

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70641 of 2025

(Arising out of Order-in-Original No.19/Pr. Commr./Noida-Cus/2020-21 dated 24.12.2020 passed by Pr. Commissioner of Customs, Noida)

M/s Shokeen Jewellers Pvt. Ltd.,Appellant
(126, 2nd Floor, Vaishali, Pitampura,
New Delhi)

VERSUS

Pr. Commissioner of Customs, NoidaRespondent
(CONCOR Complex, Greater Noida,
Distt.-Gautam Buddha Nagar, U.P.-201311)

(I)

Customs Appeal No.70642 of 2025

(Arising out of Order-in-Original No.19/Pr. Commr./Noida-Cus/2020-21 dated 24.12.2020 passed by Pr. Commissioner of Customs, Noida)

Mr. Ajit Singh,Appellant
(S/o Shri Chandra Bhan,
R/o H. No.126, 2nd Floor,
Vaishali, Pitampura, Delhi-110034)

VERSUS

Pr. Commissioner of Customs, NoidaRespondent
(CONCOR Complex, Greater Noida,
Distt.-Gautam Buddha Nagar, U.P.-201311)

(II)

Customs Appeal No.70643 of 2025

(Arising out of Order-in-Original No.19/Pr. Commr./Noida-Cus/2020-21 dated 24.12.2020 passed by Pr. Commissioner of Customs, Noida)

Mr. Nishant Shokeen,Appellant
(S/o Shri Ajit Singh,
R/o H. No.93, Mangolpur Khurd,
Northwest Delhi, Delhi-110083)

VERSUS

Commissioner of Customs, NoidaRespondent
(CONCOR Complex, Greater Noida,
Distt.-Gautam Buddha Nagar, U.P.-201311)

APPEARANCE:

Shri Rahul Raheja, Advocate & Shri Gaurav Prakash, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

(III)**Customs Appeal No.70077 of 2026**

(Arising out of Order-in-Original No.19/Pr. Commr./Noida-Cus/2020-21 dated 24.12.2020 passed by Pr. Commissioner of Customs, Noida)

M/s Raj Jewellers,Appellant
(Through Its Proprietor Shri Ashok Kumar Verma),
(SDF No.D-70B, Noida Special Economic Zone,
Noida, U.P.)

VERSUS

Pr. Commissioner of Customs, NoidaRespondent
(CONCOR Complex, Greater Noida,
Distt.-Gautam Buddha Nagar, U.P.-201311)

APPEARANCE:

Shri A. P. Mathur, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOS.- 70217-70220/2026

DATE OF HEARING : 11.03.2026
DATE OF PRONOUNCEMENT : 06.07.2026

P. K. CHOUDHARY:

These appeals arise from common *ex parte* Order-in-Original dated 24.12.2020 (disposing two Show Cause Notices¹ dated 28/11/2017 and 27/09/2019) passed by the Principal Commissioner of Customs, Noida Customs Commissionerate, CONCOR complex, Greater Noida – 201311, whereby the goods being gold jewellery and gold bullion belonging to the Appellants have been confiscated and further penalties have been imposed upon them. The duty drawback which was allowed to M/s Shokeen Jewellers for export of Gold jewellery amounting to ₹ 61,90,422/- have also been remanded back.

The Appellant(s) are the following persons: –

- i) M/s Raj Jewellers, Prop : Mr. Ashok Kumar Verma, SDF No. D-70B, NSEZ, Noida, against confiscation of (a) 13.324 KG of Gold jewellery pursuant to interception at the Airport, (b) confiscation of 12.769 KG including Bullion seized from the factory premises of M/s Raj Jewellers, at Noida SEZ, (c) demand of Customs Duty ₹

¹ SCN

- 4,53,14,714/- under Section 28 along with interest under Section 28AA of the Customs Act with equal amount of penalty under Section 114A, (d) penalty of ₹ 3 crores under Section 114AA of the Customs Act.
- ii) Mr. Ajit Singh son of late Chandra Bhan, (a) penalty of ₹ 45 lakhs under Section 112 of the Act, (b) penalty of ₹ 45 lakhs under Section 114 of the Act, (c) penalty of ₹ 5 crores under Section 114AA of the Act.
- iii) Mr. Nishant Shokeen, son of Shri Ajit Singh and Director of M/s Shokeen Jewellers Private limited, (a) penalty of Rs.45 lakhs under Section 112, (b) penalty of ₹ 45 lakhs under Section 114.
- iv) M/s Shokeen Jewellers Private limited, Gurudwara Road, Karol Bagh, New Delhi, (a) confiscation of Gold jewellery 2.519 Kgs recovered from the office premises, (b) the demand of drawback of Rs.61,90,422/- under Section 75 of the Customs Act read with Rule 16 of the Drawback Rules, (c) penalty of ₹ 45 lakhs under Section 112, (d) penalty of Rs.1 Crore under Section 114AA of the Act.

2. The brief facts are that Appellant- Shri Nishant Shokeen and one Shri Naresh Kumar Rana are directors of M/s Shokeen Jewellers Private Limited. This company is engaged in the business of manufacturing of gold jewellery and its export. For this purpose, they either purchase gold bullion from MMTC or other authorised dealer(s) after paying applicable duties and taxes or purchase Gold jewellery from other manufacturers/traders. They export jewellery to purchasers mainly in the UAE. The Appellants who have procured gold jewellery after paying duties and taxes are entitled to duty drawback on export under the Customs Act read with the Duty Drawback Rules for the jewellery exported. Mr. Ashok Kumar Verma is the Proprietor of M/s Raj Jewellers (SEZ). This unit is situated in Noida SEZ since December, 2016. Under the LOP (Letter of Permission) they are entitled to import gold bullion, thereafter to manufacture the jewellery and export the same attaining the prescribed value addition. They are also required to achieve Net Foreign Exchange² earning in the prescribed period.

² NFE

The unit started operating/commenced business from January, 2017. Mr. Naresh Kumar Rana was engaged by Mr. Ashok Kumar Verma to work for him as Manager on the recommendation of Mr. Ajit Singh. He is also brother-in-law of Mr. Ajit Singh. Mr. Ajit Singh is a businessman having knowledge of manufacture and export of gold jewellery and he helps his son Shri Nishant Shokeen in his business. He also helps and advises Mr. Ashok Kumar Verma in the business of manufacture and export of gold jewellery in the SEZ Unit namely M/s Raj Jewellers.

2.1 That the DRI received intelligence indicating that M/s Raj Jewellers were diverting their export goods – gold jewellery, manufactured out of gold bullion imported duty-free, thereby, misusing the SEZ scheme. Under the SEZ scheme, manufacturing units are allowed to procure/import raw material, consumables and capital goods without payment of customs/excise duty, which are thereafter to be used in the manufacture of the final product (under Bond) and then are to be exported and thus, earning positive net foreign exchange.

2.2 Intelligence indicated that one such consignment of M/s Raj Jewellers was to be exported to Dubai on 30/05/2017 through IGI Airport. The said export consignment was to be received by the Proprietor Mr. Ashok Kumar Verma from the CWC warehouse situated at the IGI Airport (which was earlier booked vide Shipping Bill No.0008872 dated 28/05/2017 through CWC at Noida SEZ), and thereafter to be hand carried by Mr. Ashok Kumar Verma to UAE. Intelligence further indicated that Mr. Ashok Kumar Verma instead of carrying the export consignment after taking delivery from Customs, would divert/hand over the same to some other domestic passenger(s)- namely Mr. Ajit Singh travelling to Mumbai by Air India flight No. AI – 102, after getting endorsement of export on the export documents from the Customs at IGI Airport.

2.3 Accordingly, the Customs Officers/DRI called two witnesses to the Customs Preventive room situated in the departure hall of the Airport to witness the interception, search and recovery proceedings, if any. Around 17:30 hours one team of DRI officers arrived in the Customs Preventive Room along with one person namely Mr. Ajit Singh carrying one black colour trolley bag. The officers informed Mr. Ajit Singh that they have a specific information with them that a huge quantity of gold

jewellery in the security hold area of departure side of Terminal T3, IGI Airport, have been given to him by another person named Mr. Ashok Kumar Verma, with the *mala fide* intention to divert the gold jewellery into domestic market, which was otherwise meant for export to Dubai. On being asked by the officers from Mr. Ajit Singh, if he was carrying any contraband gold jewellery to which he replied in the negative. Thereafter, the officers conducted personal search and the search of his baggage in presence of the witnesses after following the procedure. In the search they recovered following items -i) Boarding Pass No.206 of Air India from Delhi to Mumbai in the name of Mr. Ajit Singh, ii) Driving License, iii) INR 13,500, iv) One white and gold coloured Iphone having SIM No.9891886678 and v) One black colour Nokia mobile phone No.8826420034.

2.4 On search of the black colour trolley bag – (Delsey brand) resulted in recovery of the following articles -i) 03 white coloured card-board boxes which were taped sealed using silver coloured adhesive tape all containing assorted gold jewellery of different size and shape, packed in 13 transparent polythene packs, ii) personal belongings i.e. clothes etc. On being asked to produce any licit document in respect of the possession of the huge quantity of gold jewellery recovered from his trolley bag, Mr. Ajit Singh could not produce any licit document evidencing possession of the same. In the meantime another team of DRI officers arrived in the Customs Preventive Room along with one person namely Mr. Ashok Kumar Verma, who was carrying a similar Delsey brand black colour trolley bag and one black colour handbag. The said person was carrying Indian passport in his name – Ashok Kumar Verma, son of Mr. Ishwer Singh. The officers enquired from Mr. Ashok Kumar Verma whether he was carrying any Gold jewellery on his person or in his baggage to which he replied in the negative. The officers further confronted by asking him that they have information that he has handed over a huge quantity of gold jewellery to Mr. Ajit Singh which was meant for export to Dubai, with the *mala fide* intention to divert the gold jewellery in the local market, and in view of the same his personal search and search of his handbag and trolley bag was required to be carried out. On examination of the black colour handbag, the personal belongings like clothes etc. were found. Further on search of the black colour Delsey trolley bag,

only personal belongings like clothes, cigarette pack, towel etc., were found, but no gold jewellery was found in any of the 02 bags that were to be hand carried by Mr. Ashok Kumar Verma for export to Dubai. On personal search of Mr. Ashok Kumar Verma, the following articles were recovered -i) Shipping Bill No.0008872 dated 28/05/2017 for export of duty-free goods by M/s Raj Jewellers, NSEZ, Noida with an endorsement receipt dated 30/05/2017 by Mr. Ashok Kumar Verma declaring that he had received one sealed box containing gold jewellery covered under Invoice No. RJ/05/2017-18 dated 28/05/2017 from CWC warehouse, IGI Airport, New Delhi, ii) Export invoice cum packing list dated 28/05/2017 of M/s Shri Chain Co. Private Limited, Karol Bagh, iii) Cash receipt Serial No.75519 dated 30/05/2017 in the name of Mr. Ashok Kumar Verma c/o M/s Raj Jewellers, iv) Bill of lading No.140117005991 (in 02 copies) in respect of M/s Shri Chain Company Private Limited, v) A ticket for Indigo flight bearing PNR 6E21 dated 30/05/2017 (Delhi to Dubai), vi) Boarding pass of Indigo Flight sequence No.149, vii) Indian Passport No.J3159111 in the name of Mr. Ashok Kumar Verma, viii) One SIM card of Dubai, ix) One Black color Samsung smart phone dual SIM having No.9870435150, and some other documents.

2.5 That on being questioned by the officers about the parcel of Gold jewellery received by him -(Mr. Ashok Verma from CWC warehouse situated at IGI Airport), in reply stated that he had handed over his DELSEY brand trolley bag containing the said Gold jewellery to Mr. Ajit Singh by exchanging his DELSEY trolley bag with similar bag being carried by Mr. Ajit Singh, with the intention to divert the Gold jewellery in the domestic market, which was otherwise meant and declared for export to the SEZ and Customs Authorities. Further on being asked- he had received one sealed metal box-package from the CWC warehouse at IGI Airport, but why 03 card-board boxes containing Gold jewellery was found in possession of Mr. Ajit Singh. He replied that the CISF officials had opened the metal box during security check and the 03 boxes which were contained in one metal box were then placed by him in his trolley bag. He also informed that the 03 card-board boxes were originally in a metal box, which was left with CISF at the time of security check. Mr. Ashok Kumar Verma identified the 03 card-

board boxes containing the Gold jewellery which were handed over by him to Mr. Ajit Singh in the smoking room situated next to food Court at mezzanine floor above the duty-free shops. The baggage appeared to have been exchanged in the smoking room.

2.6 The officers thereafter called the Customs Jewellery Appraiser Mr. Vikram Bhasin for examination/appraisal of the jewellery recovered from the possession of Mr. Ajit Singh, they also obtained copy of the documents submitted to the Customs by Mr. Ashok Kumar Verma at the time of receipt of the jewellery parcel. Custom Jewellery Appraiser submitted his appraisal report on the same day stating that the weight of the Gold jewellery is 13324 Grams and valued at ₹ 3,55,62,488/-. The jewellery was placed under seizure under Section 110 of the Customs Act, 1962. The aforementioned documents which were resumed from both the persons as well as the 02 identical black colour trolley bags – DELSEY brand belonging to Mr. Ajit Singh and Mr. Ashok Kumar Verma, were also seized under Section 110 *ibid*.

3. A copy of the passenger manifest in respect of Flight No. 6E-021 dated 30/05/2017 of Indigo Flight and a copy of the passenger manifest in respect of Flight No. AI-102 dated 30.05.2017 were also collected from the airlines. A copy of the packing list of the seized Gold jewellery was also resumed from the Customs Officer on duty. The seized jewellery and the 02 trolley bags were properly sealed by putting them in metal trunk and properly sealed with the DRI seal, in presence of witnesses. From the Panchnama drawn at IGI Airport dated 30/05/2017 and from the perusal of the export documents recovered from the possession of Mr. Ashok Kumar Verma, it appeared to the officers that the export consignment of Gold jewellery was to be hand carried by Mr. Ashok Kumar Verma to Dubai for the fulfillment of export obligation of M/s Raj Jewellers, against the import of duty-free gold. However, Mr. Ashok Kumar Verma along with his accomplice Mr. Ajit Singh adopted a *modus operandi* wherein the Gold jewellery meant for export was diverted after getting export clearance from the SEZ Authority and the Customs Authorities at the IGI Airport. Accordingly, Mr. Ashok Kumar Verma got the export documents (shipping bill) endorsed from the Customs Authorities at the Airport, for hand

carriage, thereby showing the fulfillment of export obligation. Thereafter, instead of carrying the consignment to Dubai, handed over the same to Mr. Ajit Singh (travelling to Mumbai) after the security check, in the departure hall.

3.1 That thereafter a team of officers on the same day for the purpose of inspection, reached the premises of M/s Raj Jewellers, at NSEZ, Noida, where they found Mr. Ravi – Gatekeeper and another person namely Mr. Toofan Chandra Pradhan who was the Caretaker/contractor and Head Karigar of M/s Raj Jewellers. The officers along with Mr. Toofan Chandra Pradhan went around the premises consisting of 02 halls (one big and one small), one small room and one office room. In the big hall of the said premises, 8–10, Karigars were found engaged in manufacturing of Gold jewellery and certain machines relating to manufacturing of Gold jewellery were also found installed in the said Hall. In the office room, the officers found a safe/locker. Mr. Toofan Chandra Pradhan informed that the key of the same is with Mr. Naresh Kumar Rana the Manager of M/s Raj Jewellers. Further during the search certain files/registers containing business information of M/s Raj Jewellers were recovered by the officers. In the meantime, Mr. Naresh Kumar Rana, Manager, reached. On being asked, Mr. Naresh Kumar Rana opened the safe/locker with the key in his possession. On opening of the safe/locker, 03 Gold Bullions, one KG each were found kept therein. The gold bars so found contained marking of the assayer/smelter and serial numbers. On being asked Mr. Naresh Kumar Rana informed the officers that the aforementioned 03 Gold Bullion bars was the balance from the duty-free Gold imported by M/s Raj Jewellers against the Bill of Entry No. BE/0004340/17 dated 24/05/2017 (12 KG Gold). This was imported from M/s Motiwala Jewellers, LLC Dubai.

3.2 Further in the big hall where manufacturing of jewellery was in progress, it was observed that jewellery in finished and semi finished form and gold in other forms (cut pieces) was present. On being asked, Mr. Toofan Chandra Pradhan weighed the aforementioned Gold jewellery and Gold in various assorted form, and informed that the total weight of the same was 9732.20 grams. On enquiry by the officers Mr. Toofan Chandra Pradhan and Mr. Naresh Kumar Rana could not provide satisfactory reply about the remaining 09 kg Gold bullion

imported against bill of entry dated 24.05.2017. The officers recovered and resumed the 03 KG Gold bars and the Gold jewellery and bits of Gold(work in process) weighing 9732.20 grams, totally weighing 12769 grams for further investigation/enquiry. The officers also resumed all the files/registers/documents and sealed them in presence of the witnesses.

3.3 On the same day that is 30/05/2017, another team of officers reached the office premises of M/s Shokeen Jewellers Pvt. Ltd, located at 2127-28/58, 3rd Floor, Naiwala, Gurudwara Road, Karol Bagh, New Delhi-110005. The said building was an SCO or commercial building wherein one Mr. Vikas Sharma director of M/s Bling Fashion Pvt. Ltd. was present. Mr. Vikas Sharma informed that M/s Bling Fashion Private Limited, M/s Saanvi Exports and M/s Shokeen Jewellers were operating from the said premises. Mr. Vikas Sharma also informed that he was the proprietor of M/s Saanvi Exports and one of the directors of M/s Bling Fashion Private Ltd. Further, M/s Bling Fashion Pvt. Ltd. was engaged in online trading/export of artificial jewellery. M/s Saanvi Exports was engaged in export of Gold jewellery. He also informed that the 4th floor of the building was also being used by M/s Shokeen Jewellers Private Limited.

3.4 The officers conducted search of the 3rd and 4th floor of the said premises where they found 02 safes/Almirahs, which were in locked state. The keys of the said Almirahs/safes were with Mr. Nishant Shokeen who was out of station. The officers sealed the said two safes/Almirahs by paper seal. The officers also recovered/resumed files from the premises for further investigation. The officers also resumed two CPUs installed in the said premise, thereafter the officers sealed the premises with the DRI seal. The officers again resumed search on 31.05.2017 in the office premises of M/s Shokeen Jewellers in the presence of Mr. Vikash Sharma and one Mr. Amar Singh – office boy. Mr. Amar Singh had brought the keys of the 02 Almirah/safe thereafter the 02 Almirah/safe were opened. The officers found 02 empty steel boxes, 02 empty luggage trolley bags, two small Almirahs. On opening both the small Almirahs they found yellow coloured metals items – earring, chains, bangles, ring, pendant, necklace etc. On the apprehension that the jewellery so found may be the diverted export goods of M/s Raj Jewellers, the same

was recovered/resumed under Panchnama. The gross weight of the jewellery was 2519.39 grams.

Statement of following persons and Appellants were recorded by the officers: –

- a) Mr. Ajit Singh on 30-31/05/2017(at the time of interception and detention by the officers).
- b) Mr. Ashok Kumar Verma on 30-31/05/2017(at the time of interception and detention by the officers).
- c) Mr. Toofan Chandra Pradhan, the head craftsman-Karigar on 31/05/2017 during the course of inspection/search in the premises of Raj Jewellers-NSEZ. Also on 12/06/2017 at the DRI office.
- d) Mr. Naresh kumar Rana on 30-31/05/2017 during the course of inspection/search in the premises of Raj Jewellers –NSEZ.
- e) Mr. Nishant Shokeen on 19/07/2017 at the DRI office.
- f) Mr. Ajay Dubey, part-time employee of M/s Raj Jewellers on 25/10/2017 DRI office.

4. The allegations in the SCN are that though Mr. Ashok Kumar Verma is the proprietor of M/s Raj Jewellers – NSEZ, but actually the affairs are managed and looked after by Mr. Ajit Singh assisted by Mr. Nishant Shokeen, whereas the day-to-day affairs were being looked after by Mr. Naresh Kumar Rana, the Manager. M/s Raj Jewellers were engaged in importing duty-free Gold on free of cost basis and after manufacturing, jewelleryes were required to be exported back to the sender/dealer at Dubai. But instead of sending back the Gold jewellery, they have indulged in diverging the Gold jewellery after filing of the shipping bill and issue of Let export order. Mr. Ajit Singh in connivance with Mr. Ashok Kumar Verma following the *modus operandi* of exchanging of bags in the international departure lounge of IGI Airport, T3. Mr. Ajit Singh after receiving the bag of jewellery from Mr. Ashok Kumar Verma used to fly to Mumbai and Mr. Ashok Kumar Verma used to fly to Dubai only with the export documents without carrying the Gold jewellery. It is alleged that upon interception, the Gold jewellery meant for export was found in possession of Mr. Ajit Singh whereas the export documents were found/recovered from Mr. Ashok Kumar Verma.

4.1 It is further alleged that such diverted Gold jewellery was rooted by Mr. Ajit Singh and Mr. Nishant Shokeen through M/s Shokeen Jewellers Private Limited, which exported the same to the purchaser at Dubai under claim of duty drawback. For availing duty drawback, M/s Shokeen Jewellers obtained fake invoices of purchase from M/s Shree Ganesh Enterprises, Prop: Mr. Manish Kuchchal, a dealer registered under VAT laws, thereby availing inadmissible duty drawback.

4.2 It is further alleged that the Appellants (Mr. Ajit Singh and Mr. Ashok Kumar Verma) had adopted a *modus operandi* of exchanging bags in the departure lounge of the international terminal after security clearance and having obtained the endorsement of Let Export Order on the shipping document and receiving the consignment from the customs to be hand carried. After recording of the statements(under detention) from Mr. Ashok Kumar Verma and Mr. Ajit Singh, both were arrested and were produced before the Court of learned Chief Metropolitan Magistrate³, Patiala House Court, New Delhi and were remanded to judicial custody. Both Mr. Ashok Kumar Verma, and Mr. Ajit Singh have duly retracted from their statements recorded by the officers, Vide retraction letter addressed to the learned CMM, Patiala House Court dated 09/06/2017, wherein they have *inter alia* stated that the statement was not given by them freely but they were forced to write and sign on the statement as dictated by the officers. That after retraction, Revenue have never cared to rebut, nor any further statement was recorded from them.

4.3 That in reply to the SCNs the Appellants filed interim reply denying the allegations, on 02-05/04/2018. They also prayed for cross-examination vide written request letter stated 26/03/2018 and 31/08/2020, of the persons namely i) Mr. Naresh Kumar Rana the Manager of M/s Raj Jewellers, ii) Mr. Ajit Singh, iii) Mr. Ashok Kumar Verma, iv) Mr. Toofan Chandra Pradhan - the head craftsman. Also for cross-examination of Mr. Sarfaraz and Mr. Vijay Kochar the Panch witnesses of the Panchnama drawn at IGI Airport on 30-31/05/2017. The Appellants had also reserved the right to file their final reply to the SCN after cross-examination. The Appellants had also prayed for passing of a reasoned order if the Adjudicating Authority intended to deny such opportunity of cross examination, so that the Appellants

³ CMM

may pursue the remedy available to them. However, no specific order was passed on the request for allowing cross-examination of the persons whose statements had been relied upon for making allegations in the SCNs. The date of hearing was fixed by the learned Commissioner on 19-2-2019, on which date the learned Commissioner was absent and/ or not available in his office. Written request was filed reiterating the request for cross-examination and to fix another date for hearing.

4.4 The next date of hearing was fixed on 18/08/2020 (Covid-19 period.) before the new incumbent in the office of the learned Commissioner. As the Appellants were suffering with Covid-19 and had been advised bed rest, they sent written request dated 12/08/2020 praying for fixing of another date. However, the Appellants were marked absent. As the Appellants did not receive any communication from the office of learned Commissioner, they had again sent a request letter dated 14/09/2018 praying for cross-examination and opportunity of hearing. Further, when still there was no communication from the office of Commissioner, the Appellants again sent a detailed reply on merits dated 05/09/2020 including prayer for cross-examination. However, without providing any further opportunity, the learned Commissioner chose to pass *ex parte* order dated 24/12/2020 without even considering the interim and final replies to the SCN(s) filed by the Appellants. The Appellants have raised the following grounds in the appeal memo and also by way of oral submissions and written submissions: –

- that on 30/05/2017 at the time of interception by the officers at the Airport both the consignment of Gold jewellery as well as the documents of export were with Mr. Ashok Kumar Verma. The Appellants deny the allegation of recovery of jewellery from Mr. Ajit Singh. It is stated that the contents of the bags of both the persons were opened simultaneously and spread on the table resulting in mix up. The Appellants were compelled to sign on the Panchnama as drawn by the officers.
- Further urges that the Panchnama dated 30–31/05/2017 on the face of it suffers from serious procedural infirmities which renders it wholly unreliable. The Panchnama records that the DRI officers had prior specific information, that Shri Ashok Kumar Verma

would be departing to Dubai from IGI Airport and would be handing over a huge quantity of gold meant for export, to another passenger namely Mr. Ajit Singh who was travelling to Mumbai. On the basis of such alleged intelligence, the punch witnesses were called and requested to remain present as independent witnesses. However quite surprisingly, instead of asking the Panch witness to accompany the officers at the time of interception so as to be witness to the actual sequence of events, they were directed to wait at the Customs Preventive Room situated in the departure hall at the Airport, till the time the passengers/Appellants were intercepted and brought to the Customs Preventive Room. As per the Panchnama itself, at around 17:30 hours the DRI officers arrived at the Preventive Room along with Mr. Ajit Singh who was already in their custody and was carrying one packet, where after the alleged recovery was shown to be effected. Subsequently the officers brought Mr. Ashok Kumar Verma to the same Preventive Room stated to be carrying one identical bag and another bag. This aforementioned sequence clearly establishes that the punch witnesses did not witness the actual interception, movement or alleged exchange of baggage and were only made to witness a staged recovery inside the Preventive room. This completely defeats the very purpose of having independent Panch witness and renders the Panchnama a defective document prepared to suit the Department's version, lacking any evidentiary value or sanctity.

- It is further submitted that the very foundation of the Panchnama, in the alleged exchange of baggage at the Airport, is inherently improbable and contrary to the actual Airport procedures. As brought on record in the appeal Mr. Ajit Singh was travelling on a domestic flight, whereas Mr. Ashok Kumar Verma was travelling on an international flight. After security check, passengers of domestic and international flights are segregated in different zones with no inter-access. Therefore, the allegation that both persons met after security check

and had exchanged bags is factually impossible and renders the entire Panchnama doubtful.

- That merely because both Mr. Ajit Singh and Mr. Ashok Kumar Verma were using bags of the same colour and brand, that does not prove exchange of bags at the Airport as 'DELSEY' is a popular brand and the same is used by many people/travelers.
- That it has been further vaguely alleged by the Department that in the past also there have been exchange of baggage between both these persons on as many as 07 occasions. It is humbly urged that such an allegation is wholly unfounded, unsubstantiated and practically impossible. Given the stringent security protocols at Airport, particularly the complete segregation of domestic and international passengers after security check, repeated exchange of baggage is not feasible in the normal course. The very nature of this allegation renders it inherently improbable and contrary to ground realities. This also clearly indicates that the statement from which such allegation has been derived, was not given voluntarily by the Appellants, but was obtained under threat and coercion and the same is not reliable. Further such statement recorded from both the Appellants were retracted while in judicial custody at the 1st available opportunity in absence of any independent corroborations such as CCTV footage, security breach report or any supporting material, the said allegation deserves to be rejected outright and cannot be relied upon for any adverse inference against the Appellants.
- It is further urged that the statements relied upon by the Department are obtained under threat, coercion and undue pressure during the course of enquiry/investigation, and therefore lacks voluntariness. The contents of such statements being the result of compelled circumstances, cannot be treated as reliable or admissible evidence. It is also urged that there is no independent corroboration whatsoever, to support the allegations made therein. No financial evidence, no documentary evidence and no material particulars have been brought on record to substantiate the allegations.

In absence of any cogent evidence and/or reliable evidence, such serious allegations are only wild allegations based on assumptions and presumptions. The impugned demand and penalties as well as confiscation are fit to be set aside.

- It is further humbly urged that even the statement of the Department's witnesses namely Mr. Toofan Chandra Pradhan, the Head Karigar, suffers from glaring contradictions thereby rendering the statements unreliable. In his statement dated 31/05/2017, he has stated that Mr. Ashok Kumar Verma had given him a contract for manufacturing of gold jewellery. However, in a subsequent statement dated 12/06/2017, he has categorically stated that Mr. Ashok Kumar Verma never gave him any directions relating to his work. Such contradictory statement goes to the root of the matter and clearly demonstrates that the statements are inconsistent and unreliable. When the Department's own witness is not consistent on material aspects, no reliance can be placed on such statements to draw adverse conclusion against the Appellants. This further reinforces the contention of the Appellants that the statements recorded during investigation lack credibility and cannot be made the sole basis for sustaining the impugned order. It is settled law that allegations cannot be solely based upon statements. Reliance is placed on the ruling in *Vikram Cement Private Limited vs. Commissioner of Central Excise*, 2012 SCC OnLine CESTAT 3557 (para 9 to 13).
- Further the retraction is made while in judicial custody and the statement tendered before the CMM have been ignored and put aside by the Adjudicating Authority, which have not been disputed by the Department. The case of the Revenue is primarily founded upon statements recorded under Section 108 of the Customs Act, particularly those of Mr. Ajit Singh and Mr. Ashok Kumar Verma both of whom have retracted their statements at the earliest available opportunity. Once the key statements forming the basis of the allegations are retracted, the burden lies heavily on the Department

to establish its case and allegations through independent and cogent corroborative evidence. The Appellants have placed reliance on the ruling of the Apex Court:-

1. Vinod Solanki vs. Union of India (2008) 16 SCC 537 (para 23).
 2. Commissioner vs. Shakil Ahmad Khan 2019 SCC OnLine All 4068 (para 21, 22, 24-26).
 3. Ndukwe Onuohe vs. Assistant Collector of Customs-AIU, 1997 SCC OnLine Bom 404 (para 18-20).
 4. Ram Prakash vs. collector of Customs, 1999 SCC OnLine CEGAT 1997 (para 7).
- It is further urged that the whole case has been made out by Revenue primarily on the basis of uncorroborated statements, without any independent evidence on record. In such circumstances, the right to cross-examine becomes essential to test the veracity of the statements relied upon by the Department. The Appellants herein had specifically requested for cross-examination not only of the persons whose statements have been relied upon, but also of the panch witnesses to the Panchnama, particularly in view of the serious dispute raised regarding the manner of recovery. However, no such opportunity has been granted. The denial of cross-examination in these circumstances strikes at the very root of the proceedings and renders the reliance on such statements and Panchnama wholly unsustainable.
- The Ld. Commissioner have erred in by relying upon the statements of the Appellants and the Co-noticees, despite the fact that none of the statements can be relied upon in the fact that the tenets of Section 138B of the Act were not observed. It is submitted that it is mandated to follow the provisions of Section 138B of the Act which provides that in any proceeding under the Act, where Revenue also relies upon any statement, then such person should be examined in the adjudication proceedings and thereafter, opportunity to cross-examine should be given to the noticees or accused persons. For making the statement relevant for the purpose of proving the allegations against the

Appellants, the provisions of Section 138B of the Customs Act (which is *pari materia* to Section 9D of the Central Excise Act, 1944) have to be followed. Unless the procedure prescribed in Section 138B of the Act is followed for making the statement relevant, the same cannot be relied upon.

- From the provisions of Section 138B it is relevant and evident that the statement recorded before any Gazetted Customs Officer shall be relevant only in the conditions specified therein i.e. when the person who has 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, and 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 as evidence in the interest of justice. It is submitted that in the facts and circumstances and under the law, Department have only relied on the statements. In support of these contentions, the Appellant relies upon the ruling of the Apex Court in *Andaman Timber Industries vs. CCE* (2016) 15 SCC 785 (para 4 to 9) and other rulings.
- So far the alleged non-declaration at Dubai in the course of exports from India, it is respectfully submitted that the reliance placed by Revenue in paragraph 3.12.2 of the impugned order, reference to the letter dated 02/01/2018 issued by the Controller General of India, Dubai is wholly misplaced and misconceived. The said letter merrily states that Mr. Ashok Kumar Verma have not made any declaration upon arrival at Dubai, however the said commission is patently vague, inconclusive and cannot be treated as a determinative evidence of the alleged diversion. Firstly, the query itself as raised by the DRI is bald and lacks material particulars. There is no reference to any specific consignment, shipping bill, invoice, or corresponding bill of entry at Dubai. In

absence of such correlation, a general statement regarding non-declaration cannot lead to the inevitable conclusion that all consignments were diverted. Secondly, the Department has failed to appreciate the documentary evidence placed on record by the Appellants from the foreign buyers themselves. The overseas entities have categorically confirmed the receipt of jewellery against the gold supplied by them. In particular –

- M/s Motiwala Jewellers LLC vide letter dated 10.12.2025 as well as earlier letters have confirmed that they have duly received the 04 consignments of gold jewellery corresponding to the Gold bars supplied to M/s Raj Jewellers, and that only one consignment – Invoice No.MWJ No.0199 for 12 KG remains pending. M/s Al Salam Jewellery LLC, vide letter dated 03/10/2020 read with their earlier communications dated 14th June, 2017, 5th February, 2018 and 07/05/2020, have also acknowledged the transaction and only indicated pending receipt in respect of one specific consignment relating to gold bar supplied vide invoice No.214515 dated 13/05/2017. These communications from the buyer/suppliers of gold situated at Dubai clearly establish that the export transactions were genuine and the jewellery was, in fact, received by the foreign buyers, save and except limited to the specifically identified consignment. Apart from the above, several other communications from foreign buyers already enclosed in the appeal paper book, further corroborate the fact that the export obligations were duly fulfilled. It is common sense that no person or business entity will keep sending further consignments of gold without receiving gold jewellery in exchange of the earlier consignments. Further, it is a matter of record and admitted fact that the concerned buyers/suppliers of gold situated at Dubai have not made any complaint to the Government of India or the Department of Customs. Thus the generalized reliance on the letter of the consulate at Dubai to allege that every time gold was diverted is factually vague and incorrect and contrary to

documentary evidence and confirmation issued by the foreign counterparties themselves. Further, in view of the said letter dated 02/01/2018, being vague, non-specific and neither supported by any corroborative evidence or material, cannot be relied upon to sustain the allegation of diversion, and is liable to be disregarded.

- So far the allegation of non-receipt of jewellery making charges are concerned it is humbly submitted that the Appellants were regularly receiving consignment of gold from the said parties and further under the Customs Act read with the duty drawback rules, 06 months time is allowed for receipt of consideration from the foreign parties pursuant to export. Admittedly such period of 06 months had not crossed on the date of interception and search on 30-31/05/2017.
- So far the allegation for denial of duty drawback to M/s Shokeen Jewellers Private Limited is concerned, it is humbly submitted that the same is vague and unfounded. In view of the overwhelming evidence led by the Appellants namely evidence of purchase of gold jewellery from the dealers registered under VAT, payments made through banking channel and such evidence annexed to the claim of duty drawback and thereafter only pursuant to verification the Department have allowed the duty drawback. None of the evidences relied upon by the Appellants including the Bank reconciliation/realization statements (BRC) have been found to be fictitious. The seller of the gold jewellery namely M/s Shree Ganesh Enterprises have been found to be duly registered with the VAT Department as well as they had filed returns in which they have declared the transactions with the Appellants – M/s Shokeen Jewellers. Only for the sake of some notice returned by the Post Office on the ground of the address being incomplete, drawing of adverse inference is bad and fit to be set aside. Under such facts and circumstances the duty drawbacks allowed to M/s Shokeen Jewellers have been wrongly disallowed and the amount demanded back. Such a vague demand is fit to be set aside being

in contravention to the provisions of the Customs Act read with the duty drawback rules. Further, it is urged that even from the seizure list with respect to jewellery recovered and seized from the premises of M/s Shokeen Jewellers, it is evident that there is no match apparent on record with the jewellery seized from the premises of M/s Raj Jewellers. Only on vague statements of Mr. Toofan Chandra Pradhan and the jewellery appraiser it has been alleged that the diverted export jewellery of M/s Raj Jeweller have been rerouted for export through M/s Shokeen Jewellers under claim of duty drawback. Such a vague allegation is by way of wild guess and bald allegation, fit to be dismissed.

5. In view of the aforementioned submissions the Appellants prayed for allowing the appeals and setting aside the impugned order with consequential benefits including return of the gold and gold jewellery confiscated.

6. The learned Authorized Representative for Revenue have relied on the findings in the impugned order and the allegations made in the SCN.

7. Having considered the rival submissions of both the parties and upon perusal of the records and the written submissions we find that the whole case of the Revenue have been made on the basis of statements which are not reliable. The key statements of Mr. Ashok Kumar Verma and Mr. Ajit Singh have been retracted by them while in judicial custody at the 1st available opportunity. Such retractions have neither been rebutted by the Revenue, nor such persons were summoned for recording of further statements. Neither they were examined in Adjudication proceedings. Further, there is no corroborative evidence in support of the statement of these persons. So far the allegation made out on the basis of Panchnama/recovery proceedings drawn at the Airport on 30-31/05/2017, we find that the Panchnama is not reliable piece of evidence as Revenue have failed to substantiate the same by examining the panch witnesses in the adjudication proceedings. Such failure to examine the punch witnesses in spite of specific request made by the Appellants, goes to the very root of the matter, as the Panchnama remains unsubstantiated. We also find force in the submission of the Appellants that the said panch witnesses were

not present throughout and were called by the officers only at the fag end after drawing the Panchnama as per their own sweet will.

8. We further find that M/s Raj Jewellers -NSEZ was established in December, 2016 and had commenced their operation only in February, 2017 pursuant to import of the 1st consignment of gold bullion whereas M/s Shokeen Jewellers was established in business for the last few years and have also exported gold jewellery in the year 2016. In view of these glaring facts, the story of Revenue of diversion of export gold jewellery of M/s Raj Jewellers to M/s Shokeen Jewellers is unbelievable and not supported by cogent evidence. We also find that M/s Shokeen Jewellers have received the remittance in due time for the exports made by them under claim of duty drawback. We also take notice that the claim of duty drawback is allowed by the Customs Department only after verification of supporting documents including payment of taxes on the inputs. Further, in the course of investigation, the seller of gold jewellery namely M/s Shree Ganesh Enterprises were found duly registered with the VAT Department and have supported the transaction. The Revenue have also found corroboration of the contention from the VAT returns and banking transactions of the parties. We find that the allegations of Revenue are vague and unsubstantiated. We also find that the Appellants have been denied the proper opportunity of hearing firstly, by not granting the opportunity of cross-examination, not passing of any interim order on their interim application for cross-examination, denying them the legal remedy available to them. Secondly, in spite of repeated request made in writing to the Adjudicating Authority, the opportunity of cross-examination was denied without any reasoned order.

9. We also find that the adjudication proceedings were going on during the disturbed period of Covid-19 pandemic. In spite of specific request made for adjournment, the Adjudicating Authority failed to grant any further opportunity after 18/08/2020, which was practically the 1st date before the new incumbent in the office of the learned Commissioner. Further the Appellants had filed request letter dated 14th September, 2018 reiterating the request for cross-examination. Further the Appellants had filed detailed reply to the SCN on 05/09/2020

which also appears to be not considered by the learned Commissioner while passing the impugned order. The learned Commissioner also failed to state the adequate reason for denial of cross examination and oral hearing to the Appellants. Learned Commissioner have also not followed the directions of the Board given in Master Circular No.1053/2/2017 dated 10.03.2017 with respect to opportunity of cross-examination. Further the Board instruction F. No.390/Misc/3/2019-JC dated 27/04/2020 which mandates the Adjudicating Authorities to allow personal hearing through video conference have also not been followed.

10. We also find that the credibility of the disputed Panchnama drawn at the Airport have not been established which is the foundation of the whole proceedings and the impugned order. We also find that the allegations of Revenue of diversion of gold jewellery by M/s Raj Jewellers is unsubstantiated as no payment to the providers of gold through Hawala etc., has been brought on record.

11. In view of aforementioned findings, we conclude that the impugned order is vague and cryptic and accordingly we set aside the impugned order and allow all the four appeals. The Appellants shall be entitled to consequential benefits including return of the gold and gold jewellery seized from them.

(Order pronounced in open court - **06.07.2026**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS