

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10799 of 2022- DB

(Arising out of OIO-AHM-CUSTM-000-COM-002-22-23 & AHM-CUSTM-000-COM-003-22-23
dated 21/04/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

COMMISSIONER OF CUSTOMS-AHMEDABAD

.....Appellant

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

VERSUS

INTER CONTINENTAL INDIA

.....Respondent

Now Ms Adani Trade Links Shikhar
Nr Adani House Navrangpura
Ahmedabad, Gujarat

WITH

- (i) Customs Appeal No. 10800 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (ii) Customs Appeal No. 10801 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (iii) Customs Appeal No. 10802 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (iv) Customs Appeal No. 10803 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (v) Customs Appeal No. 10804 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (vi) Customs Appeal No. 10805 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (vii) Customs Appeal No. 10806 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (viii) Customs Appeal No. 10807 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (ix) Customs Appeal No. 10808 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (x) Customs Appeal No. 10809 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (xi) Customs Appeal No. 10810 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (xii) Customs Appeal No. 10811 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (xiii) Customs Appeal No. 10812 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (xiv) Customs Appeal No. 10813 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (xv) Customs Appeal No. 10814 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (xvi) Customs Appeal No. 10815 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**
- (xvii) Customs Appeal No. 10816 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)**

- (xviii) Customs Appeal No. 10817 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xix) Customs Appeal No. 10818 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xx) Customs Appeal No. 10819 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxi) Customs Appeal No. 10820 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxii) Customs Appeal No. 10821 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxiii) Customs Appeal No. 10822 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxiv) Customs Appeal No. 10823 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxv) Customs Appeal No. 10824 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxvi) Customs Appeal No. 10825 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxvii) Customs Appeal No. 10826 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxviii) Customs Appeal No. 10827 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)
- (xxix) Customs Appeal No. 10828 of 2022- DB (COMMISSIONER OF CUSTOMS-AHMEDABAD)

APPEARANCE:

Shri Rajesh R Kurup, Superintendent (AR) for the Appellant

Shri J C Patel, Amit Laddha & Shri Paritosh Gupta Advocate for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 11245-11274/2024

DATE OF HEARING: 11.12.2023
DATE OF DECISION: 07.06.2024

RAMESH NAIR

All these Appeals are preferred by the revenue challenging Order-In-Original No. AHM-CUSTM-000-COM-002-22-23 dtd. 21.04.2022 and AHM-CUSTM-000-COM-003-22-23 dtd. 21.04.2022 passed by the Commissioner, Customs, Ahmedabad. Since issues involved in these appeals are common and arise from same investigation, all the appeals are taken up together for disposal.

1. Brief facts of the case are that intelligence was received by the officers of DRI to the effect that M/s Adani Exports Ltd., (Now Adani Enterprises Ltd.) have formed a consortium with various companies and

thereby indulged in mis-declaration of FOB value and circular trading of Cut and Polished Diamonds (CPD) and Gold Jewellery exported by them, with an intent to artificially inflate their export turnover and to fraudulently avail the benefit of Target Plus Scheme. Further investigation into the export of studded Gold Jewellery by M/s Adani Enterprises Ltd. and its group/associated companies, during the year 2004-05 carried out by DRI, also revealed existence of circular trading and over invoicing of their exports of studded Gold Jewellery to avail benefits of Target Plus Scheme.

2. On the misuse of the Scheme being brought to its notice, the DGFT vide Notification No. 27/2004-09 dtd. 23.02.2005 excluded the export of studded Gold Jewellery from the purview of Target Plus Scheme. Further, vide Notification No. 48/2005 dtd. 20.02.2006, the exports of diamonds and other precious, semi precious stones were also removed from the list of export items entitled for Target Plus Scheme. Surprisingly, the export volume declined for all the Companies when the incentive scheme for cut and polished diamonds and studded Gold Jewellery was withdrawn. Further, investigation revealed that studded Jewellery was exported by M/s AEL and its group companies and against these exports Gold was imported either in the name of these exporter or their supporting manufacturers under Advance Licenses. Some quantity of gold was procured locally and used in the studded Jewellery exported by them. Since M/s AEL did not have facility for manufacture of Gold Jewellery, they got it manufactured through different job workers who were shown as supporting manufacturers in the Advance Licenses obtained by them. Investigation also revealed that studded Jewellery exported by M/s AEL and its group companies were re-melted at the refinery of Emirates Gold, UAE and converted into Gold bars and re-exported to the Indian Companies by the overseas suppliers controlled and managed by M/s AEL. It also appeared that the overseas buyers of studded Jewellery and its sellers in India are related to one of them had interest in the business of others involving circular trading and financial manipulation. Investigation also revealed that the Jewellery was manufactured and exported without involving any craftsmanship or without any intrinsic value addition and hence the export value was highly inflated to avail the benefit of Target Plus Scheme. On conclusion, of the investigation, show cause notice dtd. 11.09.2009 and 31.12.2009 was issued by DRI to respondents proposing:-

- (i) Confiscation of Gold under Section 111(o) of the Customs Act, 1962 read with Notification No. 93/04-Cus. dtd. 10.09.2004;
- (ii) Confiscation of export goods under Section 113(i) of the Act;
- (iii) to disallow the goods exported by them towards fulfilment of export obligation against Advance Licenses;
- (iv) to disallow the value addition claimed in assessment of exports made against the advance licenses issued by the JDGFT, Ahmedabad.;
- (v) Demand of Customs Duty foregone on import of goods which have not been used for the manufacture of goods prescribed in the advance License under Section 28(1) of the Act alongwith interest under Section 28AB;
- (vi) to disallow of so called studded Jewellery exported for the purpose of calculation of export performance or for computation of entitlement under Target Plus Scheme;
- (vii) Imposition of penalty under Section 112(a) and 114(iii) of the Act;
- (viii) Enforcement of bond executed by them at the time of import towards recovery of duty liability and interest thereof;
- (ix) Imposition of penalty under Section 112(a) and 114(iii) of the Act.

3. In adjudication, Ld. Adjudicating authority vide impugned orders dropped the proceedings initiated against respondents. Aggrieved by the said orders, revenue preferred these appeals.

4. Shri R.R. Kurup, Ld. Superintendent appearing on behalf the revenue reiterated the grounds of appeals and submits that the Adjudicating authority has failed to notice the fact that from the statements of various supporting manufacturers who had manufactured the studded Gold Jewellery, coupled with the statements of the regular exporters of studded Gold Jewellery, it was amply brought out in the SCN that what was exported was not even Jewellery, to say least, let alone the same being called studded Jewellery. This was born out from the statement of various supporting manufacturers/job workers who manufactured the studded Gold Jewellery for M/s AEL & its consortium companies. The statements as enumerated at para 18 of the Show Cause Notice clearly brings out the

facts that the studded Gold Jewellery manufactured & exported was mostly bangles of about 100gms. each and in some case even chain & pendants of heavy weight. The haste with which over 200 to 300 kgs. of such Jewellery of 995 (24 Carat) purity was manufactured in a day or two & exported, without any concern to design or size or the quality of stone affixed, even though the same were meant for exports, clearly reveals that the same were just manufactured and exported to be scraped overseas.

5. He further submits that the Ld. Commissioner also failed to surmise that as revealed by the authorized persons of M/s Anuka Arts, Shri Narendra Soni, one of the job worker, who had manufactured studded Jewellery for AEL & consortium companies in his statement, had explained in detail, the process of manufacture of studded Gold Jewellery, wherein he stated that they also specialized in manufacturing of plain casting Jewellery. For manufacture of casting Jewellery, a master of the required design was prepared by them or sometimes also given by the party. From this master a rubber mould is prepared which is used as a dye from which wax pieces are prepared. Wax pieces are joined on a stick as a tree. The tree is then amended (fixed) into investment powder (in liquid form) in a flask (cylinder vessel) and vacuumed in casting machine. This is allowed to settle for 1 hour. Thereafter the flask is heated in burnout furnace upto 730 degree. During this process the wax melts out and a cavity is prepared. Thereafter liquid Gold of desired purity is poured in the flask which settles in about 5 to 7 minutes. Thereafter individual pieces of casts are separated from the tree. These casts of the required design are thereafter used for making required Jewellery such as bangles, pendants etc. Also Shri Komal Jain, Director of M/s Vee See Jewellers Pvt. Ltd., New Delhi in his statement on being asked regarding the process of manufacture of studded Gold Jewellery, stated that for the manufacture of studded Jewellery, mountings of Gold of the required purity were made in casting machines. Molten Gold of the required purity is poured into the casting machine and mountings of Gold as per the required design are made. This mounting are then put in the vibrating machines for finishing. Thereafter the stones are fixed into the mounting as per the design. This is how normally studded Jewellery is manufactured.

6. He also argued that as revealed by the Job workers, the studded Jewellery, mostly bangles were just manufactured by rolling raw Gold of 995 purity into strips with some designs embossed in them. The said strips were given a round shape like a bangle and soldered at the end. Thereafter collects of Gold wire were soldered on them and some cheap stones were glued in the collets so as to make them appears to fall within the purview of studded Jewellery. Various Job Workers have also explained as to how studded jewellery is actually made and have also elaborated the process of manufacturing of studded Jewellery by making mountings in which finally precious/semi precious stones are fixed. The studded Jewellery exported by M/s AEL & Others was not made in the regular fashion and only stone were glued into the collets to give it a look alike of studded Jewellery. The job workers have also confirmed that they charged M/s AEL and others only at the rate of 2.50 to Rs. 3.50 per gram as they did not insist on any design or finish. In fact, in the case of studded Jewellery manufactured by M/s Rajesh Exports, Bangalore, and supplied to M/s AEL, M/s Rajesh Exports had charged Rs. 21.70 crores less than the actual price of Gold used in the manufacture, not to talk of the other charges such a job charges and costs of stones. On being asked specifically Shri Rajesh Mehta, Director of Rajesh exports could not give any plausible explanation. Moreover, the Job workers from whom the studded chains were got manufactured by M/s AEL have stated that they had never made studded chains, as stones cannot ne normally fitted in chains. However, on specifically asked by M/s AEL, they had made the studded chains by soldering collets on the chains and fixing stone in them with glue as required by them. They also stated the studded chains were not in demand and only plain chains were manufactured and sold.

7. He further submits that the Adjudicating authority, however, relying on the definition of Jewellery as per Britannica Concise Encyclopedia and without going into the essence of the entire case, simply found that to be categorized as Jewellery, weight or purity is not relevant. He also observed that Jewellery if purchased for investment does not go out of ambit of definition of Jewellery. However the contention of the Adjudicating authority is also not tenable as in UAE and even in other countries Gold bars/coins weighing 1 gram to 1kg are freely available and therefore the import of 24K Gold from India in the form of studded Jewellery by paying

making charges of above 7% on the value of gold plus the value of stones, in such large quantity, is beyond comprehension. Moreover, in India also Jewellery was purchased for investment when it was permissible to keep raw gold by individuals under the then Gold Control Act. Now since the Gold Control Act is repealed there is no bar on keeping raw gold and therefore also people will not prefer to keep Jewellery as investment. It therefore, appears that the main intention of M/s AEL and others in entering into the type of trade was to boost their export performance and thereby gain export incentives under the Target Plus Scheme, in connivance with their overseas buyers. In other words, it appears that the entire exercise was undertaken only to circumvent the Exim Policy provisions.

8. He also submits that control of M/s AEL over UAE based companies for trade of Gold bars and studded Jewellery as aptly brought out at para 8 of the SCN was also lost sight of by the Adjudication authority. The Adjudicating authority failed to appreciate that the UAE based importers of studded Gold Jewellery and the UAE based exporter of Gold bars were all conduits in this case of fraudulent export of studded Gold Jewellery, inasmuch as, they had acted as dummies and had merely lent their name for a price/ consideration. The entire trade of import of Gold Jewellery into UAE and the export of Gold Bars from UAE, including the receipt of funds for the exports of Gold bars in the accounts of the said dummy exports and making payments from the accounts of the dummy importers for their imports studded Jewellery, was all controlled and stage managed by the employees of M/s. Adani Global FZE, Dubai, a subsidiary of M/s. AEL and M/s G.A. International, a company owned and managed by Shri Vinod Shantilal Shah, the elder brother of the Director of M/s AEL. Investigation have also revealed that the Bank accounts of many of the UAE based importers and exporters were opened in the same Banks so as to facilitate easy transfer of funds from one account to the other for to and fro remittance in the name of these companies.

9. He also submits that the mails reported at para 8.8 & 8.11 of the SCN, apart from establishing the fact of control and management of M/s AEL over the Dubai based firms, also shows that the funding of the firms are also under the management and control of M/s AEL only. It is only seen from the sample mail tabulated at para 8.11, as to how the fund received

in one company for their exports of Gold bars/cut & polished diamonds are transferred to other companies for making similar payments for their imports of so-called Gold Jewellery/Cut & Polished diamonds. Also as elaborated at para 15 of the SCN it was observed that both in case of imports, as well as, exports, the rate of gold shown in the export/import invoices was not in consonance with the rate of gold as per the London Bullion Market and was much lower than the actual rate on a particular day when the import or export took place. This was clearly brought out in Annexure -I to the SCN wherein the rate of gold charged was much less than the actual gold as per London Bullion Market.

10. He further submits that at para 65.1 of the OIO, relying of the definition of Circular Trading defined at Online Law Insider, the Adjudicating authority holds that as per the above definition Circular trading would mean 'selling a commodity or security on one end and buying the same commodity or security on the other end through a series of transactions. However, the Adjudicating authority in his Order-In-Original observed that in the instant case the goods exported were studded Jewellery and goods imported were 995 purity Gold bars and therefore, since the goods exported and imported were different the charge of circular trading was fallacious on this ground. It is found that the Adjudicating authority has just discarded the categorical evidence brought forth in the SCN to establish circular trading & inter-relationship/ control of overseas companies by M/s AEL, including circular funding between these companies, by relying on extraneous aspects such as definition of associates companies, and control as per the Companies Act, to show that the Indian and overseas companies were not associate companies or that M/s AEL, had no control over the them, without going into the aspect of circular trading as aptly brought out at para 9 of the SCN.

11. He argued that the Adjudicating authority failed to surmise the fraudulent nature of the fallacious scheme of M/s AEL and its consortium companies, in coterie with the overseas exports of Gold & import of studded Jewellery, by importing Gold & exporting the studded Jewellery in a cyclic manner to reap undue benefits under the Target Plus scheme (TPS). The Adjudicating authority absolutely failed to pay heed to the explicit evidences as elaborated in the SCN and without discussing &

dealing with the same, simply relying on the submission of the respondents & dealing with some extraneous definitions and judgments, erroneously came to a conclusion that the charge levelled in the show cause notice do not survive.

12. He also argued that adjudicating authority has erred in not appreciating that the case of the department is substantiated with elaborate evidence that increase in export of studded jewellery during 2004-05, by AEL and other consortium companies, has been achieved by mis-declaration of FOB value and circular trading with intention to avail the benefit of export incentive schemes (Target Plus). That the other consortium companies were controlled by AEL and even the overseas companies who exported Gold bars & imported studded Jewellery, were inter-related and in fact controlled by AEL through its associates companies. The department is not required to prove the charges with mathematical precision and charges are to be proved on the basis of preponderance of probability. He placed reliance on the decisions of Hon'ble Apex court in the matter of Collector of Customs, Madras and Others Vs. D. Bhoormull reported at 1983(13)ELT 1546(SC).

13. He further argued that the evidences on records clearly show that Gold imported by M/s AEL and its consortium is not used in the export product, viz. studded Gold Jewellery for which they were allowed duty free imports. Therefore duty is required to be recovered from M/s AEL in terms of Notification No. 93/2004-Cus. dtd. 10.09.2004 and the bond executed by them. By the same virtue the imported Gold is also liable to confiscation. The studded Gold Jewellery said to be exported M/s AEL and its consortium is also liable to confiscation under Section 113(i) of the Customs Act, 1962. Further the other Respondents were the key players in his fraudulent scheme designed by M/s AEL. They indulge in circular trading so as to artificially boost export turnover and for availing undue benefit under the Target Plus Scheme. Therefore they are liable for penalty under Section 112 of the Customs Act, 1962.

14. Shri J.C. Patel Learned Counsel with Shri Amit Ladhha & Shri Paritosh Gupta Ld. Advocates appearing on behalf of the respondents submits that the present Show Cause Notice refers to the earlier Show Cause Notice

dated 30-3-2007 which alleged Circular Trading and misdeclaration of value & value addition of CPD and the present Show Cause Notice relies on the same investigations based on which the earlier Show Cause Notice dated 30-3-2007 was issued. The allegations of Circular trading and misdeclaration of value, value addition etc. have been set aside and transactions were held to be genuine by the Hon'ble Tribunal by its decision reported as CC v Samir Vora-2015 (330) ELT 609, duly affirmed by Hon'ble Supreme Court by dismissing the Revenue's Appeal as reported in Commissioner v Adani Enterprise Ltd – 2016 (342) ELT A50 (SC) and further, review Petition filed by Revenue was also dismissed by Hon'ble Supreme Court vide Order dated 30-3-2017. Since, the Show Cause Notice in the present case refers to the said earlier Notice dated 30-3-2007 which has attained finality in the Respondent's favour, the present appeal filed by revenue is also liable to be dismissed.

15. He also submits that the Show Cause Notice does not dispute that goods in fact were exported, but contends that the same were Gold and not Gold Studded Jewellery. The Commissioner has in Paras 67.1 to 67.3 of the Order-in-Original examined the evidence on record and arrived at the finding that the goods exported were in fact gold studded jewellery. The Commissioner has considered the Statements of the Job-workers who undertook the manufacture of the Gold-Studded jewellery on behalf of the Respondent, in which the job-workers have set out the manufacturing process undertaken. The process of manufacture is stated thus: Gold bars were fed into rolling press and drawn into strips. The strips are passed through another press having design mould so that the design gets embossed on it. Thereafter the strips were cut into desired length and given round shape of Bangle and soldered at the end. Thereafter, the Bangles were polished. After polishing round collets made of wire were soldered on the bangles to affix stones. The stones were affixed and final polishing was done. Based on the aforesaid evidence the Commissioner has rightly held that the goods exported cannot be said to be mere Gold Bars. The imported Gold bars were subjected to the aforesaid process of manufacture and conversion into Gold Bangles studded with stones and therefore, the export product was Gold Studded jewellery.

16. He further submits that the Commissioner has rightly held that merely because the jewellery exported was of 995 purity gold, it cannot be said that what was exported was not Jewellery but only gold. The Advance Licenses did not put any restriction of the purity or weight of the gold Jewellery to be exported. The Commissioner has rightly held that there is no basis for contending that Gold Jewellery of very high purity of 995 and weight is not jewellery and that in India as well as abroad, there are people who use such jewellery of high purity and weight, as deposed by one of the jewellers whose statement is recorded by the department and referred to in Para 67.4 of the Order. Further, the Commissioner has rightly held that the goods were allowed to be exported by the proper officers of customs after examination and on being satisfied that the goods were indeed gold studded Jewellery.

17. He also submits that since M/s AEL did not have any facility for manufacture of Studded Gold Jewellery, M/s AEL got the studded gold jewellery manufactured through various supporting manufacturers whose name were endorsed in the Advance Licenses. The gold bars were imported by either M/s AEL or the job workers in their name by utilizing the aforesaid Licenses and the same were cleared duty free under benefit of Notification No. 93/2004-Cus. The supporting manufacturers manufactured Studded Gold Jewellery out of the imported gold bars and supplied the same to M/s AEL who exported the same to various foreign buyers. The suppliers of gold bars and the buyers of studded Gold Jewellery are different and distinct entities. Further there is no allegation that there has been any inter-se trading / transfer of studded Gold Jewellery from one overseas entity to another. Therefore, the allegation of Circular trading is totally frivolous.

18. He also submits that "Circular Trading" means selling a commodity or security at one end and buying the same commodity or security at other end through a series of transaction. In the present case, the Respondent has exported Studded Gold Jewellery whereas the imported good was gold bars. Since, the goods exported are different from the goods alleged to be imported, the basic premise of Circular trading fails.

19. He also submits that the Show Cause Notice relies on the following documents to support the aforesaid allegation of Circular trading:

- (i) Comparative Cost Sheets of Studded Gold Jewellery v. Gold Medallions (RUD 25);
- (ii) Statement showing expenses at Dubai (RUD 27);
- (iii) Fax dated 27th October, 2004 (RUD 28);
- (iv) Email dated 13.07.2005 from /Tejal Desai (RUD 29);
- (v) Flow Chart (RUD 30);
- (vi) Number of emails set out at pages 54 to 81 of the Show Cause Notice and collectively referred to in Annexure - C thereto.

20. None of the aforesaid documents prove the allegation of Circular trading. The reasons are as under:

- (a) The comparative Cost Sheets at RUD 25 is an unsigned document. Who prepared this document, and for what purpose is not known. None of the person whose statement was recorded during investigation under Section 108 of the Customs Act, 1962 were confronted with this Comparative Cost Sheet. Assuming that this Cost Sheet was seized from the Office of the Respondent at the time of search, that by itself does not make the document admissible or reliable; Besides, on the face of it, this document does not make any reference to melting or re-melting of the jewellery. There is no such word melting or re-melting; Barring one page (page 52 of the seized file) all other pages, referred to "Refining Charges", and at 3 pages referred to "Labor Charges". Refining Charges is a distinct part of the manufacturing process of gold bars. So also, labour charges are for manufacture of gold bars. Neither refining nor labour charges can be equated with melting and therefore, no inference can be drawn only on the basis of reference to the word melting charges at one amongst 20 pages referred to collectively as RUD 25; Even if the expression 'melting charges' are taken to be correct, melting is also a process involved in the course of manufacture of gold

bars. He placed reliance on the manufacturing process of gold bars obtained from the following websites:

- (i) www.goldbarsworldwide.com;
- (ii) www.coinandbullionspages.com

(b) It therefore follows that, regardless of the terminology used in the Comparative Cost Sheet, i.e. "Refining Charges" or "Labour Charges" or "Melting Charges", none of these words or expressions convey meaning as alleged in the Show Cause Notice. All these expenses referred to the costs involved in the manufacture of gold bars, which were purchased from M/s. Emirate Refinery, before importing to India;

(c) It is well known that in relation to trade in gold, whether in the primary form or in the form of jewellery, it is normal and usual practice to charge for the value of the gold and the making thereof separately. Making charges are often separately considered. Making charges may be referred to by different names, such as, as Refining Charges in the case of gold bars, or labour or melting charges in the case of gold bars and gold jewellery. No adverse inference can therefore, be drawn by the use of these words in the Comparative Cost Sheet.

(ii) Re: RUD 27

a) This is also an unsigned document. Neither the author, nor the person to whom it is addressed is known. This document was also not shown to any person whose statement was recorded during investigation.

(iii) Re: RUD-28:

a) This is a fax sent from a number which purportedly belonged to Anu Zerox. The fax has been sent on 27th October, 2004. Once again, this document has not been shown to the persons whose statements were recorded during investigation. While this fax is purportedly marked to Shri Gautam Adani, the author thereof is not known. A plain reading of the contents of this fax shows that it

refers to some purportedly transaction to be undertaken in India as it refers to "import/buy from local bank". The "cost" set out therein therefore obviously refers to the costs involved in India for the transaction. Accordingly, melting charges are shown as "Rs.700/- Kilo". The fact that melting charges have been indicated in Indian rupees confirms the document relates to purported transaction in India. Consequently, this document has no relevance to support the allegation that jewellery exported from India was re-melted in Dubai, and the gold bars obtained therefrom, were imported back into India.

(iv) Re: RUD 29:

- a) This is a copy of an email found in the seized file. There is no evidence of it being printed from the Inbox of the recipient or Sent box of the sender thereof. There is no proof of transmission of this email or the receipt thereof. As such, mere copy of what purports to be an email has no evidentiary value. Apart from the aforesaid, the contents of this document shows that it refers to some transaction in Platinum, and gold bars or gold jewellery, which will be undertaken in future. Hence, the subject matter of the document also has no relevance to the present case which relates only to gold bars and gold jewellery, and not Platinum.

(v) Re: Emails:

- a) Bunch of emails has been relied upon to show that AEL managed and controlled all the Indian as well as the overseas entities referred to in the Show Cause Notice. These emails are part of a common investigation which were conducted by DRI in relation to export of Cut and Polished Diamonds (CPD) and gold Jewellery under TPS. A separate Show Cause Notice bearing No.DRI/AZU/INQ-15/2005 dated 30.03.2007 was however, issued in

relation to Cut and polished diamonds which culminated in an Order dated 14.01.2013 passed by the Commissioner of Customs, Airport, Mumbai. On Appeal against this Order, the Hon'ble Mumbai Tribunal in the matter reported as Commissioner of Customs v. Sameer Vora, (2015) 330 ELT 609 set aside the penalty imposed by the Commissioner and held that there was no Circular trading, much less could such an allegation of Circular trading, be sustained on the basis of these emails which were also referred therein. The Revenue has challenged the aforesaid order of Hon'ble Tribunal before Hon'ble Supreme Court. The Hon'ble Supreme Court vide Order dated 27.07.2016 affirmed the said Order passed by the Hon'ble Tribunal and dismissed the Civil Appeal which has been reported in Commissioner of Customs v. Adani Enterprises Ltd. (2016) 342 ELT A50 (SC). The Commissioner of Customs (Airport Special Cargo), Mumbai-II subsequently preferred Review Petition which was also dismissed by the Hon'ble Supreme Court vide Order 30.03.2017. These judgments therefore confirms that there was neither any misdeclaration nor there was any circular trading.

(vi) Re: Flow Chart (RUD 30):

- a) This Flow Chart has been recovered from the desktop of Vipul Desai. When shown, Vipul Desai in his Statement dated 19.02.2007 *inter alia*, stated that the Flow Chart was prepared by Sudhakar Nair, who has since left the company. No statement of Sudhakar Nair was recorded. Further a similar Flow Chart relating to cut and polished diamonds, was also recovered during the common investigation and, this aspect has also been considered and dealt with by the Hon'ble Tribunal in the aforesaid Order.

21. He also submits that the Department has relied upon the copies of so called "Cost Sheet of Jewellery" said to have been recovered from a file titled "Gold Costing" listed at Sr. No. 32 of Annexure- IV to panchanama dated 25.01.2006 drawn at the premises of M/s AEL situated at Shikhar Building, Navrangpura, Ahmedabad. M/s AEL denies that the said documents were ever recovered from any of the premises belonging to M/s AEL. As is evident from a bare perusal of the said documents, they are computer printouts not bearing any signatures and/or evidence to show the same were made by anyone in M/s AEL. In fact, a bare perusal of the said panchanama dated 25.01.2006 would show that there is no document/file named "Gold Costing" recovered by the department at all. The file listed at Sr. No.32 of the said panchanama is titled "Folders Containing - Misc. Papers (First page Adani Exports Ltd.-Precious Metal)" and, therefore, the assertion of the Department in the show cause notice is entirely incorrect, false and motivated. The whole file titled "gold costing", at referred to in the notices, therefore was not recovered from the premises of M/s AEL.

22 He argued that it is relevant to point out herein that despite the fact that these documents are the most important piece of evidence with the Department to allege circular trading, not one individual from M/s AEL was questioned about the same. It is pertinent to mention that these documents were not even shown to any employee of M/s AEL during the entire course of investigation.

23. He also submits that it is alleged that though each export consignment was worth crores of rupees, M/s AEL and its group companies did not insist on L/Cs from the so- called importers or payment against documents and instead the terms of payments were settled at Documents against Acceptance (D.A) for 90 days. The Ld. Commissioner in the impugned order has rightly hold that if the business relationship between the seller and buyer is strong, the mode of payment on D.A. terms can be adopted for payment. Even otherwise, the mere fact that M/s AEL and its group companies have adopted D.A. terms as mode of payment, cannot by itself lead to the interference that AEL have indulged in Circular Trading.

24. He further submits that it is alleged that enquires were made by the officer of customs, Bangalore at the port of destination through the Indian Consulate at Dubai in the case of M/s. Rajesh exports. The Indian Consulate at Dubai had provided information in respect of 5 consignments exported by M/s AEL wherein it was mentioned that the imports at UAE were declared under UAE Customs Tariff Heading No.71121000 and 71131900 which covers "*waste and scrap of gold, excluding sweepings containing other precious metals*" and "*articles of jewellery and parts thereof of gold and platinum*". However the report of the Indian consulate at Dubai pertains to 5 consignments in another case of M/s. Rajesh exports limited for which a separate show cause notice has been issued (which was subsequently dropped) and the inquiry in respect of the consignments which are not covered under the present Show Cause Notice cannot be made applicable to the export consignments under consideration in the present case. It is also to be noted that such inquiry has not been initiated in the present case. Moreover, the evidence in the case of M/s. Rajesh Exports Limited was found unsustainable and the charges levelled under the Show Cause Notice was subsequently dropped and therefore, any reference to the same evidence is totally irrelevant. Further, the inquiry with regard to 5 consignments cannot be extrapolated to the entire quantity of 59,502 KGS of studded gold jewelry exported by M/s AEL. For similar transactions during 2004-05, Commissioner of Custom, Bangalore issued a Show Cause Notice to M/s. Rajesh Exports Ltd. & M/s AEL alleging mis-declaration of description of Gold studded Jewellery and value of the goods and proposed disallowance for fulfillment of the export of Gold studded Jewellery towards export obligation against the Advance Licences. The SCN dated 18.11.2005 proposed to demand Customs duty along with interest and penalty. It is pertinent to note that the Ld. Commissioner of Custom, Bangalore vide Order No.01/2007 dated 31.1.2007 dropped the charges of mis-declaration of value addition & description of the Gold studded Jewellery and dropped proposal for demanding duty, interest and penalty and ordered to finalise the Shipping Bills. The said Order of the Commissioner has been upheld by the Hon'ble CESTAT, Bangalore vide Order dated 10.2.2009 by rejecting the appeal filed by the department which is reported in CC Vs. Adani Exports Ltd. 2009 (243) ELT 115. Further, the Hon'ble Karnataka High Court vide Order dated 30.10.2014 dismissed the appeal preferred by the Revenue against the order of

CESTAT which is reported in Commissioner Vs. Rajesh Exports Ltd. reported in 2015 (318) ELT A 55 (Kar). Though the Department has preferred appeal before Hon'ble Supreme Court, who vide Order dated 18.3.2016 admitted the Civil Appeal, but no stay has been granted till date.

25. He further submits that revenue alleged that there was interrelationship between the overseas seller/buyer with M/s AEL and the other four Indian companies and that the overseas party and the Indian party had interest in each others business is totally incorrect and unsubstantiated. The word "interrelationship" has been judicially interpreted and means "mutuality of interest". The expression "mutuality of interest" is found in Section 14 of the said Act, which contains the expression "interest in the business of each other". In the present case, no mutuality of interest is proved by the mere fact of buying and selling of goods and therefore, the fact that the overseas company sold gold bars to M/s AEL or others bought Gold studded Jewellery in its transactions with AEL and others, does not establish any form or kind of "interrelationship". Similarly, just because some of the overseas companies are stated to have been incorporated in or around September, 2004 does not and cannot, in law, lead to any conclusion about inter-relationship between those overseas companies and AEL and/or others. Further, there is no common shareholding or directors or any other factors which shall establish control of any form or degree by M/s AEL over the overseas companies except Adani Global FZE, UAE and Adani Global Pte Ltd.

26. As regards the various emails received from Mary Joseph giving the details of movement of funds he submits that Mary Joseph being in Singapore was coordinating between the various overseas companies and M/s AEL and/or the said Company and following up with the overseas companies for the payments and was attending to procedural formalities, including banking. Thus, the mere fact that Mary Joseph by various emails was following up the payments and intimating the position about the movement of funds does not and cannot mean that she or M/s AEL through her was controlling the various overseas companies. Keeping track and informing of the position of the payments from time to time can by no stretch of imagination mean that Mary Joseph was controlling the various

overseas companies. It is also to be noted that the statement of Mary Joseph was not recorded and it is left to imagination as to why she was writing such emails and on whose instructions. In view of the aforesaid facts and circumstances, the allegation of Circular trading has no foundation and is wholly misconceived and baseless.

27. He further submits that None of the tests or conditions as provided under Section 14 applicable as per settled law has been found to exist in the present case. Accordingly, no case whatsoever has, therefore, been made out to justify the rejection of the declared value of the said goods exported by M/s AEL. None of the principles of valuation, as settled, are based on the origin of the goods or whether any value addition was undertaken in India or not, or whether the goods are exported in the same or substantially the same form or whether there has been value addition or not. The basis of Section 14, plainly speaking, is the price of the goods in the international trade. If such a price has been realized, and none of the factors provided under law/rule on the basis of which the declared value can be rejected, are found to exist, the rejection of the declared value cannot be justified on any other basis, which would, per se be outside and/or beyond the provisions of Section 14 of the said Act. Accordingly, for the purposes of Section 14, the limited issue to be addressed is whether the value declared is based on the correct price as prevalent in the international trade. If the answer is in the affirmative, and such price has been actually realised by the exporter, no other consideration arises. All other factors are then extraneous. As such, without going into the issue whether or not there was value addition on account of the processes carried out, inasmuch as there is no allegation in the show cause notice that the value declared in the Shipping Bill is not the price of such or like goods, when sold or offered for sale, at the time and place of exportation in the course of international trade, where the buyer and seller are not related to each other, and the price is the sole consideration, the proceedings under the Notice are not maintainable in law. There is no denial that physical exports have actually taken place. In fact, the proper office of the Customs at the time of export has verified the goods in terms of value, description etc and allowed for the export upon assessment of shipping bills. It, therefore, follows that when Section 14 is based on the concept of deemed value, and so long as the value declared by M/s AEL in the

Shipping Bills is correct based on the same concept of deemed value, the Notice which does not allege anything to the contrary, is ex-facie unsustainable in the eyes of law. Respondent have received full remittance for the exports made by them. Inasmuch as the value is true and correct under Section 14 of the said Act, the same cannot be rejected and re-determined as proposed in the disputed notices. Further, the Show Cause Notice fails to bring on record any evidence to show illegal flow back of money to the overseas importers. Thus, when the remittance has been received in full and there is no evidence of flowback of money to the overseas importers, the export value declared by AEL has to be accepted as true and correct.

28. He also argued that there is no allegation at all in the Show Cause Notice that the price declared by AEL in the Shipping Bills is not the value and/or the deemed value of the said goods under Section 14 of the said Act. The Notice proceeds on an erroneous assumption that there was circular trading of gold without any manufacturing process having been carried out on the same and without any value addition and, therefore, the value of the said goods exported must be re-determined on the basis of the CIF value of gold when imported into India. This approach is fallacious as it overlooks the vital distinction between value addition and valuation. After carrying out the processes on the imported gold bars - the export consignments were presented to the Jewellery appraiser for examination, assessment and valuation of the goods. It is only after such examination and valuation that the goods were allowed to be exported. In fact, in respect of each of the exports made by M/s AEL, the Exchange Control Declaration (G.R.) Form No. A was submitted which bears the export value verification of the customs appraiser. Each such verification made and endorsed on the said declaration by the customs appraiser establishes that the export value declared in the shipping bills had been verified and found to be correct by the customs appraiser.

29. He also submits that the Show Cause Notice proceeded on the footing that the activity carried out to convert the gold into Gold studded Jewellery cannot result in value addition to the extent of 7% and on this wrongful assumption, it is alleged that the value of the Gold studded Jewellery

exported has been artificially inflated. It is alleged that entire value addition is reflected in the making charges paid to the job-workers. While on the one hand the making charges paid to the job-workers was in the range of approx. Rs. 2.50 to Rs. 3.50 (0.40 to 0.60%) the making charges shown in the export invoices were Rs. 42 to Rs. 48 (i.e. 7% or above). The notices allege that this shows that the value addition of over 7% shown is merely on paper and it is also further established that the value declared by M/s AEL does not represent the true and correct value of the so called studded jewellery. The said allegation is unsubstantiated and is based merely on assumptions and, therefore, untrue. These allegations cannot be sustained against AEL. There is no evidence to establish that AEL and other companies and the overseas importers of studded gold jewellery have interest in the business of each other and that the price is not the sole consideration for the sale. Thus, in such circumstances the price would be either the price at which the said goods are offered for sale or the price of like goods in the course of international trade. In the present case, the Show Cause Notice has not placed on record the price of like goods offered for sale in the course of international trade. Therefore, the only option available for considering the price of the goods at hand in terms of the statutory provisions is the price at which the said goods have been offered for sale that is the invoice value.

30. He further submits that it is alleged that the entire activity of import and export of Gold studded Jewellery of all the three entities i.e. HEPL, ACPL & MOL were all managed and controlled by AEL is of no significance or relevance to the determination of the export value of the Gold studded Jewellery. The mere fact that the exports of the said firms/companies were looked after by M/s AEL cannot by itself warrant the inference that the export value of the Gold studded Jewellery was inflated. Rendering assistance in the business does not mean that all these firms / companies ceased to be in existence. All the entities are and continue to be independent companies having their own business, in addition to the business of Gold studded Jewellery undertaken with assistance from AEL. It is denied that AEL controlled and/or managed the entities. These entities are not dummies or bogus. The undisputed fact is that the gold bars imported by each of the said firms/companies had been subjected to the processes of manufacture resulted in value addition of the exported Gold

studded Jewellery. In each of the cases of export by the said firms the export consignments have been appraised and valued by expert appraiser of customs and such appraiser found the declared value to be correct and at no time the declared export value had been disputed by the appraiser. When that is the case, it does not matter that the imports and exports of the said firms had been arranged by AEL. Further, M/s AEL had obtained 88 Advance licenses, from the Joint DGFT, Ahmedabad. The said 88 Advance Licences were issued allowing import of Gold Bars of .995 purity. The said licence required M/s AEL to complete its export obligation by exporting Studded Gold Jewellery (SGJ) of .995 purity made out of imported gold. It is a matter of record that the entire quantity of imported Gold Bars were utilized in the manufacture of SGJ. This entire quantity of SGJ was manufactured through various job workers / supporting manufacturers whose names were mentioned in respective licences. The entire quantity of SGJ manufactured was exported by AEL. There is no allegation that the imported Gold Bars were mis-utilised and/or retained by AEL and/or the job workers / supporting manufacturers and/or diverted in the local market. As the entire quantity of imported Gold Bars stands utilized in the manufacture of SGJ and further as the SGJ itself stands exported, AEL have fulfilled the conditions of the Notification No. 93/2004-Cus dated 10.09.2004 as well as Advance Licence. This is more so since the import and export has been carried out as specified in the said Advance Licences and no objection thereto has been raised in SCN.

31. Without prejudice to the aforesaid and in any event, he also submits that the Gold Bars were imported under the said Advance licence subject to fulfillment of the export obligation. Section 143A of the Customs Act provides for duty deferment where any material is imported under an Advance License granted under the Foreign Trade (Development and Regulation) Act, 1992 subject to an obligation to export the goods as are specified in the License. Under Section 143A, the permission for clearance without payment of duty is subject to the conditions that the duty payable on the material imported shall be adjusted against the drawback of duty payable under the said Act on the export of goods specified in the Advance license and where the duty is not so adjusted either for the reason the goods are not exported the importer shall be liable to pay the amount of

duty not so adjusted. As aforesaid M/s AEL manufactured SGJ and exported the same against the said Licenses. The said Licenses themselves were issued with export obligation of SGJ of .995 purity. It is also a matter of record, as also admitted in paragraph 10 of the SCN, that AEL manufactured SGJ out of gold bars of .995 purity. The department has thereafter assumed that AEL carried out the activity to enhance turnover. Under the said assumption the Department has further proceeded on a premise that the manufacturing activity was stage managed. The allegations were based on conjectures and without any basis. On the other hand there is enough evidence available to support AELs stand on manufacture, including the assertion in paragraph 10 of the SCN itself. That being the case AEL has completed its obligation cast under the said Advance Licenses. While carrying out the exports AEL filed shipping bills wherein they made all declarations which are true and correct. The declarations in respect of material particulars in the Shipping Bills i.e. the description, quantity, quality etc. are absolutely in order. There is no doubt that AEL exported SGJ of .995 purity, the value declared in the Shipping Bills is the transaction value of the same under the provisions of Section 14 of the Customs Act read with the Rules.

32. He further submits that once the Shipping Bill is filed, the same is scrutinized by the Customs to verify whether the same are corresponding to description made therein. If the Shipping Bill is filed in Electronic Data Interchange System, the System directs the nature of examination as well as the specific number of package to be examined. At the time of examination, an expert duly nominated by the Customs Department was also called to check and verify the purity of gold jewellery being exported. All the Documents i.e. Shipping Bill, Invoice, Packing List are also examined by the Departmental officers along with physical examination of the exported product and upon being satisfy himself with the description of the goods in shipping bill allowed for the export under section 51 of Customs Act. The said order is a statutory order and has not been reviewed and/or challenged by the department, therefore the export made by Respondent was within the four-corner of law.

33. He also submits that a certificate from a Jewellers Association recognized by the Department itself, had been furnished at the time of

exports. No representative samples to dispute the same at the time of export had been drawn. The gold (SGJ) which has been exported had gone through a proper process of export in terms of documentation in which shipping bills, invoice, packing list etc. were filed with the Customs Authority and were assessed by the proper officer. Further, the entire lot of export consignment was examined, in terms of description and the goods exported against the Advance Licences. He placed reliance of the decision of the Hon'ble Supreme Court in *UOI v. Garware Nylon Ltd.* - 1996 (87) [E.L.T.](#) 12 (S.C.) = 1996 (10) SCC 413.

34. Without prejudice to the above, he further submits that all exports have taken place prior to DGFT Policy Circular No. 18/2004-09 dated 11.02.2005 came into existence. Therefore, the provisions of the said policy circular cannot be made effective to the exports taken place prior to the issuance of said circular. The circular has prospective effect. He placed reliance on the judgment of Hon'ble Supreme Court in case of *Paper Products Ltd. Vs. Commissioner of Central Excise* reported at 1999 (112) ELT 765 (SC).

35. He also submits that jewellery is defined in the Thesaurus as 'an adornment (as a bracelet or ring or necklace) made of precious metal and set with gems (or imitation gems)'. Thus, to be categorized as jewellery', the weight or purity of the bracelet/bangles exported is not relevant. The weight/purity and nature/fineness etc. of a particular jewellery item or jewellery in general, depends on the taste, culture, customs and other consideration. Different Regions, Continents and Countries have different concepts and practices as to what constitute jewellery'. It is well known that tribal jewellery in India and Africa is considerably heavier in weight than jewellery worn in urban areas (and amongst non-tribal populace). Similarly, while in the western world, the emphasis is more on fineness/art/craft involved in making of a jewellery item and not so much on purity of gold content, in India and other countries including many Arabian countries (including UAE) etc. people prefer jewellery with higher purity/fineness. It is also to be accepted that jewellery gifted/bestowed at time of marriage and other ceremonies, not only in India but as per

customs in almost all countries is considerably heavier in weight and of much higher purity/fineness, than jewellery ordinary worn by ladies (often in form of bangles) daily.

36. He further submits that the Circular No. 18/2004-09 dated 11.02.2005 issued by DGFT runs contrary to the said Policy and the Handbook of Procedures inasmuch as it ignores part of para 4.56.1(a) thereof. In para 4.56.1 (a) of the said Policy uses the word "studded" and the same is not used in para 4.56.1(b). It is on this basis it is contended in the notices that all studded jewellery falls within para 4.56.1(a), and that only plain jewellery is covered under para 4.56.1 (b). This interpretation is contrary to the description given in para 4.56.1(a). In para 4.56.1 (a) of the Policy it is clearly stated that the items of export in respect of which 15% value addition is required are studded/gold/platinum/silver jewellery - and articles thereof, other than those covered by para 4.56.1 (b). Therefore, it is clear that the jewellery which falls under para 4.56.1 (a) are those which do not fall under para 4.56.1 (b). Para 4.56.1 (b) on the other hand covers plain gold/platinum/silver jewellery/ articles as well as ornaments like mangalasutra containing gold and black beads/imitation stones, precious stones and semi precious stones, cubic zirconia etc. but excluding those containing diamonds, precious and semi-precious stones. However, if the per gram value of the precious stones, semi-precious stones utilized in the making of jewellery/articles is less than the per gram value of gold/silver/platinum, the value addition of only 7% prescribed for plain jewellery shall be achieved. It is, therefore, apparent that if gold/platinum/silver jewellery is studded with diamonds it exclusively falls under clause (a) and not under (b) under any circumstances.

37. He further submits that total 88 advance licenses were issued to AEL, out of which 14 licenses have already been surrendered by AEL and the remaining were redeemed by DGFT. Once the export obligations under the license are fulfilled then the question of challenging the value addition does not arise. Thus, when the competent authority i.e. DGFT insofar as the issue of achievement of value addition in terms of the advance license is concerned, has redeemed the advanced licenses than the customs authority has no jurisdiction to deny the benefit accrued to AEL.

38. He also argued that the Licensing Authority, viz. Joint DGFT, Ahmedabad vide Order dated 27.12.2013 accepted the fact that there was no Circular trading, and that all the exports were to be accepted towards the discharge of the obligation under the Advance Licenses, and accordingly, redeemed all the Advance Licenses. Therefore the demand for duty is unsustainable and untenable in law. He placed reliance on the following decisions:

- Titan Medical Systems Pvt. Ltd. v CC, 2003 (151) ELT 254 (SC);
- Zuari Industries Ltd. vs. Commissioner of C. Ex. & Customs, 2007 (210) E.L.T. 648 (S.C.);
- Vadilal Chemicals Ltd. vs. State of Andhra Pradesh, 2005 (192) E.L.T. 33 (S.C.)

39. Without prejudice to the aforesaid, he also submits that in any view of the matter, assuming whilst denying and for the sake of arguments, if the allegations that what AEL imported was admittedly Gold and what AEL exported was also allegedly Gold and not Gold Jewellery, AEL would be entitled to drawback under Section 74 of the Customs Act. In the event, duty is held to be payable on the Gold. All terms and conditions of Section 74 have been satisfied and in such event, AEL would be entitled to 98% drawback of the duty paid / payable. He rely upon the judgment of the Hon'ble Bombay High Court in Cipla Limited versus Union of India reported in 1995 (80) E.L.T.17 (Bom.).

40. We have carefully considered the submissions made at length by both the sides and perused the records of the case. We find that the case of the revenue in the present matter is that M/s AEL alongwith other respondents had indulged in mis-use of the Target Plus Scheme. The main allegation is against the M/s AEL is that they entered into conspiracy with certain entities/persons and colluded with them to cause of dubious import of gold and exports of so called studded Jewellery, to take undue benefits of the Target Plus Scheme. We also find that the identical allegations were raised by the department in Show Cause Notice F. No. DRI/AZU/INQ-15/2005 dated 30.3.2007 issued by Additional Director General, Directorate of Revenue Intelligence, Ahmedabad. However, the allegations were set aside

and transactions were held to be genuine by the Hon'ble Tribunal by its decision reported as CC v Samir Vora-2015 (330) ELT 609, duly affirmed by Hon'ble Supreme Court by dismissing the Revenue's Appeal as reported in Commissioner v Adani Enterprise Ltd - 2016 (342) ELT A50 (SC) and further, review Petition filed by Revenue was also dismissed by Hon'ble Supreme Court vide Order dated 30-3-2017. We find that By way of the said order, it was held by the Tribunal to the effect that there was no inter relationship between the Respondents and Indian/overseas entities as well as no circular trading had taken place. The details finding recorded in this matter by tribunal are reproduced as below: -

"17. We have considered the lengthy arguments made by both sides and gone through the detailed written submissions filed by them. We have also perused the record and find that essentially the issues raised are questions of fact which we need to decide based on voluminous documents which each side has taken us through. We therefore first frame the issues for our decision. The issues framed are as under :

(I) Whether FOB value declared in the shipping bills for export of cut and polished diamonds by appellant companies is liable to be rejected on the ground that no processing activity to achieve value addition of 5% or 10%, was undertaken by the Indian companies in the bonded warehouses?

(II) Whether the Indian companies artificially inflated the export turnover to take benefit under the Target Plus Scheme (TPS) by resorting to circular trading/movement of the same set of diamonds between Indian companies and overseas entities which are allegedly inter related?

(III) What is the effect of the Commissions paid by the Indian entities for exports and the arrangement of buyers credit by the Indian entities on either the FOB value declared in the shipping bills or on the charge of circular trading referred to above?

(IV) Whether the export goods can be held liable for confiscation under Section 113(i) of the Act and consequently

whether the amounts of penalties imposed by the Commissioner are justified or are the same to be increased?

18. *We shall now deal with each of the above issues -*

Issue No. I

A. There are two parts to this issue. We have to see whether, firstly, any processing activity at all was carried out by the Indian companies in the bonded warehouse, and if so, to what extent and secondly, the relationship between such processing activity and the value addition, on one hand, and the relationship between the FOB value and the value addition, on the other hand.

B. The Commissioner finds that no processing was carried out by any of the six Indian companies to achieve value addition of 5% or 10%. He finds, the fact that no processing was undertaken is evident from the fact that invariably all exports took place within 3-4 days of their imports and sometimes, on the 2nd or 3rd day itself. The fact that some processing activity was carried out in the bonded warehouse cannot be denied as even Lumesh Sanghavi, whose statements have been heavily relied upon by the department, has also admitted to the processing activity being conducted in the bonded warehouse. It would be useful to reproduce the portions from the statements of Lumesh Sanghavi. In his statement dated 7-2-2006, Lumesh Sanghavi has stated as under :

"(vi) The assorter first checks the correctness of the lot wise weight declared in each of the import packets. Then he will start the process of actual assortment. Assortment would therefore include sieving, boiling and segregation.

The process of sieving on a sieve, which is a round apparatus which consists of perforated metal sheet of various sizes. The process of sieving for an average lot would normally take around 30 minutes. However, according to my experience, in the bonded warehouse activity, only about 25%

consignments were put for sieving. The rest of the consignments did not go through this process at all.

The process of boiling involves boiling of the diamonds in a small glass like see through beaker (machine) which operates on electricity. The diamonds are normally boiled for about 20 minutes to remove dust/impurities. Again according to my experience of bonded warehouse, only 50% consignments were subjected to boiling.

After the process of sieving and boiling, if at all done, the next process was assortment, i.e., segregating the diamonds on purity basis.

(vii) Lot wise assorting of received consignments of CPD in the respective bonded warehouses of the aforesaid companies/firms by way of boiling for cleaning, sieving for separating diamonds size wise, size wise weighment of diamonds using weighing machine, further assortment with regard to quality required."

(viii) Repacking of the assorted CPD for exports by the office staff."

C. In the same statement, Lumesh Sanghavi has further stated as under :

"Qn.5 : Please state whether 3 activities, i.e., sieving, boiling and quality assessment were done in respect of all the lots? Also, explain each process in detail?

Ans.5 : No, in all cases all the above said 3 steps are not followed, as in some cases boiling may not be warranted and in some cases quality assessment may not be essential. The process of boiling of CPD is basically required to clean the diamonds. It is not done in all cases. For carrying out the process of sieving, the diamonds have to be placed on different sizes of metal sheets having perforations/holes and when the diamonds are placed on said metal sheets they pass through the holes and diamonds of one particular size gets eliminated

from the lot. Thus, diamonds of different size are assorted by the process of sieving. Sometimes, the quality is assessed for ascertaining the impurity and thereby value of the CPD. This process is also not carried out 100%."

D. In his statement dated 28-2-2006, Lumesh Sanghavi once again deposed as under :

"On receipt of the imported consignment in the bonded warehouse, the process of assortment which included sieving, boiling and segregation would be undertaken for each lot (packet) separately, as detailed in reply to question No. 3 of my statement dated 7-2-2006. As stated in my statement dated 7-2-2006, all the above processes of sieving, boiling and segregation would not be undertaken on all the consignments. Sometimes, only sieving and boiling would be undertaken and no segregation would be done. Similarly, some consignment would not be subjected to boiling. Thereafter, the diamonds would be packed in different lots for export and lot Nos. and weight in carats would be marked on each packet as was done in import consignments. The entire process of assortment would take 3 to 4 hours and the imported diamonds would be exported within 3 to 4 days of their imports. Sometimes the exports would also takes place on the second or third day of imports. On being asked, I state that the imported diamonds and the exported diamonds were in the same form i.e. cut and polished diamonds were imported and cut and polished diamonds were exported without carrying out any process except sieving, boiling and segregation."

E. On this issue of whether processing at all was carried out or not, Kamaraj Bodal, who reported to Lumesh Sanghavi in his statement dated 30-1-2006 stated as under :

"Qn. 7 : Who used to physically receive the diamonds and what activities were carried out in the office of M/s. Adani Exports Ltd. after receiving the diamonds?"

Ans. 7 : I used to physically receive the diamonds brought by our Security Agency and I used make an entry of the same in bond register. Shri Lumesh Sanghavi used to bring assorters along with him and they used to assort the diamonds by sieving and boiling. They used to segregate the diamonds as per quality and they used to pack the same for exports. I have never participated in said assorting of diamonds. As per the instructions of Shri Lumesh Sanghavi, I used to prepare export invoices by typing the same on the computer installed in our office and I used to fax the same to our CHA and the Security Agency who used to transport the same from our office to Custom Office."

F. To the same effect is also the statement of Kaushal Pandya recorded on 6-2-2006 and the relevant portion reads as under :

"The imported diamonds were packed in transparent plastic bags inside the wrapper of plain white paper. On receipts of the parcel of diamonds we put it into the safe meant for the custody of diamonds in the office of Aditya Corpex Pvt. Ltd. Thereafter, on the same day, Mr. Lumesh Sanghavi came to the office of Aditya Corpex Pvt. Ltd., he checked the parcel and packets contained in it. Thereafter, as per the requirement, Mr. Lumesh used to take out the packets of certain lots from the parcel of imported diamonds for sorting into various size, by the assorters, in the office of Aditya Corpex Pvt. Ltd. Sometimes, when Lumesh Sanghavi could not come to the office Aditya Corpex Pvt. Ltd., he used to tell me on phone to take out packets of certain lots from the parcels (Aluminum Box) of imported diamonds and give them for sorting. On being asked I state that assorters used to separate the size of the different lot of imported diamonds with the help sieve of different size, as per instruction of Lumesh Sanghavi and this activity was supervised by myself. Upon sorting the imported diamonds into different sizes, two to four lots of different size group were made from the one lot and these lots were packed separately in plastic bags which were weighed in our presence, I tallied the total weight of the imported diamonds after

separating into different sizes, with the total weight of diamonds imported lot wise. Thereafter, myself and mostly Rahul kept the diamonds in transparent plastic bags and wrapped these diamonds in a plain white paper and put lot No. and carats with pencil as per the details shown for these diamonds in the export invoice."

G. It is contended that Lumesh Sanghavi retracted his statements but the DRI denies having received the affidavits of retraction which are claimed to have been sent by Lumesh Sanghavi vide 'UCP'. No acknowledgement of receipt of affidavit of retraction have been produced before us to uphold such a contention. Be that as it may, it is not as if retracted statements cannot be looked into at all in law. The Hon'ble Supreme Court in Vinod Solanki v. Union of India, Laws (SC)-2008-12-139 = [2009 \(233\) E.L.T. 157](#) (S.C.) = [2009 \(13\) S.T.R. 337](#) (S.C.), has administered a word of caution in evaluating retracted statements. We have therefore closely examined not only the statements of Lumesh Sanghavi but two others who were also involved in the activities of import and export of diamonds from bonded warehouse. After careful consideration we find that there is no manner of doubt that processes such as sieving, boiling and sorting were carried out by the Indian companies in the bonded warehouse. It is therefore not possible to hold no process at all was carried out by the Indian companies in the bonded warehouse.

18.1 *This takes us to the next question as to whether processes of boiling, sieving and sorting carried out in the bonded warehouse resulted in value addition of 5% or more in the years 2004-05 and 2005-06. These percentages of value addition flow from provisions of Para 4A.18 of FTP which was amended in 2005-06 to increase the value addition from 5% to 10%. Para 4A.18 as it stood in 2004-05 reads as under :*

"4A.18 Private/Public Bonded Warehouses may be set up in SEZ/DTA for import and re-export of cut and Polished diamonds, cut & polished coloured gemstones, uncut & unset

precious & semi-precious stones, Import & re-export of cut & polished diamonds & cut & polished coloured gemstones will be subject to achievement of minimum value addition of 5%”

18.2 *Save and except increase in the percentage of value addition there is no other charge in para 4A.18 in 2005-06. A plain reading of para 4A.18 shows that it does not contain any condition, that the value addition must be as a result of any kind of manufacturing or specific processing activity in the bonded warehouse. In fact, it refers to import of cut and polished diamonds and to the export also of cut and polished diamonds. It is implied that para 4A.18 does not necessarily envisage any kind of manufacturing or processing activity to achieve value addition, because it does not refer to any new article at the time of export, different from the goods at the time of import. The sole objective is to earn foreign exchange by value addition, and subject to achieving this object, import and re-export out of bonded warehouse of the same item, namely; cut and polished diamonds is permitted. The Id. Senior Advocates submitted that there is no bar in achieving value addition to satisfy the condition of 4A.18 simply as a result of trading, i.e. buying and selling cut and polished diamonds from the bonded warehouse. While this may appear to be the intention because para 4A.18 does not prescribe any conditions as to how to achieve the value addition, we need not test the scope of para 4A.18 by this argument alone, having accepted the first contention that processes of sieving, boiling and sorting were carried out.*

18.3 *Having regard to the plain language of para 4A.18 we are not persuaded to agree with the Commissioner that the simple processes carried out by the Indian companies cannot result in the value addition of 5% or more. No such co-relation between value addition and processing activity in the bonded warehouse is required under para 4A.18. Sieving, boiling and assorting of diamonds is a recognised activity of the diamond industry, as can be seen from the clarification contained in Circular No. 40/1999, dated 28-6-1999 issued by C.B.E. & C.*

which was issued in the context of para 8.13 of the Import and Export Policy 1997-2002, which is pari materia to para 4A.18 of FTP 2004-09, para 2 thereof is reproduced herein :

"2. The issue has been examined in consultation with the Ministry of Commerce and they have clarified that the activities of mixing, sieving, assortment and cleaning, etc. are allowed in respect of imported cut and polished diamonds and cut & polished coloured gemstones in the private/public bonded warehouses set up under paragraph 8.13 of the Exim Policy. However, the activities of mixing, sieving, assortment and cleaning would be restricted to individual consignment only and mixing of different consignments for the purpose of carrying out the activities of assortment, sieving and cleaning shall not be permitted."

18.4 *Besides, we find that the Commissioner has not relied upon any evidence to show that minimum value addition of 5% or more cannot be achieved by such processes. The show cause notice also does not refer to any evidence on this point. The question whether these simple processes can result in value addition of 5% or more is a matter of fact. If the Commissioner wants to read such a condition in para 4A.18, even though the same does not exist on the literal reading thereof, the burden lies on the department/Commissioner to lead evidence to show that these simple processes cannot result in achieving the value addition as required under para 4A.18, even if one were to presume that para 4A.18 has an inbuilt condition of achieving value addition out of processing activity in the bonded warehouse. Both sides agree and therefore, we take note, that value of a diamond depends on "4 Cs" which are colour, clarity, cut and carat. Therefore, if diamonds are segregated into a homogenous lot based on their size and quality, the value shall change even by employing simple labour intensive processes like sieving, boiling and assorting. The only piece of evidence we find on the relationship between the value addition and the process is in the form of representation made by Gem and Jewellery Export Promotion Council vide letter dated 23-10-*

2006 which relies on the same Circular of the C.B.E. & C. while dealing with the various schemes in the Policy affecting the business of gem and jewellery including diamond industry. We are informed that the Customs Officers in charge of the bonded warehouse on being satisfied, have also cancelled the bonds, which aspect has been completely overlooked by the Commissioner.

18.5 *It is true that Lumesh Sanghavi has not been able to say which of these processes were carried out in respect of how many consignments of imported diamonds before export, which (we are informed) aggregate to about 3000 consignments or whether all the processes were carried out for all the consignments, except making a general statement on 7-2-2006 which has been referred to above. It is equally true that Lumesh Sanghavi in each of his statements mentioned that the FOB value, in the invoices prepared by them for export, was shown as instructed by Samir Vora or Saurin Shah. But the question is, does such FOB value become liable for rejection merely because these two persons superior to Lumesh Sanghavi in the organisation instructed him to do so. Once we hold that there is no basis to support the finding of the Commissioner, that minimum value addition under para 4A.18 cannot be achieved by simple process, both as a point of law on interpretation of para 4A.18 and as a question of fact, in the absence of any expert evidence holding the same, we go back to the question whether the FOB value as declared in the shipping bill is correct.*

18.6 *For this purpose, we have to bear in mind the distinction between FOB value and the value addition. Section 14 of the Act provides that where duty is chargeable on ad valorem basis, the value shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation as the case may be in the course of international trade. There is no dispute about the CIF value declared by the Indian companies in the bills of entry. Rather such CIF value has been adopted by the*

Commissioner, to be the correct FOB value. We shall deal with this aspect later in detail when dealing with circular trading. Value addition is a concept under the Foreign Trade Policy (FTP). The formula for determining value addition is given in para 4A.6 of the FTP for 2004-09 which is reproduced herein :

"4A.6 The value addition for the purpose of gem and jewellery sector shall be as per paragraph 4A.2.1 of Handbook (Vol. 1)

$$V.A. = \frac{(A - B)}{B} \times 100, \text{ where}$$

V.A. Value Addition

=

A = FOB value of the export realised/FOR value of supply received.

B = The Value of inputs such as gold/silver/platinum content in the export product plus the admissible wastage along with the value of the other items such as gemstone, etc. 'Value' for this purpose includes both imported as well as domestically procured inputs. Wherever gold has been obtained on loan basis, the value shall also include interest paid in free foreign exchange to the foreign supplier."

18.7 *FOB value is therefore only one of the components for determining the value addition. Determination of value addition is a function of DGFT/licensing authorities. We are here not concerned with the determination of value addition. We are informed that the applications by the appellant companies under TPS are pending with the offices of Jt. DGFT. It will be for the licensing authority to determine the value addition at the appropriate stage. We are here concerned with the correctness of the FOB value as declared in the shipping bills which is within the jurisdiction of the Customs officer and for that the powers are derived from Section 14 of Act, which deals with*

determination of assessable value read with Section 17 of the Act which confer the power of assessment on consignments of exports, in respect of which shipping bills are filed under Section 50 of the Act. We shall first examine the law on this point.

(a) In *Frost International v. Commissioner*, [2006 \(206\) E.L.T. 451](#) (Tri.) the selling price of the manufacturer of garments was taken to be the correct Present Market Value (PMV) and on that basis, the Commissioner rejected the higher FOB value declared by the exporter. This Tribunal held that the concept of PMV cannot be equated with the FOB value of the goods which represents the price in the international market. The same view was also taken in the second case of *Frost International v. Commissioner*. The Tribunal also did not accept the evidence of clearance by the foreign buyer at a lower price received on overseas inquiry. Both these decisions in *Frost International* were upheld by Apex Court and appeals filed by the department were dismissed as reported at [2007 \(216\) E.L.T. A55](#).

(b) In *Akshay Exports v. Collector* [[2003 \(156\) E.L.T. 268](#)], the Tribunal held that in the absence of market inquiry of goods exported from India, the FOB value cannot be discarded.

(c) In *Siddachalam Exports Pvt. Ltd. v. CC* [[2011 \(267\) E.L.T. 3](#)], the Hon'ble Supreme Court observed that although the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 applied only to goods imported into India, the principles thereof were also applicable to goods exported from India.

18.8 The 'transaction value' in the present case is established by the fact that sale proceeds in foreign exchange have been fully realised. There is also no evidence on record as required under Section 14, to show that the price of such or like goods for delivery at the time and place of exportation is lower. On the other hand the appellant companies have shown that the contemporaneous imports are at comparable prices, something which the Commissioner does not accept, because according to

the Commissioner "in case of diamonds, it is not possible to have evidence of identical or similar goods since each lot of diamonds varies from the other and valuation of diamonds, which is based on carat, colour, cut and clarity cannot be compared." May be the Commissioner is right. But that be so, we have no option but to go with the examination reports recorded at the time of assessment of the export consignments on the shipping bill, on the basis of which let export orders were passed by the proper officer of Customs under Section 51 of the Act, in each case. A few photocopies of the duplicate copy of the shipping bills have been produced before us. We have also perused the record of cross-examination of 5 Customs Officers, who examined the goods. All of them have unambiguously stated that they strictly followed the procedure prescribed by law as contained in Public Notice No. 11/1998, dated 4-8-1998. The Commissioner confirms that these officers "..... only verified that the goods confirmed to the description, quantity and value as declared in the shipping bill." The confirmation of the value by these Customs officers in our opinion is a clinching evidence and there is nothing in the show-cause notice to rebut this primary evidence as to the correctness of FOB value. At no stage of the assessment of thousands of consignments, exported by the appellant companies, was any doubt raised as to the truth or accuracy of the declared FOB value. The confirmation by the Customs officers, and the admission by the Commissioner that they verified inter alia the value of the goods, is direct evidence of the correctness of the value on physical examination of the goods. In these circumstances, we do not see how the Commissioner can reject the declared FOB value.

18.9 *Yet the Commissioner did so. And the only reason for the Commissioner to do so is because neither the Customs officers who examined the goods nor the appellant companies have been able to show how simple process of boiling, sieving and assortment can result in value addition of 5% or more. This is a fundamental fallacy, which the order of the Commissioner suffers from in not maintaining the distinction between FOB*

value, which is required to be determined under Section 14 and various tests laid down in the many precedents, and value addition, of which FOB value is only one of the components and which need not arise only out of processing and indeed may have nothing to do with the processing under para 4A.18 of FTP. It would be unfair to reject the FOB value on a criteria which is not prescribed by law. As we have held, processing has been undertaken in respect of the export consignments. When neither Section 14 of the Act nor para 4A.18 of FTP requires the exporter to establish a relationship between processing and the FOB value declared in the shipping bill, which is to be independently determined, applying the tests under Section 14, the question of verification of the value addition, by the Customs officers at the time of export does not arise at all. This is more so since determination of value addition is within the jurisdiction of licensing authorities and not the Customs authorities under the provisions of FTP to which we have already adverted. We therefore find that the sole ground of the Commissioner to reject the FOB value, is that the value addition of 5% or more cannot be achieved only by carrying out simple processes, is not sustainable. We therefore, hold that the FOB value declared is correct.

18.10 *On the question of valuation, the Commissioner also records that evidences disclosed in the show cause notice, there is an allegation that the FOB value declared is not genuine on account of control by AEL over all the overseas parties involved in the transactions as buyers or sellers of diamonds. Having recorded this objection, the Commissioner does not give any categorical finding thereon but instead treads into the question of circular trading. We however prefer to deal with this issue in the context of valuation and circular trading as the department has also heavily relied upon the allegations in the show cause notice on the inter relationship between AEL and other Indian companies as well as AEL and overseas entities.*

18.11 We shall first deal with the relationship between AEL and Indian companies. There is no definition either in the Customs Act or the FTP of such a relationship. Obviously in such a case, one will have to go by the provisions of Companies Act, 1956 to see whether one company controls the other and broadly, the two tests to establish "control" of one over the other is either 'voting power' or control over the appointment of Board of Directors. The relationship in the context of determination of FOB value is the relationship between the buyer and the seller in the course of international trade. Hence, the issue of inter se relationship between AEL and Indian companies is not relevant for the purposes of Section 14. The show cause notice dwells on this issue only to show that AEL connived with the 5 other Indian entities to take advantage of benefits under TPS by showing higher incremental exports to derive maximum benefit under TPS. We do not see the relevance of the issue in this case. At the risk of repetition, we hold that since the application for grant of duty free scrips made by the Indian companies including AEL for the year 2004-05 is pending before the Licensing authority, it is for the licensing authority to consider whether the export turnover of each individual Indian company is to be reckoned or whether export turnover of all Indian companies to be clubbed for the purposes of calculating the benefits under TPS. We say no more than this so as not to prejudice the disposal of the application pending before the licensing authority. We remind ourselves that there is a concept and definition of "group company" in the FTP which we are sure shall be considered by the Licensing authority in determining the benefits under the TPS scheme.

18.12 As far as inter relationship between AEL and overseas entities is concerned, it is alleged that AEL controls the overseas entities. The basis for this allegation, as found in the impugned order, is as under :

(a) As per report received from Indian High Commission, Singapore, several entities in Hongkong and Singapore were incorporated or started business in or around the period when

TPS was announced and stopped the business soon after the TPS was over;

(b) Registered office of some of the entities in Singapore like M/s. Planica Exports Pte Ltd. and M/s. Emperor Exports Pte Ltd. is common;

(c) The registered address in some cases is residence of individual Directors;

(d) Ms. Mary Joseph who is an employee of Adani Global Pte Ltd. has also signed all contracts as Director of M/s. Gudami International and Mr. Chang Chung Ling - a Director of Gudami is shareholder/Director of M/s. Adani Global Mauritius and Adani Global Pte Ltd., Singapore;

(e) Rajendra Prasad Nair, Manoj Chandrasekharan Nair and Sudhkar Kannadiga who are Managers/Partners/Directors of Gold Star FZE, Shine Jewellery and Queen Jewellery, all UAE entities, respectively are employees of Adani Global FZE, while Vinod Shantilal Shah who is Director of Adani Global FZE and GA International is the brother in law of the Chairman and Managing Director of AEL.

18.13 *The fact that some of the overseas entities were started around time of introduction of TPS or closed business simultaneously with closure of TPS does not establish these entities in Singapore and Hongkong were controlled by AEL. We find that out of 45 overseas entities, six have started business between September and December, 2004 and two of them in May and August, 2005. Again out of 45 overseas entities, only 4 closed down and that too, between September and November, 2005 which is well before the deletion of diamonds from TPS on 20-2-2006 or the closure of TPS on 31-3-2006. No adverse inference can be drawn on this aspect. The fact that some of the companies have common registered offices or that registered office happened to be the residential premises of their Directors is again something which cannot be faulted in law and by no stretch of imagination shows control by AEL over*

them on this account. Common Directors or Directors who are employees of AEL or its subsidiaries also does not establish mutuality of interest. So also merely because Vinod Shantilal Shah is brother-in-law of the Chairman and Managing Director of AEL, it does not establish the relationship particularly when it is now shown that the Vinod Shantilal Shah is also Director in AEL or holds significant shares to exercise control over AEL and vice versa AEL has any shareholding or common Directors in GA International. Section 14 of the Act requires the interest of the buyer and the seller in the business of each other. There is no allegation of common shareholding except for the subsidiaries. It is also not shown that AEL has the power to appoint Directors or control the composition of Board of Directors of companies in which its employees or its Directors are also partners or Directors. It is not shown that AEL holds sufficient shares or voting power to control the decisions of the entities in which its Directors are also Directors or in which its employees are also Directors or Partners. Mutuality of interest must be proved both ways. It is interest in the business of each other which proves that the parties are related. The inquiries made through the Indian High Commission, Singapore or Indian Consulate in Dubai have not brought out any such factual position on either shareholding pattern or control over the composition of the Board of Directors of the overseas entities except the two subsidiaries.

18.14 *Assuming that the relationship is established in those limited cases where the Directors or partners of overseas entities are also Directors or employees in AEL's subsidiaries, as per the details set out on Pages 49 to 52 of the show cause notice, that by itself cannot be a ground to reject the declared FOB value. If the relationship has not influenced the price, then such export price must be accepted. Out of all the overseas buyers to whom the cut and polished diamonds were exported from bonded warehouse by Indian companies, only two such buyers namely; GA International and Gudami International, Singapore are part of the list of alleged related parties, but the total exports to them in 2004-05 constitutes only about 22.45%*

which means that the remaining 77.55% of exports at or about the same price has been made to independent buyers. In 2005-06, exports to independent buyers is about 28.21% assuming all the buyers in Singapore are related. We have arrived at this finding based on the information given on page 46 of the show cause notice. As long as price of exports to independent parties in respect of whom there is no allegation of relationship is available, the same would apply to all other exports including those made to related persons. This is notwithstanding the fact that the department has failed to discharge the onus of proving relationship between AEL and overseas entities, as concluded above.

18.15 *We have noted that Lumesh Sanghavi has in his statement said that the diamonds were over-invoiced. This statement by itself does not prove the case of the department. There are many reasons for the same. He himself admitted that he examined only a few consignments when the sorters were absent. Besides the price was decided by Sameer Vora or Saurin Shah based in Ahmedabad. This has also been admitted by Lumesh himself. Likewise, though Lumesh Sanghvi, admits to circular trading, on being shown during cross-examination the same examples referred to in his statements, which show the difference in quality, size and weight of each consignment, he has deposed to the contrary. We have independently also examined the evidence on record particularly Annexures 'H' and 'I' to the SCN and have found that the charge of the circular trading is not sustainable. Considering the overall facts and circumstances, this part of the statement of Lumesh Sanghvi cannot be seen as conclusive to the charge of, either over-valuation or circular trading.*

18.16 *In the above factual backdrop, we shall now deal with the case-law cited by the department. In the case of Omprakash Bhatia v. CC, [2003 \(155\) E.L.T. 423](#) (S.C.), the exporter did not lead any evidence to show that the export value mentioned in the shipping bill was the true sale consideration, and accepted the lower value ascertained on*

market inquiry even at the time of hearing, while giving up the claim of drawback. It is in these facts that the Court was called upon to decide whether Section 113(d) was applicable or not. In the instant case neither any market inquiry has been conducted, nor the appellant has accepted the value suggested by the department.

18.17 *In CC v. Pankaj V. Sheth, [1997 \(90\) E.L.T. 31](#) (Cal.), the question was whether pending inquiry, the Court could direct the Customs Authorities to endorse the fact of exports in the DEEC book issued under the Advance Licensing Scheme. The Customs Authorities resisted on the ground that the enquiry in respect of export of plastic flat jet nozzles was pending since the goods were suspected to be over-invoiced and had been provisionally allowed exports. The High Court held that the Customs Authorities had the power to examine the correctness of the value of the goods under the DEEC scheme. Firstly, this case is not at the interim stage, and secondly, in the present case investigations have been completed and detailed show cause notice issued relying on the documents & statements, which we have examined as above.*

18.18 *The judgment in Bussa Overseas v. C.L. Mahar, [2004 \(163\) E.L.T. 304](#) (Bom.) deals with a case where the goods were cleared under a Bond and therefore the argument that the proceedings could not have been commenced under Section 112 was not accepted. The Bonds in the present case were for the warehousing under Section 58 of the Act. These Bonds have been cancelled by the Bond Officer. In any case we have held the declared value to be correct. Hence, the question of confiscation does not arise at all.*

18.19 *The issue involved in the judgment in Euresian Equipment and Chemicals Ltd. and Others v. CC, [1980 \(6\) E.L.T. 38](#) (Cal.) does not arise for consideration in the facts of the instant case, as it is not the claim of the appellants that liability if any is wiped out or extinguished with the exportation of goods.*

18.20 In *CC v. D. Bhoormull*, [1983 \(13\) E.L.T. 1546](#) (S.C.), the Hon'ble Apex Court held that a case need not be proved with a mathematical precision in the context of smuggled goods seized from the shop where the claimant sought to justify the purchase with the help of documents which were not found to be credible. The Apex Court observed that -

"30. It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. 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."

"32..... However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice."

18.21 In the present case, we find that the department has failed in discharging the burden cast upon it to produce any tangible evidence in respect of the charge of over-valuation or circular trading. For the same reason, the judgment in *Steel India Company v. CCE*, [2014 \(310\) E.L.T. 184](#) (Tri.) is of no assistance to the department.

18.22 For reasons aforesaid, the declared FOB value is accepted to be the correct FOB value under Section 14 of the Act and to that extent the order of the Commissioner is set aside.

19. Issue No. II

19.1 The allegations relating to circular trading are essentially set out in paras 9.1 to 9.13 of the show cause notice. The

Commissioner, as stated, did not confirm the allegation of circular trading and held that the defence to show that circular trading is not possible appears to be plausible. The department is aggrieved by this finding and has come in appeal.

19.2 *Before examining the material marshalled in the show cause notice to show circular trading, we must record that it is admitted by the department that consignments of diamonds physically came into India and were also sent outside India, and further it is also admitted by the department that in all cases the FOB value as shown in the export invoices have been duly realised. In other words, it is not alleged that these were paper transactions. We find that the allegation of circular trading of diamond is based on same lot of diamonds being imported and exported over a number of times during different periods as detailed in the two tables on pages 81 to 83 of the show cause notice. We have therefore looked at import and export invoices to see how the individual lots referred to at pages 81 to 83 have been imported and exported. On examination of the invoices relating to import as well as export of cut and polished diamonds it is seen that each consignment consists of various lots of different descriptions, weight, value and quality. It is not the case of the department that all the lots referred to at pages 81 to 83 have been imported under one invoice. We have found each invoice to cover number of lots ranging from 8 to 23 in number. Identifying one or two lots from a consignment consisting of 8 to 23 different lots being the same which have been allegedly circulated more than once is a method which is unknown to law. The subject matter of assessment is a consignment as a whole. The Bill of entry under Section 46 or the shipping bill under Section 50 contains a declaration of the goods covered by the total quantity and value of the goods supported by the invoice, which covers the totality of all the lots constituting the consignment. Singling out one or two lots from a consignments to say that the same set of diamonds have been traded again and again is a misnomer. The Commissioner also admits in the impugned order that the value of each diamond varies on account of non-comparability*

of carat, colour, cut and clarity (4 C's). It is therefore not possible to come to the conclusion that the appellant companies indulged in circular trading merely with reference to single lots (out of a consignment) which are said to be imported and exported during different periods. Curiously, the show cause notice itself admits in para 9.2 that even these single lots which are said to be involved in circular trading varied in weight and clarity. It however describes such variation to be marginal or slight variations. We are not impressed by the use of such adjectives particularly when the Commissioner also admits the value of each lot varies on account of variation in the 4 Cs. Whether such variation is marginal so as not to affect price is not for us to say. This perhaps required expert evidence who can only do so after examining each lot. We find this is missing. We cannot indulge in conjecture whether the variation in weight or clarity is marginal so as not to affect the value or identity of the lots. Weight is directly related to the size of diamonds. If the size of the diamonds is small, a small variation in weight can substantially increase the pieces of diamonds and similarly, if the size of the diamonds is bigger, the price thereof may increase manifold even with a small variation in weight.

19.3 *Based on the details of the lots allegedly involved in circular trading, Annexure-H & I to the show-cause notice, contain details of these lots, bill of entry wise, and shipping bill wise, to allege circular trading. AEL in its reply to the show cause notice sought to demolish Annexures-H & I by reference to Exhibit-D to the reply. We have perused the Annexures-H & I to the show cause notice and Exhibit-D to the reply. In Exhibit-D we find that AEL has given several examples where the export of the lot on first import has taken place after the second import of the same alleged lot, which belies the allegation of circular trading, which if true, means that the export of the lot on first import should have taken place before the second import of the same alleged lot and not thereafter. These several examples establish that the sequence in the movement of same alleged lot to prove circular trading does not exist. AEL also submits with reference to Exhibit-D, there is*

no explanation how the same alleged lot exported to Singapore or Hong Kong has been re-imported from Dubai the next day keeping in mind the locational difference in three countries and the time involved in transporting the goods from India to Singapore or Hong Kong and from there to Dubai and Dubai to India, suggesting thereby the whole theory of circular trading is bogus and impossible. We find no answers to this point in the contentions raised by the department.

19.4 *To prove circular trading show cause notice also relies upon the statement of Lumesh Sanghavi. In his statement dated 28-2-2006, he has admitted to circular trading in relation to documents shown to him in respect of imports and exports by and to the Indian companies in July, 2005 as recorded on pages 4 to 6 of the said statement. To the same effect, he has also admitted to lots of diamonds being imported and exported over and over again in the transaction which were shown to him and recorded by him on pages 4 to 8 of his statement dated 3-1-2007. We have already dealt with the aspect of retraction of the statements of Lumesh Sanghavi. We have also gone through the record of cross-examination of Lumesh Sanghavi which has been set out by the Commissioner in extenso. We find that when confronting with the same documents such as invoice relating to the transactions which he has deposed in statement dated 28-2-2006 and 3-1-2007, he accepted that there was a variation in the weight and quality of diamonds. On re-examination by DRI officer, Lumesh Sanghavi maintained the variation in the specifications of the lots covered by two different invoices. Besides the documents speaks for themselves, oral evidence if contrary to documents has no value since documentary evidence shall prevail over oral statements. At the time of hearing before us the Id. Counsels also produced a typed statement analysing the transactions of July, 2005 shown to Lumesh Sanghavi as recorded in his statement dated 28-2-2006, to illustrate that on facts, the allegation of circular trading cannot be maintained. From the typed statements, it is seen that while exporting D-Cut white diamonds under invoice dated 21-7-2005, the weight of PK 4*

variety was 486.57 carats and that of PK 5 variety was 733.67 carats and if the same set (lot) of diamonds were allegedly imported on 26-7-2005 from Spectrum Trading, UAE, then the weight of each variety at the time of second export ought to have been the same, but as seen from the export invoice dated 28-7-2005, the weight of PK 4 variety was 725.63 carats which is much more than 486.57 carats in the previous exports and so also in case of PK 5, the weight in the second export was significantly lower at 512.61 carats as compared 733.67 carats. This difference in the weight (carats) of the two different variety of diamonds - PK4 and PK 5 show that there is no circular trading, otherwise in the two export consignments of two similar variety of diamonds, weight should have been identical. The fact that the weight in carats of PK4 was much more in the second export and that of PK5 was substantially lower, it is evident that there is no circular trading. The second illustration in the typed statement, not only shows variation in carats but also sizes between the first and second round of diamonds which as submitted by the Id. Senior Counsels fortifies their case that there is no circular trading, even if we go by the statement of Lumesh Sanghavi, who did not correctly appreciate the facts as flowing from the same documents which were shown to him. We find force in these submissions and hold that not only is the defence to circular trading plausible but incontrovertible.

19.5 The third piece of evidence referred to in the show cause notice, to support the allegation of circular trading are the 3 charts reproduced on Pages 86 to 88. These charts have been recovered from the desktop (computer) of Vipul Desai who in his statement dated 19-2-2007 said that these were prepared by Sudhakar Nair, Junior Assistant in the Banking department. No statement of Sudhakar Nair has been recorded. We have however, independently considered these charts without the benefit of the statement of the author thereof. We find that the Chart by themselves do not prove circular trading. AEL has explained these charts to depict the business plan and a pattern of transactions. This in fact appears to be so, these charts

appeared to be graphic representation of information which have been tabulated by DRI in the show cause notice covering the names and identities of overseas entities and the classification of overseas entities into buyer and seller as can be seen from pages 40, 41 and 45 to 48 of the show cause notice. The Indian companies have also not disputed the fact that they were importing cut and polished diamonds from some of the overseas entities and exporting the cut and polished diamonds to other overseas entities. We do not find anything incriminating in the 3 charts except a pictorial representation admitted by the parties.

20. *On the contrary, AEL has sought to justify what they call as the business plan and the pattern of transactions on the basis of MOU dated 19-3-2003 between its' subsidiary in Dubai, Daboul and Gudami whereby the UAE subsidiary agreed to arrange for and organise processing of unassorted diamonds in India through AEL or its nominees and Daboul agreed to procure unassorted diamonds directly or through its nominees for export to India and thereafter, purchase the same after processing in India through its intermediaries in Hongkong or Singapore for its European buyers. Shri Singh, Id. Special Counsel, as has the Commissioner strongly objected to the reliance on this MOU. He submits that this MOU was never produced during investigations. On the other hand, AEL submits that, although a copy of this MOU was not produced during investigations there are enough references to the arrangement and understanding mentioned in the MOU in the statements of various persons recorded during investigations. Our attention has been drawn to the statement dated 24-1-2006 of Samir Vora in which he has, inter alia, stated that AEL's overseas agents Daboul sent them proposal for unassorted diamonds and Daboul gives them the range of existing international value and after discussions, AEL sends its own proposal and that the value is decided after negotiation, if necessary. Bhavik Shah is the other person who makes reference to Daboul in his statement recorded on 31-1-2006 wherein he refers to Rakesh Shah an employee of Adani Global FZE to be the coordinator for import*

and export of gold, gold jewellery and articles and cut and polished diamonds with Daboul. No doubt, there is no specific reference to MOU in these statements, but nonetheless these statements prove the existence of business relationship with Daboul which is dealing in cut and polished diamonds. Moreover, AEL had disclosed a copy of the said MOU along with its reply to the show cause notice filed on 29-10-2007, against which DRI had ample opportunity to ascertain the veracity of the documents before filing its written comments to reply filed by AEL. The DRI made general and sweeping remarks about the genuineness of said MOU in its written comments filed before the Commissioner. The Commissioner could have caused necessary inquiry through DRI or otherwise to ascertain the genuineness of the said MOU. After all, as an adjudicating authority, the Commissioner must undertake fact finding especially when it is not as if AEL had adverted to business relationship with Daboul for the first time in its reply to show cause notice. We cannot help but noticing that the reply disclosing the MOU with Daboul was filed on 29-10-2007 and the adjudication order has been passed after more than 5 years, which gave ample opportunity to inquire into the genuineness of the said MOU.

21. *The most significant material relied upon in the show cause notice are the number of e-mails sent mainly by Ms. Mary and others. Some of the e-mails have been extracted in the show cause notice, as for instance at pages 59 to 64, again from pages 67 to 69 and thereafter from 70 to 79. All the e-mails have been compiled in Annexure-M to the show cause notice. Although these e-mails have been relied upon in the show cause notice to support the allegation of control of overseas entities by AEL, in view of the overlapping submissions made by Id. Special Counsel of the department, here while dealing with the issue of circular trading. According to the department, these e-mails reveal that AEL controlled all the overseas entities because there is reference to the bank accounts of different overseas entities in these mails and also to transfer of funds from account of one overseas entity to*

another. These e-mails are sent by Ms. Mary who is an employee/Director of Adani Global Pte Ltd., Singapore and these e-mails are sent internally to all persons connected with AEL based in either India or Singapore or Dubai. It is alleged that if AEL does not control overseas entities there was no reasons for Ms. Mary to pass on information relating to bank accounts and its details including password to other persons within the Adani group and likewise there was no need for Ms. Mary to report the transfer of funds with reference to certain specified transaction from one overseas entity to another or from Indian company to overseas entity or by an overseas entity to an Indian company. We find that except for agreeing to what has been stated in these e-mails, none of the persons like Bhavik Shah, Vipul Desai or C.E. Mahadevan have admitted to these e-mails being evidence of either control by AEL of the overseas entities or to circular trading. Unfortunately, hereto the statement of Ms. Mary Joseph, author of almost all these mails have not been recorded, we are left to imagination why she was writing such mails and on whose instructions. These gaps are extremely vital to the issues at hand and fatal to the case of the department. AEL submits that she was doing so on account of the agreement between the parties as recorded in Clause 6 of the MOU which is reproduced herein :

"In order to facilitate the movement of goods, Adani Global FZE has identified its business associate, M/s. Gudami International Pte Ltd. as one of the parties who may be nominated as an intermediary where Daboul requires the transaction to be routed through an intermediary. Gudami shall arrange for funds wherever necessary to finance such imports, but Daboul shall assure AGFZE that funds will be available for the onward import from Gudami and for this purpose Gudami shall be entitled to call for and maintain and monitor financial information and records. In order to coordinate the working of these transactions, including movement of funds wherever necessary, Daboul, AGFZE and Gudami may nominate a common person to act as a representative of all the parties who is acceptable to all the parties."

For want of better explanation from the department, we have no option but to accept that the reason why Ms. Mary Joseph wrote e-mails was because of the understanding recorded in the said MOU.

21.1 *We have independently gone through the set of e-mails which have been extracted in the show cause notice on the pages referred to above. We observe as under :*

(a) The e-mails pertain to large number of transaction like iron ore exports and coal transactions apart from the transactions of cut and polished diamonds;

(b) The e-mails referred to transactions with parties other than the 45 overseas entities, as for example, Aramex International Exchange, Radya Baqer Trading LLC, Navy Impex LLC and White Monitor General Trading LLC to name a few.

(c) The e-mails provide no explanation on the transfer of funds from one overseas entity to another. In many cases where there is no reference to corresponding invoice related to either import or export of cut and polished diamonds which are the subject matter of the present case. For instance against Sr. No. 4 at page 71 of the show cause notice, why have GA International, Gold Star and Labdhi transferred funds to Al Shahad considering that Labdhi is not even one of the 45 overseas entities in this case or are these entries representing settlement of accounts of some other independent transactions which has nothing to do with the transactions of cut and polished diamonds.

(d) None of the e-mails show fund flow corresponding to the circular trading of the lots as alleged in the show cause notice, meaning thereby the allegation of circular trading is unsupported by evidence of corresponding financial trail.

21.2 *As has been stated in the show cause notice, the e-mails referred to in Annexure-M to the show cause notice show control by AEL of the overseas entities. We have already held what tests and conditions need to be satisfied in law to*

establish "control". It seems Ms. Mary Joseph has merely collated the information into e-mails which is otherwise available from the documents relating to the respective transaction which documents show the name of the buyer, name of the seller, serial number and date of the invoice, the amount and the bank in which the payment is to be remitted. These e-mails do not reveal the possibility of these e-mails being sent as a result of said MOU cannot be ruled out. We find nothing incriminating in these e-mails or anything to draw an inference of control of overseas entities by AEL.

21.3 *Even if we were not to consider the said MOU, the e-mails can at best give rise to suspicion that AEL controlled the overseas entities. This, however, will remain a suspicion because statement of Ms. Mary has not been recorded. Suspicion howsoever strong cannot take the place of evidence.*

21.4 *On behalf of the Indian companies, it was also submitted that the allegation of circular trading is absurd and illogical because the CIF value of all the imported consignments has been accepted and in fact, proposed to be adopted as the correct value of the goods exported instead of the declared FOB value as stated in para 21.1(viii) and corresponding para in respect of each Indian company in the show cause notice. The argument is that, if it is alleged that the same lot was circulated number of times as tabulated from pages 81 to 83 of the show cause notice, then the CIF value of the lots repeatedly circulated ought not to have been accepted, whereas the CIF value of all the consignments of imported diamonds has been accepted to be true and correct value, meaning thereby each consignment is a fresh and a new transaction, independent of each other and not of the same goods repeatedly circulated. We do see force in this argument. We find the stand of the department in the show cause notice to be self-contradictory. If the same lot is circulated into India a number of times, it is only rational to take the CIF value only once for the same lot to support the allegation of circular trading. By not doing so, and by accepting the CIF value of each individual consignments of*

imported diamonds, the department has admitted each consignment to be different from the other, and not of the same goods, thereby militating against their own case of circular trading. The Indian companies contend and rightly so, that the implications of acceptance of CIF value means each time a new consignment has been imported unrelated to any other in the past or future, duly corroborated by remittance of foreign exchange through banks or authorised dealers equal to the value of the goods received in India. Correspondingly in relation to exports, receipt of foreign exchange through banks and authorised dealers as proceeds of exports in compliance with the provisions of Foreign Exchange Management Act, 1999.

We, therefore, hold that the charge of circular trading fails.

22. Issue No. III

The Issue relating to payment of commission and fund flow through mechanisms such as buyers credit or LC discounting are connected to the charge of circular trading and to support the allegation of control by AEL. We have for reasons recorded above, found both these charges to be unsustainable. On behalf of the Indian companies it was submitted that payment of commission in fact proves that the transactions of import and export of diamonds were genuine and on principal-to-principal basis since otherwise there was no need for them to pay commission if the transactions were bogus or involved mere circular trading. So also in relation to LC discount and buyers credit, it is submitted that these transactions were entered into because of interest arbitrage, since there is wide variation in the rates of interest between international markets and India. It is submitted that they have acted like any other prudent business men would do in the like circumstances. The department however, contends that AEL was strictly monitoring the number of days involved in the fund flow and its banking team in India took all decisions in relation to payments for all imports and exports. Suffice for us to state that when we have

held the declared FOB value to be correct and there is no circular trading, we need not go into these issues, more so, when in query from the Bench whether the payment of commission or LC discounts or availing buyers credit violated any law of India, both sides submitted that none of these actions are in breach of any of the laws for the time being force in India. The Id. Senior Counsels submitted that on the contrary the Circular No. 12, dated 9-9-2000 issued by RBI and relied upon in the show cause notice supports the case of Indian companies that payment of commission is permissible and that it is not mandatory to disclose the same in the shipping bill as long as the agreement for payment thereof is produced to the authorised dealer at the time of remittance, which they have duly done so. There is according to them, no violation of the provisions of Foreign Exchange Management Act in the payment of commission or discounting of LC or availing buyers credit. We are unable to find any such allegation about these actions being in breach of the law in the show cause notice or any finding to this effect in the impugned order. Besides, the payment of commission would be relevant for calculating the value addition if and when the pending applications for grant of duty free scrip under TPS is taken up by the competent authority.

23. Issue No. IV

Having held that the declared FOB value is correct, we set aside the confiscation of the exports goods under Section 113(i) of the Act, consequently, we also set aside the penalties imposed by the Commissioner in the impugned order under Section 114 of the Act.

23.1 *Before parting, on behalf of some of the individuals on whom the penalties have been imposed it has been submitted that penalties have been mechanically imposed without ascertaining the role played by each of them. It was submitted that the penalty on Rajesh Adani has been imposed simply because he is Managing Director. Lumesh Sanghavi, who was in*

day to day in charge of the bonded warehouses into and from where all transaction of import and export took place, has not implicated Rajesh Adani. Samir Vora and Saurin Shah have stated that Rajesh Adani was only involved on Policy matters. We find that the same is the position in relation to Deven Mehta, Omi Bagadiya, Vithaldas Udeshi and Narottam Somani on whom penalties have been imposed only because they "have allowed themselves to act at the behest of AEL and have performed acts which have rendered the export goods liable to confiscation." without ascribing acts of omission or commission under the Act to levy penalty on them. Section 114 of the Act does not create vicarious liability. It is an action in personam. It is therefore necessary to show how each of these individuals acted in a manner which resulted in misdeclaration of FOB value to render the goods liable to confiscation under Section 113(i). We find no justification has been provided by the Commissioner in the order. The statement of these individuals are exculpatory, besides not being adversely implicated by others. In any case, we have set aside penalties on all concerned as aforesaid.

24. *In the circumstances, we set aside the impugned order passed by the Commissioner and allow the appeals filed by all the parties and dismiss the appeals filed by the Department. Consequential reliefs if any are allowed.*

41. We also find that for similar disputed transactions during 2004-05, Commissioner of Custom, Bangalore also issued a Show Cause Notice to M/s. Rajesh Exports Ltd. & AEL alleging mis-declaration of description of Gold Jewellery and value of the goods and proposed disallowance for fulfillment of the export of Gold Jewellery towards export obligation against the Advance Licences. The said SCN also proposed to demand of Customs duty along with interest and penalty. In the said matter the Ld. Commissioner of Custom, Bangalore vide Order No.01/2007 dated 31.1.2007 dropped the charges of mis-declaration of value addition & description of the GSJ and dropped proposal for demanding duty, interest and penalty and ordered to finalise the Shipping Bills. The said Order of the

Commissioner has been upheld by the CESTAT, Bangalore vide Order dated 10.2.2009 by rejecting the appeal filed by the department which is reported in CC Vs. Adani Exports Ltd. 2009 (243) ELT 115. The CESTAT, Bangalore in this matter held as under :

"8.1 *We have considered the submissions made at length by both sides and perused records.*

8.2 *We would first deal with the issue of the revenue as to whether the Adjudicating Authority was in error to decide the show cause notice when an appeal is pending before the Division Bench of Hon'ble High Court of Karnataka. It is undisputed that the exports of the jewellery by the respondents were as per provisions of Export Import Policy. Respondents have obtained licence for value addition of minimum of 7% as per Paragraph 4.56.1(b) of the Policy. Somewhere down the line, DGFT issued 9 policy circulars, which required the respondents to achieve minimum value addition of 15% for studded jewellery. Respondents advance licences submitted for redemption were held back by DGFT authorities based on the said circular. Respondents moved Hon'ble High Court of Karnataka in W.P. No. 7256 of 2005 (GM-RES). Hon'ble Single Judge in the judgment dated 15th June 2005 disposed of the W.P. by ordering as under :*

"8. In the light of the aforesaid legal position it is unnecessary for us to go into the question whether the impugned circular would amend the policy or it is only clarificatory in nature. The material on record and the contents of the impugned circular itself makes it very clear that the authorities had a bona fide doubt regarding the calculation to be made to find out the value addition. Neither the definition given in the policy or in the handbook would mean that the value of the gold procured locally and added to the jewellery is to be taken into consideration to find out the outflow of foreign exchange in the gold content. The petitioner believe in view of the aforesaid definitions when the value of the gold contend locally procured in manufacturing the jewellery could be taken into consideration to calculate the value addition of the exported jewellery. Accordingly they have acted on that understanding. They have performed their export obligation completely. It is after completing the aforesaid export obligation the impugned circular is issued clarifying the position. If the clarification given is applied to the exports of the petitioner the interest of the petitioner would seriously be affected and in fact they may be exposed to penal consequences under the Customs Act. In the absence of any indication in the definition contained in the policy and the handbook, when the petitioner bona fide understood in the aforesaid manner and have performed his export obligations as required under the policy the petitioner is entitled to redemption of the license. Now by virtue of the

impugned circular, by way of clarification when what has been said is not found in the aforesaid two definitions the said benefit cannot be denied to the petitioner in so far as the exports which they have already effected. The question whether the impugned circular only clarifies the aforesaid provisions or it would have the effect of amending the aforesaid provisions, whether the second respondent has power to amend those provisions by issue of circular and whether the said circular is contrary to Sections-5 and 6 of the policy are all matters which can be agitated and gone into by this court if and when the same is challenged as coming in the way of having the benefit of export policy before carrying out an export. It is always open to the exporters not to export the goods hereafter in view of Annexure-'B', when the authorities have clarified the policy, if it is not beneficial to them. Still if they want to challenge the circular it is open to them to do so. Suffice it to say, the said circular cannot be construed at this stage as denying the benefit of the policy to the petitioner. Therefore keeping open the aforesaid questions to be agitated in future it is held that the petitioner is entitled to the redemption of the license in respect of which they have performed their export obligations. Hence, I pass the following order.

- 1. Writ Petition is allowed.*
- 2. Respondents are directed to redeem the license in respect of which the petitioner has completed exports in accordance with the Foreign Trade Policy 2004-2009 by achieving required value addition of 7% under Paragraph 4.56.1 (b).*
- 3. No costs."*

It was submitted by the Special Counsel for revenue that revenue has challenged the above order in a Writ Appeal and the same is admitted in the Hon'ble High Court of Karnataka. On a specific query from the Bench, it was submitted that the Division Bench of Hon'ble High Court of Karnataka has not stayed the order of the Hon'ble Single Judge. It is a settled law, that, unless there is a stay of the order by higher judicial forum, the order is binding. We note that in the absence of any stay of the order in W.P. No. 7256 of 2005, the learned Adjudicating Authority was not in error, in taking up the matter for adjudication, as the show cause notice is dated 18-11-2005. We note that the action of the Adjudicating Authority to take up the matter for disposal vide Order-in-Original dated 31-1-2007 cannot be faulted, for the reason that Writ Appeal is pending before Division Bench.

8.3 *The next issue for disposal is whether the impugned order needs to be set aside and the matter should be remanded back to the Adjudicating Authority only on the ground that the Commissioner should have awaited the outcome of the Writ Appeal filed by revenue. In our considered opinion, this*

proposition does not contain any merit. On perusal of the impugned order, we find that being a speaking order, does not require any remand.

9.1 *We take up the challenge of the impugned order, by the revenue on merits. We find that the grounds on which revenue has filed appeals are as under :*

"The Review Committee, comprising of the Chief Commissioner of Customs, Bangalore Zone and Chief Commissioner of Central Excise, Bangalore Zone on reviewing the said OIO, found that the Commissioner appears to have erred in passing the order in view of the following :

(i) The Commissioner of Customs failed to appreciate the fact that the issue relating to value addition was still pending before the Hon'ble Division Bench of the High Court of Karnataka which has clearly been brought out at para 28 of the Show Cause Notice wherein it has been highlighted that since the matter was sub judice, the Department reserves the right to add/to amend/modify the SCN subject to the outcome of the said judicial proceedings, in so far as the aspect of Value addition was concerned. Thus, it is clear that the Commissioner while passing the above order, without awaiting for the outcome of the said judicial proceedings, has clearly gone beyond the scope of the Show Cause Notice.

(ii) Further, as the said matter was pending before the Division Bench of the High Court, it was not legal and proper for the Commissioner to have taken a final decision with regard to the Value addition or other matters in the light of the executive instructions issued by the Central Board of Excise and Customs (the Board) in their Circular No. 162/731/95-CX.3, dated 14-12-1995 warranting such categories of cases to be transferred to the Call Book pending decision in the proceedings before the Court. The Commissioner was bound to follow the Board's instructions directing that cases in which the department had gone in Appeal to the appropriate authority to be transferred to Call Book and it was improper to decide a matter on which the department had gone in appeal to the higher Bench of the High Court, which matter was sub judice.

(iii) The Commissioner in his order has rejected, without assigning any valid reasons, the evidence adduced by the department in the form of a report received from the Consul (Economics), Consulate General of India, Dubai, UAE, enclosing the photocopies of the Bills of Entry filed by M/s. Excel Goldsmith, Sharjah towards import of three consignments of Gold jewellery exported by M/s. Rajesh Exports, Bangalore and five consignments of gold jewellery exported by M/s. Adani Exports substantiating the fact that the gold jewellery exported by the above said companies were cleared as gold scrap by M/s. Excel Goldsmith, Sharjah. Instead he proceeded to rely upon the attested copies of five Bills of Entry bearing the same

DEC numbers submitted by M/s. Adani Exports during the personal hearing showing the goods declared by M/s. Excel Goldsmith as 'studded gold jewellery' and dropped the mis-declaration charge on them without causing any verification to ascertain the veracity of these documents particularly, when (a) the attested document submitted by M/s. Adani Exports, bore a stamp disclaiming responsibility for the contents by the Ministry of Foreign Affairs, Sharjah, (b) description of goods did not match, and (c) seal nos. were absent in the documents submitted by the party, further verification was called for. The Commissioner's argument that the declarations made before the Customs of the importing country and the documents produced therein have no evidentiary value is also incorrect in view of the Harmonized System of classification and the WCO agreements as per which the classification of an item will remain the same in any country of import (i.e., it cannot be jewellery in India and gold scrap in Sharjah).

(iv) The Commissioner failed to take into consideration the Business information report given by M/s. Dun and Bradstreet India Pvt. Ltd., citing the existence of relationship between M/s. Radhakrishna Jewellers, Dubai, one of the importers at Dubai and M/s. Rajesh Exports as Shri Mahesh Mehta, brother of Mr. Rajesh Mehta was also one of the Directors of M/s. Radhakrishna Jewellers and the fact that M/s. Excel Goldsmith one of the importers in Dubai was one of the affiliates of M/s. Radhakrishna Jewellers.

It can be seen from the above reproduced grounds of appeal that the revenue's challenge is only on the ground that the Adjudicating Authority has not considered the evidence produced by the revenue in form of report received from Consul (Economics), Consulate General of India, Dubai, UAE. The importers at Dubai have cleared the consignment as 'gold scrap'. Misdeclaration charges were dropped based on the documents submitted by the respondents without causing any verification, and the importers were related to respondents. We gave anxious considerations to the oral and written submissions made by the learned Special Counsel for revenue. We find that the Adjudicating Authority, on the facts that exports were of gold jewellery manufactured/made out of imported gold, has held as under.

"63. The Parties have imported 21428.693 kgs. of gold under various Shipping Bills. Before examination of this issue relating to export of gold product from Bangalore Customs, it would also be relevant to enumerate in brief the procedure followed right from time of filing of Shipping Bill to issue of Let Export Order. The Shipping Bills in respect of goods to be exported is filed either by the Exporter or the authorized Custom House Agent. Once the Shipping Bill is filed, the Documents filed are scrutinized by the Customs to verify whether the same are

proper. If the Shipping Bill is filed in Electronic Data Interchange System, the System directs the nature of examination as well as the specific number of package to be examined. At the time of examination, a representative of the local Jewellers Association, recognized by the Department is also called to check and verify the purity of gold jewellery being exported. As a token of such check, a certificate from the representative of the Jewellers Association is also obtained verifying the purity of gold. All the Documents i.e. Shipping Bill, Invoice, Packing List are also examined by the Departmental officers indicating the Customs Appraiser and goods also examined by the Department before Let Export Order given.

64. I also note that the weight of the gold bangle exported and the fineness (purity) of the gold content in the gold product exported has also been made a ground for treating the product as 'not gold jewellery'. This allegation in the Show Cause Notice is not based on any valid or rational consideration. Jewellery is defined in the Thesaurus as 'an adornment (as a bracelet or ring or necklace) made of precious metal and set with gems (or imitation gems)'. Thus, to be categorized as jewellery', the weight or purity of the bracelet/bangles exported is not relevant. The weight/purity and nature/fineness etc. of a particular jewellery item or jewellery in general, depends on the taste, culture, customs and other consideration. Different Regions, Continents and Countries have different concepts and practices as to what constitute jewellery'. It is well known that tribal jewellery in India and Africa is considerably heavier in weight than jewellery worn in urban areas (and amongst non-tribal populace). Similarly, while in the western world, the emphasis is more on fineness/art/craft involved in making of a jewellery item and not so much on purity of gold content, in India and other countries including many Arabian countries (including UAE) etc. people prefer jewellery with higher purity/fineness. It is also to be accepted that jewellery gifted/bestowed at time of marriage and other ceremonies, not only in India but as per customs in almost all countries is considerably heavier in weight and of much higher purity/fineness, than jewellery ordinary worn by ladies (often in form of bangles) daily. However, only on such grounds of plainness of jewellery and of jewellery Bangles, it cannot be construed to signify that all such heavy marriage jewellery, is 'not jewellery as such', merely on ground of its weight or purity. It is also to be accepted that jewellery has traditional been used as form of investment and to provide a source of saving to ladies in case of distress/emergency. Jewellery, even if purchased purely as an investment does not go out of ambit of definition of 'jewellery', merely on this ground. The allegation in the SCN not to treat heavier jewellery or jewellery having higher purity and/or jewellery purchased/brought/sold more in

form of investment than for casual/daily wear is, therefore, completely devoid of merit and is based on no rational or valid or practical consideration and/or on ground realities as prevailing, not only within India but also as prevailing outside the country including in the country of export. Thus the allegations and arguments as levelled in the SCN, that the gold Bangles/products exported cannot be termed as gold jewellery or studded gold jewellery are unacceptable. It has also been alleged in the Show Cause Notice that 24 carat jewellery is generally not worn. The point raised is irrelevant. If a customer or importer of gold jewellery, outside the county, places order for supply of 24 carat gold jewellery, the same has to be supplied.

65. The show cause notice has also alleged that the export product was not studded gold jewellery, as required under the Advance Licence. I find from the records that a certificate from a Jewellers Association recognized by the Department itself, had been furnished at the time of exports. No representative samples to dispute the same at the time of export had been drawn. The gold which has been exported had gone through a proper process of export in terms of documentation in which shipping bills, invoice, packing list etc. were filed with the Customs Authority and were assessed by the proper officer. Further, the entire lot of export consignment was examined, in terms of description and the goods exported against the Advance Licences. Further to this, some photograph of the exported products were also taken which clearly indicated the item exported as gold jewellery. The Judgments relied upon by the parties reported in *Truwoods Pvt. Ltd. v. Commissioner - 2005 (186) E.L.T. 583* would be applicable. The decision rendered in *Surendranath Nundi v. Asst. Collr of Customs - 1987 (27) E.L.T. 428* would also be applicable. I also rely on CESTAT decision in case of *Truwood Pvt. Ltd. - 2006 (204) E.L.T. 288* and CEGAT decision in case of *South India Television (P) Ltd. v. Commissioner, Customs Calcutta - 2001 (130) E.L.T. 243* and CESTAT judgment in case of *Taito Watch Manufacturing Inds. v Commissioner - 2004 (173) E.L.T. 17*. It would also be required to follow the decision rendered by the Hon'ble Supreme Court in *UOI v. Garware Nylon Ltd. - 1996 (87) E.L.T. 12* (S.C.) = 1996 (10) SCC 413 that the Department was required to establish mis-declaration. The Show Cause Notice has not established mis-declaration at the time of export. The opinion of the goldsmiths relied upon in the SCN has also been examined carefully by me. The opinion of the goldsmith does not state that the item exported was not studded gold jewellery. It is to note that, although the charge of mis-declaration of gold product exported by the Exporter has been leveled on the basis of the opinion of two goldsmiths (para 18 of the SCN refers), no cognizance had been taken of

the examination and certification of gold jewellery by the Representative of the Jewellers Association at the time of export. Such contrary and conflicting stand cannot be sustained. At the time of export of gold product, no officer of the Customs Department had raised any doubt or query that the exported product did not fulfil the description of goods, meant to be exported as per the Advance Licence and/or in fulfilment of Notification No. 93/04-Cus., dated 10-9-04. Even in respect of the gold consignment exported under Shipping Bill No. 145798, dated 20-1-05 in respect of which samples were drawn for examination (Para 9 of the SCN refers), the said gold consignment was allowed for export. Had the Dept. felt that the description of the product being exported was not proper and not as per the description in the Advance Licence or if the condition of the Notification No. 93/04-Cus., dated 10-9-04 or the surety Bond executed were being violated, the concerned Customs Officers should not have allowed 'Let Export Order'. No such action was taken. In this connection, I have also taken note of the Bombay High Court Judgment in case of Popular Dyechem - [1987 \(28\) E.L.T. 63](#) (Bom.) and CESTAT judgment in case of Madhus Garage Equipment - [2006 \(198\) E.L.T. 388](#).

66. As regards the alleged mis-declaration of product at the time of import in UAE, it is observed that M/s. Adani Export Ltd. have produced Notarized documents as indicated above. Also in view of the Supreme Court and other Judgments referred above, the description of goods have to be examined with reference to Indian laws and not as per Customs Tariff and laws of the importing country. A point has been raised in the show cause notice that the exported gold jewellery at the time of import in foreign country was declared and/or cleared as 'gold scrap'. Such declaration by importer would have evidentiary value only if there had been similar evidence of 'gold scrap' been exported. There is no such collaborative evidence. On the other hand, there is overwhelming evidence in respect of description of product, at the time of export in respect of above exporters as per the description in Shipping Bill, Invoice, Packing List as well as examination by Jewellers Association. This evidence at time of export of products by the Customs Officials & examination of Jewellery' Association cannot be overlooked and reliance and conclusion reached merely on basis of how the goods were declared or at time of import in a foreign country. It is to be noticed that such declaration of goods in foreign country is by the Importer and not be the two Exporters. Therefore, mis-declaration at hand of two Exporters at time of export cannot be held."

It can be seen from the above reproduced portion of Order-in-Original that the gold jewellery was exported by the respondents, after the same was put to 100% examination by the customs authorities and the examination was conducted by

the authorises by requisitioning a representative of local Jewellery Association recognized by the department. It is not disputed by the revenue that the above findings of facts are incorrect, as can be seen from the grounds of appeal. If it is so, then it is not open to the revenue, now to say that the respondents have not exported gold jewellery as indicated by them in the declarations made, while filing documents for export, more so, when representative of the recognized Jewellers Association has given a certificate of purity of the gold jewellery exported.

9.2 *The next contention of the revenue is that the Adjudicating Authority has not properly considered the evidences adduced by the revenue in form of report received from the Indian Consulate, Dubai, UAE. It is noticed that the respondents, on receipt of the show cause notice, approached the authorities to provide copy of the full report from the Indian Consulate, Dubai, UAE. In response to such a request, the office of the Commissioner of Customs, Bangalore vide letter No. C. No. VIII/10/56/2005-Cus. Adjn./10874, dated 28-2-2006/1-3-2006 replied as under :-*

OFFICE OF THE COMMISSIONER OF CUSTOMS

C.R. Building, P.B. No. 5400, Queen’s Road, Bangalore - 560 001.
Phone : 080 - 22864751, Fax : 080 – 22860680

C.No. VIII/10/56/205 Cus. Adjn. /10874, dated 28-2-2006/1-3-06
To
M/s. Adani Exports Ltd.,
‘Adani House’, Shrimali Society,
Navrangpura, Ashram Road,
Ahmedabad, Gujarat - 380 009
Gentleman,

Sub: - SCN C.No.VIII/10/56/2005, dated 18-11-05 - request made by M/s. Adani Exports Ltd. - reg.

Please refer to your reply dated 3-1-2006 filed in connection with the above mentioned Show Cause Notice, wherein you have requested documents for the purpose of defending the allegations made in para 19 of the subject SCN.

2. In this connection I have been directed by the Commissioner of Customs Bangalore to reply to queries raised in your aforesaid letter.

2.1 Full report of the India Consulate at Dubai referred to in para 19 of the subject notice: In this regard, it is to inform you that the subject SCN mentions the nature of enquiries which were made at the port of destination through the Indian Consulate at Dubai viz., to verify the description/declaration made by the buyers at the time of import of these goods and also to ascertain the manner in which the ‘gold jewellery (bangles) imported by the buyers from M/s. Rajesh Exports Ltd. and M/s. Adani Exports Ltd. were being used. The letter addressed to the Consulate is not a document relied upon in the SCN. The Consulate in response to the enquiries made by this office have provided information in respect of 8 consignments imported by M/s. Excel Gold Smith, Sharjah from M/s. Rajesh Exports Ltd. and M/s. Adani Exports Ltd. The 8 Bills of Entry provided by the Consulate and which are relied upon in the SCN have already been provided to you as Annexure E12. Other than the above

information provided by the Consulate, no other detail has been furnished. It may please be noted that the contents of the Consulate’s letter are not relevant to the present case. It is only the information furnished by the Consulate in the form of 8 Bills of Entry that had been relied upon to frame the charges in the SCN and the same were annexed to the subject SCN. The subject SCN draws attention to the Consulate’s letter merely to indicate the source of getting from Sharjah Customs, the Bills of Entry filed by the importer.

2.2 Copies of the relevant pages of the UAE Customs Tariff. UGCC list. U.S Code : As regards the UAE Customs Tariff, the same is a public document and relevant portion which have been mentioned in the SCN have already been provided to you. So also the copy of the UGCC list was already provided to you along with the SCN.

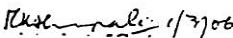
2.3 The documents referred to in para 19 of the Show Cause Notice : The same has already been furnished at para 2.1 above.

2.4 The basis for calling documents at Annexures E5 to E12 ‘Bills of Entry’ and if the same are not Bills of entry, “what is the true and correct nature of these documents”: The documents provided by the Indian Consulate at Dubai pertaining to the 8 consignments imported by M/s Excel Goldsmith, Sharjah are import declaration documents made by the importer to the proper authority at the port of import. The term Bill of entry is the common nomenclature given to such declaration of import and it is not to be confused with the documents filed in India in terms of Section 46 of the Customs Act, which is a document for assessment based on the entry made by the importer. As can be seen the documents give all relevant details pertaining to the import of goods into Sharjah such as the description and value of the items imported, the classification of the items as per the H.T. Code, the origin of the goods, the duty payable, etc. and hence in this case they have been referred as ‘Bills of entry’ in the subject SCN. Further, your argument relying upon the judgments of the Hon’ble Tribunal that the documents of a foreign buyer used by you for the purpose of clearance of the goods in the country of importation is unreliable and cannot be the basis of making any allegation against the exporter in India. This line of defence adopted by you is not tenable for the reason that the judgments of the Hon’ble Tribunal relied upon are pertaining to cases of undervaluation. In the instant case, the issues of the valuation of the items imported by the buyers at Sharjah are not disputed. The documents for the declaration of the import filed before the Sharjah Customs has been relied upon in the SCN only to substantiate the allegation that the exporter had mis-declared the item of export.

2.5 What are the relevant portions of UAE law relating to examination, assessment and clearance of goods imported into UAE and whether the same were followed in the present case : The laws relating to the examination and assessment of the import by the Sharjah Customs is not relevant to the present case. The SCN at para 19 has clearly spelt out the manner in which the imported goods were declared and how they have been cleared. The facts that the goods have been cleared by the importer at Sharjah Customs is evident from the seal on the import

declaration documents viz “Airport Customs - Clearance”. Therefore when the Sharjah Customs has accepted the documents filed by the importer and allowed clearance for the goods imported by the buyer which was declared by them as Gold scrap, Indian Customs has no powers to question the legality of such clearance. It is reiterated that the documents for the declaration of the import filed before the Sharjah Customs has been relied upon in the SCN only to substantiate the allegation that the exporter had mis-declared the export items declared in their Shipping Bills.

3. In view of the above, you are requested to file your additional reply if any to the SCN within 15 days from the date of receipt of this letter.

Yours faithfully,  1/3/06

It can be noticed from Paragraph 2.1 of the above reproduced letter, it was informed that the contents of the letter from Indian Consulate are not relevant to the present case and it is only the information furnished by Consulate in form of 8 Bills of Entry which annexed to Show Cause Notice. This would mean that the Bills of Entry annexed to Show Cause Notice are the only document relied upon by the authorities to allege misdeclaration. The said Bills of Entry are annexed to the Show Cause Notice as annexures E5 to E12. On a careful perusal of the said documents, we find that they are photocopies of declarations made by the purchasers to Dubai customs. It is noticed that these documents are not attested or signed by the customs authorities in Dubai. There is no rebuttal from the revenue to this fact even today. We find that in an identical situation, in case of imports, the Apex Court in the case of East Punjab Traders (supra) in paragraph 5 has held as under.

"The presumption to be raised under Section 139(ii) of the Customs Act could not be raised because the document did not bear any signature, did not come from proper custody and it is difficult to understand why the Indian Customs did not interact with the Japan Customs and obtain authentic copies of the document from the latter. Merely because the Department offered cross-examination of the steamer agent from whom the export declaration had been obtained and the respondents chose not to avail of that opportunity is no ground for holding that the requirements of Section 139 are satisfied for the purpose of raising the presumption. In order to raise the presumption under the said provision, the basic facts had to be laid. Even though they bear a serial number and stamp of Japan Customs, the fact remains that they are copies of copies and indisputably bear no signature of the exporter, the forwarding agent, the stevedore or the Customs Officer; no signature at all of any of them. The discrepancy in regard to copies bearing the seal of customs at Kobe also raises a serious doubt whether the copies relate to any of the consignments in question. In these circumstances, if the majority was disinclined to place reliance on these documents we find it to hold that it was in error in doing so (Para 5)."

9.3 *We find that in the present case before us, revenue has not given the copy of the report received from Indian Consulate to establish that the declarations before the Customs Authorities at Dubai were from authentic source and further, the said documents*

were copies of the copies obtained from some sources. We are of the considered view that unauthenticated documents cannot be relied upon for pressing home charge of misdeclaration on an assessee. On the contrary, we find that the respondents have produced certified copies of the Bills of Entry filed by the importer before Customs authorities at Dubai. We are of the view that the finding of the Adjudicating Authority on this point is very relevant, which are as under :

"67. During the personal hearing held on 22-11-2006, Shri Vikram Nankali, Advocate for M/s. Adani Exports Ltd., also submitted a comparative chart in respect of Annexure E8 TO E12 as referred in the Show Cause Notice. The said comparative Chart was in respect of the Bill of Entry referred to SCN, the relevant Invoice No. and date, the corresponding Shipping bill No. and date (as referred to in para 19 of the SCN) well as, the Airway bill and date including the name of the buyer which was, Excel Goldsmith in respect of all these five cases (E8 TO E12 of SCN) refers. He submitted the original copies of invoice and landing certificate, the bill of entry of Sharjah Customs. The said documents i.e., the invoice, the landing certificate and the bill of entry where, have been attested by the Tika Ram, Vice Consulate General of India Dubai (U.A.E). These, three documents also bear the seal/stamp of the United Arab Emirates. The documents have been certified to be true copies by Notary S.R. Pandya.

As per, the scrutiny of above bill of entry, the declaration the goods, description is as indicated below :

- (i) DEC/Bill of Entry No. 569, dt. 12-1-2005 — studded gold jewellery E8 of SCN refers
- (ii) DEC/Bill of Entry No. 1143, dt. 23-1-2004 — studded gold jewellery E9 of SCN refers
- (iii) DEC/Bill of Entry No. 95, dt. 3-1-2005 — studded gold jewellery E10 of SCN refers
- (iv) DEC/Bill of Entry No. 19972, dt. 24-12-2004 — studded gold jewellery E11 of SCN refers

(v) DEC/Bill of Entry No. 1142, dt. 23-1-2005 — studded gold jewellery E12 of SCN refers

Rajesh Export Ltd., have enclosed certified copies of documents filed by the importer at the time of clearance of shipment as annexure 'A' to their reply dated 30-6-06. A further comparative chart correlating the above DEC/BE/E with shipping bill/date as referred in para 19 of the SCN was also submitted by Rajesh Export Ltd, on 29-11-06. As per these details, the goods have been described as indicated below :

(i) DEC/Bill of Entry No. 18704, dt. 3-12-2004 ----- studded gold jewellery E5 of SCN refers

(ii) -----do-----18295, dt. 26-11-2004 ----- gold jewellery studded E6 of SCN refers

(iii) -----do-----/8573, dt. 3-12-2004 ----- studded gold jewellery E7 of SCN refers.”

It is to be noted that the relevant documents produced by the respondents to support their case were attested by an officer from Indian Consulate, Dubai, UAE while the very same documents produced by the revenue through Indian Consulate were not attested. Suffice to say, that the documents produced by respondent has more evidentiary value, we hold that the reliance placed by Adjudicating Authority on such documents (as produced by respondents) cannot be faulted with.

10. In totality, on the facts and circumstances of the case, we find that impugned order passed by the Adjudicating Authority is correct, legal and cannot be faulted with.

11. In view of the above reasonings, we are of the considered view that the impugned order needs to be upheld and we do so and reject the appeals filed by the revenue.

42. Further, we find that the Hon'ble Karnataka High Court vide Order dated 30.10.2014 dismissed the appeal preferred by the Revenue against the above order of CESTAT which is reported in Commissioner Vs. Rajesh Exports Ltd. reported in 2015 (318) ELT A 55 (Kar).

43. We find that the disputed matter is well settled in favour of the respondents by the above decisions and Ld. Adjudicating authority correctly

dropped the demands. We have also gone through the details finding of the Ld. Commissioner in the present disputed orders and find that each and every allegations of the revenue was discussed by him in detail and thereafter he passed a detailed speaking orders. We do not find any reason to interfere with the orders.

44. We have also gone through the Order dtd. 27.12.2013 passed by the Joint Director General of Foreign Trade in the matter of M/s AEL. We find the in the said order he accepted the fact that there was no Circular trading, and that all the exports were to be accepted towards the discharge of the obligation under the Advance Licenses, and accordingly, redeemed all the Advance Licenses. The Order dated 27.12.2013 of the Joint DGFT covers the very same Advance Licenses, which are the subject matter of the present Show Cause Notices. Since the Licensing Authority, having accepted that the M/s AEL has discharged the export obligation under Advance Licenses, in accordance with law, there is and can be no breach of Condition (v) of Notification 93/2004-Cus dated 10.09.2004 and/or the bond issued in terms thereof. We also notice that the department's appeal does not allege that the licences had been cancelled by the Additional Director General of Foreign Trade in the instant case or Licencing authority take any legal action against the respondents. Clearly, the facts are on record that the DGFT has not taken any action against the respondent related to the disputed transactions and same were valid in the eyes of law. So it is clear that DGFT does not agree with the contention of the department. We are unable to agree with the allegation of the revenue that the exports/imports have been misdeclared and benefit of exports/imports have been obtained fraudulently. We also notice that the Hon'ble Bombay High Court in the case of *Pradip Polyfils Pvt. Ltd.* [2004 \(173\) E.L.T. 3](#) (Bom.) considered the scope of jurisdiction of the customs authorities to question the validity of DEPB licences and held as under :

"We have heard Counsel on both the sides. In this case, it is not in dispute that pursuant to the application made by the petitioners seeking benefit of DEPB Schemes in respect of exports of filter plates and accessories made of polypropylene, two DEPB licences were issued by the DGFT in favour of the petitioners. The endorsement made on the licences clearly show that the DEPB licences have been issued against the

export of Polypropylene filters Plates and accessories as contained in the shipping bills furnished by the petitioners. The said DEPB licences were required to be forwarded to the Customs for verification of the particulars set out in the shipping bills and necessary endorsement thereon. Under Circular No. 15/97 dated 3-6-1997 the verification by the Customs authorities was restricted to the description, quantity and FOB value of the export product set out in the Shipping Bill. it is not the case of the Customs authorities that there is any discrepancy, quantity and FOB value of the export product. Under the circumstances, when the DEPB licence is issued by the Licensing authorities specifically holding that the Petitioners are entitled to avail the benefit of the DEPB Scheme in respect of Polypropylene filter plates and accessories, the Customs authorities were not justified in rejecting the claim of the Petitioners on the ground that the Articles exported by the Petitioners were not covered under Chapter 39 ITC (HS) classification. Whether an item falls under Chapter 39 of ITC classification or not is for the licensing authorities to consider before issuing the licence. Even after the issuance of the licences, the licensing authorities have not taken any steps to declare that the said licences were wrongly issued. Once the licensing authorities have held that the export product is covered under the DEPB Scheme and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme."

45. In the circumstance above, we do not agree with the contention of the department that the export of Studded Jewellery by M/s AEL and others was fraudulent. We do not find any reason for demand of duty or confiscation of the goods, or imposition of penalties. In the light of this, we hold that no valid grounds have been brought out to interfere with findings of the Ld. Adjudicating authority.

46. In view of the above, we find that there is no infirmity in the impugned orders and they deserve to be upheld and we do so. The appeals filed by the revenue are dismissed.

(Pronounced in the open court on 07.06.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha