Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10964 of 2025-SM

(Arising out of Order in Original AHM-CUSTM-000-PR-COM-01-25-26 Dated 08.04.2025 passed by the Principal Commissioner of Customs, Ahmedabad)

Somnath Chaudhary .....Appellant
22, Shayona Vihar, Near C.P Nagar,
Ghatlodia, Ahmedabad, Gujarat-380061

VERSUS

Commissioner of Customs- Ahmedabad .....Respondent
Custom House, Near all India Radio,
Navrangpura, Ahmadabad, 380009, Gujarat

WITH

Customs Appeal No. 10975 of 2025-SM

(Arising out of Order in Original AHM-CUSTM-000-PR-COM-01-25-26 Dated 08.04.2025 passed by the Principal Commissioner of Customs, Ahmedabad)

Sujeet Kumar .....Appellant
E-302, Swati Residency-4,
IOC Road, Chandkheda, Ahmedabad-382424, Gujarat

VERSUS

Commissioner of Customs- Ahmedabad .....Respondent
Custom House, Near all India Radio,
Navrangpura, Ahmadabad, 380009, Gujarat

APPEARANCE:
Shri Anil Kumar Mishra, Advocate, Shri Vikas Mehta, Consultant and Shri M K Kothari, Consultant appeared for the Appellant
Shri Himanshu Nachane, Superintendent(AR) appeared for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10295-10296/2026

DATE OF HEARING :25.03.2026
DATE OF DECISION: 22.04.2026

SOMESH ARORA

1. Specific intelligence developed by DRI, Ahmedabad indicated that some persons based at Vapi indulged in smuggling of gold through SVPI International Airport, Ahmedabad from Dubai and Abu Dhabi by engaging carriers (air passengers). It was also gathered that gold was being smuggled by them in various forms and that two passengers ('Pax') Shri Sahidul Abdul Chowdhury & Shri Mohmad Sarfraj Mansuri of this group were due to arrive on 27.06.2019 from Abu Dhabi at SVP1 Airport, Ahmedabad. It was also gathered that they would attempt to smuggle saffron and boxes of RMD Gutka also, in addition to gold. Intelligence gathered further indicated that Vapi

based persons viz. Shri Sajahan Chowdhury and his brother, of this syndicate were running a jewellery shop and also a gold refinery in Vapi and above Pax had been instructed to hand-over smuggled gold to Shri Sajahan Chowdhury at Vapi.

1.1 Acting on the above intelligence, on 27.06.2019, DRI officers intercepted the said two pax along with their baggage while exiting the green channel of the Arrival Hall of Terminal 2 of SVPI Airport, Ahmedabad. On being asked, they introduced themselves as Sahidul Abdul Chowdhury and Mohmad Sarfraj Mansuri by showing their passports and informed that they were coming from Abu Dhabi via Etihad Airways Flight No. EY 226. On being asked whether they were carrying any gold or any other dutiable goods with them, in person or in their baggage they stated that they were not carrying any such item with them or in their baggage. Thereafter, both the passengers were brought to the arrival hall of SVPI Airport, Ahmedabad for their personal search and search of their check-in baggages under panchnama dated 27.06.2019 drawn at arrival Hall of SVPI Airport, Ahmedabad.

1.2 Upon personal search of Shri Sahidul Abdul Chowdhury, a polyethene bag of white colour was found in his right pocket and another polyethene bag of white colour was found in his left pocket of his trouser (Denim blue Colour). From Inside the polyethene bags, two chains which seemed to be of gold, were recovered. Thereafter, he was taken inside a room in Customs area and asked to remove his trouser. He removed his trouser and handed over the same to the officers. On observation of the said trouser, the officers found two packets secreted / stitched between the outer and inner cloth of the trouser waist. One such packet was found inside a pocket in his underwear. The said packets were wrapped with Khaki duct / adhesive tape. On removing the said Khaki duct / adhesive tape, there was transparent Polythene containing brown colour semi solid substance, On being asked, Shri Sahidul Abdul Chowdhury Informed the officers that the said three packets were containing Gold in paste / powder form mixed with some chemical in such a way that the gold could not be detected even with metal detector. Then, upon search of his baggage (Brown Colour Trolley bag), the officers found various packets and pouches for which Shri Sahidul Abdul Chowdhury informed that the same were containing saffron, Gutkas and some clothes (Ladies suit pieces). The details of gold in chain as well as paste form and other items were inventorized.

1.3 Upon personal search of Shri Mohmad Sarfraj Mansuri, the officers recovered chains which seemed to be of gold from right and left pockets of trousers (Black in colour) and one packet secreted / stitched between the outer and inner cloth of the trouser waist. The details of gold in chains as well as paste form and other items found during the personal search of Shri Mohmad Sarfraj Mansuri and his baggage search were inventorized.

1.4 On being asked Shri Sahidul Abdul Chowdhury informed the officers that the aforesaid gold chains and Gold paste brought by them from UAE were meant for selling through his brother Shri Sajahan Chowdhury who was having a refinery and a shop at Shop No. 2 & 4, Poonambhal Ki Chawl, Joona Ram Mandir, Vapi Town, Vapi-396195, Gujarat and through his brother Rinkubhal from M/s. Tinku Bhai Jewellers, Shop No. 4, Pushpam Complex, Surya Hospital Road, Gunjan, Vapi.

1.5 The representative samples of Saffron as well as RMD Gutkha were drawn by the DRI officer under panchnama dated 27.06.2019.

1.6 The above mentioned items recovered from Sahidul Abdul Chowdhury viz. two Gold Chains were totally weighing 693.14 Grams in total having purity 999 valued at Rs. 2205640/- (Tariff Value) [Rs. 2425990/-(Local Market Value)]

1.7 Two Gold Bars recovered from the three packets of Brown Colour Paste i.e. One Gold Bar weighing 673.610 Grams having purity 999 valued at Rs. 2144672/- (Tariff Value) [Rs. 2358930/-(Local Market Value)] & other Gold Bar weighing 28.980 Grams having purity 831.2 valued at Rs. 76623/- (Tariff Value) [Rs. 84303/-(Local Market Value)]. Saffron weighing 5000 Grams and Gutka (2000 pouches) were attempted to be smuggled into India with an intent to evade payment of Customs duty and it clearly did not constitute part of a bonafide baggage as it was in 'commercial quantity'. Thus, under the reasonable belief that the aforesaid goods were attempted to be smuggled by Shri Sahidul Abdul Chowdhury were liable for confiscation, and since the same were in violation of the provisions of Customs Act, 1962 and Baggage Rules, they were detained for further investigation under the aforesaid panchnama dated 27.06.2019.

1.8 The above mentioned items which were recovered from Shri Mohmad Sarfraj Mansuri viz. two Gold Chains totally weighing 706.950 Grams in total having purity 999 valued at Rs. 2249585/(Tariff Value) [Rs. 2474325/-(Local Market Value)].

(i) A Gold Bar recovered from the one packet of Brown Colour Paste weighing 424.60 Grams having purity 999 valued at Re 13,51,119/- (Tariff Value) [Rs. 14,86,900/-(Local Market Value)]

(II) Saffron weighing 5000 Grams and Gutka (2000 pouches) were attempted to be smuggled into India with an intent to evade payment of Customs duty and it clearly did not constitute part of a bonafide baggage as it was in 'commercial quantity'.

Thus, under the reasonable belief that the aforesaid goods were attempted to be smuggled by Mohmad Sarfraj Mansuri were liable for confiscation, and since the same were in violation of the provisions of Customs Act, 1962 and Baggage Rules, they were detained for further investigation under the aforesaid panchnama dated 27.06.2019. The officers also detained the trousers / underwear used for secreting concealing the gold and packed in a green envelope.

1.9 Since Shri Sahidul Abdul Chowdhury informed about the gold refinery shop of Shri Sajahan Chowdhury at Vapi, search was also carried out at Shop No. 2 & 4, Poonambhai Ki Chawl, Joona Ram Mandir, Near Zanda Chowk, Vapi under panchnama on 27.06.2019 from where 6 pieces of cut Gold bar 17.260 gram with market value of Rs. 60,738/- and Silver coins and Silver bar 723.350 gram with market value of Rs. 21,259/- were recovered and since no documents showing their licit purchase / import were produced as required under Section 123(1) of the Customs Act, 1962 the said goods were detained under panchnama dated 27.06.2019. Valuation of these goods was done vide Panchnama dated 28.06.2019 at DRI Office, Ahmedabad in presence of Shri Sajahan Chowdhury by Government Approved Valuer.

1.10 Since Shri Sahidul Abdul Chowdhury Informed about the gold shop of Shri Rinku Bhai at Vapi, search was also carried out at M/s Tinku Bhai Jewellers, Shop No. 4, Pushpam Complex, Surya Hospital Road, Gunjam, Vapi

under panchnama on 27.06.2019 however no documents / goods which were related to the smuggling of gold were found.

1.11 Statement of Shri Sahidul Chowdhury alias Tinku s/o Abdul Jahangir Chowdhury was recorded on 28.06.2019 & 29.06.2019 under section 108 of the customs Act, 1962 wherein he interalia that:

(i) from 2010 onwards he joined his elder brother Sajahan Chowdhury's refinery shop M/s. Sadguru Touch Refinery, situated at Shop No. 2 & 4, Poonambhai Ki Chawl, Joona Ram Mandir, Near Zanda Chowk, Vapi ("Sdguru"). In Sadguru, they carried out melting of old and used Gold and Silver and also did purchase of gold and Silver and after melting they sold it in market;

(ii) one of his friends Shri Tarik Shaikh having mobile 937700241 and residing at Afsara Market, Vapi introduced him to his Sister's husband named Shri Mohammad Azam having mobile 8546075577 and residing at Andheri, Mumbai and Shri Moham Azam was already in touch with his elder brother Shri Sajahan Chowdhury;

(iii) Shri Mohammad Azam gave his elder brother Shri Sajahan Chowdhury idea of smuggling of pure Gold in the form of ornaments, biscuits, powder & paste form and other costly items such as saffron, Gutkha (RMD brand). Shri Mohammad Azam informed his elder brother Shri Sajahan Chowdhury that he used to do this smuggling with aid of Shri Shamim of Dubai having mobile No. 00971502275263 and India mobile No. 9892249474 and Shri Shamim invested in purchasing Gold, saffron, Gutkha (RMD brand) and clothes from Dubai and after selling the money was sent to Shri Shamim through angadia/hawala routes;

(iv) Shri Mohammed Azam informed his elder brother Sajahan Chowdhury that Shri Shamim will invest major amount remaining amount around 15 to 20 Lakhs was to be invested by elder brother and himself;

(v) that his friend Shri Mohmad Sarfraj Mansuri went to Dubai for leisure so he agreed to go with him and they both went to Dubai on 25.06.2019 and met Shri Shamim and Shri Shamim gave them 4 pure Gold Chain total weighing 1400 grams approx., 4 paackets containing Gold paste total weighing 1800 grams approx., 4 packets

containing Saffron of Iran Origin total weighing 10000 grams, 40 bundles of Gutkha (RMD brand made in India) total weighing 16000 grams;

(vi) he kept 2 pure Gold Chain total weighing 700 grams approx. in his trouser pockets, secreted 3 packets containing Gold paste total weighing 1200 grams approx. hidden between the outer and inner cloth of his trouser waist, kept packets containing Saffron of Iran Origin total weighing 5000 grams in his Check-in luggage, kept bundles of Gutkha (RMD brand made in India) total weighing 8000 grams in his Check-in Luggage;

(vii) Shri Mohmad Sarfraj Mansuri also kept 2 pure Gold Chain total weighing 700 grams approx. in his trouser pockets, secreted 1 packets containing Gold paste total weighing 600 grams approx. hidden between the outer and inner cloth of his trouser waist, kept packets containing Saffron of Iran Origin total weighing 5000 grams in his Check-in luggage, kept bundles of Gutkha (RMD brand made in India) total weighing 8000 grams in his Check-in luggage;

(viii) he along with Shri Mohmad Sarfraj Mansuri took the above said goods given by Shri Shamim and returned to India on 27.06.2019 at Ahmedabad Airport and they exited from the Green Chanel along with the said goods and check in baggage and were intercepted by DRI officers at the Arrival Hall and the above said goods were recovered from their possession under the panchnama; that those gold in chain and paste form belonged to his elder brother Shri Sajahan Chowdhury. himself and Shri Shamim as they all had invested in purchase of those gold and he along with Shri Mohmad Sarfraj Mansuri had knowingly indulged and assisted in smuggling of those Gold in chain and paste forms; that the Saffron of Iran Origin, Gutkha (RMD brand made in India) belonged to Shri Shamim as he had invested in purchase of those goods and he along with Shri Mohmad Sarfraj Mansuri had knowingly Indulged and assisted in smuggling of those goods which were to be handed over to Shri Mohammad Azam of Mumbai for further disposal;

(ix) his elder brother Shri Sajahan Chowdhury was in direct contact with Shri Shamim and they both used to decide the dates and time when he along with other passenger/carrier had to go Dubai to collect the

Gold and smuggle it into India by taking Green channel route from Airports; that on being asked, as to why they were coming to Ahmedabad Airport only and not nearby airports in spite of staying at Vapi, he stated that his elder brother had informed him that Shri Shamim had made arrangement / setting with some Customs officer posted at Ahmedabad Airport who would facilitate the clearance of passengers carrying the smuggled gold and other goods;

(x) Shri Shamim used to send the photo of the passengers who were carrying the gold and other goods for smuggling through WhatsApp to his known Customs Officer posted at Ahmedabad Airport with whom he had made the arrangement for facilitation of clearance of passengers sent by Shri Shamim carrying the gold and other goods for smuggling;

(xi) Shri Shamim referred the name of the custom posted at Ahmedabad Airport as "Chaudhary saheb"; that as arrangement of smuggling of gold and other goods from Ahmedad Airport with facilitation by Customs Officer for clearance of passengers was made, it was easy for them to smuggle the gold and other goods without being caught from Ahmedabad Airport so they specifically chose to come to Ahmedabad International Airport with Gold and other goods for smuggling and used to walk through Green Channel; once the gold chain as well as Gold paste smuggled from Ahmedabad International Airport, was received by them at their Sadguru they melted the said gold and made it in rectangular bar form of 999 purity and thereafter the same was sold by them to local customers in India on cash payment; that the gold which was detained by the DRI officer from himself and Shri Mohmad Sarfraj Mansuri was also to go to their refinery for melting and making bar of 999 purity for sale in local market on cash payment;

(xii) Therefore, himself, his elder brother Shri Sajahan Chowdhury, Shamim of Dubai and Shri Mohammad Azam of Mumbai were knowingly involved in the smuggling of Gold and other goods by taking exit from Green Channel to avoid and evade payment of appropriate applicable Customs duty; as per the version of the department.

(xiii) Shri Shamim was actively involved in doing smuggling of Gold and other goods independently and himself and his brother Shri Sajahan Chowdhury had joined with Shri Shamim from April, 2019 onwards only; that from April, 2019 onwards they had knowingly concerned

in smuggling from abroad 10931 grams of pure gold having market value of Rs. 3,82,58,500/- and the pure gold detained by DRI on 27.06.2019 from him and Shri Mohamad Sarfaraj Mansuri consisting total quantity of 2527.28 grams had market value of Rs. 88,30,448/- ;

(xiv) the smuggled saffron of Iran origin market value in India was around Rupees 550.00 per 1 gram and the smuggled Gutkha (RMD brand made in India) market value in India was around Rs. 20 per pouch.

1.12 Statement of Shri Mohmad Sarfraj Mansuri s/o Mohmad Sharif Abdul Azij Mansuri was recorded on 28.06.2019 & 29.06.2019 under section 108 of the customs Act, 1962 interalia stated that:

(1) his friend namely Shri Sahidul Chowdhury @ Tinkubhai of vapi (Mob. No. 9898006263) requested him to travel Dubal along with him for which he (Shri Sahidul Chowdhury) said he would bear the expenses of the said journey; that in return, he (Shri Sahidul Chowdhury) asked him to carry some quantity of gold, in his (Mohmad Sarfraj Mansuri) personal possession and saffron and RMD gutka in check in baggage while coming from Dubai to Ahmedabad International Airport; that he agreed with Sahidul Chowdhury's proposal and accordingly, he along with Shri Sahidul Chowdhury went to Dubai on 25.06.2019 for the said purpose through Spice Jet flight; that they stayed there in a hotel;

(2) on 26.06.2019 one friend of Sahidul Chowdhury named Shamim Azmi met them and he gave 02 jeans containing gold concealed in waist band of jeans and 04 chains to Shri Sahidul Chowdhury.

1.13 Statement of Shri Chowdhury Sajahan Jahangir S/o Shri Chowdhury Jahangir was recorded on 28.06.2019 & 29.06.2019 under section 108 of the customs Act, 1962 wherein he interalia stated that:

(1) with regard to recovery of gold and silver from said premises, he stated that he did not have any document showing licit import of these Items; that he was in the business of refining and trading of gold and silver bullion in the name of M/s. Sadguru Refinery in Vapi since last six years; that he came into contact with Shri Mohammed Azam who was staying at Andheri, Mumbal since last two to three years; that Shri Mohammad Azam gave him idea of smuggling of pure Gold in the form of ornaments, biscuits, powder & paste form and other costly items such as saffron, Gutkha (RMD brand);

(2) Shri Mohammad Azam informed him that he used to do this smuggling with the aid of Shri Shamim of Dubai having mobile no. 00971502275263 and India mobile No. 9892249474 and Shri Shamim invested in purchasing Gold, saffron and Gutkha (RMD brand) from Dubai and after selling the money was sent to Shri Shamim through angadia/hawala routes;

(3) that Shri Shamim referred the name of the custom officer as "Chaudhary Saheb"; that he had accepted the said proposal and accordingly started bringing gold through passengers to Ahmedabad International Airport through the passengers sent by as well as some time passengers were arranged by Shri Shamim, as per the arrangement the profit earned from the selling of smuggled gold in India would be shared among himself, Shri Shamim and Sahidul Chowdhury; that the payment of said amount of Rs. 25000/- per passenger, he used to pay to one Shri Pankajbhal of Ahmedabad through Angadia namely, Purnima Angadiya, Govinda Complex, Vapi Char Rasta and Vishnu Kanti Angadiya, Vapi Town;

(4) that from April 2019 onwards till the date of statement, they had smuggled the gold into India as detailed in the table at Page 13 of 442 of OIO (running page No. 96)

1.14 It appeared from the investigation carried out by the department in this case that the persons involved in this case hatched a well-planned conspiracy for smuggling of gold in various forms through carriers/Pax by adopting novel modus of concealing the gold in paste form in such a way that same were not to be detected by customs authorities. Shri Shamim of Dubai / Mumbai was the master mind and king pin of this Syndicate. The other members of the syndicate were Mohd. Azam, Shri Sajahan Chodhury, Shri Sahidul Chaudhary, Shri Mansuri Sarfaraz and the Customs officer Air Intelligence Unit (AIU), SVPI Airport, Ahmedabad.

1.15 Considering the above, Shri Sajahan Chodhury, Shri Sahidul Chaudhary, Shri Mohmad Sarfaraz Mansuri, were arrested on 29.06.2019 in exercise of provisions of section 104 of the Customs Act, 1962. The bail applications filed by them were rejected by the lower courts. They were enlarged on default bail by Hon'ble ACMM Court, Ahmedabad after completion of 60 days from the date of their arrest.

1.16 Statement of Shri Pankaj Magnani @ Munna was recorded on 30.06.2019 and 16.07.2019 under the Customs Act, 1962 wherein he interalia stated that:

(1) He knew Shri Somnath Chaudhary who was Customs Officer since last 10 to 12 years; that he was posted at Ahmedabad International Airport in Customs Department; that 5 to 6 months ago Shri Somnath Chaudhary had informed on telephone that his cash would come to Angadiya in his name (Pankaj Magnani) and requested him to collect the said cash from Angadiya, that during last five to six months he (Pankaj Magnani) had collected the cash belonging to Shri Somnath sir for around 12 to 13 times from Purnima Angadiya, Ahmedabad;

(2) one Shamim used to inform him on telephone sending money for Somnath sir; Shamim used to ask him to collect money from the Angadiya; that he saved the mobile no. of Shri Somnath as "Chodri Sb 9913197989" & Chodrisb home 07927488236"; that Shamim used to send the money for Somnath Sir two to three times every month; that the amount was Rs, 75000/- and Rs. 30,000 received once and rest of the time the amount was either Rs. 25000/- or Rs. 50000/-; that Somnath sir collected the said money from his (Pankaj Magnani) shop named Aniket Consumer situated at 3-4, Classic Chamber, Navrangpura, Ahmedabad; that last time he (Pankaj Magnani) collected Rs. 50,000 belonging to Somnath Sir from Purnima Angadiya out of which he deposited Rs. 5000/- in the Bank Account of "Alexandra Maureen Tara Jhala" on 21.06.2019; that thereafter he again received a phone call on 28.06.2019 from Shri Somnath Sir asking him to deposit Rs. 12,150/ in the bank account 3101002100024118 of "Arihant Services" out of the above said Rs. 50,000/-, which was deposited by him on 28.06.2019; that remaining balance amount of Rs. 32,850/- was collected by Somnath Chaudhary sir from his (Pankaj Magnani) shop on 28.06.2019;

(3) he was shown the relevant portion of statement of Shri Chowdhury Sajahan Jahangir recorded on 28.06.2019, having seen the same he confirmed the phone numbers of Shamim and confirmed the details of Angadiya as well his own details and also confirmed that the Customs officer referred in the said statement was Shri Somnath Chaudhary only; that when a print out of a photo was shown to him, he identified him as Shri Somnath Chaudhary,

(4) he had received total amount of Rs. 5.30 lakhs in cash from Purnima Angadia and same was handed over to Shri Somnath Chaudhary in cash and two times the amount was deposited in bank as advised by Shri Somnath Chaudhary.

(5) the whatsapp message for deposit of Rs. 12,150/ in the bank account of "Arihant Services" dated 28.06.2019 sent by Shri Somnath Chaudhary from his mobile No. 9082228222 to Shri Pankaj Magnani was also corroborated from the forensic analysis of mobile No. 9082228222 used by Shri Somnath Chaudhary.

(6) The above fact was further corroborated by the CDR of mobile no. 9913197989 (used by Somnath Chaudhary) and CDR of mobile no. 8828263331(used by Shri Shamim) wherein Pankaj (mobile number 9898053373) was in contact with Shri Shamim (mobile number 8828263331) for the period from 20.02.2019 to 06.06.2019 including the talk on 29.05.2019 and with Somnath Chaudhary on his mobile number 9913197989.

1.17 The above statement regarding receiving of money from Purnima Angadia was further corroborated by the department by Angadia slips provided by Purnima Angadia, Vapi vide their letter dated 03.07.2019 evidencing the payment made to Shri Pankaj bhai and the sender of the money was Shamim and others. As per the said Angadia slips total payments of Rs. 5,30,000/- as detailed at page No. 17 of 442 of OIO (running page No. 100) received from Sajahan bhai was given to Pankajbhai through their Ahmedabad branch during last two months. He admitted that total cash of Rs. 5,30,000/- which was received from M/S, Purnima Angadiya Sevice was handed over by him to Shri Somnath Chaudhury.

1.18 Based on above revelation, search of the residence premises of Shri Somnath Chaudhary was carried out at 22, Shayona Vihar, C.P.Nagar, Ghatlodia on 30.06.2019, wherein his mobile number 9082228222 was found containing some incriminating messages, therefore the same was resumed under panchnama dated 30.06.2019. However, the mobile I phone 6 bearing mobile 9913197989 had been reported lost by Smt. Renuka Chaudhary (wife of Shri Somnath Chaudhary) that day morning on 30.06.2019. It further appeared that the arrest of Shri Sajahan Chodhury, Sahidul Chaudhary, Shri Mansuri Sarfaraz was made in this case 29.06.2019 and the I-phone with mobile number 9913197989 was lost on very next date morning i.e. on

30.06.2019. This coincidence appeared to be suspicious to the department. Further, based on the CDR of this number, it appeared to the department that it was the most relevant / crucial mobile probably containing incriminating evidences like photos of the passengers sent by Shri Shamim to Shri Somnath Chaudhary and other evidences.

1.19 Statement of Shri Somnath Chaudhary, Superintendent of Customs, Ahmedabad was recorded on 29.07.2019 under Section 108 of Customs Act, 1962 wherein he interalia stated that he has been under suspension from 04.07.2019 onwards. He was shown panchnama dtd. 27.06.2019 under which the gold and other items smuggled by two passengers arrived at SVPI Airport through Etihad Flight EY 226. He was also shown statements of Shri Sajahan Chowdhury and Sahidul Chowdhury both recorded on 28.06.2019 and statement of Shri Pankaj Magnani recorded on 30.06.2019. Having seen the statements:

(1) He denied the allegations made in the said statement dtd. 28.06.2019 of Shri Sahajan Chowdhury. He stated that he did not know or was aware about the persons viz. S/Shri Sahidul Chowdhury, Tarik Shaikh, Mohamad Azam, Sajahan Chowdhury, Shamim, Mohmad Sarfraj Mansuri mentioned in the statement dtd. 28.06.2019 of Shri Sahidul Chowdhury.

(2) He did not know any person named Pankaj Magnani, but when he saw the address of Aniket consumer, 3-4, classic chamber, navrangpura, Ahmedabad, he realized that he knew one shop by that name and it was the source who was providing input to him.

(3) There was one person whom he knew as ‘Munna’. His statement regarding receiving money from Shamim through Purnima Angadia many times and delivered the same to him was denied by him as they were totally false.

As per the request of Shri Somnath Chaudhary, he was allowed to conclude his statement dtd. 29.07.2019 and he undertook to appear before DRI on 30.07.2019 but he did not appear but sent mail informing that due to health problem, he was unable to come to DRI office on 30.07.2019.

1.20 Further statement of Shri Somnath Chaudhary was recorded on 05.08.2019 wherein in interalia stated that:

(i) he had an informer who introduced himself as Shamim introduced one person as his friend who could also provide inputs and he had also taken his mobile number; Shamim used to give him inputs out of which some materialized and some did not; His informer introduced himself as Shamim and he was in contact occasionally during investigation of another case of Gold by him;

(ii) Shri Somnath was communicated that he had stated in his statement dtd 29.07.2019 that he had nothing to do with cash money sent by Shri Shamim of Dubal, from Purnima Angadia to Shri Pankaj Hiralal Magnani alias Munna for onward delivery to him, as claimed by Shri Pankaj Hiralal Magnani alias Munna in his statements dated 30.06.2019 and 16.07.2019; that further, he had stated that the concerned 08 nos of the said 16 cash delivery receipts of Purnima Angadia Service, Vapi, for delivery of the cash to Shri Pankaj Magnani alias Munna did not pertain to him in anyway.

(iii) Thereafter, in front of Shri Somnath, the aforesaid person whom he knew as Munna, of Aniket Store, was asked whether he collected any cash from Purnima Angadia Service, sent by one Shri Shamim of Dubai/Mumbai and delivered the same to Shri Somnath, Shri Pankaj Hiralal Magnani alias Munna, in front of Shri Somnath told that he, as it has been stated by him in his earlier statements dtd. 30.06.2019 and 16.07.2019; he collected cash money from Purnima Angadia Service, sent by one Shri Shamim of Dubai/Mumbai and delivered the same to Shri Somnath. For the same, Shri Somnath reiterated that facts stated by him in his earlier statement dtd. 29.07.2019 was true and factual and he categorically denied all allegations made against him as totally false.

1.21 After completion of the investigation by DRI, the instant Show Cause Notice was issued in respect of the goods detained under Panchnama dated 27.06.2019 drawn at arrival hall of SVPI Airport, Ahmedabad and Panchnama dated 27.06.2019 drawn at Shop No. 2 & 4, Poonambhai Ki Chawl, Joona Ram Mandir, Near Zanda Chowk, Vapi and placed under seizure on 08.07.2019 and 16.12.2019 under Section 110 of Customs Act, 1962 only, under Section 124 of Customs Act, 1962.

1.22 Another Show Cause notice in respect of smuggling of gold and other items covered in this case under Customs Act, 1962 was issued separately by

the Principal Commissioner, Customs, Ahmedabad vide F.No.VIII/10-34/DRI/AZU/Pr.Commr./O&A/2023-24 dtd. 16.02.2024.

1.23 Both the above SCNs were adjudicated by the Principal Commissioner, Customs, Ahmedabad vide OIO No. AHM-CUSTM-000-PR.COM-01-25-26 dtd. 08.04.2025. Penalty has imposed, inter alia on Shri Somnath Choudhary, Custom Officer, as well as Shri Sujeet Kumar, Custom Officer. Aggrieved by the order, both are in appeal.

Appeal No. C/10964/2025

2. Learned Advocate for the appellant, while defending the case, submitted as follows:-

- The Appellant is a serving officer with flawless 31 years of service.
- For imposing penalties , the impugned order relies almost exclusively on third party statements of –
  i. Sahidul Abdul Chowdhury, Mohmad Sarfraj Mansuri (alleged passengers)
  ii. Shamim, Mohd. Azam (Organizers),
  iii. Angadia operators (Pankaj Magnani, Purnima Angadia), etc.
- All these third-party statements were neither recorded in presence of the appellant and none was tested by cross-examination under Sections 138B.
- In COMMISSIONER OF CUSTOMS (IMPORTS), MUMBAI Versus M/s GANPATI OVERSEAS THROUGH ITS PROPRIETOR SHRI YASHPAL SHARMA & ANR. Reported 2023 (10) TMI 364 - Supreme Court held thst –

  "It is in this context that the customs officer who is empowered under Section 108 to record statement etc. has the onerous responsibility to see to it that the statement is recorded in a fair and judicious manner providing for procedural safeguards to the concerned person to ensure that the statement so recorded, which is admissible in evidence, can meet the standard of basic judicial principles and natural justice. It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards. Certainly a statement recorded under duress or coercion cannot be used against the person making the statement. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording of such a statement since the adjudicating authority exercises quasi-judicial powers."

- Impugned Order heavily relies upon defective and irrelevant angadia slips[i] without even referring to anomalies indicated by the appellant on records. The appellant has also placed additional evidence on records to indicate how these slips were made under coercion.

- The impugned Order admits that the Show Cause Notice Table A for alleged smuggling , may be inaccurate as does not have flight details but holds that these are supported by statements. Reliance on such statements while rejecting cross examination is in rejection of cross without being tested under Section 138B were not verified by learned AA.
- The narrations at bullet point 1 of page 58 of the impugned seizure SCN Dated 23.12.2019 that 'other co-accused have also mentioned his name at very instance when they were apprehended at SVPI Airport, Ahmedabad on 27.06.2019' is false. There is no statement recorded on seizure spot and the panchanama dated 27-28/06/2019 drawn by the officers of DRI at SVPI Airport (which concluded at 02.00 hours of 28/06/2019), there is no reference to any Customs officer.
- The OIO holds that a number saved as "Choudhary Sahab" in the phone of alleged smugglers is of appellant. This is the only so-called link to the Appellant and there is no CAF (Customer Acquisition Form) to link a particular sim issued to a person , no subscriber record, no IMEI matching, no tower location, no seizure of the Appellant's phone, no proof he ever used that number. People save numbers in their phones under all sorts of labels. There is no legal presumption that a name saved in somebody else's mobile equals truthful identity. Under Section 65B Evidence Act, electronic records are inadmissible without certification. No certification is produced. Thus even that one piece of alleged linkage fails both factually and legally.
- No Independent Corroboration: For alleged gold smuggling there are no CCTV footage, no Entry/exit logs, no Airport duty roster, no Call logs linked to the officer's device, no Angadia CCTV or signature records, no Bank or cash trail. The records do not indicate that the Appellant was on duty, or that he was present at the airport, or that he interacted with passengers, or that he negotiated or received money, or that he communicated with any smuggler. When the foundation is missing, no inference can be drawn.
- Unverified Statements of Co-Accused Are Inherently Weak Evidence- The co-accused have made statements after seizure of gold and such statements are self-exculpatory & self-serving, are recorded while in DRI custody and are given to shift blame onto others.
- BURDEN OF PROOF: The appellant never met the smugglers; no passenger identified him; he was not present during any smuggling

attempt and no money trail leads to him. The departments burden of proof is not discharged.

- No smuggler, no carrier, no Angadia, no passenger has ever stated that: they met the appellant or they saw him or he spoke to them or he gave instructions or he facilitated their clearance or he handled money, or that they even recognized him. At best, some statements say "a Customs officer helped us." This is classic *hearsay*. The OIO then supplies the missing identity by pure conjecture. This is impermissible in law.
- The impugned order has imposed penalties on assumptions and presumptions such as-

i. The appellant was the Custom Officer that Shri Shamim Ahmed , Shri Sqhjan Chaudhary , Shri Mohammad Azam , Shri Shahidul Chuadhary and Shri Pankaj Magnani were in touch.

ii. that once LED TV brought by Shri Shamim was cleared by a Lady officer on duty under an instructions of another Custom Officer Shri Dhiraj Kumar who was directed by the appellant.

iii. Despite submissions that regular screening is done by on duty customs officers and not AIU officers like the appellant it is held that in view of show cause notice and irrefutable evidence digital, documentary and oral corroborative statements of passengers/ carriers/ Angadiya/melting traders are sufficient to indict the appellant.

iv. For submissions that Customs Desk officers clearing passengers do not work under AIU Superintendent but under Batch in charge AC/ DC it is held that CCTV footage and Statement of Shri Dheeraj Kumar for LED TV clearance indicate that the appellant was a facilitator of Shri Shamim Ahmed in the smuggling syndicate.

v. For submissions against mismatch in CDR call dates and alleged dates of smuggling and for absence of flight details through which alleged passenger arrived it is held that some inaccuracies in charges does not vitiate the entire evidence.

vi. That statement of Shri Vikas Pawar and his certifying the quantity of gold received in domestic trade are primary evidence for quantities and absence of flight details or other minor deficiencies would not derail the investigations.

vii. Regarding Rs.32850/- the appellant had submitted that he was not available on alleged date was engaged in other official duties and gone to residences of two persons in other cases on records it is held

that the appellant was out of Airport AIU office and no confirmation is provided by the applicant for such official work.

viii. That contentions regarding timing of commencement of smuggling activities and mathematical errors in calculations of amount could be due to part payments and appellant has never denied receipt of payments by Shri Pankaj Magnani from Angadiya. It is held that this proves culpability of the appellant.

ix. That oral statements confirm exchange of photographs, and loss of appellants phone is an afterthought.

x. It is held that angaria slips not matching the alleged pattern could be due to part payments and or previous dues.

xi. That statements are recorded under Section 108 and there is hardly any cause to accord any cross examinations.

- NO NEXUS WITH ON DUTY OFFICERS : DFMD MANNED BY OTHERS: After clearing immigration, all the passengers entering the Arrival Hall have to pass through a Door Frame Metal Detector (DFMD) which is manned either by a ACO or ACS. The intercepted passengers were not stopped or subjected to any detailed checks by the officer entrusted with these duties. The Appellant had no control over such officers.
- NO NEXUS WITH ON DUTY OFFICERS : NO INVESTIGATIONS: No officer on duty at dates referred in SCN Table A is investigated.
- The statements of both Shri Sahidul Chowdhury and Shri Sajahan Chowdhury are similarly worded and uses intricate legal terms which may not be known to them. Rejecting their cross examination has created handicap.
- THEORY OF PHOTOHRAPHS IS FALSE: BURDEN OF PROOF NOT DISCHARGED– In view of above the theory of advance sharing of photographs falls flat as concocted. No such photographs are recovered from the Phone of Shri Shamim or any other person. It is not for the Appellants to prove that there were no photographs and there is no evidence to discharge the burden of proof for allegations that such photographs even existed.
- NO PROBABILITY - COLLECTOR OF CUSTOMS, MADRAS AND OTHERS Versus D. BHOORMULL INAPPLICABLE – The learned AA while indicating anomalies on records has wrongly placed reliance upon the decision of COLLECTOR OF CUSTOMS, MADRAS AND OTHERS Versus D. BHOORMULL in as much as –

i. The complete absence of flight details in Table A indicates that dates in said table are constructed from dates of domestic trade

transactions. There is no probability to link such dates to any international flight arrival at SVPI Airport Ahmedabad.

ii. Even Otherwise , there is no probability of indicated passenger travelling on such dates as there are no passport details.

iii. There is nothing to indicate any probable nexus of on duty officer allowing such smuggling.

- NO REFERENCE IN CHATS: It has also been alleged in the said para 58.11 at page 249 and 250 that there have been various chats between the masterminds and the carriers wherein there is reference to the Appellant. It is submitted that not a single chat or message bears any reference to the Appellant by name. The allegations are merely a cover-up for the lack of evidence and for absence of discharge of burden of proof.
- Reliance is placed upon

1.1. Arvind Kumar v. CC, New Delhi, 2001 (136) E.L.T. 439 (Tri. -Del.)

1.2. AMIT DAS VERSUS COMMISSIONER OF CUSTOMS - MUNDRA 2024 (11) TMI 1241 - CESTAT AHMEDABAD.

1.3. 2010 (1) TMI 841 - CESTAT, MUMBAI Other Citation: 2011 (272) E.L.T. 596 (Tri. - Mumbai) ARIF SHAIKH VERSUS COMMISSIONER OF CUSTOMS (GEN), MUMBAI

- DENIAL BY SHRI RATANBHAI PRAJAPATI : The appellant has produced on records, a cross examination of Shri Ratan Bhai Prajapati dated 18/6/2025 as an additional evidence. His denial completely vitiates the alleged grounds.
- BURDEN OF PROOF Vs STANDARD OF PROOF: It is contended that the narratives of advance sharing of photographs is rendered absurd. Even otherwise , such photographs were communicated to on duty officers is neither alleged nor established. No such photographs are recovered from the Phone of Shri Shamim or any other officer. It was incumbent upon investigations to prove how the alleged photographs helped passengers to get clearance when appellant was not handling passenger clearance. There is no evidence that customs officers received photographs from appellants. There are no investigations with officers on duty without which the allegations fall flat. It is contended that there were no photographs and there is no evidence to discharge the burden of proof for allegations that such photographs even existed.
- NO COMPLIANCE TO SECTION 138C FOR DIGITAL EVIDENCES: It is contended that there are huge procedural lapses in matters of digital evidences such as recordings and audio clips. There are no seizure memos for seizure of mobile phones of Shri Pankaj Magnani. He has not signed any

certificate as a lawful owner / operator of such phones. There is no evidences of chain of custody of digital equipment like phones. Extracts presented as digital evidences are unreliable. The appellant places reliance on rule laid by Hon'ble Supreme Court in Anvar P.V Versus P.K. Basheer and others - 2014 (9) TMI 1007 - Supreme Court.

2.1 Further, after the hearing, additional submissions have been made to bring out the chronology of events.

CHRONOLOGY OF EVENTS

Date	Event description	Ref. in Records	Remarks	Page No
27.06.2019 14.45 Hrs	Flight – Etihad EY 226 – ETA 14.45- Seizure of Gold , Safron and Gutkha from PAX Shri Sahidul Chowdhary @Tinku & Shri Mohamad Sarfraj Mansuri	Seizure Panchanama dated 27.6.2019	No reference of appellant in Panchanama	Volume-III Page 972-981
27.06.2019	Search at gold **refinery shop of Shri Sajahan** Chowdhury at Vapi	Seized 17.26 Gr Gold and 723.350 Silver Coins and Bars	No reference of appellant in Panchanama	Volume-III Page 986
27.06.2019	Search – Vapi gold shop of Shri Rinku Bhai at M/s Tinku Bhai Jewellers,	NIL PANCHANAMA	No reference of appellant in Panchanama	Volume-III First Para @ Page 990
28.06.2019 & 29.06.2019	Statements of **PAX Shri Sahidul** Chowdhary	○ One Tarik introduced PAX Sahidul to Azam Mumbai ○ AZAM Mumbai gave Idea to his brother Sajahan Vapi for doing smuggling through Shamim Dubai. ○ Sajahan was in contact with Shamim Dubai. ○ Sajahan informed him Shamim Dubai is in touch with some Customs officer " Chaudhary Saheb".	PAX quoted that a third party, his brother Sajahan told him that a 4th party Shamim Dubai is sending photos of passengers to a 5th Party which is some custom officer "Chaudhary Saheb" at SVPI Apt to facilitate. Neither Phone Number nor full identity of "Chaudhary" available in his phone or statement	Volume-III First Para @ Page 998
28.06.2019	Statements of 2nd **PAX Shri Sahidul** Chowdhary	No reference of Appellant		Volume-III @ Page 1005-1007
28.06.2019 & 29.06.2019	Statement of Shri Sajahan Chaudhary alleged **refinery owner** at Vapi M/s. Sadguru Touch Refinery	○ Shamim Dubai told Vapi refiner Sahjan that Shamim Dubai is in contact with some Custom Officer "Chaudhary Saheb". ○ to whom Sajahan was sending 25000/- through 2nd party Ratanbhai Purnima Angadia who was further remitting it to 3rd party Pankaj Bhai Ahmedabad for alleged 4th Party Appellant. ○ Shamim Dubai was sending images of PAX to appellant	Neither Phone Number nor full identity of "Chaudhary" available in his phone or statement. Phone number of Pankaj Bhai Ahmedabad was provided.	RUD 8 Volume-III First Para @ Page 1013
30.6.2019 And 16.7.19	Statement of Pankaj Bhai Magnani Owner of	○ Knew appellant for 10-12 years. ○ **Seen Vapi refiner Sahja's statement about some "Chaudhary Sahab" and Appellants full name and Phone**	○ Never knew Sajahan but confirmed his statement ○ Ratified irrelevant and defective	Volume-III 2nd Para @ Page 1043

	Aniket consumer store **selling foreign origin goods.**	**number to DRI (First allegation of nexus)** ○ Affirmed having received 75 from Shamim Dubai as per recording. ○ Named appellant as beneficiary ○ Confirmed Sahjan Statement regarding Shamim Dubai sending money ○ Shamim Dubai's money was for appellant ○ Admitted having done some bank transactions at request of Appellant	angadia slips having no reference of Shamim or Sahjan or the appellant ○ **foreign origin goods trader in contact with another foreign goods dealer Shamim Dubai.** ○ Statedly Knew Shamim for last 5-6 months whereas transaction on records are May 2019 onwards	@ Page 1066-1067 for stmnt on slips @Page 1076-1085 Copies of vague Angadia Slips
10.7.19	Receipt of CDR		NO TRANSCRIPTS	
29.7.2019	1st Statement of Appellant Somnath Chaudhary	○ Refuted statements of PAX Sahidul and denied that the term "Chaudhary Sahab" in his 3rd or 4th party hearsay references are not for him. ○ Refuted Statement of Pankaj known to him for several years only as "Munna" of Aniket Consumer Stores. ○ When asked about Shamim Dubai he said did not know him but one of his informer is Shamim but don't know his full details either.		Volume-III @ Page 1102-1107
05.08.19	2nd Statement of Pankaj Bhai Magnani @ Munna of Aniket consumer store Ahmedabad	○ Admitted he is known to the appellant as Munna ○ Identified Shri Somnath Chaudhary		Volume-III @ Page 1112
5.8.19	2nd Statement of Somnath the Appellant	○ Shamim as informer giving stray inputs ○ Has also used Shamim for overseas address verifications ○ Identified Shamim in photograph ○ Not concerned with TV custom cleared by other officers ○ Refuted aangdia slips and money receipts		Volume-III @ Page 1117-1122
20.11.19 21.11.19 22.11.19	Statements of Shamim Dubai (**after five months** of initial seizure)	○ Engaged in bringing perfumes , suits etc. ○ Knew appellant Somnath Chaudhary since Nov. 18 ○ In Nov 18 the appellant refused his proposals. ○ Sahidul used to send passengers photos which he forwarded to the appellant (**@ Page 1152 LAST PARA)** ○ One sided narrations. ○ Refuted by Appellant ○ Later Retracted by Shamim	No photos recovered from phone of Sahidul	Volume-III @ Page 1141-1122 @1142 – He used to bring perfumes, suits etc.
07.10.2020	Statement of Azam	○ Key accused Azam denied any involvement ○ Azam refuted all third party statements		**Volume-III @ Page 1260** ALSO Reiterated in OiO Internal Page 66 Appeal Book **Vol-I @Appeal Page 149**
28.12.2020	3rd Statement of the Appellant	○ Refuted third party statements ○ Denied Allegations		Volume-III @ Page 1299 1307
	Findings Vol-1 Page 495 - 502	○ Presumed nexus on the basis of 3rd party statements ○ Admitted that Appellant not on active duty @ Page 488 , 3rd Para from TOP ○ Presumption of part payment ○ Challenged TV clearance by other officer - footage held to hold that despite being not on duty , the appellant was involved	@ **488 First Para** from top @ **488 3rd** Para from top @ **page 495 3rd para** from Top. @ **page 495 3rd para from Top.**	Unsustainable findings

		○ Admitted that AIU officers are not involved in passenger clearance ○ Admitted Discrepancy in Table -A & Table B	@**Page 490 5th Para from Top** @Page 493 1st & last Para from Top	

2.2 NARRATIVES OF SYNDICATE- SCN proceeds against the appellant on a pre-determined narrative moulded by the "syndicate". The so-called "intelligence" (SCN Para 1) does not mention the Appellant by any concrete role. and is not supported by surveillance, financial records, or independent witnesses.

- ARRIVING PAX GAVE ONLY ABBRIVIATED SURNAME - The bullet point 1 of page 58 of the impugned seizure SCN Dated 23.12.2019 that 'other co-accused have also mentioned his name at very instance when they were apprehended at SVPI Airport, Ahmedabad on 27.06.2019' is incorrect. There is no statement dated 27.06.2019. The reference to mention of "Chaudhary Saheb" in statement of Sahidul dated 28.6.2029 is statedly a hearsay of third party Sahidul PAX by a fourth party Sajahan of Vapi refinery telling him that a fifth party Shamim has setting with some Chaudhary Sahab. The references and mentions are without full name or without phone number , without identity credentials is vague, unspecific and cryptic.
- Even alleged Vapi based refiner of syndicate Shri Sajahan was not having full name or phone number of the Custom Officer.
- FULL NAME – FOREIGN GOODS TRADER PANKAJ BHAI IMPLICATED THE APPELLANT -
  a. For first four days of seizure , identity of the alleged Custom Officer "Chaudhary Saheb" was not known.
  b. Then on 30.06.2019 Shri Pankaj Bhai Magnani, an old acquittance of the appellant as dealer of Foreign Origin cosmetics , phones and gadgets and owner of Aniket Consumer Store Ahmedabad was apparently coerced on 30.06.2019 to connect defective angadia slips to falsely implicate the appellant as beneficiary of money sent by Vapi Based refiner Shri Sahjan for and on behalf of Shamim Dubai which was received by Pankaj of Aniket Consumer Store.
  c. Shamim also earlier admitted in dealing of foreign goods. Shamim's business dealings in foreign goods , with Pankaj are not investigated. Pankaj's business in foreign origin goods is neither investigated nor questioned.
  d. The appellant knew Pankaj @ Munna of Aniket Consumer Stores Ahmedabad for last 10-12 years as Munna only. He is a dealer of foreign

goods. His business linkage with other foreign origin goods dealer are more obvious but not investigated.

e. Shamim did not disclose where he was disposing foreign origin goods (other than gold) after landing in Ahmedabad.

f. Pankaj having appellants phone number under an acquittance for 10-12 years is not an adverse evidence.

- PHOTOGRAPH FORWARD THEORY FALS FLAT -

a. The alleged syndicate accused reiterated that Shamim Dubai used to send photographs of arriving passengers to the appellant. None of them could produce any such forward.

b. The syndicates baseless narrative are ridiculously baseless. Alleged modus operandi required –

   i. Forwarding of media image
   ii. Receipt of image in appellants phone
   iii. Re forward of PAX image to on duty custom officers pool
   iv. Assignment of a duty officer to facilitate baggage of PAX resembling image
   v. Communication to officer manning of Door Metal Frame Detector to facilitate personal wearing
   vi. circulation of alleged photographs by the appellant to pool duty officers. No such circulation of photographs is alleged , investigated or proved.
   vii. No statement of duty pool officers are recorded having facilitated anyone on photograph basis. NOT EVERYONES PHONE WAS LOST.
   viii. Appellant was never posted in passengers clearance pool. Without his posting in pool it is impossible to assist any passengers.
   ix. The syndicate successfully diverted investigations in this regard.

- NO PROBABILITY – Hurried ratification by Pankaj Magnani of Defective , unnamed , sorted and selected angadia slips received under a handwritten note of Ratan Prajapati is in an undue haste to absolve himself and his business nexus with alleged syndicate to divert investigations by implicating the appellant. Consequently his business, his commercial nexus with syndicate and his sources of foreign origin goods remained investigated.

- REVERSE ENGINEERING OF CDR THEORY- ASSUMED PROBABILITY IS NOT AN EXCUSE FOR ABSENCE OF INVESTIGATION -

a. The quantification of past smuggling as in SCN Page 123 Table- A is derived from quantities purchased by domestic buyers Vikas Pawar from Vapi Refiner Shri Shahjan. These dates are taken as probable dates of smuggling without any supporting documents such as passport , boarding passes , manifests etc, CCTV Footage. Even a single mail to Airline referred in Table -II would have confirmed whether alleged PAX arrived or not. Such dates are linked to various PAX names in Table -B without proof of their actual arrival.

b. The Findings of impugned Order admit that the Show Cause Notice Table A for PAST alleged smuggling , may be inaccurate as does not have flight details.

c. When probability of travel is linked with date of domestic transaction , that too after refining / melting operation, neither the travel nor smuggling can be presumed probable. Consequent presumptions of connivance stands void.

- SHAMIM KNOWING OR CALLING- NOT A CONCLUSIVE PROOF- A Custom Officer works in a wide span of public interactions and is also expected to generate intelligence inputs and maintain resources for such inputs. Humint is generated though personal assets who operated in similar trades. An informer may have different shades. A CDR without incriminating transcript cannot even be a circumstantial evidence. Case relied-

    a. 2016 (2) TMI 142 - CESTAT NEW (DELHI (LB) Other Citation: 2016 (333) E.L.T. A178 (Tri. - Del.) Commissioner of Customs Versus Kamal Bajaj [PARA 8, PARA 10, PARA 15, PARA 16]

- No Independent Corroboration: For alleged gold smuggling there are no CCTV footage of passengers, no Entry/exit logs, no Airport duty roster, no Call logs linked to the officer’s device, no Angadia CCTV or signature records, no Bank or cash trail.
- NO INVESTIGATIONS WITH ON DUTY OFFICER FOR LIVE SEIZURE- The records do not indicate that the Appellant was on duty, or that he was present at the airport, or that he interacted with passengers, or that he negotiated or received money, or that he communicated with any smuggler. When the foundation is missing, no inference can be drawn.

- Unverified Statements of Co-Accused Are Inherently Weak Evidence- Such statements are self-exculpatory & self-serving, are recorded while in DRI custody and are given to shift blame onto others.

  a. *Punjab and Haryana High Court in Jindal Drugs P. Ltd. and Another v. Union of India and Another [(2016) 340 ELT 67], - 22. Clearly, if this procedure, which is statutorily prescribed by plenary Parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the Commissioner of Central Excise, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof."*

- BURDEN OF PROOF: The appellant never met the smugglers; no passenger identified him; he was not present during any smuggling attempt and no money trail leads to him. The departments burden of proof is not discharged.
- No smuggler, no carrier, no Angadia, no passenger has ever stated that: they met the appellant or they saw him or he spoke to them or he gave instructions or he facilitated their clearance or he handled money, or that they even recognized him. At best, some statements say "a Customs officer helped us." This is classic *hearsay*. The OIO then supplies the missing identity by pure conjecture. This is impermissible in law.
- NO REFERENCE IN CHATS: It has also been alleged in the said para 58.11 at page 249 and 250 that there have been various chats between the masterminds and the carriers wherein there is reference to the Appellant. It is submitted that not a single chat or message bears any reference to the Appellant by name. The allegations are merely a cover-up for the lack of evidence and for absence of discharge of burden of proof.

3. Learned AR, defending the case for the Department, submitted that the findings based on investigation, as recorded in the impugned order, are justified. While reiterating the findings of the lower authority, he particularly emphasized that para 115 at page No. 399 (running page No. 482) of the Order-in-Original brings out the culpability of the appellant in the present case. He also relied upon the decision reported at 2000 (126) E.L.T. 737 (Tribunal) in the case of Poddar Tyres (Pvt.) Ltd. Vs. Commissioner of Central Excise, Chandigarh. However, the said decision pertains to clandestine removal and classification of tyres under the Central Excise Act and involves

remand of the matter; its relevance to the present case is not clearly evident. The relevant pages No. 493–502 are reproduced below:-

Table-A, flight details of the passengers alleged to smuggled gold on the stated dates had not been mentioned. Therefore, it had been contended that even though the persons named in these Serial Numbers had not even arrived at SVPI Airport, Ahmedabad, it had been alleged that they had smuggled gold, which shows that the charges were false.

I find that this contention seeks to challenge the accuracy of dates of telephone calls of Shri Shamim Ahmad or Shri Mohamed Azam with the smuggling dates and also in some cases non-mention of name of passengers. It is apt to mention here, that the investigative agency, in any given case, would be privy to some incriminating documents recovered from the place of incident. Such documents may not always provide an exhaustive and accurate picture in all cases, however, by corroboration of other evidences/statements, the charges are framed. Therefore, merely by quoting some inaccuracies in the charges does not vitiate the entire evidence brought out in the show cause notice. I also find that Shri Somnath Chaudhary has totally failed to counter the evidences placed on record in the table A to the show cause notice.

I would like to rely on the judgment of the Hon'ble Supreme Court in the Collector Of Customs, Madras And Ors vs D. Bhoormul reported in 1983 (13) E.L.T. 1546 (S.C.), wherein it has been mentioned that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree: (relevant extracts reproduced)

> *"..... It cannot be disputed that in, proceeding for imposing penalties, under Clause (8) of S.167 to which s. 178-A-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 mathe- matical 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....."*

(ix) The contention of Shri Somnath Chaudhary that in respect of Sr.No.1,6,7,14 and 17 mentioned in Table-A to SCN only dates were stated and no flight details had been mentioned while alleging smuggling of gold, therefore, without its mention he had been implicated for facilitation.

I find that the primary evidences in above mentioned Sr.Nos. clearly mention that the statement of Shri Vikas Pawar dated 03.09.20219 carries an attachment of whatsapp date 27.03.2019, a list certifying the quantity of gold received by M/s Vikas Trading and an image of *whatsapp* chat of 03.09.2019 wherein both quantities were mentioned. Similarly, in other Sr.No. mentioned above, there are primary evidences showing the basis on which the quantity of gold were smuggled into India, which may not be exhaustive. These evidences, however, corroborates with the statements of Shri Shamim Ahmad, Shri Sajahan Chowdhury and other audio and digital evidences

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of various persons on record. Therefore, in this case, merely by not mentioning the flight dates or any other minor deficiency would not derail the entire investigation mentioned in the show cause notice.

(x) The contention of Shri Somnath Chaudhary that no mention of him was made in panchnama dated 27-28.06.2019; that SCN states he came out AIU room only at 15.03.53 hours on 27.6.2019 and the pax exiting the arrival hall at 15.02 and he was not in arrival hall from 14.45.10 when the first pax arrived and exited the arrival hall at 15.03.53.

I find that the involvement of Shri Somnath Chaudhary was revealed only after the recording of statements dated 30.06.2019 and 16.07.2019 of Shri Pankaj Magnani and receipt of information provided by the telecom service providers in respect of SDR/CDRs of S/Shri Shamim Ahmad, Mohamad Azam, Sahidul Chowdhury. The contention that he was not present in the arrival hall during the time of arrival and exit of passengers on 27/28.06.2019 does not imply that he was not involved in facilitation of passengers arriving with gold on the said dates, especially when there are irrefutable digital, documentary and oral corroborative statements of various persons to indict him in the offence.

(xi) No evidence in SCN to show that he had prevented the active duty AIU officers from intercepting the pax and that the customs officers present would have photos of pax when he was unavailable for facilitation. Not present in AIU on the alleged dates of smuggling.

I find that the statement dated 07.08.2019 of Shri Dhiraj Kumar, Inspector and colleague clearly reveals that Shri Somnath Chaudhary had directed him to inform the Customs officer at the desk to allow duty free clearance of LED TV. This is prime evidence and an instance on record where Shri Somnath Chaudhary influenced customs officers to allow clearance as per his directions.

(xii) The contention by Shri Somnath Chaudhary that Shri Pankaj Magnani was his informer and this was not investigated by the department and that the identity of any informer was never disclosed as per Reward rules and that no examination or cross-examination of Shri Pankaj was allowed, therefore, Section 138B not followed and hence statement was inadmissible. Pankaj Magnani' statement that Shri Somnath Chaudhary had collected Rs.32,850/- from his shop on 28.06.2019 was denied since he had gone to the residence of 2 persons at 06:30 am on 28.06.2019 in a separate case and then took them to AIU office and was till 10:45 pm on 28.6.2019; that his Deputy Commissioner and Shri S.N.Iyer, Superintendent were witness to the facts.

I find that in the statement dated 05.08.2019 of Shri Pankaj Magnani, he had categorically denied that he had ever given any intelligence or information either to the Customs Department or to Shri Somnath Chaudhary. Also, in the statement dated 30.06.2019 of Shri Pankaj Magnani, he had deposed that Shri Somnath Chaudhary had collected the amount of Rs.32,850/- from his shop. The contention of Shri Somnath Chaudhary was that he had gone to the residence of 2 persons on 28.06.2019 in connection to a separate case, and,

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therefore, could not have collected the said amount from Pankaj Magnani on the said date, all the more discredits his case as Shri Somnath Chaudhary was not present in AIU office and was very well outside the Ahmedabad International Airport. No evidence has been provided by Shri Somnath Chaudhary to confirm this official work. The contention of Shri Somnath Chaudhary that no attempt was made by department to ascertain whether the money received was in connection to own business or not. I find this contention to be flimsy as had it been for his business, Shri Pankaj Magnani would not have made payments to Shri Somnath Chaudhary. There are documentary evidences and corroborative statements on record of Shri Pankaj Magnani, Shri Shamim Ahmad, Shri Sajahan Chowdhury confirming that money used to be sent by Shri Sajahan Chowdhury through Shri Shamim Ahmad to Shri Pankaj Magnani by angadiya, which was, thereafter, collected by Shri Somnath Chaudhary.

(xlii) The contention of Shri Somnath Chaudhary that the SCN states the alleged activity started since April, 2019 and the first consignment was brought on 24.05.2019 and, therefore, no investigations were made by the Department to ascertain why Shri Pankaj Magnani was receiving money before April/May, 2019 as Shri Pankaj Magnani in his statement stated that money was received from Shri Shamim Ahmad through Purnima Angadia since last 5-6 months. He also contended that Shamim's statement of paying Rs.25,000/- per pax does not match with amount shown to have been sent to Shri Pankaj Angadiya as per the table shown in SCN. He has also contended that Rs.1,50,000/- shown to be sent by Purnima Angadiya to Shri Pankaj Magnani do not match with the events in the Table shown in the SCN.

I find that this contention seeks to challenge the accuracy of timings of the first smuggled gold consignment received and the receipt of consideration deposed in the statements of Shri Shamim Ahmad, Shri Pankaj Magnani and Shri Sajahan Chowdhury and also the mathematical calculation of Rs.25,000/- per passenger to the total amount of Rs.1,50,000 paid to Shri Pankaj Magnani does not tally. I find that the payments cannot be judged vis-à-vis the total passengers as such payments may be part-payments towards the monetary considerations. Shri Somnath Chaudhary, through his nitpickings on the arithmetical calculations has utterly failed to provide any counter defence or evidences to the critical charges that the considerations were being received by Shri Somnath Chaudhary through Shri Pankaj Angadiya of Purnima Angadiya. I find that it is significant to note that in the above contentions, he has nowhere denied the receipt of payments by Shri Pankaj Magnani from Purnima Angadiya, but only the mathematical calculations, which in itself proves his culpability.

(xlv) Shri Somnath Chaudhary has further contended there were contradictions on the face of angadiya slips wherein in some cases the sender's name was not mentioned as 'Sahjan' and the recepient name as 'Pankaj bhai' and in another case sender's name is mentioned as 'Samir bhai'.

I find that the contention, may be it so, still does not disprove the fact that money was transferred from Shri Sajahan Chowdhury to Shri Panjak Magnani and ultimately collected by Shri Somnath Chowdhury. The digital evidences are on record where Shri Pankaj

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Magnani in his statement dated 30.06.2019 and 16.07.2019 had deposed:- *(relevant excerpts reproduced)*

> *that last time he (Pankaj Magnani) collected Rs. 50,000 belonging to Somanth Sir from Purnima Angadiya out of which he deposited Rs. 5,000/- in the Bank Account of "Alexandra Maureen Tara Jhala" on 21.06.2019; that thereafter he again received a phone call on 28.06.2019 from Shri Somnath Sir asking him to deposit Rs. 12,150/ in the bank account-310100210002411 8 of "Arihant Services" out of the above said Rs. 50,000/-, which was deposited by him on 28.06.2019; that remaining balance amount of Rs. 32,850/- was collected by Somnath Chaudhary sir from his (Pankaj Magnani) shop on 28.06.2019;*

I find that the whatsapp message for deposit of Rs. 12,150/ in the bank account of "Arihant Services" dated 28.06.2019 sent by Shri Somnath Chaudhary from his mobile No. 9082228222 to Shri Pankaj Magnani is also corroborated from the forensic analysis of mobile No. 9082228222 used by Shri Somnath Chaudhary. The above fact was further corroborated by the CDR of mobile number 9913197989 (used by Somnath Chaudhary) and CDR of mobile number 8828263331(used by Shri Shamim) wherein Shri Pankaj Magnani (mobile number 9898053373) was in contact with Shri Shamim Ahmad (mobile number 8828263331) for the period from 20.02.2019 to 06.06.2019 including the talk on 29.05.2019 and with Somnath Chaudhary on his mobile number 9913197989.

The letter dated 03.07.2019 from Purnima Angadiya evidencing fund received from Shri Sajahan Chowdhury and payments made to Shri Pankaj Magnani are on record. Even Shri Pankaj Magnani had identified his writing and signatures on the angadiya slips, when produced by the investigating agency during recording of his statement dated 30.06.2019 and also confirmed that he had received an amount of Rs.5,30,000/- from Purnima Angadiya and handed over to Shri Somnath Chaudhary. I find that the clinching and incontrovertible documentary evidences like angadiya slips, along with corroborative statements of Shri Shamim Ahmad, Shri Mohamad Azam and Shri Sajahan Chowdhury & Shri Pankaj Magnani clearly prove that Shri Somnath Chaudhary received monetary considerations from Shri Shamim Ahmad (master mind) through Shri Pankaj Magnani.

Further, I find that in the statement dated 05.08.2019 of Shri Somnath Chaudhary, the following aspect was recorded:- ***(relevant extracts reproduced)***

> *"(viii) On being further shown one printout taken from the whatsapp messages retrieved from his mobile number 9082228222 under panchnama dated 05/06.07.2019 drawn at DRI Lab, CFL, Mumbai, Shri Somnath inter-alia stated that his number was saved as "91 9082228222@s.whatsapp.net Dil Hai Hindustani (owner)" and other person was Munna of Aniket Store and his number was saved in his mobile phone as "919898053373@s.whatsapp.net Munna Aniket"; that having seen the same, Shri Somnath confirmed that mobile number of Munna shown in that printout was the same as that of shown in paper slips of Anagadia shown to him that day;"*

The audio call recording retrieved from the Pankaj Magnani's mobile [Number 9898053373], regarding the talk between Shri Pankaj Magnani and Shri Shamim Ahmad on [Number 8828263331], wherein Shamim Ahmad was heard asking Pankaj Magnani that whether he had received Rs.50,000/- and Rs.75,000/- sent in the past by Shri Shamim

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Ahmad that was to be given to Shri Somnath Chaudhary for facilitating the clearance of pax who brought the smuggled gold. The talk also mentions that when Shri Shamim Ahmad had met Shri Somnath Chaudhary he had told to pay the money to Shri Pankaj Magnani and then Shri Somnath shared Shri Pankaj Magnani's number with Shri Shamim Ahmad. I find that the statement dated 30.06.2019 and 16.07.2019 of Shri Pankaj Magnani reveals the following: *(relevant extracts reproduced)*

> *that last time he (Pankaj Magnani) collected Rs. 50,000 belonging to Somanth Sir from Purnima Angadiya out of which he deposited Rs. 5,000/- in the Bank Account of "Alexandra Maureen Tora Jhala" on 21.06.2019; that thereafter he again received a phone call on 28.06.2019 from Shri Somnath Sir asking him to deposit Rs. 12,150/ in the bank account-310100210002411 8 of "Arihant Services" out of the above said Rs. 50,000/-, which was deposited by him on 28.06.2019; that remaining balance amount of Rs.32,850/- was collected by Somnath Chaudhary sir from his (Pankaj Magnani) shop on 28.06.2019;*

(xv) The contention of Shri Somnath Chaudhary that there were glaring gaps and differences in the table showing his on/off duty dates and his physical location as per the CDRs on the said dates which proves that he was not present in the office on alleged smuggling dates.

I have carefully gone through the Annexure-A provided in the Seizure SCN dated 23.12.2019 and find that the said Annexure provides the date on which the passengers/carriers arrived by the particular flight and date and the boarding airport. The Annexure also provides the duty status (whether on or off) of Shri Somnath Chaudhary (as per the internal office roster maintained for the officers posted in AIU section) and also the location of the officer along with the details of time when Shri Somnath Chaudhary was in talk with Shri Shamim Ahmad, Shri Mohamad Azam and Shri Panjaj Magnani. The glaring gaps pointed out by Shri Somnath Chaudhary seems to be a clear case of mis-understanding in as much as the column showing the duty of Shri Somnath Chaudhary was to suggest that as per the office roster Shri Somnath Chaudhary was on/off duty. The column showing the location of Shri Somnath Chaudhary is the actual location of him at the time of the date and time of the concerned flight which has been ascertained by the investigation agency on the basis of the CDRs for that particular day. On that basis, the column showing the location of Shri Somnath Chaudhary has been mentioned. Therefore, contention of Shri Somnath Chaudhary that as per the CDR of his mobile his location was not at Ahmedabad airport, are totally baseless and false.

(xvi) Shri Somnath Chaudhary stated that in statement dated 28.06.2019 of Shri Sajahan Chowdhury, Shri Shamim had informed the setting with Customs officer. This was denied as he did not know Shri Sajahan Chowdhury and no evidence were placed on record to show that photos of pax were being sent to him by Shamim.

I find that the investigation had attempted to retrieve the mobile phone number 9913197989 from the possession of Shri Somnath Chaudhary, however, much to the dismay of the investigation, the said mobile phone was reported to be lost the very next day of the arrest of Shri Sahidul Chowdhury and Shri Mohamad Sarfraz Mansuri on

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29.06.2019. Shri Sujeet Kumar, Superintendent, AIU also informed the investigation that he had also lost his mobile phone. Therefore, I find that the loss of mobile phone, is an afterthought, and not a pure coincidence, but done deliberately by Shri Somnath Chaudhary to avoid surrendering the custody of mobile phone [purportedly containing photos of passengers/carriers carrying gold] to the investigation agency. The corroborative statements of Shamim Ahmad, Shri Sajahan Chowdhury and Shri Mohamad Azam clearly reveal that photos of passengers/carriers carrying gold were being passed/forwarded to Shri Somnath Chaudhary to facilitate smuggling of gold from Ahmedabad airport. Further, in case of Shri Shamim Ahmad [Number 8828263331] could not be retrieved by the investigative agency as the same was stated to be destroyed by Shri Shamim Ahmad in Dubai. Therefore, as a result of the non-availability/destruction of mobile phones of noticees, I find that crucial evidences were not privy to the investigation. Notwithstanding the above, I find that the show cause notice provides enough irrefutable digital, documentary and oral corroborative statements of various persons to prove that Shri Somnath Chaudhary was the facilitator providing safe exit from the Ahmedabad airport to the passengers/carriers carrying gold.

From the statement dated 07.10.2020 of Shri Mohamad Azam it was forthcoming that Shri Sajahan Chowdhury used to send him photos of passport and photos of persons whose visa was to be prepared via whatsapp on his mobile No.8546075577, which was sent by Shri Mohamad Azam to Shri Shamim Ahmad and after getting the visa prepared, Shri Shamim Ahmad used to send the same back to Shri Mohamad Azam and Shri Mohamad Azam used to forward the same to Shri Sajahan Chowdhury through *whatsapp*. Later, the travel dates of the passengers/carriers were decided as per convenience and arrangement of Shri Somnath Chaudhary, and the photos of the passengers/carriers were shared by Shri Shamim Ahmad with Shri Somnath Chaudhary.

From the above, above facts, circumstances and the corroborative statements of the above persons, it is apparent that Shri Somnath Chaudhary was provided photos of passengers/carriers carrying gold before hand so as to facilitate the safe clearance of them from Ahmedabad airport, without payment of Customs duty.

(xvii) The contention of Shri Somnath Chaudhary that Shri Ratanbhai Prajapati vide letter dated 03.07.2019 stated that they were sending money to Shri Pankaj Magnani from around Jan-Feb, 2019, however documents submitted for only May-June, 2019 and that the Angadiya slips were not matching with the events tabulated in Table-A of the show cause notice and also did not match with the number of passengers allegedly travelled.

This contention cannot be accepted as the payments merely show the amount being transferred and not necessarily directly proportional to the passengers cleared from the airport. The payments can also be part and/or previous dues pending, therefore, a proportionate pattern of the amount against the number of passengers cleared cannot be deduced. I find that mathematical or arithmetical accuracy cannot be a basis to discredit documentary evidences.

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The contention of Shri Somnath Chaudhary that he never introduced Shri Sujeet Kumar to Shri Shamim and that on many dates on which the pax were sent by Shri Shamim, Somnath was not present and that theory of photographs was false as no photos were recovered from phone of Shri Shamim Ahmad cannot be accepted in as much as there are forensic evidences in the form CDRs from the mobile of Shri Sujeet Kumar which shows his communication with Shri Shamim Ahmad. It is also on record that the mobile of Shri Somnath Chaudhary [Number 9898053373] was reported to be lost immediately after the arrest of Shri Sahidul Chowdhury and Shri Mohamad Sarfraz Mansuri on 29.06.2019 and in case of Shri Shamim Ahmad [Number 8828263331] could not be retrieved by the investigative agency as the same was stated to be destroyed by Shri Shamim Ahmad in Dubai. Further, there is corroborative statement of Shri Shamim Ahmed, where he stated that Shri Sujeet Kumar was the 'facilitator' in absence of Shri Somnath Chaudhary.

(xviii) Shri Somnath Chaudhary had requested for cross examination of Om Prakash Bishnoi, Shri Rakesh Rajani, Shri Ajeet Chaudhary, S.N.Iyer, Shamim Ahmad, Sajahan, Ratanbhai Prajapati, Shri Pankaj Magnani, Shri Mahesh Pawar. The contention of Shri Somnath Chaudhary that the statements of Shri Sahidul Chowdhury and Shri Sajahan Chowdhury were similarly worded, so cross examination was needed. I find there is hardly any cause to accord cross examination of the person. In response, the competent authority had denied cross examination vide this office letter dated 23.01.2025, in case of the following persons:-

Sr.No	Name of person whose cross examination sought	Reasons for denial
1	Shri Chowdhury Sajahan Jahangir	The statements of the co-noticees were recorded under Section 108 of the Customs Act, 1962. They were not retracted at any stage.
2	Shri Shamim Sadruddin Ahmad	
3	Shri Ratanbhai Prajapati	No statement has been recorded in his case.
4	Shri Pankaj Manglani	His statement was recorded under Section 108 of the Customs Act, 1962. It was not retracted at any stage.
5	S/Shri Vikas Pawar, Mahesh Pawar	They are co-noticees. The retraction of their statement was made after 25 days and was not accepted by the investigation agency at the material time.
6	Shri Pankaj Magnani	Both their statements were recorded under Section 108 of the Customs Act, 1962. They were not retracted at any stage.

In case of the following Departmental officers, the cross examination was not granted by the competent authority for the following reasons:-

Sr No	Name of person whose cross examination sought	Reasons for denial
1	Shri Om Prakash Bishnoi	No statements of these Departmental officers are recorded in this case, and no specific points had been put forth for cross-examination.
2	Shri Rakesh Rajani	
3	Shri Ajeet Chaudhary	
4	Shri S.N.Iyer	

Pawan Kumar missing?

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I would rely on the following judgments in support to the denial of cross-examination of persons as sought by Shri Somnath Chaudhary:-

=> 2016 (331) E.L.T. 402 (Ker.) In case of N.S.Mahesh V/s Commissioner of Customs, Cochin, wherein the Hon'ble High Court held that; (*relevant extracts reproduced*)

> ***Cross-examination of all officers who assessed, audited, "I. examined the impugned consignments :***
> *The investigating unit has developed the case on the basis of documents recovered during investigation and other evidences and not relied on statements of any officers who examined/audited/assessed the consignment. Moreover said officers have discharged these functions as part of their official duty, based on documents provided by the importer. Further noticee No. 2 has not given any reasons for examining the said officer, nor the evidences sought to be brought out from them. It is also learnt that the dockets of the bills of entry relied upon by investigation have already been supplied along with the show cause notice. However if required, noticee No. 2 can obtain additional set of copies of documents from SIIB, under prior intimation to undersigned. Accordingly the request for cross-examining all officers who assessed/audited/examined the impugned consignments cannot be acceded to.*
>
> ***II.Cross-examination of co-noticee Sri Reji Cherian :***
> *Apart from a broad statement that noticee No. 2 was seeking cross-examination of Sri Reji Cherian for rebutting the allegations of abetting evasion of duty by furnishing false and fabricated incorrect materials, no specific reasons or points have been attributed for seeking his cross-examination. Further noticee No. 2 has not given any specific fact that would emerge in his favour upon the cross-examination of Sri Reji Cherian. Further as Sri Reji Cherian is a co-noticee, this authority cannot direct him to be present for proceedings that may cause him to incriminate himself and therefore the request for cross-examination of Sri Reji Cherian cannot be acceded to."*
>
> ***2.****On a perusal of Ext.P5 order, and the reasons given by the respondent to deny the request of the petitioner for cross-examination, I do not find any illegality in the said order that would warrant an interference with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition, in its challenge against Ext.P5 order, therefore fails, and is accordingly dismissed."*

=> I also rely on the judgment of Hon'ble CEGAT, New Delhi in case of CALICUT RUBBER COMPANY Versus COLLECTOR OF CENTRAL EXCISE, COCHIN reported in 1996 (81) E.L.T. 320 (Tribunal), wherein it was held that: (*relevant extracts reproduced*)

> *"We agree with the Learned Collector that the statements are voluntary and that there has been no coercion in recording the statements as can be seen from the nature of the respective statements. The reply to show cause notice merely states that they are not voluntary statement. However, if there was any coercion or fraud by the officials then the appellants could have immediately reconciled from the statements on the very next day. In the reply to the show cause notice, the appellants themselves have contended that they do not suggest that the department had intentionally foisted a false case against them. Therefore, when there is no allegation of false case having been made out against them and that there is no individual resilement by the witnesses at the earliest point of time, therefore, we have to come to the conclusion that the statements given by the witnesses are voluntary. As regards the plea of denial of opportunity to cross-examine the witnesses,*

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It has to be stated that the appellants are the accused persons and their statements are not held to be false and that the case against them is on the basis of their own statement and hence the question of calling them for cross-examination does not arise. It is only the independent witnesses like foreman, workers, manager who can be called for cross-examination, if only they wanted them to be produced. There was no specific prayer before the Collector and the Collector has also been referred to such a prayer in the impugned order. We hold that there has been no violation of principles of natural justice, none."

=> Similar lines has also been followed in the judgment by the Hon'ble CESTAT, Delhi in case of Jagdish Shanker Trivedi V/s Commissioner of Customs, Kanpur reported in 2006 (194) E.L.T. 290 (Tri. - Del.), wherein it was held that:- (*relevant extracts reproduced*)

"In almost all the cases such persons dealing in contraband would refuse to be cross-examined on the ground that they are accused of an offence and, had a fundamental right against testimonial compulsion under Article 20(3), and thereby create a situation where each one of them, in the same breath, would ask for cross-examination of the other and refuse to be cross-examined, and then contend that refusal has resulted in failure of proper hearing. Therefore, principles of natural justice do not require that in matters like this, persons who had given information should be allowed to be cross-examined by the co-noticees on the statements made before the customs authorities. If cross-examination is to be allowed as a matter of right then in all cases of conspiracy and joint dealings between the co-noticees in the commission of the offences in connection with the contraband goods, they can bring about a situation of failure of natural justice by a joint strategic effort such co-noticees by each one refusing to be cross-examined by resorting to Article 20(3) of the Constitution and simultaneously claiming cross-examination of the other co-noticees. We, therefore, hold that the appellants, including the appellant Ashish Kumar Chaurasia were not entitled to claim cross-examination as a matter of right."

In the instant case, statements of the accused or co-noticees, i.e., Shri Shamim Ahmad, Shri Sajahan Chowdhury, Shri Pankaj Magnani have been recorded under Section 108 of Customs Act, 1962 and they have not retracted their statements. Therefore, their statement stands valid as evidences.

The contention of Shri Somnath Chaudhary that no recovery of goods for the earlier period alleged to have smuggled and that no pax intercepted by DRI had implicated him cannot be accepted. I find that even though no recovery of smuggled goods have been made for the past period, documentary, digital evidences and corroborative statements of various passengers/carriers/Angadiya/Melting traders etc. on record clearly reveal that smuggling of gold was effected during the relevant period. I have already discussed in the earlier para that the involvement of Shri Somnath Chaudhary was revealed only after the recording of statements dated 30.06.2019 and 16.07.2019 of Shri Pankaj Magnani and receipt of information provided by the telecom service providers in respect of SDR/CDRs of S/Shri Shamim Ahmad, Mohamad Azam, Sahidul Chowdhury.

D. CONCLUSION TO THE FINDINGS

(i) I find that enough documentary, digital evidences and corroborative statements of various passengers/carriers/Angadiya/Melting traders etc. in the instant case

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are on record and elaborately discussed in the earlier paras, which clearly reveal that smuggling of gold was affected by passengers/carriers from the Ahmedabad airport during the relevant period with the connivance of Shri Somnath Chaudhary, Customs officer, posted at AIU office. I find that Shri Somnath Chaudhary has aided in the smuggling of goods, which had resulted in the clearance of Gold/other items and he very well knew that he was dealing with the goods brought to India were being smuggled, or in other words, he knew or had reason to believe that the goods were being smuggled and the smuggled goods were liable to confiscation under Section 111 of the Customs Act, 1962.

I find that Shri Somnath Chaudhary is liable to penalty under Section 112(b) of Customs Act, 1962 in case of the seizure Show Cause Notice No.DRI/AZU/GI-02/ENQ-78/INT-41/2019 dated 23.12.2019, wherein the value of the seized goods was Rs.1,44,95,941/-, which includes 2544.540 grams of smuggled gold, valued at Rs.88,91,186/- and the remaining Silver coins/Gutkha pouches. I find that Shri Somnath Chaudhary is also liable to penalty under Section 112(b) of Customs Act, 1962 in case of the Show Cause Notice No. VIII/10-34/DRI/AZU/Pr.Commr/O&A/2023-24 dated 16.02.2024 issued for the past period, wherein 28443.930 grams of gold (in the form of gold chains/gold paste), was smuggled, valued at Rs.8,41,20,280/- and one LED TV, valued at Rs.1,00,000/-.

116. ROLE OF SHRI SUJEET KUMAR, AIR INTELLIGENCE OFFICER, SVPI, AHMEDABAD AIRPORT

From the documentary and digital evidences, oral corroborative statements of Shri Shamim Ahmad on record clearly corroborate Shri Sujeet Kumar's role as one of the facilitator, in addition to Shri Somnath Chaudhary to aid smuggling activity of the syndicate.

A. DOCUMENTARY AND DIGITAL EVIDENCES

(i) Analysis of CDRs of the mobile number of Shri Sujeet Kumar showed that he was in contact with Shri Shamim Ahmad through his local and Dubai number as well. Shri Shamim Ahmad in his statement dated 20.11.2019, 21.11.2019 and 22.11.2019 revealed that Shri Sujeet Kumar introduced to him by Shri Somnath Chaudhary when he arrived at Ahmedabad airport on 16.05.2019 and was in contact with him through his mobile number and was part of their arrangement of smuggling of gold and other items through Ahmedabad airport. It was also revealed by Shri Shamim Ahmad that on directions of Shri Somnath Chaudhary, Shri Sujeet Kumar would facilitate in absence of Shri Somnath Chaudhary. This fact gets corroborated from the fact that the call records of the mobile of Shri Sujeet Kumar shows his first call to Shri Shamim Ahmad on 22.05.2019. I find that, thereon, there were regular talks with Shri Shamim Ahmad as and when the carriers/passengers, carrying gold were scheduled to arrive at Ahmedabad airport from Dubai. Shri Shamim also stated that he had handed over one LED TV to Shri Sujeet Kumar after clearing the same without payment of duty through Shri Somnath Chaudhary. Shri Shamim Ahmad also revealed that the calls made to Shri Somnath Chaudhary and Shri Sujeet Kumar were regarding the name of the

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passengers, date of journey and flight no. in which the carriers were carrying gold and other items from Dubai to Ahmedabad airport.

(ii) On being confronted with the content of a specific call made by Shri Sujeet Kumar on 18.06.2019 (243 seconds) to Shri Shamim Ahmad, Shri Sujeet Kumar was evasive in his reply. Shri Sujeet Kumar also stated that he had not met Shri Shamim Ahmad and also was evasive when confronted with the statements of Shri Shamim Ahmad. I find that in his defence reply, he mentioned Shri Shamim Ahmad as his informer, which shows ambiguity in his stance. From the call records, a specific call on 23.06.2019 from the mobile number of Shri Sujeet Kumar to Shri Shamim was found, which was unexplained.

B. CORROBORATIVE EVIDENCES

(i) In his statement dated 30/31.08.2019 Shri Sujeet Kumar also stated that Shri Shamim Ahmad was his informer and that he booked many cases on the basis of his shared intelligence. The fact that at times Shri Sujeet Kumar denied his meeting and acquaintance with Shri Shamim Ahmad and on other occasions stated that Shri Shamim Ahmad was his informer, shows ambiguity to his statement.

(ii) In his statement dated 20.11.2019, Shri Shamim Ahmad revealed that Shri Somnath Chaudhary introduced Shri Sujeet Kumar to him when he arrived at Ahmedabad airport on 16.05.2019 and that he was also the part of their arrangement of smuggling of gold from Ahmedabad airport. He also revealed that the LED TV brought by him on 18.06.2019 was for Shri Sujeet Kumar.

(iii) During the course of investigation, it was observed that the mobile of both Shri Somnath Chaudhary and Shri Sujeet Kumar were reported by them as lost. In case of Shri Somnath Chaudhary, the loss of mobile had been reported on 30.06.2019, i.e., on the day of the residential search of Shri Somnath Chaudhary. In case of Shri Sujeet Kumar, he stated that his mobile was damaged when it fell from his pocket and that he had disposed of the same in the dustbin. These incidents, clearly show that after the interception of DRI of passengers at Ahmedabad airport on 27.06.2019, both the officers were apprehensive regarding their involvement in the smuggling activity. The concidence of the loss of mobile phone of Shri Sujeet Kumar after the arrest of Shri Sajahan Chowdhury, Shri Sahidul Chowdhury, Shri Mansuri Sarfaraz on 29.06.2019 and other circumstantial evidences on record clearly shows that a conscious and a deliberate action was taken by Shri Sujeet Kumar to destroy digital evidences. This proves the culpability on the part of Shri Sujeet Kumar in the smuggling syndicate.

C. DEFENCE AND FINDINGS

(i) There was no mention of him in the statements of Shri Sahidul Chowdhury and Shri Mansuri during the seizure proceedings, therefore he has been made a forced party in seizure SCN. He submitted that had he facilitated, the passengers, Shri Sahidul Chowdhury and Shri Mansuri would have mentioned his name. Further, no allegations against him were made in the statements of Shri Sajahan Chowdhury.

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3.1 The AR also made further submissions on 21.04.2026 as follows:-

CHRONOLOGICAL ALLEGATIONS/DESCRIPTION AGAINST THE PERSONS WHO HAVE FILED APPEALS IN HON'BLE CESTAT, AHMEDABAD AGAINST THE IMPUGNED ORDER (OIO) No. AHM-CUSTM-000-PR.COM-01-25-26 DTD. 08.04.2025				
Sr. No.	**Name (S/Shri)**	**allegation / description**	**Statement recorded on**	**Para No. & Page No. of the impugned order [OIO dtd. 08.04.2025] issued by the Principal Commissioner, Customs, Ahmedabad.**
1	Sahidul Abdul Chowdhury (Mob No. 9898006263 {India} & 588615554 {Dubai}) and hailing from Hoogly, West Bengal.	Smuggled gold and other items		Para (xiv), Page No. 9 of 442
		He named the appellant.		Para No.4(xiii), page No. 8 of 442
		Arrested on 29.06.2019 and were enlarged on default bail by Hon'ble ACMM Court, Ahmedabad after completion of 60 days from the date of arrest.		Para No. 8, Page No. 16 of 442
			28.06.2019 & 29.06.2019	Para 4, Page No. 6 of 442
			another statement dtd. 07.07.2020	Para 32, Page No. 62 of 442
2	Mohmad Sarfraj Mansuri	Smuggled gold chains, gold paste, saffron and gutkha as a carrier.		Para 4, Page No. 10 of 442
			28.06.2019 & 29.06.2019	Para No.5, page No. 9 of 442
		Arrested on 29.06.2019 and were enlarged on default bail by Hon'ble ACMM Court, Ahmedabad after completion of 60 days from the date of arrest.		Para No. 8, Page No. 16 of 442
3	Sajahan Chowdhury (brother of Sahidul Abdul Chowdhury) {Mob No. 9924393834)	Having a refinery named Sadguru Touch Refinery and a shop in Vapi, Gujarat. Knowingly involved in smuggling gold.		Para No. 6(i), page No. 11 of 442
			28.06.2019 & 29.06.2019	Para 6, Page No. 11 of 442
		Arrested on 29.06.2019 and were enlarged on default bail by Hon'ble ACMM Court, Ahmedabad after completion of 60 days from the date of arrest.		Para No. 8, Page No. 16 of 442
			further statement on 12.10.2019	Para 30, Page No. 50 of 442
			another statement dtd. 08.07.2020	Para 32.1, Page No. 64 of 442
		mastermind of the syndicate and carriers in the whole modus of smuggling gold from Dubai to India at SVPI Airport, Ahmedabad.		Para 43, Page No. 152 of 442

4	Mohammad Azam Jalaluddin, Mumbai (Mob No. 8546075577)	Mastermind in the whole syndicate. He gave idea of smuggling gold to Sajahan Chowdhury and involved in smuggling gold and other items at SVPI Airport		Para 33, Page No. 64 of 442
		Arranged meeting of Sajahan Chowdhury and Shamim Azmi		Para (xiv), Page No. 69 of 442
			06.10.2020	Para 33, Page No. 64 of 442
			further statement dtd. 07.10.2020	Para 33.1, Page No. 66 of 442
			further statement dtd. 08.10.2020	Para 33.2, Page No. 71 of 442
		Arrested on 08.10.2020		Para 33.3, Page No. 73 of 442
5	Shamim Azmi of Dubai (Mob No. 9892249474 {India} & 00971502275263 {Dubai})	Actively involved in smuggling gold & other items. Mastermind, carrier and kingpin of the whole syndicate		Para (xvii), Page No. 9 of 442
		He had setting at Ahmedabad International Airport with one "Shri Chaudhary Saheb" who would facilitate in smuggling against consideration of Rs. 25000/- per passenger		Para (v), Page No. 12 of 442
		Shamim used to send the photographs of passengers to Somnath Choudhary through whatsapp messages on Somnath Choudhary's mob No. 9913197989 and payment of Rs.25,000/- per passenger was paid through pankaj magnani through Ratan prajapati, Angadia, vapi to Somnath Chaudhary.		Para 58.10, Page No. 233 of 442
			20.11.2019	Para 31, Page No. 52 of 442
		Arrested on 20.11.2019		Para 31.1, Page No. 57 of 442
		One day custody was granted by ACMM.		Para 31.1, Page No. 57 of 442
			further statement on 21.11.2019 & 22.11.2019	Para 31.2, Page No. 58 of 442
		Somnath Choudhary informed Shamim that he did not have to pay custom duty on LED TV brought for him.		Para C, Page No. 61 of 442
6	Ratan Prajapati (Purnima Angadia, Vapi)	sending cash received from Sajahan Chowdhury to Pankaj magnani, Ahmedabad		Para A(iv), Page No. 337 of 442
			Statement not recorded	Sr. No. 3 in the table at Para (xviii), Page No. 416 of 442
7	Pankaj magnani (Aniket consumer, navrangpura, Ahmedabad)	collected money from purnima angadia, vapi and handed over to somnath choudhary		Para 9(i), Page No. 16 of 442
			30.06.2019, 16.07.2019	Para No. 9, Page No. 16 of 442

			further statement dtd. 05.08.2019	Para No. 21, Page No. 23 of 442
8	Somnath choudhary	facilitated in smuggling gold and other items and safe exit of carriers/passengers from customs area and out of airport in lieu of monetory consideration		Para 41, Page No. 142 of 442
			29.07.2019	Para No. 20, Page No. 22 of 442
			further statement dtd. 05.08.2019	Para No. 21.1, Page No. 23 of 442
		essential link in organized smuggling of gold and other items		Para 25, Page No. 27 of 442
		Arrested on 06.08.2019 under the provisions of Section 104 of the Customs Act, 1962 and was enlarged on default bail by Hon'ble ACMM Court, Ahmedabad after completion of 60 days from the date of his arrest.		Para 26, Page No. 27 of 442
			further statement dtd. 28.12.2020	Para 36, Page No. 109 of 442
		Played a pivotal role as "facilitator" in conspired smuggling activity and instrumental in organizing schedules of date, time and flight as per his convenience/availability as on duty AIU officer, for passengers carrying smuggled gold into India through Ahmedabad Airport.		Para 115, Page No. 399 of 442
		Somnath Choudhary's mob No. 9913197989 was reported lost by his wife on the next day i.e. on 30.06.2019, of arrest of Sahidul Chowdhury and Mohamad Sarfraj Mansuri on 29.06.2019. This was done deliberately by Somnath Chaudhary to avoid surrendering the custody of mobile phone (purportedly containing photos of passengers/carriers carrying gold) to the investigating agency.		Para 11, Page No. 18 of 442 & Para (xvi), Page No. 414 of 442
9	Dhiraj kumar	he has acted as per the directions of his- superior officer, Shri Somnath Chaudhary, Superintendent, AIU, Ahmedabad airport , who urged him to get the clearance of LED TV from the customs officers present at the desk without payment of Customs duty		2nd para, Page No.408 of 442
			07.08.2019	Para 27, Page 27 of 442
		Scrutiny of CDR of Somnath Choudhary and Shamim Azmi, it was revealed that Sujit Kumar was in continuous contact		Para 28, Page No. 29 of 442

		with Shamim		
10	Sujit kumar	Changed the mobile handset between 27.06.2019 and 03.07.2019		Para 28.1 continued on page No. 30 of 442
			30.08.2019	Para 28.2, Page No. 30 of 442
			further statement on 31.08.2019	Para 28.3. Page No. 34 of 442
			further statement dtd. 14.12.2020	Para 35, Page No. 106 of 442
		Sujeet Kumar actively played that role of another officer and connived with smugglers to clear smuggled gold and other items.		Para 28,5, Page No. 36 of 442
		Sujeet Kumar would facilitate in absence of Somnath Chaudhary		Para 116(A)(i), Page No. 419 of 442
11	Mahesh Pawar, responsible person of M/s Vikas Trading Co., Ahmedabad	Mahesh Pawar and Vikas pawar, both brothers had an active role in disposal of smuggled gold by selling the same into market by converting into gold Bars without the cover of invoices, in cash which they used to purchase from sajahan chowdhury.		Para 29.16, Page No. 47 of 442
			24.08.2019	Para 29, Page No. 37 of 442
			further statement on 03.09.2019 & 04.09.2019	Para No. 29.7, Page No. 44 of 442
			Further statement on 04.09.2019	Para 29.15, Page No. 47 of 442
		Arrested on 04.09.2019		Para 29.16 continued on Page 48 of 442
12	Vikas Pawar, Technical person of M/s Vikas Trading Co., Ahmedabad.	Mahesh Pawar and Vikas pawar, both brothers had an active role in disposal of smuggled gold by selling the same into market by converting into gold Bars without the cover of invoices, in cash which they used to receive from sajahan chowdhury.		Para 29.16, Page No. 47 of 442
			03.09.2019 & 04.09.2019	Para 29.1, Page No. 38 of 442
			Further statement on 04.09.2019	Para 29.6, Page No. 43 of 442
		Arrested on 04.09.2019		Para 29.16 continued on Page 48 of 442

FINDINGS:-

4. This Court has gone through the rival submissions. This Court finds that there has been complete denial of cross-examination, which is now statutorily provided for under Section 138B. The same is reproduced below:-

"138B. Relevancy of statements under certain circumstances.—

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]"

4.1 It is thus clear that any statement, if it is to be considered relevant, can be taken into cognizance only after examining the person whose statement has been recorded as a witness. The three exceptions to this requirement are where the person who made the statement is dead, cannot be found, is incapable of giving evidence, or is kept out of the way by the adverse party, or where his presence cannot be obtained without unreasonable delay or expense as considered by the Court.

Various Hon'ble High Courts, while interpreting the provisions of Section 138B, have consistently held that wherever reliance is placed on a statement, an opportunity for cross-examination must be afforded. The same provisions exist *mutatis mutandis* under the Central Excise Act as well. The following case laws are relevant:-

I. 2022 (380) E.L.T. 264 (Bom.) in the case of *Prakash Raghunath Autade Vs. Union of India*, wherein it was held that cross-examination can be insisted upon only after the witness is first examined by the Adjudicating Authority.

II. 2021 (377) E.L.T. 510 (Mad.) in the case of *Sri Balaganesan Spinners Vs. Jt. Commissioner of Customs, Tuticorin*, wherein it was held that cross-examination of a person whose statement is relied upon must be granted, even if such person is a co-noticee.

III. 2020 (372) E.L.T. 156 (Tri. - Ahmd.) in the case of *Borsad Tobacco Co. Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Ahmedabad-III*, wherein denial of cross-examination of the Chemical

Examiner and non-supply of correspondence was held to be violative of principles of natural justice.

IV. 2019 (366) E.L.T. 280 (Cal.) in the case of *Sampad Narayan Mukherjee Vs. Union of India*, wherein it was held that statements are admissible in evidence only when the witness is offered for cross-examination in terms of Section 138B.

V. 2019 (366) E.L.T. 970 (Del.) in the case of *Krishan Kishore Aggarwal Vs. Additional Commissioner of Customs*, wherein denial of cross-examination, based on misinterpretation of earlier judgments, was held to be a violation of principles of natural justice.

VI. 2018 (362) E.L.T. 94 (Guj.) in the case of *Balaji Enterprise Vs. Union of India*, wherein it was held that denial of cross-examination of witnesses is not justified merely on the ground that they have not retracted their statements.

VII. 2018 (361) E.L.T. 90 (P & H) in the case of *Ambika International Vs. Union of India*, wherein it was held that the procedure under Section 9D of the Central Excise Act (pari materia to Section 138B of the Customs Act) must be followed both in adjudication and prosecution.

VIII. 2018 (18) G.S.T.L. 415 (Ker.) in the case of *Mohammed Fariz & Co. Vs. Commissioner of Customs, Cochin*, wherein it was held that denial of cross-examination of a person whose statement is relied upon renders the order a nullity.

IX. 2016 (340) E.L.T. 67 (P & H) in the case of *Jindal Drugs Pvt. Ltd. Vs. Union of India*, relying on *Parmarth Iron Pvt. Ltd.* [2016-TIOL-2749-HC-P&H-CX], wherein it was held that cross-examination is mandatory and the Adjudicating Authority cannot rely upon statements without examination-in-chief.

X. *Ambika International Vs. Union of India* (CWP No. 12615/2016 dated 17.06.2016), also reported at 2016 (337) E.L.T. A204 (S.C.), wherein it was reiterated that examination-in-chief is necessary to make statements admissible under the law.

4.2 In the instant case, no effective defence could have been put forth by the appellant without affording cross-examination of all those witnesses whose statements have been relied upon against him. This assumes greater significance as the statements recorded of Shri Somnath Chaudhary are in the nature of denial and no inculpatory statement under Section 108 has been

made by him. Therefore, reliance on the statements of other persons to implicate Shri Somnath Chaudhary, without following the due procedure prescribed under law and Section 138B, is legally unsustainable. Further, the reliance placed on the letters of the Angadiya during the course of investigation is also misplaced. Such letters were merely furnished in response to queries raised by the Department and were not obtained by summoning the person or records in accordance with law. These documents have neither been recorded under Section 108 nor tested for their evidentiary value. There is nothing on record to show whether the entries referred to therein were maintained in the regular course of business so as to be admissible in evidence. Moreover, these documents were not provided to the appellant for effective rebuttal nor was any opportunity granted to examine or comment upon the same. It is also pertinent that the alleged payments from the so-called smugglers to the appellant have been treated as relevant without any proper evidentiary foundation. The persons making such statements ought to have been examined under Section 108 and offered for cross-examination. Instead, the Department has merely relied upon unverified letters, without establishing whether the same are based on properly maintained books of account. Such material, therefore, cannot be treated as reliable evidence, particularly when cross-examination of the concerned persons has been denied to the appellant. Additionally, no identification of the appellant has been carried out by the accused persons or passengers. Significantly, for the initial period of 3–4 days, none of the persons named the appellant and only made vague references such as “some Chaudhary”. Subsequently, his name was introduced in statements without any proper investigation, including identification through personal appearance, photographs, or otherwise. It is further noted that entities such as M/s. Purnima Angadiya Services and Vishnubhai Kantilal Angadiya, who are alleged to have handled the Angadiya slips and transactions, have not even been issued show cause notices despite their purported involvement in handling payments relating to contraband goods. The denial of cross-examination of such crucial witnesses has caused serious prejudice to the appellant. In view of the above, such statements and documents ought not to have been relied upon. Alternatively, the persons giving such statements should have been subjected to cross-examination, particularly in light of the legal position emerging from the judicial precedents discussed hereinabove and the mandatory requirements of Section 138B, which are equally applicable to adjudication proceedings.

4.3 There is no evidence on record in the form of passport details of the alleged passengers or their dates of arrival and clearance from the airport on

the dates when they are alleged to have brought contraband goods and exited with the connivance of the present appellant. The Department has failed to establish any correlation between the call data records, the dates of arrival of the passengers, and the duty roster of Shri Somnath Chaudhary, or the presence of any other officers who could have acted on alleged instructions. There is no material to show any synchronized link between the alleged acts of smuggling and the involvement of the appellant. In fact, para 2.1 and 2.2 of the Order-in-Original, reproduced below, do not substantiate such linkage:-

> *"2.1 Upon personal search of Shri Sahidul Abdul Chowdhury, a polyethene bag of white colour was found in his right pocket and another polyethene bag of white colour was found in his left pocket of his trouser (Denim blue Colour). From Inside the polyethene bags, two chains seemed to be of gold, which were recovered. Thereafter, he was taken inside a room in Customs area and asked to remove his trouser. He removed his trouser and handed over the same to the officers. On minute observation of the said trouser, the officers found two packets secreted / stitched between the outer and Inner cloth of the trouser waist. One such packet was found inside a pocket in his underwear. The said packets were wrapped with Khaki duct / adhesive tape. On removing the said Khaki duct / adhesive tape, there was transparent Polythene containing brown colour semi solid substance, on being asked, Shri Sahidul Abdul Chowdhury informed the officer's that the said three packets were containing Gold in paste / powder form mixed with some chemical in such a way that the gold could not be detected even with metal detector. Then, upon search of his baggage (Brown Colour Trolley bag), the officers found various packets and pouches for which Shri Sahidul Abdul Chowdhury Informed that the same were containing saffron, Gutkas and some clothes (Ladies suit places). The details of gold in chain as well as paste form and other items were inventorized as under:*

Sr No	***Name of Cloth / Luggage***	***Packing Material***	***Name of the Goods***	***Gross Weight (Gms)***
1	*Trouser (Right side pocket)*	*One white colour red printed polyethene bag*	*Yellow Metal Chain*	*345.11*
2	*Trouser (Left side pocket)*	*One white colour red printed polyethene bag*	*Yellow Metal Chain*	*348.03*
3	*Trouser waist*	*Transparent packet wrapped with khaki duct/adhesive tape*	*Gold (Brown colour paste inside transparent packet)*	*148.7*
4		*Transparent packet wrapped with khaki duct/adhesive tape*	*Gold (Brown colour paste inside transparent packet)*	*468.5*
5	*Underwear*	*Transparent packet wrapped with khaki duct/adhesive tape*	*Gold (Brown colour paste inside transparent packet)*	*613.2*
6	*Check-in Luggage Bag (Brown Colour Trolley bag)*	*Polythene bundles containing 10 pouches (each weighing 25 gms)*	*Saffron (Zibad Termes) Origin Iran*	*12 × 10 × 25 = 3000*
7		*80 pouches (each weighing 25 gms)*	*Saffron (Zibad Termes) Origin Iran*	*80 × 25 = 2000*
8		*20 bundles each containing 100 pouches (each weighing 4 gms)*	*Gutka (RMD Brand made in India)*	*20 × 100 × 4 = 8000*

2.2 Upon personal search of Shri Mohmad Sarfraj Mansuri, the officers recovered chains which seemed to be of gold from right and left pockets of trousers (Black in colour) and one packet secreted /stitched between the outer and inner cloth of the trouser waist. The details of gold in chains as well as

paste form and other items found during the personal search of Shri Mohmad Sarfraj Mansuri and his baggage search were inventorized as under:"

Sr No	***Name of Cloth / Luggage***	***Packing Material***	***Name of the Goods***	***Weight (Gms)***
1	*Trouser (Right side Pocket)*	*One white colour red printed polyethene bag*	*Yellow Metal Chain*	*348.69*
2	*Trouser (Left side Pocket)*	*One white colour red printed polyethene bag*	*Yellow Metal Chain*	*358.26*
3	*Trouser waist*	*Transparent packet wrapped with khaki duct / adhesive tape*	*Gold (Brown colour paste inside transparent packet)*	*603.7*
4	*Check-in Luggage Bag (Mahroon Colour Trolley bag)*	*Polyethene bundles containing 10 pouches (each weighing 25 gms)*	*Saffron (Zibad Termes) Iran Origin*	*12 × 10 × 25 = 3000*
5		*80 pouches (each weighing 25 gms)*	*Saffron (Zibad Termes) Iran Origin*	*80 × 25 = 2000*
6		*20 bundles each containing 100 pouches (each weighing 4 grams)*	*Gutka (RMD Brand made in India)*	*20 × 100 × 4 = 8000*

4.4 Indicate that the consignments were being carried in a well-conceived manner which was more consistent with an attempt to remove contraband through concealment rather than through connivance. It has also not been brought on record as to how such passengers cleared customs in the UAE and why, despite alleged connivance, goods like saffron and gutka were carried. Apart from this, various discrepancies pointed out by the appellant have not been dealt with by the lower authority. It is also not explained how the passengers could pass through the dual frame metal detectors, which are normally manned by different officers on a rotational basis. The CDR data relied upon merely shows that the appellant was in contact with one of the persons alleged to be part of the syndicate. However, no details of any conversation have been provided. At best, what is established is a vague link between the appellant and such person. In fact, call records ought to have clearly indicated that the appellant was in touch with the so-called kingpin immediately before, at the time of, or after the clearance of the consignments, and that the head of the syndicate was in turn contacting other persons for coordination. No such evidence is forthcoming. For all the above reasons, supported by various case laws relied upon by the appellant, particularly *Arvind Kumar Vs. Commissioner of Customs, New Delhi* reported in 2001 (136) E.L.T. 439 (Tri.-Del.), wherein it was held that allegations of abetment against Customs officers cannot be sustained without affording cross-examination of witnesses, and *Arif Shaikh Vs. Commissioner of Customs (Gen), Mumbai* reported in 2011 (272) E.L.T. 596 (Tri.-Mumbai), wherein it was held that in the absence of corroborative evidence, charges against the officer cannot be sustained, the case of the appellant merits acceptance.

Further, this Court also finds substance in the submission of the appellant that the penalty imposed under Section 112(b) cannot be sustained. In this regard, Section 112(a) and (b) are reproduced below:-

> *"112. Penalty for improper importation of goods, etc.—*
>
> *Any person,—*
>
> *(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
>
> *(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*
>
> *shall be liable,—*
>
> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5 [not exceeding the value of the goods or five thousand rupees], whichever is the greater; 1*
>
> *[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]*
>
> *[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 3 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;*
>
> *(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 4 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;*
>
> *(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 5 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]"*

4.5 It is clear that there is no specific allegation that the appellant had dealt with any goods with knowledge or reason to believe that they were liable for confiscation under Section 111. In fact, there has been no identification of the appellant, and no witness has stated that he had seen the officer in person. The appellant, therefore, cannot be said to be a person concerned with dealing in any such goods, and there is no evidence on record to establish the same,

specially in the absence of his own culpatory statement and also no statement of Angadiyas under Section 108 as also no cross examination or examination having been done. In these circumstances, even the invocation of Section 112(b) appears misplaced. However, even on the standard of preponderance of probability, the case against the appellant cannot be sustained. The statements relied upon have not been subjected to cross-examination and, therefore, lack evidentiary value. The adjudication has proceeded by placing reliance on such untested statements as well as on Angadiya records, which have not been properly brought on record in accordance with law and hence cannot be relied upon. Further, the call data records (CDR) have been relied upon without any proper transcription or corroborative material, which is contrary to the legal position laid down in *Commissioner Vs. Kamal Bajaj*, reported in 2016 (333) E.L.T. A178 (Tri.-Del.). Accordingly, the reliance placed on such material is unsustainable in law. The contraband recovered on the day of inspection also does not inspire in favour of conspiracy theory. The Contraband is stated to be gold chains, gold in paste form so made as will defy metal detectors kept in sewn packets stitched to the pant, lady suits, saffron and Gutkha. There is also no allegation or statement that such contraband needed any connivance/ collusion at the port of embarkation with their customs or security. The theory therefore has loose ends and is not plausible.

5. Appeal of appellant Shri Somnath Chaudhary is therefore liable to succeed.

Appeal No.C/10975/2025

6. The learned Consultant for the appellant, while making his submissions against the impugned order arising out of the same investigation, submitted as follows:

- That the appellant is serving in Customs department at the post of Superintendent.
- That Ld. Principal Commissioner has adjudicated 02 show cause notice(s) by way of common order impugned herein and has imposed penalty of Rs. 1.0 lakh (for first show cause notice) and Rs. 4.0 lakh (for second show cause notice) on the appellant under Section 112 (b) of Customs Act, 1962 on the sole charge of ‘facilitation’ of smuggling, mainly of gold, from Sardar Vallabhbhai Patel International Airport, Ahmedabad.
- The impugned order is not tenable on facts as well as law for the following amongst other reasons:

(i) Ld. Adjudicating Authority has placed reliance on the statement of Shri Shamim Ahmad (para 116 of show cause notice on page 578 of appeal memo) wherein he (Shri Shamim Ahmad) has stated that on directions of Shri Somnath Choudhary, Shri Sujeet Kumar would facilitate in absence of Shri Somnath Choudhary. Thus, the sole premise to penalise the appellant is 'facilitation' in absence of Shri Somnath Choudhary. However, (i) there is no allegation or findings citing evidence to show that Shri Somnath Choudhary had given any such directions to the appellant and (ii) the table contained in para-D (ii) on page 425 of impugned order on page 584 of appeal memo does not pinpoint a single instance (out of 7 detailed therein), where Shri Somnath Choudhary was absent. As a matter of fact, on 02 occasions, i. e. 14.06.2019 and 18.06.2019 (Sl. Nos. 5 & 6), the appellant was not on duty, being an off for him. Thus, the impugned order fails on both these primary criteria adopted by Ld. Adjudicating Authority for implicating the appellant.

(ii) The impugned order is self-contradictory inasmuch as on one hand, it has refused to accept the plea of innocence advanced by appellant on the ground Shri Sahidul Chowdhary and Shri Mohmad Sarfraj Mansuri (the two passengers from whom gold, etc. was recovered on arrival at the airport on 27.06.2019) had not named the appellant as 'facilitator' (page 421 of impugned order on page 580 of appeal memo), whereas, on the other hand, it relies on statements of other passengers (co-accused as well) who had also not named the appellant as a 'facilitator'.

(iii) Ld. Adjudicating Authority has wrongly implicated the appellant without considering the details of cases booked by him on the inputs received by Shri Shamim Ahamad (page 102 of appeal memo) based on which the appellant identified Shri Shamim Ahamad as informer and explained the calls received from him, which are relied by him. The details of all these cases were placed by appellant before Ld. Adjudicating Authority under reply dated 10.10.2024. The same is nowhere rebutted in the impugned order.

(iv) The sole evidence of alleged quid pro quo cited in the show cause notice to support the allegation of 'facilitation' against the appellant, is that Shri Shamim Ahmad had given one LED TV to appellant, is found false by Ld. Adjudicating Authority. It is held in the impugned order that there is no evidence of receipt of any TV by appellant.

(v) Section 112 (b) of Customs Act, 1962 is not applicable to appellant inasmuch as the appellant has not acquired possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchased or in any other manner dealing with any goods which he knew or had reason to believe were liable to confiscation under section 111. Unless the twin criteria laid down by Ld. Adjudicating Authority at Sl. No. (i) above is satisfied, there is no question of attributing any knowledge or reason to appellant so as to invoke Section 112 (b) of Customs Act, 1962 against him.

(vi) The notice/order does not rely upon any transcript of telecalls between any persons including the appellant. Hence, the same is entirely based on assumptions and presumptions, which, as per settled law is not tenable in the eyes of law. This particularly when the appellant has explained the calls received from Shri Shamim Ahmad on the basis of cases booked by the appellant based on inputs received from latter.

- Thus, it may be kindly appreciated that the appellant never facilitated alleged smuggling of gold and other items covered by the Show Cause Notice. Accordingly, he is not liable to penalty under Section 112 (b) of Customs Act, 1962.
- On this basis, it is prayed to allow the appeal filed by appellant and oblige.

6.1 Further submissions dated 15.04.2026 have been adduced by the learned Consultant for the appellant, which are as follows:

- In the findings of part of the O-I-O passed by the Ld. Pr. Commissioner of Customs, Ahmedabad held that [**Page No. 425, table of sub-para (ii) of the OIO** refers] in all on seven (7) various dates as tabulated in the said para, as per call records coincide with dates on which smuggling was carried out by the respective passenger/ carrier. The findings so derived is baseless and not supported with any evidence. It is submitted that the said list is prepared from ANNEXURE-I and ANNEXURE-A to the SCN. However, above two ANNEXUREs referred to are not in agreement with each other and are self- contradictory. In view of these inconsistencies, any inference sought to be drawn on the basis of such contradictory material is inherently unreliable and unsustainable in law.
- Further, it is respectfully submitted that, as per the table appended to the findings (page 425 of the impugned order), the passenger, Shri

Chowdhury Abdul Jehangir Shahidul, is stated to have arrived on 23/24.05.2019. However, it is an admitted position that when the said passenger was apprehended by the DRI on 27.06.2019, he was specifically questioned regarding the identity of the officer who allegedly facilitated his smooth exit. In response, although he did name an officer, the officer so identified was not the present appellant.

This material fact has been completely overlooked. The testimony the said passenger to the above effect, clearly negates the allegation of facilitation. The findings recorded in the impugned order, therefore, rest merely on presumption and assumption, without any cogent or corroborative evidence, and are consequently untenable in law.

- It is further submitted that, as per the table of findings referred to above **(Sub-para (ii) of the OIO at page 425)**, at Sl. Nos. 5 and 6, it is alleged that the passengers arrived on 13.06.2019 and 18/19.06.2019 and were facilitated by the appellant. However, this allegation is factually unsustainable. On 13.06.2019, the appellant was off duty, as evidenced by the duty rosters dated 07.06.2019 and 14.06.2019 issued by Customs, Airport **(annexed herewith as Annexure-A & B).** Therefore, the appellant could not have facilitated any passenger on that date. Further, with respect to the alleged incident dated 18/19.06.2019, the Ld. Adjudicating Authority itself, in findings at **(Para 116(C)(iii) (page 422 of the OIO),** has categorically recorded—upon perusal of the CCTV footage and the duty roster—that the appellant was neither present in the CCTV footage nor on duty at the relevant date and time. In view of the above, the findings recorded in the table are self-contradictory and unsustainable, thereby rendering the allegation against the appellant devoid of merit.
- It is further submitted that, as per the aforesaid table in the OIO, the alleged telephonic conversations between the appellant and Shri Mohd. Shamim are stated to have taken place on 14.06.2019 **(Sl. No. 5)** and 23.06.2019 **(Sl. No. 7).** However, the same table records that the concerned passengers arrived on 13.06.2019 and 22.06.2019, respectively. In this regard, it is pertinent to note that, on both occasions, the alleged telephonic communication is shown to have occurred subsequent to the arrival of the passengers. In such circumstances, it is manifestly illogical and untenable to allege that the appellant facilitated the passengers in connection with their arrival on the basis of conversations that took place after the relevant events had already occurred. Accordingly, the sequence of dates, as recorded in

the OIO itself, clearly negates the allegation of facilitation by the appellant, rendering the same devoid of any factual or legal basis.

- The impugned order is self-contradictory in as much as, on the one hand, it rejects the appellant's plea of innocence on the ground that Shri Sahidul Chowdhary and Shri Mohmad Sarfraj Mansuri—being the two passengers from whom gold and other items were recovered upon their arrival at the airport on 27.06.2019 by DRI did not name the appellant as a "facilitator" **(as noted in the opening paragraph of page 421 of the impugned order).** On the other hand, the same order places reliance on the statement of another passenger, Shri Mohd. Shamim (also a co-accused), who purportedly implicated the appellant as a "facilitator." Significantly, the said statement of Shri Mohd. Shamim has itself been found to be unreliable and untrue by the Ld. Adjudicating Authority upon examination of the CCTV footage. In view of the above, the impugned order adopts inconsistent standards in appreciating evidence, thereby rendering its findings arbitrary, contradictory, and unsustainable in law.
- The Ld. Adjudicating Authority has erroneously implicated the appellant without duly considering the material evidence on record. In this regard, the appellant had specifically furnished details of cases booked by him on the basis of inputs received from Shri Shamim Ahmad **(as reflected at page 102 of the appeal memo)**. It was on the strength of such prior interactions that the appellant had known Shri Shamim Ahmad as an informer and duly explained the nature and context of the calls received from him, which have otherwise been relied upon in the impugned order. It is further submitted that comprehensive details of all such cases were placed before the Ld. Adjudicating Authority vide reply dated 10.10.2024. However, the impugned order is conspicuously silent on this crucial aspect and fails to rebut or even consider the said evidence. Such non-consideration of relevant and material facts renders the findings vitiated and unsustainable in law.
- The sole piece of evidence cited in the show cause notice to substantiate the allegation of "facilitation" against the appellant is the purported quid pro quo, namely, that Shri Shamim Ahmad had gifted an LED TV to the appellant. However, this allegation has been categorically found to be false by the Ld. Adjudicating Authority. As recorded in (**Para (iii) at page 422 of the impugned OIO)**, there is no evidence whatsoever to establish that the appellant received any such TV. The Ld. Adjudicating Authority has, in unequivocal terms, held

that the alleged LED TV was never gifted to the appellant and further noted that the appellant was not on duty on the relevant date and time. These findings strike at the very root of the prosecution's case and demolish the foundation of the alleged quid pro quo. In light of the above, it necessarily follows that the deposition made by Shri Shamim Ahmad, alleging that the appellant facilitated him in ensuring safe passage, is wholly unreliable and devoid of credibility. His statements stand discredited, particularly in view of the findings recorded by the Ld. Pr. Commissioner in relation to the LED TV allegation. Moreover, the CCTV footage of the Airport, as duly considered and relied upon by the Ld. Pr. Commissioner, conclusively establishes the absence on given date and innocence of the appellant. Accordingly, the statements of Shri Shamim Ahmad, having been demonstrably proven false, cannot be relied upon, and the allegations against the appellant are liable to be set aside.

- Section 112(b) of the Customs Act, 1962 is not attracted in the present case, as the appellant has neither acquired possession of, nor was in any manner concerned with, the carrying, removing, depositing, harbouring, keeping, concealing, selling, purchasing, or otherwise dealing with any goods which he knew or had reason to believe were liable to confiscation under Section 111 of the Act. It is submitted that the essential ingredients for invocation of Section 112(b), as noted by the Ld. Adjudicating Authority itself at page 419 of the impugned OIO, are not satisfied in the present case. Firstly, there is no finding whatsoever that Shri Somnath Chaudhary had instructed the appellant to facilitate or allow smooth passage to any passenger. Secondly, it is also not disputed, as evident from the dates reflected in the table (page 425, sub-para (ii) of the OIO), further it is not claimed or established that Shri Somnath Chaudhary was not on duty on the relevant dates in question. In the absence of these foundational elements, no knowledge or reasonable belief can be attributed to the appellant so as to bring his case within the ambit of Section 112(b) of the Customs Act, 1962. Consequently, the invocation of the said provision against the appellant is wholly misconceived and unsustainable in law.
- It is respectfully submitted that the appellant's name does not find mention at any stage in the alleged financial trail purportedly unearthed by the DRI and set out in the show cause notice. Furthermore, no material whatsoever has been brought on record to establish any financial nexus or connection of the appellant with the alleged

transactions. In the absence of such evidence, the allegations against the appellant remain wholly unsubstantiated and unsustainable in law.

- The citations in support of the contentions made herein above:-

1) *This Hon'ble Tribunal in the case of AMIT DAS Vs. Commr of Customs, Mundra held in* ***Final Order No. 12833/2024*** *dated 26.11.2024 that statement of co-accused not corroborated by any other evidence cannot be relied. In the present case half of the statement of co-accused Shri Shamim has been held to be untrue in LED TV gifting matter after due perusal of CCTV footage by the Ld Pr Commissioner, the first adjudicating authority. Thus, on the basis of statement of co-accused the applicant cannot be held to be guilty.*
2) *in the case of Shakil Patel Vs. Commissioner of Customs (General) Mumbai -2018 (361) ELT 382 (Tri.-Mum.)*
3) *Dabesh Prashad Nanda Vs. Commissioner of C.Ex.- 2016 (332) ELT 733 (Tri.Del.)*
4) *K. K Jain Vs. Commissioner of Customs, Kandla- 2009 (235) ELT 170 (Tri. Ahmd.) •*
5) *Dhananjay N. Khalwadekar Vs. Commissioner of Customs (Prev.), Mumbai- 2003 (156) ELT 888 (Tri.- Mum.)*
6) *Haricharan Kurmi Vs. State of Bihar- AIR 1964 SC 1184*
7) *Commissioner of C.Ex. Indore Vs. Prag Pentachem Pvt. Ltd.- 2018 (360) ELT 1025 (Tri.- Del.) • Commissioner of C. Ex..& S.T. Raipur Vs. P. D. Industires Pvt. Ltd.-*
8) *2016 (340) ELT 249 (Tri.- Del.) • Habib Uz ZamanVs. Commissioner of Customs, New Delhi*
9) *2021 (376) ELT 666 (Tri. Del.) THAT THIS IS NOT A CASE WHERE PENALTY UNDER SECTION 112 OF CA, 1962 CAN BE IMPOSED : -*
10) *Punam Chand Bhotrav. Collector of Customs - 1993 (63) E.L.T. 237.*
11) *Jai Narain Verma v. Collector of Customs, New Delhi - 1995 (76) E.L.T. 421.*
12) *Jaswinder Singh v. Collector of Customs, New Delhi - 1996 (83) E.L.T. 175.*
13) *Mahabir Prasad v. Commissioner of Cus. (Prev.), I.N.B., Patna - 2000 (126) E.L.T. 803.*

14) Pradeep Shah Vs. Commissioner of Customs, Patna - 2006 (197) E.L.T. 301 (Tri. - Kolkata) • Vikram Singh DahiyaVs. Comm. Of Cus.(Export), New Delhi -

15) 2008 (223)ELT 619 (Tri. Del.) • Surinder Kumar Khanna Vs. Intelligence Officer, DRI-

16) 2018(362) ELT 935 (SC) • Habib Uz Zaman Vs. Commissioner of Customs, New Delhi -

17) 2021(376) ELT 666 (Tri. Del.) • K.K. Jain Vs. Commissioner of Customs, Kandla - 2009(235) ELT 170 (Tri. Ahmd.)

- Departmental Testimonials in Support: -

(i) The letter of DC, Airport to CBI Gandhinagar No. VIII/10-06/AIU/B/CONF./2020-21 dated 13.9.2021. **(Page No. 83 to 85 of appeal Memo)** (Relevant para-2.5 at page no.85 of the appeal memo)

(ii) Letter from Joint Director, DRI to DG (Vigilance) DRI/AZU/GI/CONF-23/2019 dated 23.9.2019 where in last para of the said letter, it is informed that Shri Sujeet Kumar (Appellant) has not came to any adverse notice. **(at page No. 89 of appeal Memo)**

- The Ld. Adjudicating Authority has observed in the impugned order that it is incorrect to contend that no new facts have emerged after 23.09.2019. In this regard, it has been noted that voluntary statements of various co-noticees, namely Shri Sajahan Chowdhury, Shri Mohamad Azam, Shri Raujesh Dhakkad, Shri Akkhil Dhakkad (along with audit evidence), Shri Sankrin Jugdar, Shri Dilip Jugdar, Shri Tejas Sah, Shri Rahul Jain, Shri Syed Rasul, and Shri Hafizur Rehman Khan, as well as certain audio evidence, were recorded, on the basis of which the investigation agency proceeded to implicate Shri Sujeet Kumar in the show cause notice **(as recorded in paragraph (iv) at page 423 of the impugned order dated 08.04.2025)**. However, it is pertinent to submit that none of the aforesaid co-noticees, in their respective voluntary statements, have in any manner referred to or implicated the appellant as a "facilitator" or otherwise connected him with the alleged activities. In these circumstances, the allegations against the appellant are wholly unsustainable and devoid of merit. In the absence of any incriminating statements, corroborative documentary evidence, or other substantive material linking the appellant to the alleged

offence, such serious allegations remain entirely unsubstantiated. Accordingly, the findings recorded in the impugned order, insofar as they pertain to the appellant, are liable to be set aside.

- In support some of the orders were placed on record by way of Annexure A and Annexure B.

7. As regards the rebuttal of the Authorised Representative (AR), the same was presented through a common synopsis for both matters, reiterating the findings of the lower authority.

8. This Court has carefully gone through the extensive arguments advanced by the learned Consultant for this appellant. It finds merit in the contention that the charge has not been proved by the standard of preponderance of probability with regard to the alleged facilitation/connivance of Shri Sujeet Kumar with Shri Somnath Chaudhary or with other accused persons stated to be involved in acts of smuggling. It is observed that Shri Sujeet Kumar and Shri Somnath Chaudhary were officials of equal rank and were on duty simultaneously on a number of occasions when, as per the department, passengers were allegedly crossing the airport with such connivance of either of them helping in clearance. This is also evident from the Annexures submitted by the learned Consultant for the appellant. Contraband recovered during interception does not inspire confidence that connivance was at work. Stitched packets in gold paste with chemical to escape detection by metal detectors, Saffron, Indian Gutkha, Ladies Suit are not the kind of contraband carried by passengers who are in collusion with officers. Such probability is rather low. It is further noted that, despite reliance on CCTV footage, neither the duty of the appellant at the relevant date and time nor his alleged involvement has been established. Further, various statements relied upon by the department suffer from lack of evidentiary value, as the same have not been subjected to examination and cross-examination, which, as per settled legal position and case laws, is essential to render such statements admissible and reliable. Apart from the department's reliance on untested statements, there is no inculpatory statement of Shri Sujeet Kumar on record before the Customs authorities. The vital evidence regarding alleged payments, supported by any credible record, is also missing. It is further unclear whether the alleged acts amounted to mere facilitation (implying lack of knowledge of smuggling) or active connivance. The passport entries merely indicate that Shri Sujeet Kumar was present at the airport on certain occasions, but not surely on the import side. No evidence has also been brought on record to establish that he had the capacity or wherewithal to facilitate the movement of any passenger through the entire system,

including the preventive officers posted on the airport . In the absence of such material evidence, the case of the department remains uncorroborated. The statements relied upon are untested during adjudication and, therefore, cannot establish the case even on the basis of preponderance of probability.

8.1 In view of the foregoing, the case is not sustainable, and the appellant is entitled to relief. The appeal is allowed by setting aside the penalties.

9. Both appeals are allowed.

(Pronounced in the open court on 22.04.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Bharvi