchnama, Shri Mukesh Makwana produced a Bill of Lading bearing no. ERSLSINNSA0021 showing shipped on board on 17.07.2017 for the four containers bearing Nos. CLHU3518799, FSCU3288625, RWAU2404931 and TGHU3380576 issued in favour of M/s. Radhika Impex, 8, Annapurna Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad-382430, E-mail: radhikaimpex7979@gmail.com; IEC No. 0817501754, place of receipt as Singapore, Port of discharge as Nhava Sheva, Place of delivery as ICD Ahmedabad, said to contain HMS Scrap, Gross/Net weight 81220 Kgs, shipper Applied Logistics PTE Ltd, 27, Penjuru Lane, #05-02 Singapore-609195, the delivery agent name & address ASR India Pvt. Ltd. (as agent ASR container line)-Mumbai, 2405, 24th Floor, Haware Infotech Park, Sector 30A, Plot 39/3, Near Inorbit Mall, Vashi, Navi Mumbai-400708; Tel. No. 022-20871222.

3.2 Further examination of all the four containers bearing nos. RWAU2404931, CLHU3518799, FSCU3288625 and TGHU3380576 was conducted wherein the containers were 100% de-stuffed under Panchnama dated 29/30.07.2017 in the presence of panchas and line agent and it was found that each container was stuffed with jumbo PP bags containing betel nuts concealed behind HMS Scrap. On counting the jumbo PP bags, it was found that each container was stuffed with 12 jumbo PP bags containing betel nuts, totaling to 48 jumbo PP bags.

3.3 Three packets containing composite samples of betel nuts were taken and sealed in the presence of panchas, line agent and Shri Tarkeshwar Kumar, CFS Representative. Thereafter, the entire quantity of betel nuts, after segregation from HMS Scrap, was reloaded inside two containers bearing no. FSCU328625 and TGHU3380576 and sealed with bottle seal nos. 1900 and 1948, respectively, being perishable in nature. Thereafter, weighment of the container nos. FSCU328625 and TGHU3380576 was carried out and the net weight of betel nuts was found to be 21420 Kgs (11080 Kgs + 10340 Kgs).

3.4 The Customs officers found that the aforesaid betel nuts, along with packaging material weighing 21420 Kgs having market value of Rs.1,14,57,687/- (approx.), was liable for confiscation under Section 111, 118 and 120 of the Customs Act, 1962, since the cargo was found to be mis-declared with regard to description, quantity and valuation. HMS Scrap weighing 59030 Kgs was also found to be liable for confiscation under Section 119 of the Customs Act, 1962, as the HMS Scrap was used for concealment of above said betel nuts. Thereafter, the Customs officers placed the two containers containing betel nuts bearing nos. FSCU328625 and TGHU3380576 and sealed with bottle seals nos. 1900 and 1948 and the cargo HMS Scrap under seizure in terms of Section 110 of the Customs Act, 1962, under the reasonable belief that the same are liable to confiscation under provisions of Section 111, 118, 119 and 120 of the Customs Act, 1962. Accordingly, the said 21.420 MT of Betel Nuts (Areca Nuts) and 59.03 MTs of HMS Scrap were seized vide Seizure Memo F.No. S/43-05/SIIB/CHM/2017-18 dated 30.07.2017.

4. The time period prescribed for the issuance of Show Cause Notice under Section 124 of the Customs Act, 1962, in respect of goods which were seized vide Seizure Memo F.No. S/43-05/SIIB/CHM/2017-18 dated 30.07.2017, was extended for a further period of six months i.e. up to 30.07.2018 under Section 110(2) of the Customs Act, 1962, vide OIO No. MUN-CUSTOM-000-11-17-18 dated 24.01.2018 issued by the Commissioner of Customs, Custom House, Mundra.

5.1 The premises of M/s. Radhika Impex, 8, Annapurna Estate, Nr. Zaveri Estate, Kathwada, Ahmedabad-382430, was searched and a Panchnama dated 30.07.2017 was drawn in the presence of independent panchas and Shri Anokhelal Rajput, husband of owner of the premises. During the course of panchnama, Shri Rajput informed the officers that the Godown No.8 is registered in the name of his wife Smt. Sunitaben and they rented the said premises to M/s. Radhika Impex; that he submitted a copy of rent agreement to the officers. During the panchnama the inside of godwon was found empty

and no incriminating items or documents were recovered from the said premises.

5.2 A search was conducted at the residence of Shri Tushar Natubhai Thakor, B/1/7 and B/1/5 Raghukul Society, Nr. Railway Crossing, Shahibaug, Ahmedabad, whose name was shown as Proprietor of M/s. Radhika Impex, under Panchnama dated 30.07.2017, in the presence of independent panchas and Shri Natubhai Thakor, father of Shri Tushar N Thakor. During the course of panchnama, Shri Natubhai Mohanbhai Thakor informed that Shri Tusharbhai N. Thakor is his son and residing at B/1/7, Raghukul Society, Railway Crossing, Shahibaug, Ahmedabad and this flat was on the opposite side of the Flat No. B/1/5 on the same floor of same building; that he was the owner of both flats; that the officers recovered a Pen drive and one DVD on which Tusharbhai was written and seized the same under the reasonable belief that the same will be helpful during the investigation.

5.3 The said Pen drive and DVD seized under Panchnama dated 30.07.2017 from the residence of Shri Tushar Natubhai Thakor, B/1/7 and B/1/5 Raghukul Society, Nr. Railway Crossing, Shahibaug, Ahmedabad, were scrutinized under Panchnama dated 19.03.2018 and it was found that the DVD was containing only JPG image and one vedio file; that no incriminating data was retrieved from the DVD; that the Pen drive was containing only MP3 files and JPG image; that no incriminating data was retrieved from the Pen drive.

6. Summons dated 31.07.2017, 07.08.2017, 22.08.2017, 04.10.2017, 04.12.2017, 22.12.2017, 18.01.2018, 20.03.2018 & 22.05.2017 were issued to Shri Tushar Natubhai Thakor (Proprietor of M/s. Radhika Impex) on his office address as well as at his residential address but no response was received during the investigation. Consequently, a Criminal Complaint No. 363/2018 dated 09.02.2018 was lodged under Section 174 and 175 of Indian Penal Code, 1860, read with Section 108 of the Customs Act, 1962, before the Hon'ble Additional Chief Judicial Magistrate, Mundra.

7. An offence case was booked for smuggling of 27 kg. Gold Bars and 25.20 Lakh sticks of Gudang Garam brand Cigarettes concealed in the consignments declared as HMS, imported by M/s. Bhagyoday Enterprise (Proprietor Shri Dipak Jayantibhai Thakor) A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmadabad, Gujarat. During the course of investigation, statements of relevant persons were recorded under Section 108 of the Customs Act, 1962. The relevant statements recorded in connection with the case booked against M/s. Bhagyoday Enterprise are directly connected with the instant case booked against the importer and therefore, the same are relied upon in present

case. Show Cause Notice F.No. S/43-02/SIIB/CHM/Bhagyoday/2017-18 dated 16.01.2018 was issued by the Commissioner of Customs, Mundra, to M/s. Bhagyoday Enterprise and others.

8. 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 Enterprises, Ahmedabad?

Ans: I know M/s. Bhagyoday Enterprises, 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 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.7 To whom you are issuing Delivery Order in respect of M/s. Bhagyoday Enterprises?

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 Enterprises 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 |
|--------------------------------|--------------------|---------------------|----------------------------|--------------------------|---------------------------------------|
| 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 | GATU3260784 TGHU3084553 | --do-- | 25,20.00 0 Nos of Cigarette Sticks |

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

| | 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 Enterprises, Ahmedabad | M/s. Radhika Impex, 8, Anpurna Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad - 382430 |

Q.12 Peruse the Bill of Lading No. ERSL SINNSA0021, 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 impmmum@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. ERSL SINNSA0021 (four containers). I submit the e-mails details in support of the shipper's request.

Q.13 In the Bill of Lading No. ERSL SINNSA0021. 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. ERSL SINNSA0021, 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. ERSL SINNSA0021 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 Enterprises, 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. ERSL SINNSA0021 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 Enterprises?

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 Enterprises, 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.

9. Statement of **Shri Ramnarayan Laddha**, Manager of M/s. HB Metals Pvt. Ltd., was recorded on **10.08.2017** in the Jail office, Palara khas Jail, Bhuj. His statement recorded in questionnaire form is re-produced 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, Kirtinari Enterprise, RSS Enterprise, Shree Balaji Trading Company, Gajanan Corporation, 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 knew 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 Jethalia, 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 Jethalia 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 Jethalia 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, Malaysia, 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 Ajmera, Uttam Sen, Mukesh Chandra Laddha, Vijay Jethaliya, Vikas Jethalia, Rajesh Nai, Bhairulal Laddha 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. Prakash Mishra stated that for M/s. Mahendra trading company Mr. Ramnarayan Shayamilal 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 take 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 take 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 Chetariji the owner of Rahul Roadlines?

Ans. I do not remember as of now. I might have procured scrap through him.

Q.39. Which scrap do you purchase 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 bhai.

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 talk 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 Trading 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.

10. Statement of **Shri Dipakbhai J. Thakor**, Proprietor of M/s. Bhagyoday Enterprise, A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmadabad, Gujarat. (IEC No. 0815907371) 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: 3 Are 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, Taluka Daskoi, Ahmedabad.

Q: 4 Are 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:5 Who else in your family is involved in the business of importing HMS Scrap ?

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

Q:6 How often do you meet Mr Tushar Natubhai Thakor and what is your business relationship with him?

Ans: I meet Mr Tushar Natubhai Thakor 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 Rakhival, 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 Shiw 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 Shiw 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: 9 Who 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 Ramnarayan Laddha, 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 Ramnarayan Laddha,

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. Bhaggoday 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.

11. Statement of **Shri Sandeep Moolchandbhai Shah**, Director of M/s. Somnath Metals Pvt. Ltd. was recorded on **24.08.2017** under Section 108 of the Customs Act, 1962, wherein he *inter-alia* 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 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 Anklेशwar. Our main customers of steel are M/s. Jindal Steel at Hissar, Haryana and Orisa. Few consignments we also sold to M/s. Laseon 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 summons.

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 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.

12. 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. 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 Enterprises?

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 Enterprises 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.

13. Further statement of **Shri Dipak Jayantibhai Thakor**, proprietor of M/s. Bhagyoday Enterprise 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: I 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 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. 9635606 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 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. Sandeep 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.

13.1 Based on the investigation and statements of Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprises, Ahmedabad and Shri Ramnarayan S. Laddha, both were arrested on 30.08.2017 under the reasonable belief that they have committed an offence punishable under Section 132 and 135 of the Customs Act, 1962.

14.1 **Shri Sanjay Moolchand Shah** alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., appeared on 25.10.2017 in compliance of the Hon'ble High Court of Gujarat's 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 he *interalia* 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 domestic market i.e. mainly from Ahmedabad and Vadodara. We are also procuring some consignments from Surat, Indore and Anikleshwar. 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, Dipakbhai 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 Shyamal Laddha?

Ans. He is my cousin brother (Mama's Son) and resides at Krishna Kutir, Jain Colony, Shahbaug 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. Shahaug 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. Janunbhai 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 Minerals 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. Tuhsar 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. smp19444@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. Radhika 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. Arthant 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.

14.2 Further statement of **Shri 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 Enterprises. 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 Enterprises 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. Arhant 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 "Dhru 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 Thakkar, 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 Thakkar, 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, Singarva, Kathwada, Ahmedabad). Many times he meets me together with Mr. Ramnarayan Shyam Lal 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 Enterprise 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. 0510FIGSI70279 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. Bhagyoday 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.69 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.70. 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.71. 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 "Dhira Kanta" at Kathwada from where Sh. Ramnarayan Laddha through Sh. Dipak received/get the container to their desired place.

Q.72. 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.73. 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.

14.3 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 Enterprises, Daskaroi, Ahmedabad?

Ans: Yes, I know, he was my neighbor.

Q.2 What is the business of Shri Dipak J Thakor 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 Enterprises?

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 Enterprises 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 Ramnarayan 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 servies 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) Bajra 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.

15.1 During the course of investigation, it was learnt that the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, has also booked an offence case against the importer for smuggling of Betel Nuts at ICD Ahmedabad. The evidences collected by DRI, Ahmedabad were received vide letter F.No.DRI/AZU/GI-01/ENQ-35/2017 dated 21.11.2017 and the same are relied upon in this case also.

15.2 Statement of **Shri Vishal Ganpatbhai Patel**, Manager of M/s. Sayani & Sons, 211, Shanay-2, Opp. Gandhigram Railway Station, Bh. Emerald Honda, Ashram Road, Ahmedabad - 380 009 (CHA at ICD) was recorded on 08.08.2017 before the SIO, DRI, Zonal unit, Ahmedabad, wherein he *interalia* stated that he joined M/s. Sayani & Sons as a Manager and he also appointed Shri Ajay Sureshbhai Dutt as Manager (Marketing); that he also started one M/s. Xpress Maritime Private Limited, engaged in freight forwarding business; that apart from him his wife Smt. Kruti Patel was also other director in this company; that he knew M/s. Radhika Impex, 8, Annapurna Industrial Estate, Nr. Zaveri Estate, Kathwada, Ahmedabad - 382430 (IEC No. 08175001754) ; that he had acted as CHA for for them and got cleared their six containers from ICD Khodiyar vide Bill of Entry No. 2413204 dated 12.07.2017; that he clarified that he not import clearance work of said M/s. Radhika through Shri Ajay Dutt, Manager (Marketing) of M/s. Sayani & Sons, Ahmedabad; that Shri Ajay Dutt visited Shri Sanjay Shah @Sanjay Khatod of M/s. Somnath Metals Pvt. Ltd for procurement of work for M/s. Sayani & Sons; that Shri Sanjay Shah @ Sanjay Khatod informed him that as he was already getting done import clearance of his containers through M/s. Guruprakash Enterprise, he could not give any business from M/s. Somnath Metals Pvt. Ltd, he informed him that he was going to start import in the his new firm in future; that in the end of June-2017 Shri Ajay Dutt received a call from Shri Sanjay Shah @ Sanjay Khatod informing him that he would give major work of import clearance of HMS scrap of his new firm to M/s. Sayani & Sons, Ahmedabad; that Shri Sanjay Shah sent documents in the name of M/s. Radhika Impex for clearance of 102.370 MTs of HMS imported through five containers at ICD Khodiyar; that after received the documents, due to introduction of new Goods and Service Tax they faced problem in filing import import Bill of Entry in the name of M/s. Radhika Impex, Ahmedabad; that Shri Sanjay Shah @ Sanjay Khatod informed that he will sent documents showing high seas sales

purchase of 102.370 MTs of HMS by his another firm M/s. Bhagyoday Enterprise, A-2, BHoleshiv Compound, Singarva, Tal Daskoi, Ahmedabad (IEC No. 0815907371) from M/s. Radhika Impex. Ahmedabad; that accordingly, said five (5) containers were got cleared in the name of M/s. Bhagyoday Enterprise, Ahmedabad (IEC No. 0815907371 from ICD Khodiyar; that a local IGM No. 2827463 dated 24.06.2017 and Bill of Entry No. 2347590 dated 07.07.2017 were filed for clearance of said five containers; that after getting out of charge from Customs, ICD Khodiyar, on the very next day i.e. on 12.07.2017, Shri Sanjay Shah @ Sanjay Khatod again send documents for import clearance of afore-mentioned six (6) containers vide which 101.394 MTs of HMS was imported in the name of M/s. Radhika Impex; that said goods were cleared by them i.e. M/s. Sayani & Sons, Ahmedabad from the Customs, ICD Khodiyar vide Bill of Entry No. 2413204 dated 12.07.2017; that he had received KYC documents and other documents in person from one Shri Dharmesh (Mob.no. +919727890800); that Shri Sanjay Shah @ Sanjay Khatod informed Shri Ajay Dutt that Shri Dharmesh was working in his office; he had neither met in person nor talked to Shri Tushar Natubahi Thakor, proprietor of M/s. Radhika Impex, 8, Annapurna Industrial Estate, Nr. Zaveri Estate, Kathwada, Ahmedabad - 382430 for any other matter related to clearance of 101.934 MTs of HMS imported in the name of M/s. Radhika Impex through six (6) containers; that they had never received any documents related to KYC, invoice, packing list, country of origin etc. or other documents from Shri Tushar Thakor; that even for payment of their charges they had talked to Shri Sanjay Shah @ Sanjay Khatod; that for all these matters, they had dealt with Shri Sanjay Shah @ Sanjay Khatod.

15.3 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 Apartment, 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.

15.4.1 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 (**RUD-15**) wherein he *inter-alia* stated that he involved with following firms as owner or director or had business relationship or controlled 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, Ahmedabad-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.

15.4.2 On being asked 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 Jaumin Soni (Mob. No. 8401855209) are working in the office of this firm situated at Shahibaug; that Shri Vijaybhai & 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.

15.4.3 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 Thakor 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 Ramnarayan 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 Ramnarayan 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 Ramnarayan Laddha as well as Shri Tushar Thakor has informed him about this; that Shri Ramnarayan 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 Ramnarayan 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.thakor3480@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 Enterprises, Ahmedabad; that Shri Ramnarayan 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 radhikaimpex@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 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 Ramnarayan 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)

15.4.4 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.

15.4.5 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 107.830 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 Ramnarayan Laddha has created the firms in the name of M/s. Bhagyoday Enterprises 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 Enterprises 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.

16. 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 Enterprises 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 Enterprises of Shri Dipak J. Thakor. .

Ans. We purchased and sold scraps to M/s. Bhagyoday Enterprises, 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 Enterprises. 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 Enterprises 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.

17. Statement of **Shri Prakash Chandra Mishra**, Proprietor of M/s. Shree Rama Krishna Freight Carrier, 24, Meritline, Plot-45, Sector-9, Gandhidham, Kutch, Gujarat-370201, was recorded on 05.01.2018 wherein he *interalia* stated that his employee Shri Lalman Shaligram Gautam had received an order for transport of containers from ICD Kodiyar to M/s. Radhika Impex, Ahmedabad; that they have transported 6 containers for M/s. Radhika Impex under LR No. 15978, 15979, 15994, 15995, 15996, 15997 all dated 19.07.2017; that Shri Sanjay M. Shah alias Sanjay Kathod has phoned to Shri Lalman for transportation of these 6 containers for M/s. Radhika Impex; that he submitted ledger of M/s. Radhika Impex for the period 01.04.2017 and 31.03.2018 along with copy of LRs and stated that till date they have not received any payment for transportation for Radhika Impex; that he got the news of detection of Gold by Mundra Customs on 19.07.2017, after the transportation of these 6 containers for M/s. Radhika Impex; that his staff Shri Lalman informed him later that a consignment of 6 containers belongs to M/s. Radhika Impex had been booked and transported as per the direction of Sanjay M. Shah, director of M/s. Somnath Metals Pvt, Ltd; that as Shri Sanjay Shah was his old client so his staff had not enquired him about M/s. Radhika Impex; that they had transported only 6 containers for M/s. Radhika Impex from ICD Khodiyar to their destination; that he was not aware about the place of unloading of containers as their drivers have been instructed to reach and

park trailers at Dhara Kanta, GIDC Kathwada; that after reaching at Dhara Kanta two persons relating to Shri Sanjay Shah came and escorted the trailers to their destination; that he was aware about the seizure of Betel Nut (Supari) by Mundra Customs on 30.07.2017 from the four containers imported in the name of M/s. Radhika Impex, Ahmedabad; that they have not transported any containers from Mundra port for M/s. Radhika Impex in past one year; that on being asked regarding the transportation of containers imported in the name of M/s. Bhagyoday Enterprises from ICD Khodiyar to the destination, he stated that they received orders and instruction from Shri Sanjay M. Shah for transportation; that they have transported 5 containers from ICD Khodiyar during the month of July, 2017 relating to M/s. Bhagyoday Enterprise as per direction of Shri Sanjay M. Shah.

18. Statement of **Shri Vishal Patel**, Manager of M/s. Sayani & Sons, 211, Shanay-2, Opp. Gandhigram Railway Station, Bh. Emerald Honda, Ashram Road, Ahmedabad, was recorded on 30.01.2018 wherein he interalia stated that he was also one of the active director of M/s. Xpress Maritime Pvt. Ltd, engaged in forwarding and logistics services; that he had perused his earlier statement dated 08.08.2017 recorded before the Senior Intelligence officer, DRI, Ahmedabad and stated that all the facts recorded in said statement are true and correct; that on being specifically asked regarding the import clearance of first consignment of M/s. Radhika Impex covered under B.L.No. MAX/SIN/0830/1718 issued on 13.06.2017, he stated that Shri Sanjay M. Shah alias Sanjay Kathod contacted to one of his staff Shri Ajay Dutt and handed over the import documents viz. Invoice, Packing list, B.L, PSIC, Form-9, KYC, Authority letter, Insurance, etc. for filling of bill of entry; that after generating the checklist on 03.07.2017, they got some problem in filling B.E in the name of M/s. Radhika Impex due to GST; that they have communicated the said problem to Shri Sanjay Shah and in reply Shri Shah forwarded documents relating to High Sea Sales from M/s. Radhika Impex to M/s. Bhagyoday Enterprises and directed Shri Ajay Dutt to file the Bill of Entry in the name of M/s. Bhagyoday Enterprise for the clearance of said cargo; that they have filed first time bill of entry in the name of M/s. Bhagyoday Enterprises; that Shri Sanjay Shah had contacted with Shri Ajay Dutt for clearance of the cargo imported by his new firm viz. M/s. Radhika Impex; that he confirmed that Shri Sanjay Shah informed to Shri Ajay Dutt that both the firms M/s. Radhika Impex and M/s. Bhagyoday Enterprise are controlled by him; that on being specifically asked regarding the checklist generated on 03.07.2017 in the name of M/s. Radhika Impex and High Seas sales agreement made on 19.06.2017, he stated that they have not enquires so much from Shri Sanjay Shah as he already informed to Shri Ajay Dutt that both the firms are controlled by him but for the purpose of some reason IEC

were registered in the name of Shri Tushar Thakor and Shri Dipak Thakor. that he received payment of shipping charges of Rs. 3,00,000/- from M/s. Bhagyoday Enterprises in the account of his firm M/s. Xpress Maritime Pvt. Ltd. against clearance of 102,370 MT HMS vide B.E. No. 2347590 dated 07.07.2017; that Shri Sanjay Shah informed him in the first meeting that he had some problem with his existing CHA M/s. Guruprakash Enterprise and also due to high outstanding against his company M/s. Somnath Metals Pvt. Ltd. and he wanted them to do as a CHA for clearance of his new firm M/s. Radhika Impex; that during the meeting he assured him that he would diverted his import work of M/s. Somnath Metals Pvt Ltd to M/s. Sayani & Sons in future; that he have never meet with Shri Dipak Thakor and Tushar Thakor as Shri Sanjay Shah informed me that M/s. Radhika Impex and M/s. Bhagyoday Enterprise are managed by him; that Shri Sanjay Shah instructed them to handover the containers to his regular transporter M/s. Shree Rama Krishna Freight Carriers; that after perusal of Bill of Lading No. ERSL5INNSA0021, he stated that the said consignment was meant to be delivered at ICD Ahmedabad and the supplier of this cargo was also M/s. Applied Logistics PTE LTD., Singapore, thus, he confirmed that this consignment was also managed by Shri Sanjay Shah.

19. Shri Sanjay Moolchand Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., appeared in response to the Summons issued in this case on 31.01.2018 in compliance to Hon'ble High Court of Gujarat's Order dated 25.01.2018 in the Criminal Misc. Application (for Anticipatory Bail) No. 1902 of 2018. Statement of Shri Sanjay Moolchand Shah alias Sanjay Khatod was recorded on **31.01.2017** under Section 108 of C.A., 1962 (**RUD-19**). Free translation of his statement in questionnaire form is re-produced as under:

Q.1 Do you know Shri Ajay Dutt, employee of M/s. Sayani & Sons (CHA). If yes, how?

Ans.1 Yes, I know Shri Ajay Dutt. Earlier, Shri Ajay Dutt would work in CHA firm M/s. Guruprakash Enterprises. Import clearance work of my firm M/s. Somnath Metals was done by CHA firm M/s. Guruprakash Enterprises. One and half year ago, Shri Ajay Dutt contacted me and informed that he had left the firm M/s. Guruprakash Enterprises and started his own work and sought work of import clearance. I told him that when there will be work, I will tell him.

Q. 2 Kindly peruse the joint statement dated 08.08.2017 of Shri Vishal Patel, Manager, M/s. Sayani & Sons (CHA) and Shri Ajay Dutt which was recorded before Senior Intelligence officer, DRI, Ahmedabad, and please comment?

Ans.2 I perused the joint statement dated 08.08.2017 of Shri Vishal Patel, Manager, M/s. Sayani & Sons (CHA) and Shri Ajay Dutt and in token of having read, I put my dated signature on it. I do not know Shri Vishal Patel, I had never

met him. I do not remember whether I went to the office of M/s. Sayani & Sons or not. So far I could remember, I have given reference of Shri Ajay Dutt to Shri Tushar Thakor.

Q.3 Kindly peruse your statement dated 07.11.2017 & 08.11.2017 which were recorded before the Senior Intelligence officer, DRI, Ahmedabad, Please offer your comments?

Ans.3 In token of having read, I put my dated signature on the statements dated 07.11.2017 & 08.11.2017 which were recorded before Senior Intelligence officer, DRI, Ahmedabad.

Q.4 What type of business relations are between M/s. Jay Engineers, Himmatnagar and M/s. Somnath Metals Pvt Ltd.?

Ans.4 I had purchased only local scrap from M/s. Jay Engineers, Himmatnagar. I have not purchased imported scrap from M/s. Jay Engineers. Shri Ramnarayan Laddha was the mediator in all the purchase of scrap from M/s. Jay Engineers. I made payment to M/s. Jay Engineers. I did not give any commission to Shri Ramnarayan Laddha.

Q.5 Please produce the invoice copy of scrap purchased by M/s. Somnath Metals Pvt Ltd from M/s. Jay Engineers, Himmatnagar in the month of July, 2017. Kindly produce the ledger of M/s. Jay Engineers, Himmatnagar for the year 2017?

Ans.5 M/s. Somnath Metals Pvt Ltd had not purchased scrap from M/s. Jay Engineers, Himmatnagar in the month of July, 2017 I will send the ledger of M/s. Jay Engineers, Himmatnagar for the year 2017 by post within next two or three days.

Q.6 Do you know Shri Prakash Chandra Mishra, Proprietor of M/s. Shree Rama Krishna Freight Carrier, 24, Meritime, Plot-45, Sector-9, Gandhidham. If yes, How?

Ans.6 I know Shri Prakash Chandra Mishra, Proprietor of M/s. Shree Rama Krishna Freight Carrier, 24, Meritime, Plot-45, Sector-9, Gandhidham, since last 20 years. He was engaged in transport related work of my firm M/s. Somnath Metals Pvt Ltd.

Q.7 Kindly peruse the statement dated 05.01.2018 of Shri Prakash Chandra Mishra, Proprietor of M/s. Shree Rama Krishna Freight Carrier, 24, Meritime, Plot-45, Sector-9, Gandhidham and offer your comments? Shri Prakash Chandra Mishra has admitted in his statement that you have booked trailer from Shri Lalman for transport of import containers of M/s. Radhika Impex? Please offer your comments in this respect?

Ans.7 I perused the statement dated 05.01.2018 of Shri Prakash Chandra Mishra, and after understanding, I put my dated signature on it. I admit that, I have recommended for transportation of first consignment of import containers of M/s. Radhika Impex.

Q.8 Kindly peruse the statement dated 30.01.2018 of Shri Vishal Patel, Manager, M/s. Sayani & Sons (CHA) and offer your comments? Shri Vishal Patel

has stated in his statement that you had given copy of High Sea Sales Agreement dated 19.06.2017 between M/s. Radhika Impex and M/s. Bhagyoday Enterprises to Shri Ajay Dutt for clearance of imported scrap in the name of M/s. Bhagyoday Enterprises? Please Clarify?

Ans.8 I perused the statement dated 30.01.2018 of Shri Vishal Patel, Manager, M/s. Sayam & Sons (CHA) and after understanding I put my dated signature on it. In respect of High Sea sales agreement dated 19.06.2017, I want to state that Shri Tushar had approached me with the documents of his first import consignment and I had given reference of Shri Tushar to Shri Ajay Dutt. I had not given the import papers of M/s. Radhika Impex to Shri Ajay Dutt.

Q. 9 When and where did you meet with Shri Tushar last time? Where is Shri Tushar Triakor at present?

Ans.9 I had met Shri Tushar in July, 2017. I do not know where is Shri Tushar at present.

20. During the course of investigation, following documents have been received from the relevant persons called for under summons proceeding:

(i) Ledger account of M/s. Jay Engineers for the period 01.04.2017 to 31.03.2018 maintained by M/s. Somnath Metals Pvt. Ltd. was received from M/s. Somnath Metals Pvt Ltd vide speed post no. RG067271138IN dated 06.02.2018.

(ii) Bank account statement of importer for the account No. 917020025386537 (Customer no. 873349732) maintained with Axis Bank, Shahibaug, Ahmedabad, for the period 01.01.2017 to 01.08.2017 was received through e-mail. On scrutiny of bank account statement and submissions of relevant persons, it appeared during the investigation that a substantial amount of fund has been received by the importer from 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 Enterprises and M/s. Radhika Impex. But M/s. Somnath Metals Pvt. Ltd has not submitted the relevant documents till date.

(iii) In compliance to the letter F.No. S/43-05/Radhika/SIIB/CHM/2017-18 dated 08.02.2018, the Manager, State Bank of India, Shahibaug, Ahmedabad, has submitted bank account statement of A/c No. 36723066317 maintained in the name of M/s. Bhagyoday Enterprise, for the period 01.01.2016 to 21.02.2018 through e-mail.

(iv) In compliance to the letter F.No. S/43-05/Radhika/SIIB/CHM/2017-18 dated 14.03.2018, M/s. Axis Bank, Himmatnagar submitted bank account statement for A/c No. 916020024002620 maintained in the name of M/s. Jay Engineers, 7, Krishna Complex, Opp Civil, Himmatnagar along with copies of KYC documents i.e. PAN card no. DAMPK1017G, ADHAR no. 801401160006 of Shri Rajendra Kumar.

21. 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, Himmatnagar and called for copy of sales and Purchase Invoices, Ledger account relating to transaction made with M/s. Bhagyoday Enterprises and M/s. Radhika Impex, but the said documents have not been received. A search was conducted by the officers of Ahmedabad Customs at the premises of M/s. Jay Engineers, 7, Krishna Complex, 1846, Opp Civil, Himmatnagar and panchnama dated 14.02.2018 was drawn in presence of independent panchas and Shri Yogesh Bhatt, husband of Smt Muktaben Bhatt, owner of premises. During the panchnama, Shri Yogendra Bhatt informed that he rented this premises to M/s. Vishwamitra India Consultancy Service Ltd w.e.f. May 2014 to Mar 2016 and later on to Shri Rajendrakumar Shankarlal Bishnoi w.e.f. 19.04.2016 to 19.03.2017 who was doing the business in the name of M/s. Jay Engineers; that later on Bisnoi had vacated said premises on 19.3.2017 and Shri Bhatt has informed the he has given the said premises on rent from April 2017 to M/s. N.K. Agency and M/s. N.K. Agency is using the said premises as godown continuously till date.

22. 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 were 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 transactions made with M/s. Bhagyoday Enterprises 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 assured to submit the said documents but the sales and purchase invoices were not received.

23. Further statement of **Shri Ramnarayan S. Laddha** was recorded on **10.04.2018**. His statement recorded in questionnaire form is reproduced as under:

Q.1 When did you talk last time with Shri Tushar Thakor, Prop. of M/s. Radhika Impex?

Ans. I have never talked with Shri Tushar Thakor.

Q.2 From the statement of Shri Sanjay Shah recorded on 08.11.2017 before SIO, DRI, AZU, Ahmedabad, it is appears that Shri Tushar Thakor used the Mobile No. 9724169844. From the CDR (call detail record) for the period of May, 2017 to July, 2017 of said mobile No. it is found that 4 calls have been made to your mobile No. 9960583253 on 08 May'17, 10 June'17 and 12 June'17. Please state what type of communication had been made between you and Shri Tushar on that days?

Ans. I have never talked with Shri Tushar Thakor on my phone. It may be possible that Shri Sanjay Shah have been talked to me from that mobile no.

Q.3 From the call details of your mobile No. 9960583253 it is noticed that three SMS have been received by you on 19.07.2017 at 11:43 PM from Shri Sanjay Shah from his Mobile No. 9825169614. Please state what type of communication was made from Shri Sanjay Shah?

Ans. I have used mobile No. 9960583253 issued in the name of my manager Shri Shivaji Pawar working in SHB Metal Pvt Ltd, Pune. In regards to the SMS received by me on 19.07.2017 from Shri Sanjay Shah I state that at present I have not remembered said content.

Q.4 Please peruse the bank account statement of M/s. Jay Engineers of A/c No. 916020024002620 maintained with Axis Bank, Himmatnagar for the period 01.04.2017 to 16.03.2018. It is noticed from the said statement that huge amount have been transferred to the account of Smt Liladevi Ramnarayn Laddha. Please state about the nature of said transactions?

Ans. I have perused the bank account statement of M/s. Jay Engineers of A/c No. 916020024002620 maintained with Axis Bank, Himmatnagar and after gone through the same I appended my dated signature and state that said amounts have been received in the account of my wife as a loan and as far as I remember the said amount have been repay to M/s. Jay Engineers. At present I have no documentary evidence for re-payment and I will submit the same within a weeks' time.

Q.5 Please state about the business relation with M/s. Jay Engineers, Himmatnagar? Please also state about the procurement and sales of scraps from/to M/ Jay Engineers to M/s. HB Metal Pvt Ltd. in details.

Ans. My company M/s. HB Metal Pvt Ltd was engaged in only purchase of scrap material from M/s. Jay Engineers, Himmatnagar. We have made purchase from them only during 2016-17 and after that we have not made any business with them during 2017-18.

Q.6 Please peruse the answer to the Q.No.4 of statement dated 31.01.2018 of Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd. and offer your comments?

Ans. I have perused answer to the Q.No.4 of statement dated 31.01.2018 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 I have started business with M/s. Jay

Engineers through agents but after some time Shri Sanjay Shah started business with Shri Jay Engineers as my competitor so I left the business relation with M/s. Jay Engineers. I have never indulged myself between Shri Sanjay Shah and M/s. Jay Engineers.

24. Further statement of **Shri Sanjay Moolchand Shah**, Director of M/s. Somnath Metals Pvt. Ltd., was recorded on **18.04.2018** on behalf of Shri Sandeep Moolchand Shah, Director of M/s. Somnath Metals Pvt. Ltd., wherein he *inter alia* stated that that Shri Sandeep Shah is his brother and he was second director in M/s. Somnath Metals Pvt. Ltd. and he was looking after the works relating to receipt and loading/dispatch of goods at Godown; that his brother was out of station to attend a family function and he was not able to appear; that he submitted an authorization letter 16.04.2018 issued by Shri Sandeep Shah to give statement on behalf of him. His statement recorded in questionnaire form is reproduced as under:

Q.1 Please state the role of your brother Shri Sandeep Moolchand Shah in the starting of business by Shri Tushar Thakor in the name of M/s. Radhika Impex? Please explain in detail.

Ans. As per knowledge my brother Shri Sandeep Shah known to Shri Tushar Thakor since long time being neighbor, My brother has not helped to Shri Tushar Thakor in starting of his business in the name of M/s. Radhika Impex. Further, I state that being a director in M/s. Somnath Metal Pvt. Ltd my brother is not aware about the procedure of getting IEC or any other license relating to our business.

Q.2 Please peruse the copy of 'Rent Agreement' dated 13.02.2017 between M/s. Radhika Impex and Mrs. Sunitaben Anokhelal Rajput, seized under panchnama dated 30.07.2017 drawn at M/s. Radhika Impex, 8 Annapurna Estate, Near Jhaveri Estate, Kathwada, Ahmedabad. It is noticed that Shri Sandeep Shah has appended signature on said rent agreement as a witness. Please explain.

Ans. I perused the copy of 'Rent Agreement' dated 13.02.2017 between M/s. Radhika Impex and Mrs. Sunitaben Anokhelal Rajput, seized under panchnama dated 30.07.2017 and after going through the same I appended my dated signature in token of having seen and perused. In this context, I state that being a neighbor and well known to Shri Tushar Thakor, my brother had helped to sign as witness on the rent agreement of said premises.

Q.3 Please peruse the answer to Q. 6 of statement dated 10.04.2018 of Shri Ramnarayan S. Laddha wherein he stated that he never indulged between you and M/s. Jay Engineers. This reply of Shri Laddha is contrary to answer to Q.4 of your earlier statement dated 31.01.2018.

Ans. I have perused the statement dated 10.04.2018 of Shri Ramnarayan S. Laddha and after gone through the same I appended my dated signature in

token of having seen and perused. I again want to submit that I have purchased scraps from M/s. Jay Engineers, Himmattnagar through Shri Ramnarayan Laddha.

Q.4 From the call details of your mobile No. 9825169614 it is noticed that three SMS have been send by you on 19.07.2017 at 11:43PM to Shri Ramnarayan Laddha on mobile No. 9960583253. Please explain what type of communication was made to Shri Laddha through those SMS?

Ans. At present I have not remembered the content of those SMS.

Q.5 Where is Tushar Thakor?

Ans. I don't know.

25. Further statement of **Shri Dipak Jayantibhai Thakor**, Proprietor of M/s. Bhagyoday Enterprise, Ahmedabad, was recorded on **15.06.2018**, wherein he *inter alia* stated that the documents relating to Purchase and Sales invoices of M/s. Bhagyoday Enterprise are not in his possession and all his documents are in possession of either Shri Sanjay Shah or Shri Ramnarayan Laddha; that he had put signature on invoice, bank cheque book and any other documents as and when asked by Shri Sanjay Shah and Shri Ramnarayan Laddha; that on being specifically asked regarding the import clearance of consignment of M/s. Radhika Impex covered under B.L.No. MAX/SIN/0830/1718 issued on 13.06.2017 cleared under Bill of Entry No. 2347590 dated 7.7.2017 filed by M/s. Bhagyoday Enterprise by showing High Sea Sale agreement dated 19.6.2017, he stated that he was not aware about the procedure of High Sea sales and as per the direction of Shri Sanjay M. Shah and Shri Ramnarayan Laddha, he signed the said documents; that he had never talked about purchase of this consignment of M/s. Radhika Impex, Ahmedabad; that on being asked about the sales of scrap cleared under Bill of Entry No. 2347590 dated 7.7.2017 filed by M/s. Bhagyoday Enterprise, he stated that he was not in position to say about the sales details of said imported scrap as the whole sole business of his firm was handled by Shri Sanjay Shah and Shri Ramnarayan Laddha; that on being asked regarding visit at Godown and unloading of imported scrap at M/s. Bhagyoday Enterprise, A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad, Gujarat, he stated that he had never visited the godown of M/s. Bhagyoday Enterprise, situated at A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad, and he was not aware about the unloading of imported scrap as the all works of my firm was looked after by Shri Sanjay M. Shah and Shri Ramnarayan Laddha; that on being asked regarding the bank account No. 36723066317 maintained at SBI, Shahibaugh in the name of my firm M/s. Bhagyoday Enterprise, he stated that he was not aware about the said Bank account. It may be possible that Shri Sanjay Shah or Shri Laddha got his signature for this purpose but they did not inform him about this bank account; that Shri Tushar Thakor was his cousin and he was not residing at

his home since the day of detection of the case and he had not been in touch with Shri Tushar Thakor.

26. It appeared that Shri Tushar N. Thakor, Shri Dipak J. Thakor, Shri Ramnarayan Laddha and Shri Sanjay M. Shah with pre-conceived and cool thought conspired to smuggle the Betel Nuts commonly known as Supari by way of concealing the same in their import consignment of Heavy Melting Scrap imported in the name of M/s. Radhika Impex, a proprietorship firm in the name of Shri Tushar Natubhai Thakor. The details of import of Betel Nuts detected and seized, being concealed in the goods i.e. HMS imported by M/s. Radhika Impex, are as under:

| Bill of Lading No. & date | Description of goods as per B.L | Qty. (MT) as per B.L | Qty. of Betel nuts concealing in import consignment | Remarks |
|---------------------------|---------------------------------|----------------------|---|-----------------------|
| ERSLSINNSA0021 | Heavy Melting Scrap | 81220 kg | 21420 kg | Seized by SIB, Mundra |

27. On scrutiny of Bank account statement of M/s. Radhika Impex for the period 01.01.2017 to 01.08.2017 and bank accounts statement of M/s. Jay Engineers, it appeared that M/s. Somnath Metals Pvt. Ltd. had transferred the funds into the account of M/s. Jay Engineers, a firm controlled by Shri Ramnarayan S. Laddha and subsequently M/s. Jay Engineers had paid the said amount on same day to M/s. Radhika Impex. M/s. Radhika Impex had transferred the same amount to M/s. Xpress Maritime Private Limited, Ahmedabad, a clearing and forwarding agent at ICD Ahmedabad for payment of Customs duties and other expenses. The initial transaction from M/s. Somnath Metals Pvt. Ltd to M/s. Radhika Impex through M/s. Jay Engineers are shown as below as a sample basis:

| Date of transaction | Amount paid by M/s. Somnath Metal Pvt. Ltd. to M/s. Jay Engineers | Amount paid by M/s. Jay Engineers to Radhika Impex (Rs.) | Amt. subsequently utilized by M/s. Radhika Impex (Rs.) | Remarks |
|---------------------|---|--|--|-----------------|
| 17-07-2017 | 450000 | 450000 | 414801 | Xpress Maritime |
| 18-07-2017 | 400000 | 400000 | 400000 | Xpress Maritime |

28 Summary of the case:

28.1 Acting on a specific intelligence, the cargo covered under B/L No. ERSLSINNSA0021 showing shipped on board on 17.07.2017 for the four containers bearing Nos. CLHU3518799, FSCU3288625, RWAU2404931 and TGHU3380576 issued in favour of M/s. Radhika Impex, 8, Annapurna

Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad-382430, was offloaded at Mundra port. The cargo covered under B/L No. ERSLSINNSA0021 was examined and total 21,420 MT of Betel Nuts commonly known as Supari was found concealed behind the HMS stuffed in the said four containers. The Betel Nuts along with packing materials weighing 21420 Kgs having market value of Rs. 1,14,57,687 (approx.) appeared to be liable for confiscation under Section 111 of the Customs Act, 1962, as the said cargo was found mis-declared with regard to description, quantity and valuation. HMS weighing 59030 Kgs also appeared to be liable for confiscation under Section 119 of Customs Act, 1962, as the same was used to conceal the said Betel Nuts. Accordingly, 21420 kgs of Betel Nuts and HMS weighing 59030 Kgs were seized under Section 110 of Customs Act, 1962.

28.2 It appeared that in the case of import made by M/s. Bhagyoday Enterprises, 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 whats app on 21.07.2017 for change in details of consignee and consignor in Bill of Lading No. DUBASRMUN 6515 dated 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 dated 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 Enterprises, Ahmedabad | M/s. Radhika Impex, 8, Anpurna Industrial Estate, Near Zaveri Estate, Kathwada Gam, Ahmedabad - 382430 |

28.3 The first import consignment of M/s. Radhika Impex was cleared at ICD Ahmedabad in the name of M/s. Bhagyoday Enterprise under Bill of Entry No 2347590 dated 07.07.2017 by way of showing High Sea sale agreement dated 19.6.2017 between them. Shri Dipak Thakor stated that he was not aware about the procedure of High Sea sales and as per the direction of Shri Sanjay M. Shah and Shri Ramnarayan Laddha, he signed the said documents and he had never visited the godown of M/s. Bhagyoday Enterprise, situated at A-2, Bhaleshiv Compound, Singarva Tal-Daskoi, Ahmedabad, and he was not aware about the unloading of imported scrap as all the work of his firm was looked after by Shri Sanjay M. Shah and Shri Ramnarayan Laddha. The said premises of M/s. Bhagyoday Enterprise was also not found genuine at the time of execution of search warrant. The import clearances of M/s. Bhagyoday

Enterprise and M/s. Radhika Impex at ICD Ahmedabad were looked after and controlled by Shri Sanjay Moolchand Shah and Shri Ramnarayan Laddha.

28.4 Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, admitted in his statements that he used to contact 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 operations of M/s. Bhagyoday Enterprise and M/s. Radhika Impex.

28.5 It appeared that Shri Dipak Thakor was indulged in purchase of imported goods from importer by showing High Sea Sales. It also appeared that Shri Sanjay M. Shah was actively involved in handing over the import documents to CHA for clearance of imported goods pertaining to importer at ICD Ahmedabad. He was also the decision making person for the purpose of filing of Bills of Entry and directed the CHA for filing the same. Shri Sanjay M. Shah also arranged transportation and decided the actual place of delivery of imported cargo. Shri Sanjay M. Shah accepted that they had asked Shri Tushar Natubhai Thakor, Proprietor of M/s. Radhika Impex to abscond and as per their instructions, Shri Tushar Thakor did not appear before the investigating officer in the instant case booked against the importer.

28.6 Betel Nuts are freely importable as per Import Policy subject to condition that CIF value is Rs. 251/- and above per Kilogram as imposed vide Notification No. 35/2015-2020 dated 17.01.2017 issued by DGFT. Tariff Value in terms of Section 14 of the Customs Act, 1962, has been fixed on import of Areca nuts (Betel Nuts) @ USD 3320 per Metric Tonne vide Notification No. 36/2001-Customs (NT) dated 03.08.2001 as amended vide Notification No. 71/2017-Customs (NT) dated 14.07.2017. It appeared that the importer had smuggled Betel Nuts under the Bill of Lading No. ERSL SINNSA0021 with an intention to evade Customs duties on account of high Tariff Value and levy of higher rate of Customs duties.

28.7 The Areca (Betel) Nuts fall under the Category-I of Disposal Manual and hence immediate disposal was required post seizure, owing to its perishable nature. After due process under the provisions of sub-section 1B of Section 110(1) of the Customs Act, 1962, the seized quantity of 21.420 MTs of Areca (Betel) Nuts was auctioned through MSTC Ltd. An amount of Rs.29,87,998/- was realized against auction of said goods and the said amount of Rs.29,87,998/- was deposited vide GAR-7 challan dated 20.03.2018 in SBI, Mundra.

28.8 On the basis of role played into the business activity of importer, it appeared that Shri Tushar Thakor, in connivance with Shri Dipak Thakor, Shri Sanjay Shah and Shri Ramnarayan S. Laddha has played crucial role in import of restricted goods in the name of M/s. Radhika Impex. During the course of investigation, Shri Dipak Thakor and Shri Ramnarayan Laddha were arrested on 30.8.2018. S/Shri Tushar N Thakor, Dipak Thakor, Sanjay M. Shah and Ramnarayan Laddha, all are part of this syndicate, the members of which are involved in nefarious activities such as smuggling of Areca/Betel Nuts by way of concealment in HMS Scrap. The syndicate is engaged in smuggling of 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 Tushar Natubhai Thakor, Proprietor of M/s. Radhika Impex, Ahmedabad:

29. Shri Tushar Natubhai Thakor, Proprietor of M/s. Radhika Impex. did not appear before the investigating officer despite several Summons issued under Section 108 of the Customs Act, 1962. Therefore, a Criminal Complaint No. 363/2018 dated 09.02.2018 was lodged against him under Section 174 and 175 of Indian Penal Code, 1860 read with Section 108 of the Customs Act, 1962, before the Hon'ble Additional Chief Judicial Magistrate, Mundra. From the documents and statements of concerned persons collected during the investigation, it appeared that Shri Tushar Natubhai Thakor has created a firm in the name of M/s. Radhika Impex for trading of metal scraps and allotted IEC No. 0817501754. His initial investment in business was a sum of amount of Rs. 70,000/- and did not get any loan from financial institution, Shri Tushar had deposited cash Rs.25,000/- and 45,000/- on 22.3.2017 and 17.4.2017 respectively into his bank account no. 917020025386537 maintained with Axis Bank, Shahibaug, Ahmedabad. Shri Tushar Thakor was aware about his first importation and High Sea Sale made to M/s. Bhagyoday Enterprise for subsequent clearance at ICD Ahmedabad. He was fully aware about the financial funding by the firms M/s. Somnath Metals Pvt Ltd., controlled by Shri Sanjay M. Shah through M/s. Jay Engineers, Himatnagar, controlled by Shri Ramnarayan Laddha. He was fully aware about the smuggling of Areca Nuts (Betel Nuts) concealed in the HMS imported by him.

Role played by Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, Ahmedabad:

30. Shri Dipak J. Thakor has created a firm in the name of M/s. Bhagyoday Enterprises 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 rupees and did not get any loan from financial institution. Despite of the fact that he was fully aware about the provisions of Import -Export procedure, he agreed to do as puppet in the hand of Shri Sanjay M. Shah and Shri Ramnarayan Laddha. He had purchased the first import consignment of M/s. Radhika Impex by way of showing High Sea Sale agreement dated 19.6.2017 and filed Bill of Entry No. 2347590 dated 7.7.2017 at ICD Ahmedabad. From the Bank account statements it appeared that Shri Dipak Thakor had not made payment to M/s. Radhika Impex against the High Sea Sale agreement dated 19.06.2017. It appeared that Shri Dipak Thakor has directly connected and benefitted with the import consignment in the name of M/s. Radhika Impex. He has received a handsome amount from the firms/companies handled by Shri Ramnarayan Laddha and Shri Sanjay Shah, in the bank account maintained in Axis Bank in the name of M/s. Bhagyoday Enterprise. Shri Dipak Thakor failed to submit any 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 Bank account 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. All the import documents relating to HSS from M/s. Radhika Impex and banking documents relating to M/s. Bhagyoday Enterprise were signed by Shri Dipak J. Thakor. He was fully aware about the illicit business activity i.e. smuggling of Betel Nuts in the name of M/s. Radhika Impex.

Role played by Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd., Ahmedabad:

31.1 Shri Sanjay M. Shah being neighbor of Shri Dipak J. Thakor and Shri Tushar N. Thakor created a nexus with the help of Shri Ramnarayan Laddha. He managed to get the godown on rent for M/s. Radhika Impex through his brother Shri Sandeep M. Shah. Shri Sanjay had admitted that he prepared a forged certificate bearing No. AXIS/SHB/TXB/Cert/17-18/18 dated 11.07.2017 have been shown issued by Axis Bank, Shahibaug Branch in the name of Shri Tushar Thakor of M/s. Radhika Impex which was never issued by the Bank. He accepted that this certificate was also prepared in the computer of his office and it was known to him. He was fully aware that Shri Ramnarayan Laddha has created the firms in the name of M/s. Bhagyoday Enterprise and M/s. Radhika Impex for smuggling of contraband goods. They did not want to do any illegal activities through their operative firms i.e. M/s.

Somnath Metals Pvt. Ltd., M/s. H.B. Metals Pvt. Ltd. and M/s. 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. He funded the importer through his firm M/s. Somnath Metals Pvt. Ltd. through M/s. Jay Engineers for payment to overseas buyer as well as other legal expenses viz. Customs duty, clearing and transportation charges, etc. Shri Sanjay Shah was the main person taking decisions on behalf of importer and communicated his decision to M/s. Sayani & Sons (CHA at ICD Ahmedabad) and the transporter M/s. Rama Krishna Freight Carriers.

31.2 Shri Sanjay Shah played a vital role in the import made in the name of the importer. Instead of joining the investigation in response to Summons issued to him under Section 108 of C.A., 1962, he opted for the remedy of Anticipatory Bail before the Hon'ble Court. He appeared on 31.01.2018 in compliance of Hon'ble High Court of Gujarat's Order dated 25.01.2018 in the Criminal Misc. Application (for Anticipatory Bail) No. 1902 of 2018.

31.3 He also funded the importer for the purpose of legal fees and taxes. Shri Sanjay Shah showed purchase of scrap by his firms from M/s. Bhagyoday Enterprise, which they were importing from Gulf countries and taking delivery at Ahmedabad and unloaded the containers at his desired destination. He was well aware of the contraband goods 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, Whole Sole of M/s. H.B. Metals Pvt. Ltd., Ahmedbad and M/s. Jay Engineers, Himmatnagar:

32. Shri Ramnarayan S. Laddha, with the help of Shri Sanjay Shah, started business in the name of M/s. Radhika Impex with consent of Shri Tushar Thakor. Shri Sanjay Shah stated that Shri Laddha had managed and funded the overall business of M/s. Radhika Impex and M/s. Bhagyoday Enterprises. He plotted a nexus with the help of supplier situated at Singapore in the name of Importer's IEC. Shri Ramnarayn Laddha had used his relation to funding the importer through M/s. Somnath Metals Pvt. Ltd. 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 covered in said Bill of lading may not be detected or hold by the Customs, Mundra. After detection of Gold and Cigarettes in the containers imported in the name of M/s. Bhagyoday Enterprise Shri Ramnarayan Laddha and Shri Sanjay Shah instructed the importer to run away and hide. It appeared that Shri Ramnarayan Laddha through Sh. Dipak Thakor held 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. A huge transaction had been made between M/s. HB Metals Pvt Ltd and M/s. Jay Engineers which show the close relations between two firms. He had directed Shri Sanjay Shah to make coordination with CHA and Transporter so that the import consignement may be cleared and reached their premises other than the premises mentioned in the import documents. He also had controlled over the other firms viz. M/s. Jay Engineers, Himmatnagar. Shri Laddha has admitted that he didn't know about the owner of M/s. Jay Engineers as the dealing is done through agents only but on the other way he admitted that he received a money of more than Rs.85.00 Lakhs as a loan in the bank's account of his wife Smt. Liladevi Ramnarayn Laddha. This clearly established the control of Shri Laddha over the business of M/s. Jay Engineers.

33. The relevant provisions of Customs Act, 1962, invoked in this case are reproduced as under:

33.1 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;

33.2 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;

33.3 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.

34. Confiscation:

34.1 The importer had tried to smuggle total 21420 kgs of Areca Nuts (Betel Nuts) by way of concealing it with their import consignment of heavy mealting scrap of 59030 Kgs having contemporaneous assessable value of Rs.11,47,838/- (@Rs. 19445/- per MT at ICD Ahmedabad) imported under the Bill of Lading No. ERSL SINNSA0021 dated 17.07.2017. They had not declared the details of Areca Nuts (Betel Nuts) concealed in the HMS before the Customs at the time of clearance of their aforesaid import consignment. The minimum CIF value of smuggled Betel Nuts weighing 21420 Kgs is arrived at Rs.53,76,420/- (@ Rs.251/- per kg). It appeared that the act of importation of Betel Nuts by way of concealment is defined as smuggling in terms of Section 2(39) of the Customs Act, 1962.

34.2 The Areca Nut (Betel Nut) is freely importable item and can be imported subject to minimum CIF value of Rs. 251/- and above per Kilogram. However, in the instant case, the Betel Nuts were neither declared before the Customs nor were included in the Bill of Lading presented before the Customs. Therefore, the said Betel Nuts concealed in the cargo declared as HMS is liable for confiscation under Sections 111(f), 111(i), 111(j) and 111(m) of the Customs Act, 1962.

34.3 Further, the 59.030 MTs of imported Heavy Melting Scrap having contemporaneous assessable value of Rs.11,47,838/- imported under the Bill of Lading No. ERSL SINNSA0021 dated 17.07.2017, being used for concealment of 21,420 MTs of Betel Nuts are also liable for confiscation under Section 119 of the Customs Act, 1962.

35. Penalty:

35.1 Shri Tushar Natubhai Thakor, Proprietor of the importer, had tried to import the Betel Nuts (Areca Nuts) by way of concealing the same in their import consignment declared as HMS under the Bill of Lading No. ERSL SINNSA0021. The importer has not joined the investigation to submit his version. On the basis of submissions and documents collected during the investigation, it appeared that the importer was a part of nexus along with other persons viz. S/Shri Dipak Thakor, Sanjay M. Shah and Ramnarayan Laddha. He was financially funded by the firms controlled by Shri Sanjay M. Shah and Shri Ramnarayan Laddha. All the import documents and banking documents relating to import were signed by him with an intention to get profit in monetary terms. He was fully aware about the smuggling of 21420 Kgs of Betel Nuts concealed in the HMS imported by him. He was having culpable state of mind and the acts of omission and commission made on his part have

rendred the imported goods liable for confiscation and consequently, the importer is liable for penalty under Section 112 of the Customs Act, 1962.

35.2 Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, was fully aware about the illicit import of consignments as he was indulged in purchase of import consignment on High Sea Sale basis. He was also a part of nexus with the other persons 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 having culpable state of mind and the acts of omission and commission made on his part have rendred the imported goods liable for confiscation and consequently, Shri Dipak J. Thakor is liable for penalty under Section 112 of the Customs Act, 1962.

35.3 Shri Sanjay M. Shah *alias* Sanjay Khatod had helped the importer to import the goods from Singapore 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 importer. He was entrusted by Shri Ramnarayan Ladda to take care of business run in the name of importer. He played an active role by way of making arrangement for transportation of the containers to the importer's premises and played a vital role in destuffing of cargo at the premises suitable to him as the cargo was funded by his firm viz. M/s. Somnath Metals Pvt. Ltd. Shri Shah had played a vital role in smuggling of 21420 Kgs of Betel nuts. He was having culpable state of mind and the acts of omission and commission made on his part have rendred the imported goods liable for confiscation and consequently, Shri Sanjay M. Shah is liable for penalty under Section 112 of the Customs Act, 1962.

35.4 Shri Ramnarayan Laddha has created the firm in the name of M/s. Radhika Impex for illicit import of Betel Nuts. Shri Laddha controlled the business and banking transactions of the importer with the help of Shri Sanjay M. Shah. Shri Laddha played a vital role in the smuggling of 21420 Kgs of Betel Nuts in the name of M/s. Radhika Impex. He was having culpable state of mind and the acts of omission and commission made on his part have rendred the imported goods liable for confiscation and consequently, Shri Ramnarayan Laddha is liable for penalty under Section 112 of the Customs Act, 1962.

36. Therefore, **M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor)**, 8, Annapurna Estate, Nr. Zaveri Estate, Kathwada, Ahmedabad-382430, were called upon to show cause to the Commissioner of Customs, Mundra, as to why:

- (i) The Areca Nuts (Betel Nuts) commonly known as Sapari weighing 21420 kgs having minimum CIF value of Rs.53,76,420/- smuggled into India by way of concealment in the import consignment of 'Heavy Metal Scrap' under the Bill of Lading No. ERSL SINNSA0021 dated 17.07.2017 issued by M/s. Ever Radiant Shipping PTE Ltd, Singapore should not be held liable for confiscation under Section 111(f), 111(i), 111(j) and 111(m) of the Customs Act, 1962;
- (ii) The Heavy Metal Scrap of 59030 Kgs valued at Rs.11,47,838/- imported under the Bill of Lading No. ERSL SINNSA0021 dated 17.07.2017 being used for concealment of Betel Nuts should not be held liable for confiscation under Section 119 of the Customs Act, 1962;
- (iii) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for the acts and omission on their parts, as discussed above.

37. Shri Dipak Jayantibhai Thakor (Proprietor of M/s. Bhagyoday Enterprise, A-2 Bhole Shiv Compound, PO Singarwa, Tal. Daskroi, Ahmedabad), 11, LR Apartment, 1st Floor, Near Railway Crossing, Opposite Police Commissioner Office, 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(a) of the Customs Act, 1962 for the acts and omissions on his part, as discussed above.

38. Shri Sanjay M. Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2nd Floor, Nali Kanti 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(a) of the Customs Act, 1962 for the acts and omissions on his part, as discussed above.

39. 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(a) of the Customs Act, 1962 for the acts and omissions on his part, as discussed above.

DEFENCE REPLY:

40. M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor) submitted their defence reply, vide letter dated 27.12.2018, wherein they contended as under:-

- They stated that reference is made to the Panchnama dated 29/30-2017, 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 of its contents.
- They submitted that the Noticee is 10th standard failed and he does not know English language; that the Noticee is from a very poor family; that Shri Sanjay Shah is very well known about the conditions of the Noticee as they dwell in the same area; that Shri Sanjay Shah had invited the Noticee in his office in the presence of Shri Ramnarayan Laddha; that Shri Ramnarayan Laddha had given the Noticee an offer of business and he had promised that he will not carry out any illegal activity in that company.
- They submitted that the Noticee was only proprietor on paper but he was not the owner of the said firm; that Mr Sanjay Shah and Mr Ramnarayan Laddha were the owners and controlling this company; that this company was opened by Mr Sanjay Shah & Mr Ramnarayan Laddha and Mr Ramnarayan Laddha had provided funds and arranged for the IEC; that all this work had been done in the office of Mr Sanjay Shah; that the Noticee had no role in the said company.
- They requested to check the call details and bank details of Shri Sanjay and Shri Ramnarayan Laddha and their passports; that both these persons were the main culprits as they both were heads of this firm and cheque book and passbook was also in the custody of Mr Sanjay Shah and Ramnarayan Laddha; that the Noticee belongs to a poor family; that the Noticee is not directly or indirectly included or involved in this offence; that the Noticee has never gone to any department and any bank and his signature was taken on blank paper; that Mr Sanjay Shah has misused the said blank paper signed by the Noticee for committing the said offence; that the Noticee has not registered the firm Radhika Impex and he has also not registered for the import-export code (IEC) number.
- They submitted that Mr Sanjay and Mr Ramnarayan Laddha asked the noticee to sign on blank paper and he did so; that the Noticee did not know how many papers he had signed and what kind of use was taken

for his signed papers; that the Noticee is an innocent person and the Department has falsely roped him in the said offence.

- They submitted that the Noticee did not know about the consignment purchased by Mr Ramnarayan Laddha; that Mr Ramnarayan Laddha has misused the blank papers; that the Noticee had not purchased any consignment and he did not have contact with any person.
- They further submitted that there is no role of the Noticee in Radhika Impex and he has not benefitted economically in any way from Radhika Impex; that Shri Ramnarayan Laddha had opened Radhika Impex and he had arranged funds, export-import code, clearing of goods, customs house agents, purchase of goods, opening of bank account etc.
- They submitted that Section 119 is not applicable in this case as the Noticee is not an owner of goods and he had not purchased any goods nor made any contact with any person or any officer. Further, the goods have been seized by the Customs department and the Noticee never even claimed the said goods.
- They submitted that the Noticee cannot be penalized under section 112(a) as the department has no evidence proving that the Noticee in any way has done any of the action in the manner allegedly contrary to the provisions of the Customs Act.
- 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.

41. Shri Dipak J. Thakor (Proprietor of M/s. Bhagyoday Enterprise) submitted his defence reply, vide letter dated 27.11.2018, wherein he contended as under:-

- He submitted that he 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. On this sole ground itself the SCN would be set aside.
- He requested to check the call details and bank details of Shri Sanjay Shah and Shri Ramnarayan Laddha and their passports which would prove that they are the main culprits and heads of this firm.
- He submitted that Shri Sanjay Shah had called him and he had met Mr Sanjay Shah and his relative Shri Ramnarayan Laddha; that Mr Sanjay and Mr Ramnarayan Laddha asked him to sign on blank paper which he did; that he did not know how many papers he had signed; that he is an

innocent person and the Department has falsely roped him in the said offence.

- He submitted that he is serving in the office of Mr Sanjay Shah and Mr Sanjay Shah was giving him a salary of Rs.15,000/- per month; that his work was only of sorting metal and he did not know what kind of use was taken for his signed papers; that Mr Sanjay Shah is the head of this firm and the cheque book and passbook are also in the custody of Mr Sanjay Shah and Mr Ramnarayan Laddha.
- He submitted that he is belonging to a poor family; that he is not directly or indirectly included or involved in this offence; that he has never gone to any department and any bank; that his signature was taken on blank paper; that Mr Sanjay Shah has misused the said blank paper signed by him in committing the said offence; that he has not registered the firm Bhagyoday Enterprise and also not registered for IEC.
- He submitted that he did not know about the consignment purchased by Mr Sanjay; that he had not purchased any consignment and he did not have contact with any person.
- He further submitted that he has no role in Radhika Impex; that he is not an employee of Radhika Impex and not benefitted economically in any way from Radhika Impex; that Shri Ramnarayan Laddha has opened Radhika Impex and Bhagyoday Enterprise and Shri Laddha had arranged fund, export-import code, clearing of goods, customs house agents, purchase of goods, opening of bank account etc.
- He further requested that a personal hearing be granted and having regard to the submissions made hereinabove, he requested to quash and set aside the impugned Show Cause Notice.

42. Shri Sanjay Shah submitted his interim reply, vide letter dated 16.01.2019, 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 and submitted that he did not have knowledge about the contents of the consignments imported by M/s. Radhika Impex; that his role was limited for clearing and transporting the alleged imported goods.
- His statements were recorded on 25/26.10.2017 and 07.11.2017 by the officers of Director of Revenue Intelligence in connection with import made by M/s. Radhika Impex. The said statement recorded by DRI were inculpatory in nature, but the same were recorded under coercive action with a threat to arrest. He had immediately retracted the said statements before the Ld. Magistrate. Since he had no knowledge about

the contents of the imported goods, it would not be said that he had abetted the offence for which the goods are liable for confiscation and liable for penalty under Section 112(a) of the said Act.

➤ His point-wise submissions in respect of the allegations made in the captioned Show Cause Notice are as under:

I. Wrongly alleged that the Noticee financed M/s. Radhika Impex for import of the goods and payment of statutory duties:

(a) He denied the charges made in captioned Show Cause Notice that he had funded M/s. Radhika Impex for payment to overseas buyers and other statutory duties viz. customs duty, clearing and transportation charges etc. for the consignments imported by M/s. Radhika Impex. He submitted that he had never funded M/s. Radhika Impex for import of the goods and never dealt with M/s. Radhika Impex.

(b) He submitted that he purchased Stainless Steel Scrap (S.S. Scrap) from M/s. Jay Engineers during the period 2016-17 and 2017-18 in the regular course of business. It is wrongly alleged that the M/s. Somnath Metals Pvt. Ltd., where he 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.

(c) He submitted that he had made payment to M/s. Jay Engineers in the regular course of business and did not have any knowledge about use of such fund by M/s. Radhika Impex.

II. Statements of Co-noticee cannot be relied:

(i) Statements of Shri Ramnarayan Laddha recorded on 10.08.2017, 30.08.2017, 19.12.2017 and 10.05.2018: He submitted that statements of Shri Ramnarayan Laddha were recorded on the above referred dates. Nowhere he has 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.

(ii) Statements of Vishal G. Patel, Manager of M/s. Savani & Sons: The Noticee stated that he had never meet with Mr. Vishal G. Patel anytime and doesn't know him. 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.

(iii) Statements dated 05.01.2018 of Shri Prakash Mishra, Proprietor of Shri Rama Krishna: The Noticee stated that Shri Prakash Mishra wrongly deposed about the name of the Noticee and his statement/allegations were made only on the premise that the

Noticee used to give instruction to Shri Prakash Mishra for transportation of goods imported in the name of M/s. Bhagyoday Enterprise. It is stated that the Noticee merely assisted in transportation of containers from Port to Godown of M/s. Bhagyoday Enterprise and it does not mean that the Noticee had knowledge about contents of the goods in the container for M/s. Radhika Impex also. It is submitted that Shri Prakash Mishra 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.

- He further submitted that his statements were recorded from time to time but the same are exculpatory in connection with the import of goods in dispute as he never accepted that he had knowledge about the contents of goods alleged to be imported by M/s. Radhika Impex.
- 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 the office of DRI located in Ahmedabad. During his interrogation on 07.11.2017 and 08.11.2017 he was threatened with arrest if he did not sign on the pre-prepared statement produced before him. On the threat 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.
- He submitted that he neither instructed the CHA for filing Bill of Entry nor instructed the transporter for transportation of the goods; that he was not indulged in any activity in connection with the import of M/s. Radhika Impex and therefore, no penalty can be imposed on him.
- It is alleged that he has created a forged certificate bearing No.AXIS/SHB/TXB/Cert/17-18/18 dated 11.07.2017 which was shown to be issued by Axis Bank, Shahibaug Branch in the name of Tushar Thakur which was never issued by the Bank. He denied the above allegation in entirety and submitted that they have never created the forged certificate alleged to be issued by Axis Bank Shahibaug branch, Ahmedabad in the name of Tushar Thakur. The above allegation of the department is on assumption and presumption basis and lacks any evidence to support such allegation. The Revenue neither provided the copy of such certificate dated 11.07.2017 nor adduced any evidence to support the allegation and therefore, such allegation deserves no merits.
- 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 or omits or do any act which acts or omissions would render goods liable to

confiscation under Section 111 or abets the 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 he had connived 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 other evidences which show that the Noticee abetted the offence for which the goods are liable for confiscation. In the present case undisputedly, the Noticee did not have knowledge about contents of the goods in containers and therefore, the question of abetment in the alleged offence does not arise.

- He submitted that mens-rea is sine qua non for imposition of penalty under Section 112(a) of the Act. In the absence of mens-rea, penalty u/s 112(a) cannot be imposed. While the goods are liable to confiscation, no penalties can be imposed on the Noticee under Section 112(a) of the Act, if no evidence is adduced by the Revenue to show that the Noticee had any 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 hereinabove. They requested that personal hearing be granted to them before the case is adjudicated upon.

43. Shri Sanjay Shah submitted his final reply, vide letter dated 15.02.2019, wherein he contended as under:-

- He is in receipt of the copy of Certificate bearing No. AXIS/SHB/TXB/Cert/17-18/18 dated 11.07.2017 which is relied upon in the Show Cause Notice and alleged that the Noticee created the said forged certificate which was shown to be issued by Axis Bank, Shahibaug Branch in the name of Mr. Tushar Thakur which was never issued by the Bank. He denied the above allegation in entirety and submitted that he had not created the said forged certificate alleged to be issued by Axis Bank, Shahibaug branch, Ahmedabad in the name of Tushar Thakur. The above allegation has been levelled on assumption and presumption basis and lacks any evidence to support such allegation. He submitted that the Revenue has not produced any evidence to prove that the alleged forged certificate was prepared by him or under his instructions.
- The Show Cause Notice alleges that the Noticee has accepted in his statements dated 07.11.2017 and 08.11.2017 that the alleged forged certificate was prepared in the computer at his office and it was known to him. He denied the above allegation and submitted that he has already retracted the said statements dated 07.11.2017 and 08.11.2017 before the Ld. Magistrate at Ahmedabad and stated that his statements were not voluntarily recorded and therefore, the statements dated 07.11.2017 and 08.11.2017 cannot be relied as the same lacks any evidentiary value.
- He submitted that the alleged forged certificate was seized from the computer of CHA namely M/s. Sayani & Sons and therefore, it can't be alleged that the Noticee has created the alleged forged certificate. He submitted that he has no connection with the alleged forged certificate and has no knowledge as to who has prepared the said certificate.
- He reiterated that the entire offence was conducted by Mr. Tushar Thakor and his role was limited for clearing and transporting the imported goods. He submitted that he has not acted illegally and not violated the provisions of law and therefore, the penalty under Section 112(a) cannot be imposed on him.
- In view of the above and in furtherance to the Interim reply dated 16th January, 2019, he requested to drop the Show Cause Notice to the extent of imposing penalty upon him.

44. Shri Ram Narayan Laddha submitted his defence reply, vide letter dated 16.08.2018, 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. He was a director in M/s. SHB Metals Pvt. Ltd. but the said company is closed. He was also a director in M/s. HB Metals Private Limited but had resigned from the said company. He does not own and/or manage any company/firm/concern in the name of M/s. Radhika Impex. He further denied that he manages/controls the business transactions of the said company/firm/concern. He also denied that he is the owner and/or manager of Jay Engineering.
- He submitted that he is neither the shipper nor the consignee/importer in the present consignment. 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 any change or amendment of the name of the shipper and consignee in the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 and DUBASRMUN6454 dated 06.07.2017. In fact, Mr. Rajendra Singh Rao, in his statement recorded on 1st August 2017 stated that he had received a request for amendment in the abovementioned Bills of Lading from the Shipper's appointed forwarder in Dubai through whatsapp dated 21st July 2017. There is no mention that he was in any way involved in amendment or change in the Bills of Lading.
- With regard to the statement recorded of Mr. Dipak Jayantibhai Thakor, Sole Proprietor of M/s. Bhagyoday Enterprise, he submitted that he used to enquire about the scrap consignment which is true but 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 was controlled/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 Sole 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. He

stated that he is not aware about any person by the name "Saleem". He stated that he is not aware about any firm by the name of M/s. Radhika Impex and he does not handle and/or control the business/transaction of the said company. He denied that he arranged any meeting between Mr. Dipak Jayantibhai Thakor and Mr. Kamlesh Sharma, CHA/CB at Mundra. He denied that he was looking after all the day to day affairs or handled the account/transactions of M/s. Radhika Impex.

- With regard to the statement recorded of Mr. Sandeep Moolchandbhai Shah, one of the Director of M/s Somnath Metals Pvt. Ltd., he submitted that he did not own any company known as M/s. Anjali Steel.
- With regard to the statement 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 Shahibaug Police Commissioner Office; he denied 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 has requested Mr. Sanjay Shah to ask Mr. Kamlesh Sharma for clearance of any scrap or cargo at Mundra Port; he denied that he had requested Mr. Sanjay Shah to handle custom clearance of imported goods of M/s. Bhagyoday Enterprise at Mundra Port; he further denied that he is holding or running any business in the name of M/s Bhagyoday Enterprise through Mr. Dipak Thakor; that he is not aware about any container containing scrap cargo of M/s. Bhagyoday Enterprise which was being transported from CFS at Mundra Port to "Dra Kanta" at Kathwada; that he was the director in M/s. HB Metal Private Limited but later he has resigned and the said company is currently not owned or operated by him; he denied that he had requested Mr. Sanjay Shah to credit Rs.19,00,000/- in advance against the payment of HMS/SS scrap which he would be purchasing from M/s Bhagyodaya Enterprises; he stated that he never met or knows any person known as Mr. Tushar Thakor; he stated that he did not start 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 denied that he is operating or handling any banking, CHA, Customs or transport related work of M/s. Radhika Impex. There are no documents to prove that he was operating or handling any banking, CHA, Customs or transport related work of M/s. Radhika Impex. He denied that he had requested Mr. Ajay Dutt of M/s Guruprakash Enterprises to look after Customs and import related of M/s. Somnath Metal Pvt. Ltd. or of M/s. Radhika Impex. As statement of Mr. Ajay Dutt has not been recorded, the statement of Mr. Sanjay Shah cannot be relied upon as there is no corroboration.

➤ He further stated that he is not the owner of M/s. Bhagyoday Enterprise, nor does he own/control/manage the banking, administrative or financial works of the following companies with the names as follows:

- a) 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) 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 submitted that he is neither the proprietor of M/s. Bhagyoday Enterprise nor a representative of the said firm; that Mr. Tushar Thakor is the sole proprietor of M/s Radhika Impex and is the importer in the present transaction.

➤ He further submitted that the statements recorded of Mr. Rajendra Singh Rao, Mr. Vishal Ganparibhai Patel and Mr. Prakash Chandra Mishra do not say anything about his involvement in the said consignment. Further, the statements recorded of Mr. Dipak J. Thakor, Mr. Sandeep Moolchand Shah and Mr. Sanjay Moolchand Shah about his involvement in the said consignment are neither supported by any document showing him as importer nor any bank transaction record has been produced showing that he had financed the said confiscated goods. Further, he has never 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 statements given by Mr. Dipak J. Thakor, Mr. Sandeep Moolchand Shah and Mr. Sanjay Moolchand Shah that he is wrongly impleaded in the said matter. Adjudication only on the basis of bald statements without any concrete evidence is impermissible in law. In view of the above, there is no case against him and thus the allegations and the present show cause notice is not sustainable and/or valid against him.

➤ He stated that he has never confessed about having the knowledge about the said consignment and the same is wrongly recorded and signed by him under duress. He stated that he is not involved in any illegal activities.

- He submitted that he has been wrongly charged under section 112(a) of the Customs Act, 1962 which deals with penalty for improper importation of goods where any person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 11, or abets the doing or omission of such an act. He is neither the shipper nor the consignee/notify party of the said cargo as per the Bill of Lading No. ERSLSINNSA0021. There is no evidence showing him to have any relation with the said confiscated goods or that he had knowledge about the said consignment. 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 wished to be heard in person before the case is adjudicated and therefore requested for a personal hearing.

PERSONAL HEARING:

45. Personal Hearing was offered to all the noticees on 10.12.2018 on which date Shri M. B. Bhansali, Advocate, appeared on behalf of **Shri Dipak J. Thakor (Proprietor of M/s. Bhagyoday Enterprise)**. He reiterated the submissions made in their written reply dated 27.11.2018. He stated that his client has nothing to do with M/s. Radhika Impex and there is no documentary evidence against his client. He requested to drop the proceedings against his client.
46. Shri Manoj R. Khatri, Advocate, appeared on 10.12.2018, on behalf of **Shri Ramnarayan S. Laddha**. He reiterated the submissions made in their written reply dated 16.08.2018. He stated that his client has been accused in the statement of Shri Dipak Thakor and Shri Sanjay Shah and that Shri Dipak Thakor is the Proprietor of M/s. Bhagyoday Enterprise and not of M/s Radhika Impex. He further stated that there is no documentary evidence against his client. He requested to drop the proceedings against his client.
47. Shri Khatri Mahamad Bilal, Advocate, appeared on 16.01.2019, on behalf of the importer **M/s. Radhika Impex (Proprietor Shri Tushar N. Thakor)** and reiterated the submissions made in their written reply dated 27.12.2018.
48. Shri Amit Laddha, Advocate, appeared on 16.01.2019, on behalf of **Shri Sanjay M. Shah**. He submitted an interim reply dated 16.01.2019 wherein

they requested to allow cross-examination of Shri Vishal Patel of M/s. Sayani & Sons and Shri Prakash Mishra, Proprietor of M/s. Rama Krishna Freight Carrier. He also requested to provide them the forged Axis Bank Certificate referred in Para 31.1 of the SCN as the same is not included in RUDs. Since these requests were made for the first time on 16.01.2019, therefore the adjudicating authority held that the same will be examined and decision would be communicated.

49. Under his aforesaid interim reply dated 16.01.2019, Shri Sanjay M. Shah had sought cross-examination of (1) Shri Vishal G. Patel, Manager of M/s. Sayani & Sons & (2) Shri Prakash Mishra, Proprietor of M/s. Shree Ram Krishna Freight Carrier and also sought a copy of the Axis Bank certificate bearing No. AXIS/SHB/TXB/Cert/17-18/18 dated 11.07.2017 which has been forged by the said Noticee as per the SCN. The request for cross-examination was examined on the basis of documentary evidence available on record. On going through the statements dated 08.08.2017 & 30.01.2018 of Shri Vishal G. Patel, Manager of M/s. Sayani & Sons, it was observed that the submissions made by Shri Vishal G. Patel stand corroborated in the statements dated 08.11.2017 & 31.01.2018 of Shri Sanjay Shah and there is no outright contradiction. Similarly, on going through the statement dated 05.01.2018 of Shri Prakash Chand Mishra, Proprietor of M/s. Shree Rama Krishna Freight Carrier, it was observed that the submissions made by him have been corroborated by Shri Sanjay Shah in his statement dated 31.01.2018 and there is no denial or contradiction. Hence, the cross-examination of Shri Vishal G. Patel & Shri Prakash Chand Mishra would not serve any fruitful purpose and only lead to delay in adjudication proceedings and therefore, the request for cross-examination was rejected. The same was communicated to the said Noticee vide letter F.No. VII/48-07/Adj./Commr./MCH/2018-19 dated 21.01.2019, along with a copy of the forged Axis Bank certificate bearing No. AXIS/SHB/TXB/Cert/17-18/18 dated 11.07.2017, as requested by them. The Noticee was also given an opportunity for Personal Hearing on 13.02.2019 which was re-fixed for 18.02.2019 as per the adjournment request received from the advocate of Shri Sanjay M. Shah vide his letter dated 31.01.2019. However, on 18.02.2019, neither the said Noticee nor his advocate turned up for Personal Hearing. Further, a final reply to the impugned SCN was received, vide letter dated 15.02.2019, wherein the Noticee submitted that Personal Hearing in this case was held on 16.01.2019 wherein they had submitted detailed written submissions vide Interim Reply dated 16.01.2019. They further requested to decide the case on the basis of the said interim reply coupled with the present final reply. They did not require any further Personal Hearing in the instant case.

DISCUSSION AND FINDINGS:

50. 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 personal hearing.

51. I find that the following issues are involved in the impugned Show Cause Notice, which are required to be decided:-

- (i) Whether the Areca Nuts (Betel Nuts) commonly known as Supari weighing 21420 Kgs, having minimum CIF value of Rs.53,76,420/-, smuggled into India by way of concealment in the import consignment of 'Heavy Metal Scrap' under the Bill of Lading No. ERSL SINNSA0021 dated 17.07.2017 issued by M/s. Ever Radiant Shipping PTE LTD, Singapore, is required to be confiscated under Section 111(f) 111(i), 111(j) and 111(m) of the Customs Act, 1962;
- (ii) Whether the Heavy Metal Scrap weighing 59030 Kgs, valued at Rs.11,47,838/-, imported under the Bill of Lading No. ERSL SINNSA0021 dated 17.07.2017, being used for concealment of Betel Nuts, is required to be confiscated under Section 119 of the Customs Act, 1962;
- (iii) Whether penalty is imposable upon M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor), 8, Annapurna Estate, Nr. Zaveri Estate, Kathwada, Ahmedabad-382430, under Section 112(a) of the Customs Act, 1962;
- (iv) Whether penalty is imposable upon Shri Dipak Jayantibhai Thakor (Proprietor of M/s. Bhagyoday Enterprise, A-2 Bhole Shiv Compound, PO Singarwa, Tal. Daskroi, Ahmedabad), 11, LR Apartment, 1st Floor, Near Railway Crossing, Opposite Police Commissioner Office, Shahibaug, Ahmedabad, under Section 112(a) of the Customs Act, 1962;
- (v) 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(a) of the Customs Act, 1962;
- (vi) Whether penalty is imposable upon Shri Ramnarayan S. Laddha, B-41, Krishna Kutir, Jain Colony, Near Terā Pant Bhawan, Shahibaug, Ahmedabad, under Section 112(a) of the Customs Act, 1962.

52. In regard to the seizure of smuggled Betel Nuts, I refer to the Panchnama dated 29/30.07.2017 drawn at Landmark CFS, Mundra, whereby it was revealed that the importer M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor) had smuggled 48 jumbo PP bags containing 21420 Kgs of Betel Nuts, which were concealed in 04 containers said to contain Heavy Melting Scrap (HMS). The details regarding the containers, examination of goods, detection & recovery of smuggled Betel Nuts etc. have been exhaustively detailed in the said Panchnama dated 29/30.07.2017, which has been relied upon in the SCN.

53. I find that the said Panchnama had been drawn by the Customs officers in the presence of two independent panchas and the representatives of the CFS & Shipping Line Agent. 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 Betel Nuts in the HMS consignments as detailed in the said Panchnama.

54. I find that the instant case of smuggling of Betel Nuts is directly connected with the offence case booked against M/s. Bhagyoday Enterprise (Proprietor Shri Dipak Jayantibhai Thakor), A2, Bhole Shiv Compound, Singarava, Tal. Daskoi, Ahmedabad, Gujarat, for smuggling of 27 kgs Gold Bars and 25.20 Lakh sticks of Gudang Garam brand foreign origin Cigarettes concealed in the consignments declared as HMS. During the investigation of the case against M/s. Bhagyoday Enterprise, it had been observed that after the detection of Gold Bars in their import consignment by the Customs, M/s. Bhagyoday Enterprise had attempted to amend the consignee name in the shipments which were in the pipeline to M/s. Radhika Impex, which indicated that both these firms are closely related. Hence, the instant consignment, which was in the name of M/s. Radhika Impex and destined for Nhava Sheva port (final destination being ICD Ahmedabad), was offloaded at Mundra Port and examined by the Customs officers which led to the detection of the instant case. Hence, the statements of relevant persons recorded in connection with the case booked against M/s. Bhagyoday Enterprise are directly connected with the instant case booked against the importer and the same are relied upon in the present case also. Concurrently, the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, also booked an offence case against M/s. Radhika Impex for smuggling of Betel Nuts at ICD Ahmedabad. The evidences collected by DRI, Ahmedabad was shared with Mundra Customs vide letter F.No. DRI/AZU/GI-01/ENQ-35/2017 dated 21.11.2017 and the same are relied upon in the present case also.

55. I find that detailed investigations have been conducted in order to find out the mastermind and the financial beneficiary of the aforesaid smuggling activities. During the course of investigation, the statements of following persons were recorded under Section 108 of the Customs Act, 1962:

55.1 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, under Section 108 of the Customs Act, 1962, 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. On being asked regarding the relationship between the Bill of Lading No. DUBASRMUN6515 dated 13.07.2017 issued by his company and the Bill of Lading No. ERSL SINNSA0021 issued from Singapore, he stated that as per the Shipper's request through their appointed forwarder in Dubai, the importer/shipper 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. ERSL SINNSA0021 issued from Singapore, the consignee is M/s. Radhika Impex, Ahmedabad. Moreover, it is also found that the surname of proprietors of both the consignees is same i.e. Thakor, both the persons' residential & office addresses are in the same vicinity in Ahmedabad, Gujarat, both the consignees are maintaining the Bank Account at Axis Bank Limited, Shahibaug Branch, Nilkanth Plaza, Opp. New Madhupura Market, Police Commissioner Road, Shahibaug, Ahmedabad. Further, in both the cases, the modus operandi is similar i.e. concealment of smuggled goods in the consignment of HMS Scrap. In view of the above, he submitted that both the

companies are operated by the same person who is the mastermind behind the smuggling of gold, cigarettes & betel nuts

55.2 Statements of Shri Dipak J. Thakor, Proprietor of M/s. Bhagyoday Enterprise, A-2, Bholeshiv Compound, Singarva Tal-Daskoi, Ahmedabad, Gujarat, were recorded on 16.08.2017 & 30.08.2017, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that his cousin Shri Tushar Natubhai Thakor, who is the son of his father's elder brother, is running a unit in the name of M/s. Radhika Impex at Ahmedabad which is also involved in HMS scrap business; that Mr. Sanjay M. Shah, owner of M/s. Somnath Metal Pvt. Ltd. & Shri Ramnarayan S. 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; that he did not know about the change in name from M/s. Bhagyoday Enterprise to M/s. Radhika Impex in the Bill of Lading DUBASRMUN6454 dated 06.07.2017 and it will be known only to Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha even though the firm M/s. Radhika Impex belongs to his cousin brother Shri Tushar Natubhai Thakor; that his cousin Shri Tushar Natubhai Thakor had told him that Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha were looking after all the day-to-day work and handled the accounts & transactions of M/s. Radhika Impex.

55.3 Statements of Shri Ramnarayan S. Laddha were recorded on 30.08.2017 & 19.12.2017, under Section 108 of the Customs Act, 1962, 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 but he doesn't know about the owner of M/s. Jay Engineers as the dealing is done through agents only.

55.4 Statement of Shri Prakash Chandra 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 05.01.2018

under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that they had received an order for transport of containers from ICD Khodiyar to M/s. Radhika Impex, Ahmedabad; that they had transported 6 containers for M/s. Radhika Impex under LR No. 15978, 15979, 15994, 15995, 15996, 15997 all dated 19.07.2017; that Shri Sanjay M. Shah alias Sanjay Khatod had phoned his employee Shri Lalman for transportation of these 6 containers for M/s. Radhika Impex; that he got the news of detection of Gold by Mundra Customs on 19.07.2017 after the transportation of these 6 containers for M/s. Radhika Impex; that his employee Shri Lalman informed him later that a consignment of 6 containers belonging to M/s. Radhika Impex had been booked and transported as per the direction of Shri Sanjay M. Shah, Director of M/s. Somnath Metals Pvt. Ltd.; that as Shri Sanjay M. Shah was his old client, so his staff had not enquired him about M/s. Radhika Impex; that they had transported only 6 containers for M/s. Radhika Impex from ICD Khodiyar to their destination; that he was not aware about the place of unloading of containers as their drivers had been instructed to reach and park trailers at Dhara Kanta, GIDC Kathwada; that after reaching at Dhara Kanta two persons relating to Shri Sanjay M. Shah came and escorted the trailers to their destination; that he was aware about the seizure of Betel Nut (Supari) by Mundra Customs on 30.07.2017 from the four containers imported in the name of M/s. Radhika Impex, Ahmedabad.

55.5 Statement of Shri Vishal Patel, Manager of M/s. Sayani & Sons, 211, Shanay-2, Opp. Gandhigram Railway Station, Behind Emerald Honda, Ashram Road, Ahmedabad, was recorded on 30.01.2018, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that for the import clearance of first consignment of M/s. Radhika Impex covered under B/L No. MAX/SIN/0830/1718 issued on 13.06.2017, Shri Sanjay M. Shah contacted one of his staff Shri Ajay Dutt and handed over the import documents viz. Invoice, Packing List, B.L., PSIC, Form-9, KYC, Authority Letter, Insurance, etc. for filing of bill of entry; that after generating the checklist on 03.07.2017, they faced some problem in filing B/E in the name of M/s. Radhika Impex due to GST; that they have communicated the said problem to Shri Sanjay M. Shah and in reply Shri Sanjay M. Shah forwarded the documents relating to High Sea Sales from M/s. Radhika Impex to M/s. Bhagyoday Enterprise and directed Shri Ajay Dutt to file the Bill of Entry in the name of M/s. Bhagyoday Enterprise for the clearance of said cargo; that Shri Sanjay M. Shah had contacted with Shri Ajay Dutt for clearance of the cargo imported by his new firm viz. M/s. Radhika Impex; that Shri Sanjay M. Shah informed Shri Ajay Dutt that both the firms M/s. Radhika Impex and M/s. Bhagyoday Enterprise are controlled by him but for some reason IEC were registered in the name of Shri Tushar Thakor and Shri Dipak Thakor; that Shri Sanjay M. Shah informed him in the first meeting that he had some problem with his existing

CHA M/s. Guruprakash Enterprise and he wanted them to work as the CHA for clearance of his new firm M/s. Radhika Impex; that he had never met with Shri Dipak Thakor and Shri Tushar Thakor as Shri Sanjay M. Shah informed him that M/s. Radhika Impex and M/s. Bhagyoday Enterprise are managed by him only; that Shri Sanjay M. Shah instructed them to handover the containers to his regular transporter M/s. Shree Rama Krishna Freight Carriers; that after perusal of Bill of Lading No. ERSLSINNSA0021, he stated that the said consignment was meant to be delivered at ICD Ahmedabad and the supplier of this cargo was also M/s. Applied Logistics PTE LTD., Singapore, thus, he confirmed that this consignment was also managed by Shri Sanjay M. Shah.

55.6 Shri Sanjay Moolchand Shah alias Sanjay Khatod, Director of M/s. Somnath Metals Pvt. Ltd., appeared on 25.10.2017 in compliance of Hon'ble High Court of Gujarat's 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 under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that on request of Shri Dipak J. Thakor and Shri Ramnarayan S. Laddha, he had just 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. He admitted that he had contacted his regular transporter M/s. Shree Rama Krishna Freight Carrier for transportation of first consignment of import containers of M/s. Radhika Impex and also referred Shri Tushar to Shri Ajay Dutt, Manager (Marketing) of M/s. Sayani & Sons, Ahmedabad, for clearance of import consignments from ICD Khodiyar/Ahmedabad.

55.7 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, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that Shri Ramnarayan Laddha told him that he has started a firm namely M/s. Radhika Impex and he wanted to import Metal Scrap through that firm, but due to some reasons he has started this firm in the name of Shri Tushar Thakor; that being the owner of M/s. Radhika Impex, Shri Ramnarayan Laddha had invested his own money in all the business of M/s. Radhika Impex; that Shri Ramnarayan Laddha would look after all the work 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 Ramnarayan Laddha as well as Shri Tushar Thakor had informed him about this; that Shri Ramnarayan Laddha had informed him that Shri Tushar Thakor is not much literate and has little knowledge of computer and internet; that as there is a big offence case booked by the Sales Tax Department against Shri Ramnarayan Laddha so he was unable to handle day-to-day work viz, Import related work, banking related work, CHA related work, Customs related work and Transport related work of M/s. Radhika Impex; that this was the reason he (Sanjay M. Shah) handled all these works of M/s. Radhika Impex on the request of Shri Ramnarayan Laddha; that he had contacted Shri Ajay Dutt for 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 & 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 & freight forwarding of M/s. Radhika Impex to Shri Ajay Dutt; that all the business work of M/s. Radhika Impex was done through e-mail ID tushar.thakor3480@gmail.com, radhikaimpex121@gmail.com, radhikaimpex9@yahoo.com, radhikaimpex7979@gmail.com, radhikaimpeximpo@gmail.com; that he had sent the documents of first consignment of import of HMS scrap in June, 2017 by M/s. Radhika Impex contained in five containers to Shri Ajay Dutt but later on the said containers were released in the name of the firm M/s. Bhagyoday Enterprise, Ahmedabad; that Shri Ramnarayan 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, who is the cousin of Shri Tushar Thakor; that he had made correspondence with Shri Ajay Dutt on his e-mail ID duttajay87@gmail.com from the e-mail ID of M/s. Radhika Impex and sent KYC related documents, Invoice, 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 his 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 was paid to Shri Ajay Dutt; that M/s. Jay Engineers was also controlled by Shri Ramnarayan Laddha and all the banking, administrative and financial work of M/s. Jay Engineers was looked after by Shri Ramnarayan Laddha. He admitted that the fake Certificate bearing No. AXIS/SHB/TXB/Cert/17-18/18 dated 11.07.2017 purportedly issued by Axis Bank, Shahibaug Branch, in the name of Shri Tushar Thakor of M/s. Radhika Impex was prepared in the computer at his office and he knew

about it. He deposed that Shri Ramnarayan Laddha had 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 firms i.e. M/s. Somnath Metals Pvt. Ltd., M/s. H.B. Metals Pvt. Ltd. and M/s. SHE 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; that when Mundra Customs caught Betel Nuts from the imported containers of M/s. Radhika Impex and Gold & Cigarettes from the imported containers of M/s. Bhagyoday Enterprise, they helped Shri Tushar Thakor in fleeing so that he could not be caught by Customs.

55.8 Shri Tushar N. Thakor (Proprietor of M/s. Radhika Impex) remained absconding during the entire investigation and did not appear before the investigating officers despite repeated Summons issued under Section 108 of the Customs Act, 1962. Consequently, Criminal Complaint No. 363/2018 dated 09.02.2018 was lodged under Section 174 and 175 of the Indian Penal Code, 1860, read with Section 108 of the Customs Act, 1962, before the Hon'ble Additional Chief Judicial Magistrate, Mundra.

56. Based on the aforesaid material evidence available on record, I find that Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha (who are cousin brothers) hatched the conspiracy of smuggling of Gold, Cigarettes & Betel Nuts 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 and his cousin Shri Tushar N. Thakor to lend their name for monetary consideration and created the firms M/s. Bhagyoday Enterprise (Proprietor Shri Dipak J. Thakor) and M/s. Radhika Impex (Proprietor Shri Tushar N. Thakor). Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha retained the operational control over all the activities of M/s. Radhika Impex (Proprietor Shri Tushar N. Thakor) and used the firm's IEC for smuggling of Betel Nuts so as to escape any criminal liability if the smuggled goods are caught by the Customs. Subsequently, when the smuggled Betel Nuts were intercepted by the Customs, Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha have indulged in a blame game by shifting the responsibility on each other and Shri Tushar N. Thakor. Hence, I find that the investigation has very clearly established the criminal nexus between Shri Sanjay M. Shah, Shri Ramnarayan S. Laddha and their puppers Shri Dipak J. Thakor & Shri Tushar N. Thakor, for smuggling of Betel Nuts by concealment in HMS consignments.

57. Further, I find that the investigation has uncovered the funding of M/s. Radhika Impex by Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha through their firms M/s. Somnath Metals Pvt. Ltd. and M/s. Jay Engineers.

● The Bank Account Statements of M/s. Radhika Impex and M/s. Jay Engineers for the period 01.01.2017 to 01.08.2017 show that M/s. Somnath Metals Pvt. Ltd. had transferred funds (Rs.4,50,000/- on 17.07.2017 and Rs.4,00,000/- on 18.07.2017) into the account of M/s. Jay Engineers, a firm controlled by Shri Ramnarayan S. Laddha, and subsequently M/s. Jay Engineers had paid the said amount on same day to M/s. Radhika Impex. M/s. Radhika Impex had transferred the same amount to M/s. Xpress Maritime Private Limited, Ahmedabad, a clearing and forwarding agent at ICD Ahmedabad for payment of Customs duties and other expenses. 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. In fact, it only points to the fact that Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha were financing the activities of M/s. Radhika Impex and they were the ultimate financial beneficiary of the smuggling of Betel Nuts.

58. In their defence submissions, all the four 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 Betel Nuts into India, in a clandestine manner, therefore it cannot be logically expected that any specific documentary evidence would have been created by the persons involved in such nefarious activities. 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, 1962, 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:

58.1 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.L. Patunji v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 SCC 721."

58.2 The Hon'ble Supreme Court has observed in the case of *Naresh J. Sukhwani v. Union of India* - 1995 Supp. (A) 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 inculpating 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 inculpates 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."

58.3 A Constitution Bench of Apex Court of India in the matter of *Romesh Chandra Mehta v. State of W.B.* - (1969) 3 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.

58.4 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 S. Laddha controlling and financing the activities of M/s. Radhika Impex, which has been reconfirmed by Shri Pushar N. 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 the Customs Act, 1962, are not required to follow the safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.

58.5 In view of the above, the statements under the present proceeding are material piece of evidence to establish the case for Revenue. The Apex Court in the case of *K.I. Pavunny Vs AC Cochin*, reported at 1970 (90) ELT 241 (SC), 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 the case of *Kanhaiyalal Vs Union of India*, reported at (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.

58.6 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 157, in 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. Archer* (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.”

58.7 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.

58.8 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, the 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."

59. In the instant case, Areca Nuts (Betel Nuts) weighing 21420 Kgs and having minimum CIF value of Rs.53,76,420/-, were found to be concealed in the containers declared as HMS and were seized under the reasonable belief that the same are smuggled goods. None of the co-noticees have disputed the fact of smuggling of said Betel Nuts into India. Hence, I find that the importer, in connivance with the other co-noticees, had engaged in the aforesaid act of smuggling in order to evade the Customs duty leviable on the imported Betel Nuts. Further, I find that as per the Import Policy applicable at the relevant time, import of Areca Nuts was 'restricted' in as much as it was subject to the condition that CIF value should be Rs.251/- and above per Kilogram in terms of Notification No. 35/2015-2020 dated 17.01.2017 issued by the DGFT. As

the said condition has not been fulfilled by the importer, therefore I hold that the imported Betel Nuts are required to be treated as "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962. In this regard, I rely upon the case law of *Om Prakash Bhamra vs. Commissioner of Customs, Delhi*, reported at 2003 (155) ELT 423 (S.C.), wherein the Apex Court held that "Restriction is one type of prohibition" and therefore, goods imported in violation of any restriction fall within the ambit of "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962.

60. In view of the above, I find that Areca Nuts (Betel Nuts), commonly known as Supari, weighing 21420 Kgs and having minimum CIF value of Rs.53,76,420/-, smuggled into India by way of concealment in the import consignment of 'Heavy Metal Scrap' under the Bill of Lading No. ERSLSINNSA0021 dated 17.07.2017 issued by M/s. Ever Radiant Shipping PTE LTD, Singapore, are liable for confiscation under the provisions of Section 111(f), 111(i), 111(j) and 111(m) of the Customs Act, 1962. As the said seized Betel Nuts have subsequently been disposed through e-auction, therefore the amount of Rs.29,87,998/-, realized as sale proceeds, is required to be adjusted/appropriated against the confiscation of said seized Betel Nuts in terms of Section 126 of the Customs Act, 1962.

61. Further, I find that the Heavy Metal Scrap, totally weighing 59030 Kgs and valued at Rs.11,47,838/-, imported under the Bill of Lading No. ERSLSINNSA0021 dated 17.07.2017, was being used for concealment of Betel Nuts 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. As the importer remained absconding and none of the co-noticees have claimed ownership of the imported goods, therefore I find that the said HMS, used for concealment of the smuggled goods, is required to be absolutely confiscated under the provisions of Section 119 of the Customs Act, 1962.

62. In regard to the proposal for imposition of penalty on the importer M/s. Radhika Impex (Proprietor Shri Tushar Narubhai Thakor), I find that the importer has attempted to smuggle the Betel Nuts in blatant violation of the Customs Act, 1962, which has rendered the said 21420 Kgs of Betel Nuts, having minimum CIF value of Rs.53,76,420/-, 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. Moreover, Betel Nuts are "restricted goods" in as much as their import is subject to the condition imposed by the DGFT i.e., CIF value being Rs.251/- and above per Kilogram. Also, the Heavy Metal Scrap, totally weighing 59030 Kgs and valued at Rs.11,47,838/-, used for concealment of Betel Nuts 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 Tushar Natubhai Thakor, Proprietor of M/s. Radhika Impex, had attempted to smuggle the restricted goods by way of concealing the same in the cargo declared as HMS. The investigation has brought out that Shri Tushar N. Thakor was fully aware about the smuggling of restricted goods in his firm's name as all the import documents and banking documents relating to the import were signed by him. He had permitted other persons to use his IEC for monetary consideration. He was a part of nexus with the other co-noticees viz. Shri Dipak J. Thakor, 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. After the detection of instant case of smuggling of Betel Nuts by the Customs officers at Mundra Port, Shri Tushar N. Thakor absconded and never appeared before the investigating officers despite repeated Summons which shows his culpability and complicity in the matter. The aforesaid acts of omission and commission on the part of the importer M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor) have rendered the smuggled Betel Nuts liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore, I find that the said contraventions on the part of M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor), constitute an offence of the nature as described under Section 112(a) of the Customs Act, 1962 and consequently, M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor) is liable for penalty under Section 112(a) of the Customs Act, 1962. Further, as the impugned goods i.e., Betel Nuts, fall under the definition of "prohibited goods" as per Section 2(33) of the Customs Act, 1962, therefore the quantum of penalty would be as per Section 112(i) of the Customs Act, 1962, which provides that "(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater."

63. In regard to the proposal for imposition of penalty on Shri Dipak Jayantibhai Thakor (Proprietor of M/s. Bhagyoday Enterprise), I find that the investigation has revealed that Shri Dipak J. Thakor had introduced his cousin Shri Tushar N. Thakor to Shri Ramnarayan S. Laddha. He was a part of the syndicate along with the other co-noticees viz. Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha, which was indulged in smuggling of contraband goods. He was financially funded by the firms controlled by Shri Sanjay M. Shah and Shri Ramnarayan S. Laddha. He was fully aware about the illicit import of contraband goods in the name of his proprietorship firm M/s. Bhagyoday Enterprise, as well as in the name of M/s. Radhika Impex (Proprietor Shri Tushar N. Thakor), as he had purchased the first import consignment of M/s. Radhika Impex on High Sea Sale basis and also after the detection of Gold in the import consignment of M/s. Bhagyoday Enterprise,

they had attempted to amend the name of consignee in respect of the shipments in the pipeline to M/s. Radhika Impex to evade detection by Customs. The investigation also revealed that Shri Dipak J. Thakor had not made any payment to M/s. Radhika Impex against the High Sea Sale agreement dated 19.06.2017 which shows that Shri Dipak J. Thakor was directly connected and benefited from the import consignments in the name of M/s. Radhika Impex. He has received a handsome amount from the firms/companies controlled by Shri Ramnarayan S. Laddha and Shri Sanjay M. Shah, in the bank account maintained in Axis Bank in the name of M/s. Bhagyoday Enterprise. The aforesaid acts of omission and commission on his part have rendered the smuggled Betel Nuts liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore, I find that the said contraventions on the part of Shri Dipak Jayantibhai Thakor constitute an offence of the nature as described under Section 112(a) of the Customs Act, 1962 and consequently, Shri Dipak Jayantibhai Thakor is liable for penalty under Section 112(a) of the Customs Act, 1962. Further, as the impugned goods i.e., Betel Nuts, fall under the definition of "prohibited goods" as per Section 2(33) of the Customs Act, 1962, therefore the quantum of penalty would be as per Section 112(j) of the Customs Act, 1962, which provides that *"(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater."*

64. 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., I find that Shri Sanjay M. Shah had helped the importer to import the restricted goods from Singapore by way of funding through his firm M/s. Somnath Metals Pvt. Ltd. Shri Sanjay M. Shah was actively involved in clearance of import consignment made in the name of importer. He was entrusted by his cousin Shri Ramnarayan S. Laddha to take care of business run in the name of M/s. Radhika Impex. He played an active role in the smuggling of restricted goods by way of making arrangement for transportation of containers to the importer's premises and played a vital role in destuffing of cargo at the premises suitable to him as the cargo was funded by his firm viz. M/s. Somnath Metals Pvt. Ltd. He had obtained the godown on rent for M/s. Radhika Impex through his brother Shri Sandeep M. Shah. Shri Sanjay M. Shah was the decision making authority on behalf of importer and communicated his decision to M/s. Sayani & Sons (CHA at ICD Ahmedabad) and the transporter M/s. Rama Krishna Freight Carriers. His culpability and complicity in the entire smuggling racket is also evident from the fact that when the instant case was detected and he was summoned under Section 108 of the Customs Act, 1962, to appear before the investigating officers, he chose

the remedy of Anticipatory Bail before the Hon'ble Courts and appeared only in compliance of the Hon'ble High Court of Gujarat's Order in the Criminal Misc. Application (for Anticipatory Bail) filed by him. Hence, I find that Shri Sanjay M. Shah had played a vital role in the smuggling of 21420 Kgs of Betel Nuts by using the IEC of M/s. Radhika Impex. The aforesaid acts of omission and commission on his part have rendered the smuggled Betel Nuts liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore, I find that the said contraventions on the part of Shri Sanjay M. Shah constitute an offence of the nature as described under Section 112(a) of the Customs Act, 1962 and consequently, Shri Sanjay M. Shah is liable for penalty under Section 112(a) of the Customs Act, 1962. Further, as the impugned goods i.e., Betel Nuts, fall under the definition of "prohibited goods" as per Section 2(33) of the Customs Act, 1962, therefore the quantum of penalty would be as per Section 112(i) of the Customs Act, 1962, which provides that "(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater."

65. In regard to the proposal for imposition of penalty on Shri Ramnarayan S. Laddha, I find that Shri Ramnarayan S. Laddha was actively engaged in creating the firm in the name of M/s. Radhika Impex for the purpose of smuggling of contraband goods. Shri Ramnarayan S. Laddha controlled all the business and banking transactions of M/s. Radhika Impex along with his cousin Shri Sanjay M. Shah. He plotted a nexus, with the help of the supplier situated at Singapore, for smuggling of Betel Nuts in the name of M/s. Radhika Impex by using the importer's IEC. Shri Ramnarayan S. Laddha had used his relations and firms/companies controlled by him for funding the importer through M/s. Somnath Metals Pvt. Ltd., M/s. H.B. Metals Pvt. Ltd. and M/s. Jay Engineers. He had adopted a modus operandi of creating firms/companies in the names of others and controlling all the activities of such dummy firms/companies without appearing anywhere on paper, so that he can claim innocence whenever any such dummy firm is caught in any illegal activity by the Govt. agencies. Moreover, he is a habitual offender with cases booked against him at multiple locations being investigated by varied Govt. departments. Hence, I find that Shri Ramnarayan S. Laddha had played a vital role in the smuggling of 21420 Kgs of Betel Nuts by using the IEC of M/s. Radhika Impex. The aforesaid acts of omission and commission on his part have rendered the smuggled Betel Nuts liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 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(a) of the Customs Act, 1962 and consequently, Shri Ramnarayan S. Laddha is liable for penalty

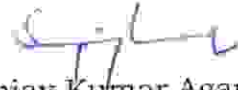
under Section 112(a) of the Customs Act, 1962. Further, as the impugned goods i.e., Betel Nuts, fall under the definition of "prohibited goods" as per Section 2(33) of the Customs Act, 1962, therefore the quantum of penalty would be as per Section 112(i) of the Customs Act, 1962, which provides that "(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater."

In view of the above discussions and findings, I pass the following order:-

::: ORDER :::

- (i) I order absolute confiscation of Areca Nuts (Betel Nuts) weighing 21420 Kgs, having minimum CIF value of Rs.53,76,420/-, smuggled into India by way of concealment in the import consignment of 'Heavy Metal Scrap' under Bill of Lading No. ERSLSINNS80021 dated 17.07.2017, under the provisions of Section 111(f), 111(i), 111(j) and 111(m) of the Customs Act, 1962. As the said seized Betel Nuts have subsequently been disposed through e-auction, therefore I order appropriation of the amount of Rs.29,87,998/-, realized as sale proceeds of said seized Betel Nuts, in terms of Section 126 of the Customs Act, 1962
- (ii) I order absolute confiscation of the Heavy Metal Scrap, totally weighing 59030 Kgs and valued at Rs.11,47,838/-, used for concealment of Betel Nuts, under Section 119 of the Customs Act, 1962.
- (iii) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor), 8, Annapurna Estate, Near Zaveri Estate, Kathwada, Ahmedabad-382430, under Section 112(a) of the Customs Act, 1962.
- (iv) I impose penalty of Rs.2,00,000/- (Rupees Two Lakhs only) on Shri Dipak Jayantibhai Thakor (Proprietor of M/s. Bhagyoday Enterprise, A-2 Bhole Shiv Compound, PO Singarwa, Tal. Daskroi, Ahmedabad), 11, LR Apartment, 1st Floor, Near Railway Crossing, Opposite Police Commissioner Office, Shahibaug, Ahmedabad, Gujarat, under Section 112(a) of the Customs Act, 1962.
- (v) I impose penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) on Shri Sanjay M. Shah alias Sanjay Kharod, Director of M/s. Somnath Metals Pvt. Ltd., 203, 2nd Floor, Nani Kanth Plaza, Shahibaug, Ahmedabad, under Section 112(a) of the Customs Act, 1962.

- (vi) I impose penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) on Shri Ramnarayan S. Laddha, B-41, Krishna Kutir, Jain Colony, Near Tera Pant Bhawan, Shahibaug, Ahmedabad, under Section 112(a) of the Customs Act, 1962.


(Sanjay Kumar Agarwal)
Principal Commissioner,
Custom House, Mundra.

BY RPAD / HAND DELIVERY

F.No. VIII/48-07/Adj/Commr./MCH/2018-19

Dated: 25.02.2019

To:

1. M/s. Radhika Impex (Proprietor Shri Tushar Natubhai Thakor),
Office Address: 8, Annapurna Estate,
Near Zaveri Estate, Kathwada, Ahmedabad-382430.

Residence Address: B/1/7, Raghukul Society,
Near Railway Crossing,
Shahibaug, Ahmedabad-380004.

2. Shri Dipak J. Thakor (Proprietor of M/s. Bhagyoday Enterprise),
A2, Bhole Shiv Compound,
Singarava, Tal. Daskoi,
Ahmedabad, Gujarat.

Residence Address: 11, LR Apartment,
1st Floor, Near Railway Crossing,
Opposite Police Commissioner Office,
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.

Residence Address: 3, Jayeshwar Society,
Near Railway Crossing,
Shahibaug, Ahmedabad-380004.

4. Shri Ramnarayan S. Laddha,
B-41, Krishna Kutir, Jain Colony,
Near Tera Pant Bhawan,
Shahibaug, Ahmedabad.

Copy to:

- (i) The Chief Commissioner of Customs, CCO, Ahmedabad.
- (ii) The Deputy/Assistant Commissioner (SIIB), Customs, Mundra.
- (iii) The Deputy/Assistant Commissioner (RRA), Customs, Mundra.
- (iv) The Deputy/Assistant Commissioner (Disposal), Customs, Mundra.
- (v) The Deputy/Assistant Commissioner (TRC), Customs, Mundra.
- (vi) The Deputy/Assistant Commissioner (EDI), Customs, Mundra.
- (vii) Guard file.