

- In respect of the above two sets of invoices bearing the same numbers, he stated that instead of giving them the invoices issued by M/s.Vani Exports, Shri Kalpesh Daftary had probably prepared another set of invoices and gave it to them.
- Since they were not aware of the actual sale and purchase of the licences they never came to know about it.
- On being asked regarding the type of licences sold against these two invoices, he stated that he is not aware as to what are the licences sold against these bill/debit notes.
- He submitted a copy of the ledger account of M/s Vani Exports for the year-2009-10 (2 pages) as maintained by them in tally software.
- The said account shows the mention of the amounts of Rs.16221444.00 in credit side shown as purchase Kolkata at Vch.No.130 and an amount of Rs.26181654.00 also as Purchase Kolkata at Vch.No.129.
- On comparing the same with the Ledger account produced by Shri.Girish Ghelani, he finds that the amount of Rs.26181654.00 is not reflected in his account.
- This discrepancy must have occurred due to the handiwork of Shri. Kalpesh Daftary of M/s SCPL as during that period Shri.Kalpesh Daftary was handling the entire work of M/s SCPL and the purchase and sale of licences in their firm was managed by Shri. Sashin Koradia as per the directions of Shri.Kalpesh Daftary.
- They have made payment of Rs.5.05 crores to M/s.Vani Exports, Kolkata towards their purchases of Rs.4.80 crores.
- The payments were made and handled by Shri Kalpesh Daftary only and they were merely signing instruments and handing it over to him.
- They have received payment of approximately Rs.6.80 crores towards the sale of these 13 licences from M/s. Reliance Industries Ltd. Out of this Rs.5.05 crores was made to M/s.Vani Exports, Kolkata and the balance amount was made to other firms by Shri Kalpesh Daftary and they had merely signed cheques and handed over the same to him.

78. The hard disks, laptops, pendrives etc. withdrawn from the office and premises of M/s.Krish Overseas, Rajkot, M/s.Bansi Overseas, Rajkot and the residential premises of Shri Piyush Viramgama were sent to the Directorate of Forensic Science (DFS), Gandhinagar. The DFS vide their report No. DFS/EE/2010/CF/115 dtd.22/07/2011 DFS/EE/2010/CF/116 dtd.29/09/2011 and DFS/EE/2010/CF/119 dtd.13/10/2011 forwarded CD/DVD of the evidentiary documents retrieved from the same. Copies of

the documents and evidences relevant to the investigations were called for from the DFS, Gandhinagar vide letter dtd.25/06/2012 . The certified copies of the document printouts were forwarded by the DFS, Gandhinagar vide their letter No.DFS/EE/2010/CF/115 dtd.11.09/2012, DFS/EE/2010/CF/116 dtd.11/09/2012 and DFS/EE/2010/CF/119 dtd.11/09/2012.

79. On completion of investigation, it appeared that in the instant case there has been contravention of provisions of Section 7 and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 14 of Foreign Trade (Regulation) Rules, 1993, apart from wrong availment of Notification No.41/2005-Cus dated 09.05.2005 and non-payment of duty of Rs. 6,95,53,888/- on the goods imported, as indicated in Annexure 'B' to the show cause notice. Accordingly, a show cause notice No.DRI/AZU/INV-21/2010 dated 08.04.2013 to M/s. Reliance Industries Ltd, Bharuch and other by the Additional Director General, DRI, Zonal Unit, Ahmedabad calling upon them to show cause to the Commissioner of Customs, Ahmedabad as to why:-

- A. The goods valued at **Rs.38,92,76,299/-**, (details as per Annexure 'B') imported by presenting 13 forged/fake VKGUY (details as per Annexure 'A') should not be held liable for confiscation under Section 111 (d), (j) and (o) of the Customs Act, 1962;
- B. The Customs duty totally amounting to **Rs.6,95,53,888/-** which was debited utilizing the forged/fake VKGUY licences should not be demanded from them under Section 28 (4) (erstwhile proviso to Section 28 (1) ) of the Customs Act, 1962 ;
- C. Interest should not be recovered from them on the said differential duty, as at (B) above, under Section 28AA (erstwhile 28AB) of the Customs Act, 1962;
- D. Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962;
- E. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

80. (I) Shri Kalpesh Daftary, of M/s.Sunkalp Creations Pvt Ltd, Mumbai and M/s.Bansi Overseas, Rajkot; (II) Shri Piyush Viramgama of M/s.Krish Overseas and M/s.Bansi Overseas, Rajkot; (III) Shri Niyaz Ahmed of M/s.Indiyana Shoes and M/s.Indiyana Marketing, Kanpur and (IV) Shri Vijay Gadhiya of M/s.Krish Overseas and M/s.Shivigangi Enterprise, Rajkot were also called upon to show cause to the Commissioner of Customs Ahmedabad as to why :-

- i) Penalty should not be imposed upon them under Section 112 (a) of the Customs Act, 1962 and
- ii) Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962.

**Defence submission:**

81. M/s. Reliance Industries Ltd, hereinafter referred to as M/s. Reliance, for short, submitted their written reply vide letter dated 4<sup>th</sup> September 2013. M/s. Reliance submitted that they are engaged in the manufacture of excisable goods at their factory situated at Dahej/Bharuch at Gujarat; that they import at the port of Dahej, various inputs/raw-materials for use in or in relation to the manufacture of their final products; that they discharge the customs duty liability on the imported goods inter alia by using various licences/duty credit scrips including duty credit scrips/licences issued under Vishesh Krishi and Gram Udyog Yojna (VKGUY) scheme.

81.1. M/s. Reliance further stated that their annual requirement of such duty credit scrips/licences is to the tune of duty of about five hundred crores, out of which, 50% is fulfilled through licences/duty credit scrips issued in their own name and the balance through transferable licences /duty credit scrips which they procure from the market. During the period 2008 - 2009, they had utilized about 214 such licences/duty credit scrips involving duty of 75 crores and during the period 2009 - 2010 we had utilized 512 licences/duty credit scrips involving duty of Rs. 105 crores.

81.2. M/s. Reliance submitted that the transferable licence/duty credit scrips are purchased by them through brokers; that one such broker through whom they have been regularly purchasing transferable licences/duty credit scrips was Mr. Bhavesh Doshi through whom they had procured about 417 licences/duty credit scrips during the period August 2008 - March 2010.

81.3. Explaining their case, M/s. Reliance stated that in the normal course of their business, in November 2009 they had purchased from Hindustan Continental Ltd. of Kolkata, 17 transferable VKGUY licences/duty credit scrips through the said broker Mr. Bhavesh Doshi. For purchase of said licences/duty credit scrips, they had placed through Mr. Bhavesh Doshi a purchase order No. XB37209193 dated 07.11.2009 on the said Hindustan Continental Ltd. The said VKGUY licences/scrips were purchased at the prevailing market rate of 98% of the value of the duty credit scrips. M/s. Reliance pointed out that in accordance with the normal practice in the trade, the responsibility under the said purchase order for arranging the release advice pertaining to the licences/ scrips from the port of registration and to ensure the authenticity and correctness of the same was that of the said broker and the transferor.

81.4. M/s. Reliance stated that on receipt of the transferable licences/scrips from the seller Hindustan Continental Ltd, through the said broker Bhavesh Doshi, they duly verified the details of the said licences/scrips from the website of DGFT. The payment for the purchase of the said licence/scrips was made to Hindustan Continental Ltd. through RTGS. The release advices in respect of the said licences from the Customs at Mangalore where the said licences were registered as also FAX letters from Mangalore Customs verifying the genuineness of the release advices were provided to them by the said broker Bhavesh Doshi. Based on the said licences / release advices, the Customs at Dahej, granted clearance to the goods imported by them by debiting the duty in the said licences.

82. Subsequent to the clearance of the goods, M/s. Reliance stated that they were informed by the said Bhavesh Doshi by his e-mails dated 30.07.2010 and 02.08.2010 that some of the licences/duty credit scrips which they had purchased from Hindustan Continental Ltd., Kolkata through him, had been found to be forged by DRI in the course of investigations. M/s. Reliance further stated that by the said mail Bhavesh Doshi informed them that the said licences which had been sold to them by Hindustan Continental Ltd., Kolkata were offered to him by one Mr. Kalpesh Daftary director of Sunkalp Creation Pvt. Ltd. In support of their above submission, M/s. Reliance submitted copies of aforesaid e-mails.

82.1. M/s. Reliance submitted that by above said way they came to know that 13 licences/scrips, details which are given in annexure A to the SCN were forged ones. They also stated that upon being informed by Mr.

Bhavesh Doshi that 13 licences/scrips have been found to be forged in the DRI investigation, by their two letters, both dated 09.08.2010 addressed to the Superintendent of Customs and Assistant Commissioner of Customs, Surat, they paid up the Customs Duty of Rs. 6,95,53,884 alongwith interest Rs. 69,85,878/-. M/s. Reliance also pointed out that by the letter addressed to the Assistant Commissioner with a copy to DRI, they pointed out that the said duty and interest had been paid in terms of the provisions of section 28(2B) of the Customs Act, 1962 as it then stood. M/s. Reliance also stated that in response to their aforesaid letter, DRI vide its letter dated 16.09.2010, contended that the provisions of section 28(2B) of the Customs Act 1962 were not applicable in the present case in view of explanation 1 thereto. M/s. Reliance also stated that vide their letter dated 12.10.2010 they brought to the notice of DRI that they were innocent purchasers who were unaware of the wrong committed by a third party; that they were not aware that the licences were not genuine and that they were innocent buyers for value.

82.2. Claiming that they are innocent in the matter, M/s. Reliance pointed out that DRI had recorded statements of their Dr. Manoj Prasad Guru, General Manager (Commercial) Mr. Santosh Rane Manager (Procurement) and Ms. Vahabish B. Pardiwala senior Vice President (Procurement) and all of them maintained that the said 13 licences/scrips had been purchased by them from Hindustan Continental Ltd. through broker Mr. Bhavesh Doshi who had provided them the original licences with transfer letters and release advice as also FAX letters from Mangalore Customs verifying the genuineness of the release advices. M/s. Reliance also insisted that on receiving the licences/release advices from the said broker, they have verified the licence details form the website of the DGFT. They have also maintained that payment was made at the prevailing market rate of 98% which was made through RTGS to Hindustan Continental Ltd.

82.3. Expanding their submission, M/s. Reliance contended that in the regular course of their imports, they purchase and utilize a large No. of transferable licences involving duty of crores of Rupees; Mr. Bhavesh Doshi, was a regular broker, through whom they regularly purchase large No. of licences from Hindustan Continental Ltd. & therefore they had no reason to doubt the credentials of Bhavesh Doshi & Hindustan Continental Ltd. M/s. Reliance also pointed out that the 13 licences in question were part of licences which they had purchased from Hindustan Continental Ltd., through broker Mr. Bhavesh Doshi; on receipt of the licences from the said broker they had taken steps to ascertain the genuineness of the licences by

verifying the details from DGFT website; that they had made payment for the licences by RTGS at the prevailing market rate of 98%.

82.4. It was also stated by M/s. Reliance that it is a general trade practice that where the licence is intended to be utilized at a different port, the licence broker/trader gets the release advice issued from Customs at the port of registration and provides the same with the licence to the buyer. It is also a general trade practice that the licence broker/trader pursues the verification and genuineness of the release advice at the port of issue of release advice. M/s. Reliance submitted that consistent with the said general practice, they had received through Bhavesh Doshi, the broker, the letters of Mangalore Customs confirming genuineness of the release advices and the same was presented before Dahej Custom Authorities presuming the same to have been issued by Mangalore Custom Authorities.

82.5. M/s. Reliance also argued that Shri Kalpesh Daftary, Piyush Viramgama, Vijay Gadhiyal & Niyaz Ahmed were the persons who had hatched the conspiracy to forge 13 VKGUY licences and to sell the same to them. Since they use to purchase licences in bulk, the said conspirators found it easy to mix 13 bogus licence with other genuine licences purchased by them; that the conspirators arranged to supply the forged licences alongwith genuine licences through Hindustan Continental Ltd. and Bhavesh Doshi whose credentials they would not have doubted because they were purchasing licences in bulk regularly from them. In other words they were made victims of fraud by the said conspirators. M/s. Reliance also pointed out that they had no knowledge that the 13 licences in question were forged licences and that they became aware of the same only after Mr. Bhavesh Doshi informed them when he became aware of the same during DRI investigation. M/s. Reliance stated that despite the aforesaid admitted facts which clearly reveal that they were unaware that the said 13 licences and the release advices were forged and that they were victims of fraud committed by the said conspirators, the Show Cause Notice has proposed actions against them by raising the following contentions.

83. M/s. Reliance argued that the Notice does not dispute the position that they were unaware that the said 13 licences and corresponding Release Advice and custom letters were forged and that they had no reason to doubt the credentials of the transferor Hindustan Continental Ltd. and the broker Bhavesh Doshi and that in fact they were victims of the fraud committed by Kalpesh Daftary and his co-conspirators, the Notice

nevertheless contends that they cannot shy away from their responsibilities in purchase and utilization of the forged licences. M/s. Reliance pointed out that it was contended in the Notice that they did not take steps to ascertain the genuineness of the release advices and that it is settled position of law that a buyer cannot have a better title than the seller. It has also been stated in the notice that it is for them to establish that they had no knowledge about the genuineness or otherwise of the licences/Release Advices in question; that since the licences which were produced and debited for duty payment were forged, the goods in question were liable for confiscation under section 111(d), (j) and (o) of the Customs Act, 1962 and that we are liable to penalty under section 112(a) and 114A of the said Act. It has also been stated in the notice that they are not eligible for the benefit of erstwhile section 28(2B) (now section 28(2) of the Customs Act, 1962 by virtue of explanation 1 thereto; it is further contended that the extended period of limitation is applicable in the present case.

83.1. Arguing that the aforesaid contentions raised in show cause notice are misconceived and unsustainable in law, M/s. Reliance stated that the admitted position is that upon being informed by the licence broker Mr. Bhavesh Doshi that 13 licences / scrips purchased by them from Hindustan Continental Ltd. through said broker were forged, they paid up the customs duty of 6,95,53,888 along with interest of 69,95,878/-. M/s. Reliance also stated that by the said letter addressed to the Assistant Commissioner, copy of which was marked to the DRI, they pointed out that the said duty and interest were paid in terms of provisions of section 28(2B) of the Customs Act, 1962.

83.2. M/s. Reliance contended that in view of the said payment of duty and interest prior to issuance of the present Show Cause Notice, the present Show Cause Notice is barred & not maintainable in view of the provisions of the said section 28(2B). The said section 28(2B) provides that where any duty has not been levied or short levied or not paid, the person chargeable with the duty may pay the same **before service of notice on him** and inform the proper office about such payment in writing and thereupon no notice shall be served on person chargeable with duty. In the present case, since they have paid the duty with interest before the service of notice on them, the present notice is barred and not maintainable in view of **the provisions of section 28(2B)**. In support of above contention they placed reliance on the following case laws:

(a) CCE v Roshan Lal Lalit Mohan – 2006 (206) ELT 325

- (b) Adecco Flexione Workforce Solutions Ltd. 2012(26)STR 3
- (c) Reliance Industries Ltd. 2013 (287) E.L.T. 433
- (d) Blue Star Ltd. 2013 (31) S.T.R. 28
- (e) M.D.Engineers 2013 (30) S.T.R. 389
- (f) Manipal County 2010 (17) S.T.R. 474
- (g) Circular No.48/2008 dated 3-10-08

83.3. M/s. Reliance pointed out that it is contended in the Show Cause Notice that the provisions of section 28(2B) would not apply in the present case in view of explanation 1 to section 28(2B). Arguing that said contention is totally unsustainable in law M/s. Reliance stated that Explanation 1 to Section 28(2B) provides that nothing contained in 28(2B) shall apply in a case where duty was not levied or was not paid by reason of collusion or any willful misstatement or suppression of facts by the importer or exporter or agent or employee of the importer or exporter. M/s. Reliance argued that none of the ingredients of the said explanation 1 is applicable in the present case.

83.4. The Notice, except merely contending that they are not eligible for benefit of section 28(2B) by virtue of explanation 1 to said section 28(2B), it does not specify as to how the said explanation 1 is attracted to the present case. Explanation 1 would be attracted, if it is alleged and established by evidence that the non levy or non-payment of duty was for reason of collusion, willful misstatement or suppression of facts by the importer, agent or employee of the importer. Thus to invoke explanation 1 against them, the Notice must first of all specify which out of the 3 ingredients namely collusion, willful misstatement, suppression of facts is applicable in the present case. In the absence of Notice specifying the particular ingredients out of the 3 ingredients namely collusion, willful misstatement, suppression of facts, the said explanation 1 cannot be invoked against them. In support of above submission they placed reliance on the decisions of the Honourable Supreme Court in the case of H.M.M Ltd. 1995 (76) E.L.T. 497 and Aban Loyd Chiles Offshore Ltd.2006(200)ELT 370.

83.5. Continuing their arguments, M/s. Reliance stated secondly, the alleged collusion or willful misstatement or suppression of facts must be from the importer, his agent or employee. In the present case, the entire allegation of forgery is against Kalpesh Daftary, Piyush Viramgama, Vijay Gadhiyal & Niyaz Ahmed who according to the Notice had hatched a conspiracy to forge the 13 VKGUY licences and sell the same to them. In fact the notice itself contends that the said persons had chosen to sell the forged licences to them in such a manner that they could not have doubted the



genuineness of the licences in as much as they had mixed few bogus licences amongst other genuine licences and arranged to sell the same through Hindustan Continental Ltd. and Bhavesh Doshi and since they were regularly purchasing licences from Hindustan Continental Ltd. & Bhavesh Doshi, they had no reason to doubt the credentials of Hindustan Continental Ltd. & Bhavesh Doshi. M/s. Reliance argued that it is thus apparent from the Notice that the allegations of collusion, willful misstatement, suppression of facts are not against them or their agent or employee but against the said 3 person with whom they had no dealings and who were not their agents or employees.

83.6. As a matter of fact, M/s. Reliance pointed that it is undisputed facts which are accepted in the Show Cause Notice the licences in question were part of larger No. of licences which they had purchased in regular course of their business through broker Mr. Bhavesh Doshi who was a regular broker through whom they had been purchasing large No. of licences from Hindustan Continental Ltd. The Notice in fact admits that they had no reason to doubt the credentials of Bhavesh Doshi & Hindustan Continental Ltd. M/s. Reliance insisted it is also accepted in the Notice that on receipt of the licences from the broker they had taken steps to ascertain the genuineness of the licences from DGFT website and by that they had made payment of licences from RGTS at prevailing market rate of 98%. The Notice further accepted that it is a general trade practice that the licence broker/ trader gets the release advice issued from the customs at the port of registration and also pursues the verification of genuineness of the release advice by Customs and that consistent with such general practice we had received through the broker Bhavesh Doshi, the FAX letters of Mangalore Customs confirming genuineness of the release advices and the same were presented to the Dahej Custom authorities believing the same to be issued by Mangalore Customs Authorities. M/s. Reliance argued that in fact, the notice itself accepts that Kalpesh Daftary, Piyush Viramgama, Vijay Gadhiyal & Niyaz Ahmed who had hatched the conspiracy to sell forged licences had arranged to supply the forged licences alongwith genuine licences through Hindustan Continental Ltd. These facts, M/s. Reliance stated, accepted in the Notice rule out any collusion or willful misstatement or suppression of facts on their part and hence explanation 1 to section 28(2B) can have no application in their case.

83.7. Countering the contention raised in the Notice that they cannot shy away from their responsibilities in the purchase and utilization of

forged licences and that they cannot have a better title than the seller of the licences; Reliance argued that these contentions in the Notice can only mean that the duty with interest would become payable by them which, in fact, they have already done in terms of section 28(2B); that these contentions however cannot make explanation 1 to section 28(2B) applicable to them because for explanation 1 to apply it must be shown that there was collusion, willful misstatement, suppression of facts on their part.

83.8. M/s. Reliance stated that it has been stated in the Notice that they did not take any steps to verify the genuineness of the release advices. In this behalf Reliance submitted that the Notice itself accepted that it is general practice in trade that the licence broker/trader gets the release advice issued from customs and also pursues the verification of genuineness of the release advice. Therefore, Reliance argued that their action in relying upon licence broker/trader was in consistence with such trade practice and they had no reason to doubt the genuineness of the release advices or letter of Mangalore Customs of verification. M/s. Reliance also pointed out that as a matter of fact even the proper officers of customs at Dahej Customs Port who granted clearances against the said release advices did not doubt the genuineness of the release advices or of the Mangalore Customs letter for verification.

84. Dealing with the proposal in the show cause notice to confiscate the goods imported by debiting in the licences in question under the provisions of section 111(o), (d) and (j) of the Customs Act, 1962 and the proposal to impose penalty under section 112(a) and 114A of the Customs Act, 1962, M/s. Reliance argued that as the show cause notice itself is not maintainable in view of the provisions of section 28(2B) of the Customs Act, 1962, the question of confiscation and imposition of penalty does not arise.

84.1. Explaining as to why the provisions of section 111(o), (d) and (j) are not attracted in the present case, Reliance stated that Section 111(o) applies to any goods which are exempted from duty or any prohibition, subject to any condition and where such condition is not observed / fulfilled. Essentially, Reliance argued that Section 111(o) applies where an exemption is granted to the importer subject to the importer having to observe/fulfill certain post import conditions. In the present case the exemption granted to them was not subject to any conditions which we were required to observe and which we have failed to observe; Section 111(o) therefore does not have any application to the present case.

84.2. M/s. Reliance pointed out that the exemption is sought to be denied to them not on the ground that they were required to observe certain conditions which they have failed to observe. The exemption is denied to them on the ground that the VKGUY licences which they had purchased and against which they had cleared the goods were subsequently found to be forged and therefore the goods were not entitled to the benefit of exemption Notification. M/s. Reliance stated that there is a difference between the exemption not being available at all and a situation where the exemption is available and is granted subject to fulfillment of certain post clearance condition. Section 111(o) is not attracted in the former situation but is attracted in the latter situation. The present case does not fall under the latter situation and hence section 111(o) has no application in the present case.

84.3. M/s. Reliance also stated that Section 111(d) of the Customs Act, 1962 also does not have any application to the present case. Section 111(d) applies to goods which are imported or attempted to be imported etc. contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. In the present case the goods imported by them were freely importable without the requirement of any licence and there was no prohibition with regard to the import of the said goods either under the Customs Act or any other law. The provisions of section 111(d) therefore have no application to the present case.

84.4. M/s. Reliance pointed out that Rule 14 of the Foreign Trade (Regulation) Rules, 1993 prohibits making, signing or using or causing to be made signed or used any declaration statement or document for the purposes of obtaining a licence or importing any goods. The Notice however has ignored the words 'knowing or having reason to believe that such declaration, statement or document is false in any material particular' appearing in the said Rule 14. The provisions of the said Rule 14 would be attracted only if the importer knew or had a reason to believe that a declaration, document, statement is false in any material particular. In the present case, Reliance added, there is absolutely no evidence to establish that they knew or had a reason to believe that the 13 licences in question were forged. On the contrary from the facts accepted in the Notice and discussed hereinabove, it would be apparent that they had no knowledge whatsoever or had a reason to believe that the licences in question were forged, and in fact, Reliance submitted they were victims of the fraud committed by Kalpesh Daftary, Piyush Viramgama, Vijay Gadhiya & Niyaz Ahmed.

84.5. Although the Notice contends that section 111(j) of the Customs Act, 1962 is applicable it does not indicate as to how section 111(j) is attracted in the present case, Reliance added. Section 111(j) applies to any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of a proper officer or contrary to the terms of such permissions. In the present case, the goods have been removed from the Customs area only after filing of the Bills of Entry and the assessment thereof by the proper officer of Customs and after the proper officer passed the order for home consumption under section 47 of the Customs Act, 1962. Section 111(j) therefore has no application whatsoever in the present case.

84.6. Finally, M/s. Reliance submitted that since, as submitted hereinabove, the goods are not liable to confiscation under section 111 of the Customs Act, 1962, the question of imposition of penalty on them under section 112(a) of the said Act does not arise. Further, since as explained hereinabove there has been no collusion or willful misstatement or suppression of facts on our part, penalty under section 114A under the Customs Act, 1962 is also not imposable. M/s. Reliance also argued that in any event there is no allegation or evidence to suggest that they were party to the forgery or fraud committed by the said persons Kalpesh Daftary, Piyush Viramgama, Vijay Gadhiya & Niyaz Ahmed and on the contrary they are victims of the fraud/forgery committed by the said persons. In these circumstances the question of imposition penalty on them cannot and does not arise. On the backdrop of above submission, M/s. Reliance stated that the proposals for penalty on them are totally unsustainable in law and accordingly requested to discharge and drop the Notice against them.

#### **Kalpesh Daftary**

85. Shri Kalpesh Daftary has filed his written submission vide his letter dated 19.08.2013 and denied the charges made in the show cause notice. In fact his reply does not actually counter the allegations made in the show cause notice and makes allegations on other conspirators who happened to be his associates when the offence was committed. Such allegations on other associates are not reproduced here in view of the fact that it has got nothing to do with the charges made in the show cause notice against Shri Daftary. Shri Daftary has extensively mentioned about Dharmesh Gathani of Padmavati Agencies Pvt. Ltd in his reply. Fact of the matter,

however, is that in the instant case, the fake licences were not supplied to Reliance Industries Ltd by Padmavati Agencies. This clearly exhibits that reply to SCN has been filed without going to the factual position and simply submitted a reply identical to reply submitted in the case of Hindalco Industries Ltd.

85.1. He claimed that it is case of Padvapati Agencies (P) Ltd., in connivance with Custom Officers of the port issuing and confirming the licenses and forged the documents and used the same for their personal gain. He also stated that he has retracted the statement recorded by DRI. Shri Daftary argued that Shri Dharmesh Gathani of Padmavati Agencies Pvt. Ltd in his statement has stated that they have been supplying licences to Reliance Industries Ltd. Therefore, Daftary stated that Shri Dharmesh Gathani was having easy access to Xerox copies of the used licenses by Reliance Industries Ltd at Dahej or Magdala port.

85.2. Shri Kalpesh Daftary stated that his statement was under pressure from Dharmesh Gathani who had made a police complaint. As per civil suit filed by Padmavati Agencies in City civil Court on 28.10.2010 they have mentioned full address of Niyaz Ahmed and this information was only with DRI. He also claimed that he has never visited Kanpur but Dharmesh Gathani has full details of Niyaz Ahmed. As per CBI investigation Ashok Gupta is main culprit in creating fake licenses and Niyaz Ahmed is witness in CBI investigation.

85.3. Shri Kalpesh Daftary also stated that allegations against him made in the show cause notice are on the basis of statements of various persons. Accordingly, he requested to provide opportunity to cross examine such persons through his lawyer so as to prove that statements of such persons are not completely true. He also contended that right to cross examination is a right under statue and it cannot be taken away. He also stated that the show cause notice is prima-facie time barred as DRI had arrested him therefore all details prior to arrest were with DRI. Now the show cause notice has been issued after two years of his arrest and hence the SCN is time barred as the extended period is not available as all facts were with DRI. He has also resisted the proposal to impose penalty on him.

**Piyush Viramgama**

86. Shri Piyush Viramgama, Notice No.3 filed his reply to aforesaid show cause notice vide his letter dated 01.01.2014. In sum and substance, he submitted as under:

- He confirmed having received the show cause notice and conversant with facts and circumstances of the case. He filed the reply/at this stage, with a view to bring certain important aspects, with a request to withdraw/drop this notice. He was an under-trial prisoner and unable to get any temporary bail, he could not properly instruct his lawyer. Hence on this count also, he submitted that he reserves his right to file further reply after getting released from imprisonment.
- He denied the charges made against him in the notice.
- He stated that the Show Cause Notice refers to number of statements of various persons and such persons mentioned in SCN have allegedly described the incident, which has been made basis of initiating proceeding against him. Therefore, requested to provide opportunity for cross-examination of such person through his lawyer with a view to prove that the facts stated by such person's are not complete and hence cannot be made basis for issuance of SCN.
- He contended that the right to cross examination is a right given under statue and hence same cannot be taken away.
- He further stated that Show-Cause Notice is prima-facie time barred. That the DRI had arrested him for alleged irregularity or illegality of DEPB licenses. Hence the department is having notice of all the details at least prior to the arrest, in spite of this fact notice issued after period of more than one year and hence it is time barred and hence not maintainable in eye of law. The extended period of issuance of Show Cause Notice is not available after disclosure of facts and on the said basis arrest of the notice has taken place. Therefore in view of true and correct interpretation of Section 28 of Custom Act notice itself is time barred.
- He further stated that the allegation under Custom Act raised u/s 111 (d), (j) and (o) as well as for invocation of personal penalty, do not apply to facts and circumstances of present case. In fact entire transaction of purchase and sale of DEPB licenses is neither done by notice or his company, therefore any of the provision of Section 111

are not invocable nor any of the provisions of personal penalty are invocable against him.

- He further contended that reliance has been placed on his statement recorded and at that time, he was imprisoned and was not having legal guidance, nor having documentary evidence. Such statement was immediately retracted by him.
- He argued that it is evident from the content of notice itself and more particularly from the procedure required to be followed to obtain the credit of the licenses that the Padvamati Agencies Pvt. Ltd., in connivance with custom officers of the port issuing and confirming the licenses as genuine licenses and of the utilizer port have forged the documents and used the same for their personal gain.
- Shri Viramgama submitted that Dharmesh Gathani had given his statement recorded on 22.04.2010. Padmavati agencies Pvt. Ltd is CHA (Custom House Agent). That CHA license was issued from Jamnagar Custom and said Padmavati Agencies are consultant of M/s.Hindalco and other such companies and hence they are fully aware of custom formality. Further in his statement he has further said that they help exporters in application DGFT/Custom verification work. What is most relevant to note is that his statement differs from Police statement in 145/2010 register at Dahej. And as per Civil suit filed by M/s.Hindalco Industries Ltd at city Civil Court Ahmedabad they mentioned that they pay Rs. 3.75 crore for one licences consultancy charge to Padmavati Agencies Pvt.Ltd that show that they adjust forge licensees profit from other way.
- He submitted that statement of Bikas Pinaliwala stated that it is only Padmavati Agencies who gave low rate and higher quantity. That the genuineness of the RA's are required to be confirmed by RA issuing Customs Authority , Dahej Port . Though in the present case nor any fax or any letter of confirmation is sent from Dahej, Custom to Mangalore, Custom.
- Further Shri Viramgama submitted that Shri Bikas Pilaniwala of M/s.Hindalco mentioned stated that in addition to the Custom Authorities, the confirmation of genuineness of the release advice in respect of the alleged 85 licensees were also managed by none other but M/s.Padmavati Agencies (P) Ltd . Dharmesh Gathani is main conspirer of these forge licensees.
- Dharmesh Gathani of M/s Padmavati Agencies (P) Ltd stated that due to huge loss to M/s.Padmavati Agencies (P) Ltd in stock market and he

took more money by borrowing same from market that's way they wanted easy money by selling forged license to M/s.Hindalco.

- Shri Viramgama stated that from the above facts and discrepancy mentioned above the allegation leveled against him with regards to act of omission and commission in forging and sale of forged DEPB/VKGUY licenses to M/s.Hindalco Industries Ltd is totally baseless, arbitrary and illegal. Hence, action proposed in the notice needs to be dropped.

87. Shri Niyaz Ahmed and Vijay Ghadiya did not file any reply to the show cause notice despite repeated requests to do so.

#### **Personal hearing.**

88. 1<sup>st</sup> Personal Hearing in the case was fixed on 24.02.2014 and communicated to all the Noticees, but none appeared. M/s. A.S. Dayal & Associates – Advocates & Solicitors vide their letter dated 20<sup>th</sup> February 2014, on behalf of Reliance Industries Ltd informed that due to some personal difficulty of the counsel concerned, they may not be able to attend the hearing.

88.1. 2<sup>nd</sup> Personal Hearing in the matter was fixed on 10.03.2014 and communicated to all the Noticees. Shri J.C. Patel Advocate and Ms. Shilpa Balani Advocate appeared in the hearing representing M/s. Reliance Industries Ltd and reiterated the main points of their written submission already made. They also stated that they are not liable for penalty under various provisions invoked in the show cause notice and in support their submission they submitted copies of certain case law. No other notices appeared for hearing on 10.03.2014.

88.2. 3<sup>rd</sup> hearing was fixed on 18.03.2014 and communicated to all the remaining notices; as the earlier notice of hearing issued to Shri Niyaz Ahmedabad, the notice of hearing for 18.03.2014, not only sent to his known address but also exhibited on the notice board of the Customs House in terms of Section 153 of the Customs Act, 1962. However, none of the remaining noticees appeared for hearing on 18.03.2014.

#### **Discussions and findings:**

89. I have carefully gone through the case records and submissions made by all the Noticees. At the outset, I find that in the detailed investigation conducted by DRI, it has emerged beyond dispute that in total



98 VKGUY and 08 DEPB licences and the Release Advices and other allied documents corresponding to these licences were forged. Of these, 13 forged VKGUY licences were sold to M/s. Reliance Industries Ltd, Dahej and 85 forged VKGUY and 08 DEPB licences were sold to M/s. Hindalco Industries Ltd, Dahej. However, since the present notice deals with only the 13 forged VKGUY licences utilised by Reliance Industries Ltd, Dahej, my findings are confined to only these 13 forged VKGUY licences though there may be some references to other forged licences sold to Hindalco Industries Ltd as the investigation was conducted and evidences collected are for all the forged licences.

89.1. I find that the principal allegation in the show cause notice is that 13 VKGUY licenses used by M/s. Reliance collectively involving Customs Duty of Rs.6,95,53,888/- at the time of importation at Dahej port were not genuine licenses but fake/forged licenses. It is a allegation having far-reaching consequences and therefore deserves to be examined thoroughly. However, before doing so, to understand the nitty-gritty involved, and the fraud alleged to have been committed in its entirety, before dealing with the issue of fake licenses specifically, it would be just and proper to briefly place on record as to how the licenses under various export promotion schemes are issued by DGFT, procedure for registering such licenses with Customs, as to how these licenses are transferred/traded and finally utilized towards payment of Customs duty.

90	<b>EXPORT PROMOTION SCHEMES, ISSUE OF LICENCES BY DGFT, AND ITS UTILIZATION BY IMPORTERS.</b>
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90.1. To begin with, in order to make the exports an effective instrument for promoting greater economic activity and employment, the Government keeps on announcing various export promotion schemes for the benefit of Exporters and augment export as a whole. Effectively, under the export promotion schemes, the Exporters of goods and services are given benefits under different schemes by the Director General of Foreign Trade (DGFT) viz. Advance Authorization, Export Promotion Capital Goods scheme (EPCG), Duty Entitlement Passbook scheme (DEPB), Duty Free Import Authorization (DFIA), Vishesh Krushi and Gram Udyog Yojana (VKGUY) etc. Some of the benefits are on actual user condition basis while some are freely transferrable i.e. if the exporter who has been given the export benefits by way of Duty Scrips – generally referred to in market parlance as Licences –

does not intend to utilize these licences for whatsoever reason, such exporter can sell it in the market to another firm who can use it for paying Customs duty at the time of import. The exporters are required to make an application to their jurisdictional DGFT for obtaining the licences and amongst others; they are required to submit the Export Promotion Copies of the Shipping Bills in respect of which the benefits are being claimed. Based on the application and the documents submitted by the exporter, the DGFT issues Duty Scrips -licences to the exporter. The licence issued by the DGFT contains the details of the port of registration which is the port from which the goods were exported. The licence issued by the DGFT consists of the following documents: -

- a) Computer printed licence forwarding letter
- b) Licence printed on a special pre-printed paper
- c) Annexure to the licence containing a list of the shipping bills in respect of which the licence is issued.

90.2. The licences issued by the DGFT are essentially Duty Scrips and to enable their utilization towards payment of Customs duty, the Ministry of Finance, Government of India concurrently issues Notifications under the Customs Act, 1962 providing for debit of Customs duty from the licences issued by the DGFT under respective export incentive schemes.

90.3. After having issued licence by DGFT, the same is required to be registered with the Customs authorities at the port of registration. The exporter therefore, submits the licence in original to the Customs authorities, who after due verification of the shipping bills, register the licence and, if the licence so registered is to be used at the same port, it would be presented at the time of import for debiting the Customs duty. However, if the licence is to be used at a different port, the Exporter obtains a Release Advice (RA) from the Customs at the port of registration and the RA can be for either full or part amount of the duty amount of the licence. Effectively, RA is a document transferring the duty credit for utilization at a port other than the port of registration. The Release Advice can only be used by the firm whose name/IEC is mentioned in the Release Advice and at the port which is mentioned in the Release Advice. The Release Advice issuing Custom House sends one copy in a sealed cover to the Custom House where the same is to be utilized and one copy of the Release advice is handed over the importer.

90.4. When the licence and the Release Advice are to be utilized, the importer presents the licence and the Release Advice to the Customs at the port where it is to be utilized. By and large, before allowing utilization of the Release Advice, the Customs authorities get the genuineness of the Release Advice confirmed by sending a letter to the Customs at the port from where the Release Advice was originated, notwithstanding the fact that no such mandatory procedure has been laid down. Consequently, on receipt of the confirmation of genuineness, the Release Advice is allowed to be utilized for paying Customs duty at the time of import.

90.5. If the licence is freely transferrable, the Exporter - the original licence holder can sell it in the market to anyone who is in requirement of the same. The licences are sold in the market after the same is registered with the Customs at the port of registration indicated in the licence. The transferrable licences are generally sold in the market at a discount which varies from case to case. To illustrate, if the duty amount of the licence is Rs.100, it would be sold for about Rs.96 to Rs.97/-; however, the quantum of discount may vary and is finally determined by the market forces. The transferrable licences are mostly purchased by the licence brokers/traders and they in turn sell it to the ultimate user for a commission or profit. In these cases, the original licence holder issues a transfer letter, wherein the name of the transferee is left blank or the transfer letter is issued in the favour of the licence broker/trader, the signature of the transferor on the transfer letter is generally verified by the bank of the transferor/licence holder. If the transfer letter is in the name of the licence broker/trader he in turn would issue another transfer letter in favour of the buyer of the licence who normally would be the ultimate user of the licence. Where the name of the transferee is left blank in the transfer letter issued by the original licence holder, the licence broker/trader fills in the name of the buyer to whom he sells the licence. The licence broker/trader sells the licence at a price higher than at which he had purchased the licence i.e. after adding his profit. Where the licence is intended to be utilized at a different port, the licence broker/trader also gets the Release Advice issued from the Customs at the port of registration of the licence. The licence broker/trader hands over the entire set of original documents, received by him from the original licence holder, to the buyer. Eventually, when the licence is to be utilized, the buyer of the licence presents the entire set of documents to the Customs at the port where it is to be utilized for payment of Customs duty at the time of import.

The buyer of the licence also asks the licence broker/trader for pursuing the verification of the genuineness of the Release Advice at the port of issue of the Release Advice.

91	<b>FAKE NATURE OF THE 13 VKGUY LICENCES USED BY RELIANCE AT DAHEJ PORT</b>
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91.1. Coming to the core issue in the show cause notice i.e. the fake nature of the licences used by Reliance at Dahej Port. At the outset, I find that during the course of investigation, DRI has traced all the genuine 13 VKGUY licences corresponding to the fake licences used by Reliance at Dahej Port along with its corresponding Release Advices alongwith details of Importers who had finally utilized these genuine licences which in itself establishes that these licences used by Reliance were fake licences. Apart from the above, DRI had also unearthed incontrovertible evidences to categorically establish that 85 VKGUY and 8 DEPB licences used by Hindalco at Dahej Port were fake licences. The evidences gathered by DRI during the course of investigation are discussed here under.

91.2. During the course of investigation, DRI had obtained the documents in original in respect of the 13 fake/forged VKGUY licences used by M/s. Reliance from Customs, Dahej. The documents in original in respect of the corresponding 13 genuine VKGUY licences were also obtained from the Custom authorities concerned as well as the importers who had purchased and used the same. These forged licences and release advices were utilised by M/s. Reliance Industries Ltd, at Dahej port. Further, I find that the details of the forged licences, the purported port of registration, the corresponding forged Release Advice issued as well as the details of the buyer of the genuine licence, the port of registration, the release advice issued etc. have been detailed in Annexure 'A' to the show cause notice. I also find that in the instant case, the case involves the following critical aspects:

- 1) Forgery of the licences and its related documents.
- 2) Sale of the forged licences to the end-user.
- 3) Receipt of the sale proceeds of the forged licences and its disbursal amongst the persons involved in the forgery and sale.

I also find that in the instant case, the forgery consisted of the following :-

- a) The licence forwarding letter, the Licence issued by the jurisdictional DGFT and the annexure to the licence.
- b) The Transfer letter of the original licence holder transferring the licence in favour of the ultimate user of the licence.
- c) The Release Advice issued by the Customs at the port of registration enabling use of the licence at Dahej port by M/s. Reliance Industries Ltd.
- d) The letter of the Customs, at the port issuing the Release Advice, confirming genuineness of the Release Advice used by M/s. Reliance Industries Ltd.

92	<b>FORGERY OF THE LICENCE FORWARDING LETTERS, THE LICENCES ISSUED BY DGFT AND THE ANNEXURES TO THE LICENCES</b>
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92.1. I find that the evidences gathered during the course of investigation clearly bring out that Shri Kalpessh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed conspired and had forged 98 VKGUY licences and 08 DEPB licences and the Release Advices and documents corresponding to these licences. Shri Kalpessh Daftary was a Director of M/s. Sunkalp Creations Pvt Ltd, Mumbai (SCPL) which was engaged in the trading business of transferrable licences. Shri Daftary was procuring various kinds of licences from M/s. Allanasons Ltd, Mumbai and their other associates companies i.e. M/s. Frigorifico Allana Ltd and M/s. Indagro Foods Ltd, Mumbai. According to the information made available by these companies, during the period 2008-2009 and 2009-2010 SCPL had purchased 388 licences from these companies. These licences were subsequently sold by SCPL under their sale invoices/debit notes as well as of other companies such as M/s. Accurate Multitrade Pvt Ltd, Mumbai, M/s. Padmavati Agencies Pvt Ltd, Ahmedabad etc. During the course of investigation, it has become clear that the 13 VKGUY licences which were forged and sold to M/s. RIL are among these 388 licences purchased by SCPL from M/s. Allanasons Ltd, Mumbai and their other companies i.e. M/s. Frigorifico Allana Ltd and M/s. Indagro Foods Ltd, Mumbai.

92.2. I find that it has also come on record during the course of investigation that the 388 licences sold by M/s. Allanasons Ltd, Mumbai and their other associate companies i.e. M/s. Frigorifico Allana Ltd and M/s. Indagro Foods Ltd, Mumbai. to M/s. Sunkalp Creations Pvt Ltd (SCPL) were

all genuine licences issued by the jurisdictional DGFT to the respective exporters. Of these 388 licences, 13 VKGUY licences were came to be subsequently forged/faked and sold to M/s. Reliance, as per details exhibited in Annexure A to the notice. I also find from the case records that the genuine 13 VKGUY licences were sold by SCPL to M/s. Sun Export Pvt Ltd, Mumbai who is also a licence trader. The details of the invoices of SCPL under which these genuine 13 VKGUY licences were sold to M/s. Sun Export, Mumbai are as under :

S.No.	Invoice No. & Date of SCPL	Invoice issued to	Licence No. & Date	Licence Amount
1	SCPL/VKGUY/09-10/065 dtd.11.09.2009	M/s.Sun Export Pvt Ltd, Mumbai.	0310522743/ 05-06-2009	7778161/-
			0310521936/ 29-05-2009	4426478/-
			0310512901/ 24-03-2009	4638435/-
			0310522738/ 05-06-2009	
2	SCPL/VKGUY/09-10/067 dtd.17.09.2009	M/s.Sun Export Pvt Ltd, Mumbai.	0310518177/ 04-05-2009	5247824/-
3	SCPL/VKGUY/09-10/079 dtd.09.10.2009	M/s.Sun Export Pvt Ltd, Mumbai.	0310529284/ 16-07-2009	5626358/-
			0310531352/ 30-07-2009	6005453/-
			0310528689/ 13-07-2009	4776335/-
			0310523562/ 11-06-2009	5753032/-
			0310523564/ 11-06-2009	4003373/-
			0310523566/ 11-06-2009	5130380/-
			0310526777/ 02-07-2009	4470235/-
			0310528212/ 10-07-2009	6590018/-

92.3. The case records indicate that after purchase of the above said 13 licences, Sun Export Pvt Ltd, Mumbai subsequently sold 12 of these licences to another licence trader M/s.Trident (India) Ltd, Ahmedabad while 01 licence was sold to M/s.S.R. International, Mumbai a licence trader who in turn sold it to M/s.Honda Siel Cars. Of these 12 licences, M/s.Trident (India) Ltd sold 11 licences to M/s.E.I.Dupont Pvt Ltd and 01 licence was sold by them to another licence trader M/s.Vani Exports, Kolkata who in turn sold it to M/s.Lupin Laboratories. These 13 genuine VKGUY licences were used by M/s.E.I.Dupont Pvt Ltd, M/s.Honda Siel Cars and M/s.Lupin Laboratories

(Details as per Annexure 'A' to SCN). The sale of these 13 genuine licences were effected by SCPL under their own invoices. These 13 genuine VKGUY licences were registered at JNCH and the Release Advices too were issued in favour of M/s.E.I.Dupont Pvt Ltd, M/s.Honda Siel Cars and M/s.Lupin Laboratories and no Release Advice was issued to M/.RIL for use at Dahej.

92.4. From the above it is quite obvious that to whom the aforesaid 13 genuine VKGUY licences were originally issued by the jurisdictional DGFT, in which Customs Port these licences were registered, to whom these were transferred subsequently, in whose favour Release Advices were issued by the port where it was registered and in which port these licences were finally utilised for debiting against import. The evidences gathered clearly bring out that subsequent to selling the 13 genuine VKGUY licences, these very licences were forged/faked and again sold to M/s. Reliance. The fake nature of aforesaid licences were confirmed by jurisdictional DGFT i.e. the issuing authority itself has confirmed that the 13 genuine VKGUY licences used by M/s. Reliance at Dahej Port were fake. According to the case records, These 13 forged/fake licences were shown to have been issued by DGFT, Mumbai. Therefore, during the course of investigation, photocopies of the licences from their office records were called for from these offices of the DGFT. Scrutiny of the photocopies received from these offices of the DGFT indicated that though the licences bearing these numbers and particulars were issued by them, the port of registration in the 13 VKGUY licences was JNPT whereas in the fake licences the registration of these licences was as Mangalore Sea. Thus, I find that from records of DGFT, Mumbai itself it stood established that these 13 VKGUY licences showing port of registration as Mangalore Sea are fake.

92.5. I also find that the cross verification conducted with Mangalore also brought out the same result. During the course of investigation, I find that DRI had called for a copy of the register of the licences registered with Mangalore Customs for the relevant period maintained by Mangalore Customs. On scrutiny, it was revealed that these 13 VKGUY licences though shown to have been registered with Mangalore Customs, were not in fact registered with them nor Mangalore Customs had ever issued any Release Advice in respect of these 13 VKGUY licences. I find that this has clearly demonstrated that the 13 VKGUY licences shown to have been registered with Mangalore Customs used by M/s. Reliance at Dahej on the basis of

Release Advices shown to have been issued by Mangalore Customs were forged/fake.

92.6. I find that Investigation has also brought on record that Shri Niyaz Ahmed of M/s. Indiyana Shoes, Kanpur was indulging in forging of licences and he was known to Shri Piyush Viramgama. It is also evident from records that Shri Kalpesh Daftary was introduced to Shri Niyaz Ahmed by Shri Piyush Viramgama and the matter of forging of licences was discussed between them. I find that it also emerges from records that consequent to their discussions, photocopies of the 13 genuine VKGUY licences, available with Shri Kalpesh Daftary was provided to Shri Niyaz Ahmed. Using the details and particulars of the genuine 13 VKGUY licences, Shri Niyaz Ahmed prepared forged/faked licences. The only difference between the genuine and the forged/faked licences was that the port of registration was changed to Mangalore Sea, whereas in the genuine licences it was JNPT. I also find that the depositions made by Shri Piyush Viramgama and Shri Kalpesh Daftary also bring out that the licences were forged/faked using the genuine stationery of DGFT. Thus, I find that from this angle also the fake nature of 13 VKGUY licences used by M/s. Reliance at Dahej stands established beyond shadow of doubt.

92.7. I find that yet another confirmation of fake nature of aforesaid 13 VKGUY licences came from the statements of Shri Piyush Viramgama under Section 108 of the Customs Act, 1962. I also take note of the fact that in his statements Shri Piyush Viramgama also admitted that the signatures of the officer of DGFT appearing on the 13 forged/fake licences were forged by him. This fact was also confirmed by Shri Kalpesh Daftary in his statement recorded under Section 108 of the Customs Act, 1962. Apart from the above, I find that the officers of Mangalore Customs who have purportedly signed on the reverse side of the licence endorsing registration of the licence have in their statements recorded under Section 108 of the Customs Act, 1962 categorically stated that the rubber stamps and signatures appearing on the reverse side of the 13 licences used by M/s. RIL at Dahej were not genuine and that the signatures and stamps on the reverse side of the licences were forged.

92.8. I also find that there are enough evidences on record to conclude that not only the licence and RA, but also the forwarding letters and Annexes to the licences were also forged. I find that as per the normal



practice, the DGFT forwards the licence issued to the exporter by way of a forwarding letter. The said letter is a simple document which is prepared and computer printed on a normal sheet of paper. The said letter is signed by the officer of DGFT who signs on the licence. Similarly the Annexure to the licence too is a simple document containing the list of shipping bills in respect of which the licence is being issued and the Annexure too is prepared and computer printed on a normal sheet of paper. The Annexure too is signed by the officer of DGFT who has signed on the licence and the round seal of the DGFT is affixed on the said Annexure. I find that the verifications carried out in the course of the investigation with the DGFT as well as the concerned Custom House i.e. New Custom House, Mangalore has clearly brought out that the annexures to forged licences too were forged/faked. At the outset, I find that the exporters to whom the genuine licence was originally issued by the DGFT had not exported goods through Mangalore port. The port of registration indicated in the DGFT letters forwarding the licences used by M/s. Reliance was Mangalore Sea. Similarly, the forged/faked annexures indicated that the port of export was Mangalore whereas as per genuine licences the port of registration was Nhava Sheva (JNCH). I find that from the above, it clearly emerges that the licence forwarding letters and annexures to the licences used by M/s. Reliance at Dahej were all forged/fake documents. I find that the above stated position stands corroborated by the depositions of Shri Piyush Viramgama and Shri Kalpesh Daftary in their respective statements recorded under Section 108 of the Customs Act, 1962. In their respective statements, both of them admitted to having forged the Licence forwarding letters of DGFT and the annexures to the Licence. I also note that the above stated position gets fully substantiated from the documents recovered by the DFS, Gandhinagar from the Hard Disk Drive and Pen Drives recovered from the office and residence of Shri Piyush Viramgama. The documents recovered and forwarded by DFS contain, amongst others, licence forwarding letters of purportedly of DGFT wherein the port of registration is shown to be Mangalore Sea. Also the annexures to the licences purportedly of DGFT prepared in Microsoft Excel showing the port of export as Mangalore Sea. I find that the recovery of documents of this nature by DFS, Gandhinagar leads to the inescapable conclusion that as admitted by Shri Piyush Viramgama and Shri Kalpesh Daftary in their respective statements recorded under Section 108 of the Customs Act, 1962 the forwarding letter of DGFT and Annexure to the licence were generated by them in their office.

92.9. I also find that evidences recovered during the course of search in premises of M/s. Bansi Overseas, Rajkot further reinforced the fake nature of aforesaid 13 VKGUY licences and allied documents thereto. The evidences recovered from the above said premises, inter alia, contained one VKGUY licence bearing No. 0710059272/0/24/00 dated 21/8/2008 which was purportedly issued by the Director General of Foreign Trade (DGFT), Bangalore to M/s. General Commodities Private Limited, Bangalore for duty credit of Rs.43,87,551/-. The port of registration of the said licence was mentioned as Mangalore Sea. The said licence also contained endorsements purportedly made by the Superintendent of Customs, Mangalore. I find that Shri Piyush Viramagama and Shri Kalpesh Daftary have in the course of their statements recorded under Section 108 of the Customs Act, 1962 admitted that the said licence was a forged/fake document. Further, in the course of the search a list of 85 VKGUY licences was also recovered. Shri Piyush Viramagama and Shri Kalpesh Daftary have in their statements admitted that these 85 licences were forged/faked. Further, Shri Piyush Viramagama had in the course of his statement dated 06/09/2010 produced a list which contained details of 20 licences. Shri Piyush Viramagama admitted that out of these 20 licences, licences mentioned at sl.no. 1 to 9 and sl. no.17 to 20 of said list are forged licences and they have been utilized. The 13 licences admitted to have been forged and which were contained in the list produced by Shri Piyush Viramagama were the 13 VKGUY licences utilized by M/s.RIL at Dahej.

92.10. Apart from the above, I also find that there other evidences which were retrieved by Directorate of Forensic Science, Gandhinagar (DFS) from the hard disk as well as 02 pen drives (portable storage devices) recovered from the office premises of M/s. Bansi Overseas, Rajkot. The DFS vide their letter No.DFS-EE-2010-CF-116 dtd.29/09/2011 forwarded their report along with the relevant documents recovered from the said devices in a CD/DVD. Certified printouts of the documents relevant to the investigation called for by DRI and forwarded by DFS include:

- 1) The licence forwarding letters purportedly of DGFT, Mumbai prepared in Microsoft Word showing the port of registration as Mangalore Sea.
- 2) Scanned copies of the genuine licences issued by DGFT, Mumbai.

- 3) 12 Release Advices prepared in Text files purported to have been issued by Mangalore Customs in favour of M/s. Reliance Industries Ltd for use at Dahej Port.

92.11. I also find that the data retrieved by DFS Gandhinagar from the 2 pen drives recovered from the residential premises of Shri Piyush Viramgama, include a Microsoft Word document containing a scanned letter C.No.S-01/47/2009 Imp dtd.16/04/2009 duly signed and stamped, purportedly by Shri E. Sukumaran, Assistant Commissioner of Customs, New Custom House, Mangalore to Dahej Customs confirming the genuineness of 13 Release Advices all dated 06.04.2009 which goes to conclusively establish that not only the licences and its allied documents but also even the letters confirming genuineness of the licences were forged by Piyush Viramgama and Shri Kalpesh Daftary. Further, I also observe that the search of the residential premises of Shri Vijay Gadhiya, employee and associate of Shri Piyush Viramgama resulted in the recovery of various incriminating evidences viz. rubber stamps of the DGFT, Rajkot, Round Seal (Stamp) of Mangalore Customs, Rubber Stamps of different banks, negatives for preparing rubber stamps of the firms whose licence were forged as well as rubber stamps of the banks whose stamps were used for verification of signatures on the transfer letters etc. I also find that in the course of their statements Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Kalpesh Daftary have admitted that the Round Seal (Rubber Stamp) of Mangalore Customs was used for forging the letters in the name of Customs, Mangalore confirming genuineness of the release advices, the Rubber stamps of different banks was used for forging the stamps and signatures of the Banks on the transfer letter of the licences.

92.12. From a careful perusal of evidences enumerated and discussed hereinbefore, it is beyond dispute that Shri Kalpesh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed had forged 13 VKGUY licences, related Release Advices and documents corresponding to these licences. From the evidences available on record, I also find that these licences were actually forged by Shri Niyaz Ahmed while the Release Advices and the letters confirming the genuineness of the Release Advices were forged by Shri Piyush Virmagama. It is also evident that the forged rubber stamps and signatures of the Customs officers on the reverse side of the licences were also forged by Shri Piyush Viramgama and this fact stood categorically admitted in his statements recorded under Section 108 of the

Customs Act, 1962 and duly corroborated by Shri Kalpesh Daftary in his statements. Further confirmation of the forgery is also forthcoming from the statement of Shri Vijay Gadhiya who had in his statement admitted that he had prepared the rubber stamps which were affixed by him on the transfer letters, on the reverse side of the licences, Customs letter confirming genuineness of the Release Advices on the instructions of Shri Piyush Viramgama. I also find from the evidences that the benefits arising out of the forging of the licences and its sale were also accrued to all the above said persons, details of which are being dealt with separately elsewhere in this Order. Before concluding my findings on this aspect, I categorically hold that there are plethora of evidences on record to irrefutably establish that the 13 VKGUY licences as mentioned above and the Release Advices used by Reliance at Dahej Port were forged/fake licences.

93	<b>FORGERY OF THE TRANSFER LETTERS OF THE ORIGINAL LICENCE HOLDERS</b>
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93.1. As noted elsewhere in this Order, the transferrable licences are sold in the market and the same are purchased by importers for using the same to pay Customs duty at the time of import. Once the licences are sold, so as to enable the buyer to utilize the same, the original licence holder is required to issue a letter confirming transfer of the licence in the name of the buyer. In these transfer letters the signature of the transferor is verified/authenticated by the bank authorities with whom the licence holder has an account. The transfer letters are issued on the letter heads of the concerned firm/company.

93.2. I find that in the capacity of a trader, Shri Kalpesh Daftary had dealt with the genuine licences and had sold them to different firms/companies. Therefore, he was in possession of the transfer letters issued by the original holders of the genuine licences in the above said manner. Like in the case of the forgery of the licences using the photocopies of the genuine licences traded by him, it is evident that using the transfer letters of the genuine licence holders, I find that the letterheads of these firms, to whom the genuine licences were issued, too were forged for preparing forged transfer letters in the names of these firms/companies. The forging of licence transfer letters also get established from the evidences gathered during the course of the search of the residential premises of Shri Vijay Gadhiya and the office premises of Shri Piyush Viramgama. As already stated hereinbefore, the articles recovered from

above said premises include, rubber stamps and negatives and butter paper images for preparing rubber stamps of different banks and exporter firms were recovered, the details of these are as under :-

- i) Rubber stamp of Oriental Bank of Commerce,
- ii) Rubber stamp of HDFC Bank Ltd,
- iii) Rubber stamp of one V.NAGARAJAN (329), Chief Manager.
- iv) Negative for preparing rubber stamp of Union Bank of India, Kollam Civil Stn.Branch
- v) Negative for preparing rubber stamp of The Federal Bank Ltd, Kollam
- vi) Negative for preparing rubber stamp of ING Vysya Bank Ltd, Kollam
- vii) Negative for preparing rubber stamp of Indian Bank, Kollam
- viii) Negative for preparing rubber stamp of Bank of Baroda.
- ix) Negative for preparing rubber stamp of The Catholic Syrian Bank
- x) Negative for preparing rubber stamp of Axis Bank Ltd, Kollam.
- xi) Negative for preparing rubber stamp of The South Indian Bank Ltd, Kollam
- xii) Negative for preparing rubber stamp of State Bank of India, Kollam
- xiii) Negative for preparing rubber stamp of Emmanuel Cashew Industries
- xiv) Negative for preparing rubber stamp of Abbas Cashew Company
- xv) Negative for preparing rubber stamp of Quilon Export Enterprises
- xvi) Negative for preparing rubber stamp of Bola Raghvendra Kamath & Sons.
- xvii) Negative for preparing rubber stamp of Lekshmi Enterprises.
- xviii) Negative for preparing rubber stamp of Poornachandra Cashew Co
- xix) Negative for preparing rubber stamp of Peniel Cashew Co.

93.3. Shri Piyush Viramgama had in his statements admitted that these negatives and butter paper images of the rubber stamps were actually used to make rubber stamps by his employee Shri Vijay A.Gadhiya as per his instructions and those rubber stamps were further utilized for forging the transfer letters of various parties and also forging the signature verifications by the bank officers. Shri Vijay Gadhiya had in his statement admitted that he used to affix the rubber stamps on the forged transfer letters as per the instructions of Shri Piyush Viramgama.

94	<b>FORGERY OF THE RELEASE ADVICES ISSUED BY THE CUSTOMS AT THE PORT OF REGISTRATION</b>
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94.1. I find that in the 13 licences used by Reliance at Dahej Port, the port of registration as Mangalore Sea and that the same were shown to have been registered with the Customs at Mangalore. Therefore, in order to facilitate usage of these licences, the Release Advices in respect of these 13 licences too were forged for usage of the same by Reliance at Dahej Port. I find that inquiry caused by DRI in this regard brought on record that in Mangalore Customs, the import bills of entries and export shipping bills are filed in the EDI system which is in operation since the year-2000. Further the licences are also registered in the EDI system and the Release Advices issued from the EDI system. Needless to mention here that for the Release Advices to be issued by Mangalore Customs, the licences must have been registered with them. Therefore, in the instant case, I find that the 13 licences purported to have been registered with Mangalore Customs used by M/s.Reliance at Dahej on the strength of Release Advices purported to have been issued by Mangalore Customs were got verified with Mangalore Customs. It was reported by Mangalore Customs that none of these 13 licences were registered with them and no Release Advices were issued by them to M/s.Relance for use at Dahej. Thus, the fake nature of Release Advices used by M/s. Reliance at Dahej stands established beyond dispute.

94.2. Since these 13 VKGUY licences were originally issued to M/s. Allanasons Ltd, Mumbai by DGFT, Mumbai, on being requested, M/s. Allanasons Ltd, Mumbai vide their letters ASL/186/2010 dtd.6/7/2010 and ASL/187/2010 dtd.8/7/2010 submitted the details of the licences sold/transferred by them during 2008-2009 and 2009-2010. I find that according to the details submitted by M/s. Allanasons Ltd, Mumbai these 13 VKGUY licences were sold/transferred by them to M/s.SCPL. The details of the Release Advices issued by the concerned Custom House in respect of the

genuine licences, corresponding to 13 forged VKGUY licences, too indicate that they had not issued any release advices in favour of M/s. Reliance Industries Ltd for use at Dahej.

94.3. I find that according to the prevailing practice, the endorsement of registration with the Customs is made on the reverse side of the original licence and the fact of registration is also entered in the register maintained by the Custom House. On scrutiny of copy of the register for the relevant period maintained by Mangalore Customs revealed that none of the 13 VKGUY licences used by M/s. Reliance at Dahej were registered with them. As regards the endorsement purported to have been made by the officers of Mangalore Customs on the reverse side of the forged/fake licences, statements of the concerned officers were recorded under Section 108 of the Customs Act, 1962. Smt. Uma Devi, Superintendent of Customs & Central Excise, Mangalore was working in the Export Section of Mangalore Custom House during the period from May, 2009 to May, 2012 and Export Section of the Custom House is where the licences are registered. The forged/fake licences used by M/s. Reliance bear signature purportedly made by Smt. Uma Devi. Smt Uma Devi had in her statement stated that the signatures appearing on the 13 licences did not belong to her and the same were forged by imitating her signature. I find that during the course of investigation, the rubber stamps affixed on these licences too were found to be fake. Similarly, the other officers posted in the export section and licence section too denied that the signatures appearing on the reverse side of the 13 forged/fake licences were made by them. Thus, I find that from this angle also the fake nature of the 13 licences used by M/s. Reliance at Dahej Port stands established beyond grain of doubt.

94.4. I also find that the above stated position gets further reinforced from the statements of Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Kalpesh Daftary recorded under Section 108 of the Customs Act, 1962 wherein they had categorically admitted that signature of the Superintendent of Customs appearing on the reverse side of the licences were done by Shri Piyush Viramgama. I also find that Shri Viramgama further admitted that the Release Advices were prepared by him on his computer on the basis of the actual Release Advices issued by Mangalore Customs and he had forged the signature of the Superintendent of Customs appearing on the Release Advices. Shri Vijay Gadhiya had in his statement admitted to having prepared the Rubber stamps as well as affixing the same on Release Advices

on the instructions of Shri Piyush Viramgama. The facts stated by Shri Piyush Viramgama were confirmed by Shri Kalpesh Daftary in his statements. The above stated position gets corroborated from the documents retrieved by DFS, Gandhinagar from the hard disk drive and pen drives recovered from the office and residential premises of Shri Piyush Viramgama. The documents recovered and forwarded by the DFS, vide their report No.DFS/EE/2010/CF/115, DFS/EE/2010/CF/116 and DFS/EE/2010/CF/119 all dtd.11/09/2012 contains printouts of 29 release advices prepared showing them to have been purportedly issued by Mangalore Customs for use at Dahej Port. Out of these 29 Release Advices, 12 Release Advices were used by M/s.RIL at Dahej, the details of these Release Advices used by M/s.RIL and which were recovered by the DFS are as under :

Sr.No.	Release Advice No.& Date	Licence Number & Date	Duty (Rs.)	Amount
1	2459/10-11-2009	0310521936/29-05-2009		4426478/-
2	2460/10-11-2009	0310521936 /29-05-2009		4426478/-
3	2461/10-11-2009	0310518177/04-05-2009		5247824/-
4	2462/10-11-2009	0310522743/05-06-2009		7778161/-
5	2464/10-11-2009	0310529284/16-07-2009		5626358/-
6	2465/10-11-2009	0310528689/13-07-2009		4776335/-
7	2467/10-11-2009	0310531532/30-07-2009		6005453/-
8	2468/10-11-2009	0310523564/11-06-2009		4003373/-
9	2473/10-11-2009	0310523566/11-06-2009		5130380/-
10	2474/10-11-2009	0310523562/11-06-2009		5753032/-
11	2475/10-11-2009	0310528212/10-07-2009		6590018/-
12	2476/10-11-2009	0310526777/02-07-2009		4470235/-

94.5. From the unquestionable evidences discussed hereinbefore, I find that it stands established in very unambiguous manner that the endorsement of registration, the endorsement of issue of Release advices on the reverse side of the 13 licences used by M/s. Reliance at Dahej were all forged.

95	<b>FABRICATION OF LETTERS CONFIRMING GENUINENESS OF THE RELEASE ADVICES USED BY M/S.RELIANCE INDUSTRIES LTD.</b>
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95.1. As noted hereinbefore, by and large, before allowing utilisation of the Release Advices, the Customs get the Release Advice verified from the



originating port by sending a letter seeking confirmation of genuineness of the Release Advice. I also note that the procedure followed is that the letters seeking confirmation of genuineness is sent by Fax and no letter is sent by post. Similarly, the letters confirming the genuineness are also received by Fax and no letter is sent by post. I find that the point to be noted here is that as the to and fro communications are by fax, no letter in original is received by either the sending or receiving Custom House. Therefore, while forging the Customs letters confirming genuineness of the Release Advices Shri Piyush Viramgama and Shri Kalpesh Daftary took advantage of the fact that original letters are not sent, the letters are only sent by Fax. I also find that it has also been brought out in the course of the investigations that the licence broker/trader who had sold the licence to the ultimate user is responsible for getting the confirmation of genuineness of the Release Advice and he too is interested in getting the confirmation as soon as possible for the reason that the payment towards the licence is made by the buyer only after confirmation of genuineness of the Release Advice.

95.2. I also find that during the course of investigation, the letter purportedly issued by Mangalore Customs confirming the genuineness of the 13 Release Advices used by M/s. Reliance at Dahej Port were obtained from Custom House, Dahej and from the records submitted by Shri Bhavesh Doshi. The said letter was only a copy and as indicated by the header at the top of the letter, the same was received by Fax. In the said letter the following header is seen at the top of the letter :

Sr.No.	Letter No. & Date	RA number	Header detail
1	S-01/04/2009 IMP dtd.17/11/2009	2450 to 2465, 2467, 2468, 2473 to 2476 all dtd.10/11/2009	08 0222612184, SUNKKALP, #2198 P 001/001.

It is quite apparent from the header at the top of the letter as detailed in the above table that the letter was faxed by/from M/s. Sunkkalp Creations Pvt Ltd, Mumbai. The possibility of M/s.SCPL having received the letter from Mangalore Customs and forwarding them to M/s. Reliance also does not exist because it is matter of record now that no Release Advices in respect of the 13 forged/fake licences used by M/s. Reliance were issued by Mangalore Customs to M/s. Reliance or for use at Dahej Port. I find that it is already on record that none of the 13 licences were registered with them; therefore, the question of issuing Release Advices or confirming their genuineness does not arise. .

95.3. I also find that during the course of investigation, Shri Bhavesh Doshi who was the broker in the sale of these 13 forged VKGUY licences to M/s. Reliance was examined and his statement was recorded under Section 108 of the Customs Act, 1962. In his statement recorded on 06/07/2010 he categorically stated that the Customs letters confirming genuineness of the Release Advices were always received by them Shri Kalpessh Daftary of SCPL and he in turn faxed it to M/s. Reliance. I find that to further establish the fake nature of aforesaid confirmation letters, it may be mentioned here that the purported letter of Mangalore Customs confirming the genuineness of the Release Advices in respect of the 13 forged/fake VKGUY licences used by M/s. Reliance at Dahej were shown to have been issued under the signature of Shri Poovappa D.V, the then Superintendent of Customs (Appg.I), Mangalore Customs. However, I find that when Shri Poovappa D.V was shown the letter, purportedly issued under his signature he stated that the signature in the said letter is forged and as per the records of Custom House Mangalore no such letter has been issued and that the said document is a forged one.

95.4. On a careful consideration of evidences available on record, I find that the letter confirming genuineness of the Release Advices were prepared by Shri Kalpessh Daftary and mailed/faxed to Shri Piyush Viramgama who used to put the round seal of Custom House, Mangalore, recovered from the premises of Shri Vijay Gadhiya, on the said letter and re-faxed or mailed it back to Shri Kalpessh Daftary after scanning the same. Once the fax or mail was received back by Kalpesh Daftary, the signature on the letter of confirmation was also scanned by Shri Kalpessh Navinchandra Daftary from some other genuine document of customs and the scanned portion was affixed on the letter and the print out of the same was taken and faxed to Shri Bhavesh Doshi. It is also evident from case records that the letters requesting confirmation of genuineness was not faxed from Dahej Customs directly to Mangalore Customs on account of non-functional of fax at Dahej Customs. Therefore, letters seeking confirmation were always handed over to the employees of the CHA M/s. Nationwide Shipping Services. Similarly, the letter confirming the genuineness of the Release Advices were never received at the Fax installed in Dahej Customs but the same were sent by Shri Bhavesh Doshi to Reliance and the same was presented to the Customs officers by the employees of M/s.Nationwide Shipping Services.

96	SALE OF THE FORGED LICENCES OF M/S.RELIANCE INDUSTRIES LTD, THE END-USER.	
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96.1. On perusal of relevant records, I find that the 13 forged VKGUY licences used by M/s. Reliance were purchased by them from M/s. Hindustan Continental Ltd, Mumbai through the broker Shri Bhavesh Doshi. Further, the billing was made from Kolkata address to save on VAT which is leviable on sale of licences in Gujarat but is exempted in West Bengal. When Shri Bhavesh Doshi was questioned regarding these 13 forged VKGUY licences he informed that these licences were sold to them by Shri Kalpesh Daftary of M/s.SCPL however the billing was done by M/s. Hindustan Continental Ltd. When Shri Surendra Kulhari of M/s.Hindustan Continental Ltd was questioned regarding these 13 forged VKGUY licences sold by them to M/s. Reliance, he stated that his company was only issuing Invoices to facilitate the sale of the licences to M/s. Reliance. The trading of all these licences were done as per the instructions of Shri. Kalpesh Daftary of M/s Sunkalp Creations Pvt. Limited and the billings were arranged by Shri Sashin Koradia of Mumbai. For this purpose, purchase invoices of M/s.Vani Export, Kolkata was provided to him by Shri Kalpesh Daftary. Shri Kulhari further stated that they had never received physical delivery of the licences and they had only issued invoices for which they received commission.

96.2. During the course of investigation, I find that the documents recovered from the office premises of M/s. Vani Exports, Kolkata and the details furnished by Shri Girish Ghelani, details of 13 forged VKGUY licences used by M/s. Reliance at Dahej were not found mentioned. When Shri Girish Ghelani was questioned in this regard he denied having sold these 13 licences to M/s. Hindustan Continental Ltd. I find that in the course of his statement Shri Girish Ghelani was confronted with sales invoices of M/s. Vani Exports, Kolkata in respect of these 13 licences. Shri Girish Ghelani stated that the said invoices were not issued by his firm and that the same were fake/forged invoices. Shri Girish Ghelani further stated that his firm had under the invoices bearing the same numbers sold totally 5 DEPB licences and that the said 13 licences were not traded by his firm.

96.3. I find that it clearly emerges from the evidences that for transacting the sale of the said 13 forged VKGUY licences Shri Kalpesh Daftary had having sold the genuine 13 VKGUY licences to M/s.Sun Exports, Mumbai under the invoices of his firm SCPL proceeded to get these 13

licences forged by Shri Niyaz Ahmed, Shri Piyush Viramgama and Shri Vijay Gadhiya. These forged licences were then sold by Shri Kalpessh Daftary through the broker - Shri Bhavesh Doshi to M/s. Reliance Industries Ltd. The sale invoices to M/s. Reliance in respect of these forged/fake VKGUY licences was got issued by Shri Kalpessh Daftary from M/s. Hindustan Continental Ltd, Kolkata. For issuing sales invoices M/s. Hindustan Continental Ltd would be requiring purchase invoices. Therefore, Shri Kalpessh Daftary forged the invoices of M/s. Vani Exports, Kolkata showing sale of these 13 licences to M/s. Hindustan Continental Ltd, Kolkata. Since M/s. Vani Exports, Kolkata and M/s. Hindustan Continental Ltd, Kolkata were having transactions of sale/purchase of licences between them, which too were arranged by Shri Kalpessh Daftary of SCPL and they were making and receiving on account payments, it was very convenient for Shri Kalpessh Daftary to receive payment from M/s. Reliance in respect of the 13 forged VKGUY licences in the name of M/s. Hindustan Continental Ltd from where it was transferred to M/s. Vani Exports, Kolkata and other firms as per his requirement funds. However, the financial transactions pertaining to the sale of these 13 forged VKGUY licences were all controlled and managed by Shri Kalpessh Daftary.

96.4. It is beyond dispute from the evidences narrated hereinabove that the 13 forged VKGUY licences were sold to M/s. Reliance by M/s. SCPL through the broker Shri Bhavesh Doshi. It is also evident that these 13 licences were forged by Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed and were sold by Shri Kalpessh Daftary to M/s. Reliance under the invoices of M/s. Hindustan Continental Ltd, Kolkata. I find that it also categorically emerges from the evidences that Shri Kalpessh Daftary, Shri Niyaz Ahmed, Shri Piyush Viramgama were the key conspirators involved in the forgery of the 13 licences and its subsequent sale to M/s. Reliance. There are evidences on record to corroborate that the sale proceeds in respect of these 13 licences were received in the bank accounts of M/s. Shivangi Enterprises, Rajkot and other firms from where the same distributed amongst the said persons by either withdrawing in cash or transferring to other accounts.

97	RECEIPT OF THE SALE PROCEED LICENCES AND ITS DISBURSAL AMOUNT INVOLVED IN THE FORGERY AND SALE	
OF THE FORGED AGAINST THE PERSONS		

97.1. As already recorded hereinbefore, Shri Kalpessh Dattary was

the key person formulating the idea of forging the licences. From records, I also find that Shri Kalpessh Dattary was also controlling the sales proceeds and its disbursement amongst the individuals who were conspirators to the scheme of forgery. The face value of the 13 forged licences sold to

M/s. Reliance amounted to Rs.6,95,53,888/- . These licences were sold to M/s. Reliance at a discounted price of about 96% to 98% of the face value. The licences were originally sold under the invoices of M/s. Hindustan Continental Ltd, Kolkata. Further these 13 forged VKGUY licences were shown to have been sold to M/s. Hindustan Continental Ltd, Kolkata by M/s. Vani Exports, Kolkata. Fact of the matter, however, is that M/s. Vani Exports, Kolkata was not aware about any such sale and the invoices of M/s. Vani Exports, Kolkata were forged/faked by Shri Kalpessh Dattary. On receipt of payment from M/s. Reliance, M/s. Hindustan Continental Ltd made payments to M/s. Vani Exports, Kolkata whose invoices were forged to show sale of the said 13 VKGUY licences to M/s. Hindustan Continental Ltd, Kolkata. As stated hereinabove the payments were being received and made by the firms on an on-account basis and there was no bill wise or licence wise co-

relation of the payments. Further, the sale and purchase of the licences were all controlled by Shri Kalpessh Dattary only and the firms were merely issuing invoices on commission basis. Apart from that the receipt and payment of funds were all being done on the instructions of Shri Kalpessh Dattary and the firms/companies who had issued sales invoices had no control over the same as it did not belong to them. Therefore, there neither was any occasion or reason for M/s. Vani Exports, Kolkata or M/s. Hindustan Continental Ltd, Kolkata to have any reason to doubt the receipt or payment of the funds in their accounts.

97.2. On perusal of relevant records I find that the bank account of M/s. Shivangi Enterprise a Proprietary firm of Shri Vijay Gadhviya was extensively used by Shri Kalpessh Dattary for receiving the sale proceeds of the forged/fake licences sold by him. Apart from the 13 forged VKGUY licences sold to M/s. Reliance, Shri Kalpessh Dattary had also sold 85 forged/fake VKGUY and 08 DEPB licences to M/s. Hindalco Industries Ltd, Dahanu for which also the aforesaid bank account was used by Shri Kalpessh Dattary. The matter of the forged licences sold to M/s. Hindalco Industries

Ltd, Dahej is not a subject matter of this proceedings, I am not going to that aspect in this Order. However, the short point is that Shri Kalpessh Daftary had in collusion with Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed in all forged/faked and sold 98 VKGUY licences and 08 DEPB licences. The sale proceeds of these forged/fake licences were received in the bank account of M/s. Shivangi Enterprises as well as in the names of other firms provided by Shri Sashin Koradia. From the HDFC bank account statement of M/s. Shivangi Enterprise, Rajkot pertaining to the period from July, 2008 to 31/03/2010 it is seen that an amount of Rs.35,25,11,530/- was received and credited to the said account. Out of this that an amount of Rs.35,35,11,530/- paid out from the said account and which is shown on the debit side of the said bank account statement. As stated hereinabove, in the sale and purchase of licences the payments are not made on one to one basis of either the invoice or the licence. As these traders buy and sell licences to one another on a regular basis, they make and receive on account payments. Therefore, I find that it is not possible to co-relate the payments received/made licence wise or invoice wise.

97.3. I also find that evidences in the form of emails recovered from the email account of Shri Vishal Wadkar, an employee of Shri Sashin Koradia and part time employee of Shri Kalpessh Daftary clearly indicate that the payments were made and received in the names of various firms/companies and the accounting in respect of these transactions were maintained by Shri Sashin Koradia. The account of Shri Kalpessh Daftary was maintained by Shri Sashin Koradia in the code name of 'zoo'. It is also seen from the accounts maintained by Shri Sashin Koradia that the funds are rotated between different firms/companies and in a large number of cases, the amounts are converted in to cash and delivered to Shri Kalpesh Daftary or to other firms and persons on the instructions of Shri Kalpessh Daftary. The cash was sent through Angadias for delivery to the persons concerned.

97.4. So far as the distribution of the proceeds from the sale of the forged licences is concerned, I find that Shri Piyush Viramgama had in his statements admitted to having received an amount of Rs.1.75 crores for his role in the forgery out of which about Rs.60 lakhs was received by him in the account of his firm M/s. Krish Overseas from M/s. SCPL and the balance amount was received by him in cash from the account of M/s. Shivangi Enterprise, Rajkot. On being questioned, in this regard, I find that Shri Kalpessh Daftary disagreed with the statement of Shri Piyush Viramgama

and stated Shri Piyush Viramgama had in fact got about Rs.10 crores for his role in the forgery of the licences i.e. including the forged licences sold to Hindalco Industries. Shri Kalpessh Daftary explained the distribution of the sale proceeds as under :

20% of the original licence value of the licence was given to Niyaz Ahmed, 20% of the original licence value was taken by Piyush Viramgama, and as the licences were normally sold at 90% of the original value, he got 50% of the original value of the licence. The money received from the sale of the forged licences was transferred by the companies of Sashinbhai i.e. M/s. Punjab Chemical and Crop Protection Ltd or M/s.Hindustan Continental Ltd., M/s.Osatwal Trading to the bank account of Shivangi Enterprise only to extent of the share of Niyaz Ahmed and Piyush Viramgama i.e. 40% of the original value of the licence. Part of his share of the money was withdrawn in cash by Sashinbhai from his companies i.e. M/s.Punjab Chemical and Crop Protection Ltd or M/s. Hindustan Continental Ltd., M/s. Osatwal Trading and paid to him in cash and part of the money was transferred to M/s. Sunkalp Creations Pvt Ltd by these firms/companies. Though his share in the sale of the forged licences was 50% of the original value of the licence, he effectively got only 40% because about 10% was the charges of Sashinbhai for arranging the billings, making cash payments etc.

97.5. From the case records it is quite apparent that the other conspirator and beneficiary of the forgery of the licences and its subsequent sale to M/s. Reliance was Shri Niyaz Ahmed of M/s.Indiyana Shoes, Kanpur. I find that now it is already on record that the licences were forged by Shri Niyaz Ahmed at Kanpur using the photocopies of the genuine licences provide by Shri Kalpessh Daftary. I also find that the above stated position stands categorically confirmed by Shri Piyush Viramgama as well as Shri Kalpessh Daftary in their respective statements recorded under Section 108 of the Customs Act, 1962. I also find that, in addition, there are various other evidences which go to establish the role of Shri Niyaz Ahmed in the forgery and sale of the forged licences. Shri Piyush Viramgama had in the course of his statement recorded on 06/09/2010 submitted the bills of Shree Maruti Courier Service Pvt. Ltd., Rajkot, in respect of documents / parcels sent from

his firm M/s Krish Overseas, Rajkot to various persons / firms. The said bills contained date-wise consignee name to whom documents were sent. From the details contained in the said bills it is seen that there are a number of consignments sent to Shri Niyaz Ahmed, Kanpur. I find this corroborates the statements of Shri Piyush Viramgama and Shri Kalpesh Daftary that the photocopies of the genuine licences were sent to Shri Niyaz Ahmed for preparing a forged set of licences. Additionally the account of M/s. Krish Overseas, Rajkot submitted by M/s.Sunny International, Rajkot – a travel agent indicates quite a number of air ticket bookings made for Shri Niyaz Ahmed and his associates by Shri Piyush Viramgama. The payments in respect of these air tickets have been made by M/s. Krish Overseas, Rajkot of Shri Piyush Viramgama. All these evidences clearly indicate the complicity of Shri Niyaz Ahmed in forgery of licences.

97.6. So far as the share of Shri Niyaz Ahmed arising out of the forgery of the licences and its subsequent sale is concerned, the evidences in the form of RTGS applications made to HDFC Bank, Rajkot by M/s. Shivangi Enterprise, Rajkot recovered from the office premises of Shri Piyush Viramgama in the course of the searches carried out disclose the relevant details. The details of the said payments made by RTGS from the HDFC Bank A/c No.0379200002927 of M/s. Shivangi Enterprise to Shri Niyaz Ahmed, Shri Ashok Gupta etc. are as under :-

Sr.No.	Date	Paying Bank	Receiving Bank	Name of Receiver and account No.	Amount (Rs)
1	12/11/2008	HDFC Rajkot	Indian Overseas Bank, Kanpur	Indiyana Shoes – 1007	1500000
2	12/11/2008	HDFC Rajkot	Indian Overseas Bank, Kanpur	Indiyana Marketing – 932	1500000
3	17/9/2008	HDFC Rajkot	Indian Overseas Bank, Kanpur	Indiyana Shoes – 1007	500000
4	12/11/2008	HDFC Rajkot	HDFC Bank Rajkot	Sunkkalp Creations – 03792320001493	500000
5	03/10/2008	HDFC Rajkot	Indian Overseas Bank, Kanpur	Indiyana Marketing – 932	500000
6	03/10/2008	HDFC	Indian Overseas	Indiyana Shoes – 1007	500000



		Rajkot	Bank, Kanpur		
7	14/10/2008	HDFC Rajkot	Indian Overseas Bank, Kanpur	Indiyana Marketing - 932	500000
8	14/10/2008	HDFC Rajkot	Union Bank of India, Kanpur	Ashok Kumar Gupta - 435801010502698	500000
9	14/10/2008	HDFC Rajkot	Indian Overseas Bank, Kanpur	Indiyana Shoes - 1007	500000
					Rs.65,00,000/-

97.7. I also find that Shri Piyush Viramgama had in his statement dtd.12/05/2010 stated that the payments, as detailed above were made to Shri Niyaz Ahmed, M/s.Indiyana Shoes, Shri Ashok Gupta etc. in respect of the forged licences. Further I find that Shri Vijay Gadhiya, Proprietor of M/s.Shivangi Enterprise, Rajkot from whose account the payments were made had in his statement dtd.17/09/2010 stated that whatever amount was debited from his bank account in the name of (i) Indiyana Marketing (ii) Indiyana Shoes (iii) Niyaz Ahmed (iv) Nizam Ahmed (v) Qamar Jahan (vi) Ashok Kumar Gupta (vii) Unique Fabricator (viii) A.K.Gupta & Sons (ix) A.K.Gupta (x) Indiyana Enterprise (xi) Indiyana have all been transferred to Shri Niyaz Ahmed at Kanpur. In the course of the investigations it was found that M/s.Shivangi Enterprise, Rajkot was having another account bearing No. 910020005728774 with Axis Bank Ltd, Rajkot. It was seen that payments have been made to Shri Niyaz Ahmed and others from this account too.

97.8. The above stated position gets substantiated from the statements of Shri Kalpesh Daftary recorded on different dates wherein he had confirmed that the share of Shri Niyaz Ahmed was 20% of the original value of the forged licences. Shri Kalpesh Daftary had further stated that he had paid an amount of Rs.2 crores in cash to Shri Niyaz Ahmed at Mumbai. I also find that during the course of investigation, the bank account statement of M/s. Shivangi Enterprises, Rajkot with HDFC Bank, Rajkot and Axis Bank, Rajkot were called for and scrutinized by DRI. I also find that scrutiny of said account revealed that an amount of Rs.4,40,94,906/- was transferred from these accounts to Shri Niyaz Ahmed, his family members, his firms, his associate and to other firms as per his instructions. The details of these payments are as under:

Sr.No.	Name of the firm/person to whom transferred	Name of transferring bank	Amount (Rs.)
1	Shri Niyaz Ahmed, Kanpur	HDFC Bank, Rajkot	747673
2	Shri Niyaz Ahmed, Kanpur	Axis Bank, Rajkot	1478590
3	M/s.Indiyana Shoes, Kanpur	HDFC Bank, Rajkot	6000000
4	M/s.Indiyana Marketing, Kanpur	HDFC Bank, Rajkot	7821762
5	M/s.Indiyana Marketing, Kanpur	Axis Bank, Rajkot	3994300
6	M/s.Indiyana Enterprise, Kanpur	HDFC Bank, Rajkot	1000000
7	Shri Nizam Ahmed Junior, Kanpur	HDFC Bank, Rajkot	3090732
8	Smt. Qamar Jahan, Kanpur	HDFC Bank, Rajkot	3491930
9	Shri Ashok Gupta, Kanpur	HDFC Bank, Rajkot	3502431
10	M/s.Ashok Gupta & Sons	HDFC Bank, Rajkot	1994629
11	M/s.Unique Fabricators, Kanpur	HDFC Bank, Rajkot	8987169
13	M/s.Unique Fabricators, Kanpur	Axis Bank, Rajkot	1985690
	<b>TOTAL =</b>		<b>44094906</b>

97.9. I find that the above payments made paid to Shri Niyaz Ahmed are in addition to the amounts claimed to have been paid to him in cash. Further, the fact that the beneficiary of the amounts transferred from the bank accounts of M/s.Shivangi Enterprise, Rajkot was Shri Niyaz Ahmed is also established from the statement of Shri Ashok Gupta to whose account an amount of Rs.54,97,060/- was transferred from M/s.Shivangi Enterprise, Rajkot. Shri Ashok Gupta had in his statements recorded on different dates stated that the said amount was transferred in his account on behalf of Shri Niyaz Ahmed of Kanpur. Shri Gupta further stated that Shri Niyaz Ahmad had contacted him and said that he had sold some licences and was expecting to receive money for them. He also informed Shri Gupta that he did not want to receive sale proceeds of the same in his own bank accounts and asked Shri Gupta to lend his bank account for the said purpose and offered Shri Gupta around 10% of the amount that would be deposited to which Shri Gupta had agreed. Shri Gupta further stated that he had in all received an amount of Rs.59,98,649/- in his different bank accounts on behalf of Shri Niyaz Ahmed of Kanpur. On receipt of funds in his account, Shri Niyaz Ahmed would inform him and he along with Shri Niyaz Ahmed used to visit the bank and withdrew cash amount and handed over to Shri Niyaz Ahmed. From the above, it clearly stands established that Shri Niyaz Ahmed was one of the conspirators of the forgery and he had received his share of money from the sales proceeds of such forged licences.

97.10. I also find that Shri Niyaz Ahmed was not available during the course of the search of his office and factory premises and the summons issued to him on 20/07/2010 for appearance on 29/07/2010 and dtd.04/10/2010 for appearance on 14/10/2010 were not honored and returned back undelivered. Similarly Shri Haseeb Ahmed, Marketing Manager of M/s. Indiyana Shoes, Kanpur was also issued Summons on 13/07/2010 for appearance on 19/07/2010 and as the same was not honored, another Summons was issued on 20/07/2010 for appearance on 30/07/2010 but Shri Haseeb Ahmed failed to appear before the investigating officers. Similarly, summons were issued to viz. Shri Mohammed Ali @ Munnabhai of M/s.Unique Fabricators, Kanpur in whose account money was transferred from M/s.Shavangi Enterprise, Rajkot. However, Shri Mohammed Ali did not appear before the investigating officer. The details of the summons issued to Shri Mohammed Ali @ Munnabhai are as under :

S.No.	Summons issued on	Summoned for appearance on	Remarks
1	01/02/2011	14/02/2011	Refused to accept the summons
2	18/02/2011	03/03/2011	Summons received but did appear.
3	07/04/2011	25/04/2011	Summons received but did appear.

97.11. From the evidences discussed hereinabove, it clearly emerges that 13 VKGUY licences used by M/s. Reliance at Dahej Port were forged by Shri Niyaz Ahmed, Shri Kalpesh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya and these forged licences were sold by Shri Kalpesh Daftary, Shri Piyush Viramgama to M/s.Reliance Industries Ltd for use at Dahej. It is also evident from records that the sale proceeds arising out of sales of such forged licences were shared by above said individuals.

98. I find that during the course of investigation, in the entire conspiracy involving forgery of the licences and its subsequent sale to M/s. Reliance and its utilization at Dahej, DRI had examined the role of M/s. Reliance as well. It was revealed in the course of such examination that M/s. Reliance had taken some steps to ascertain the genuineness of the licences purchased by them from the market. Therefore, DRI concluded that due diligence was done by M/s. Reliance in respect of the licences purchased and utilized by them. However, DRI noted, it clearly emerged from the records that M/s. Reliance did not take any steps to ascertain the genuineness of the Release Advices issued in respect of the forged licences

utilized by them. Therefore, I find that, as rightly brought out in the show cause notice, M/s. Reliance cannot shy away from their responsibilities in the purchase and utilization of the forged licences without resorting to any kind of verification about the genuineness of the Release Advices they produced before the Customs authorities. I also find from the records that M/s. Reliance got the letter confirming the genuineness of the TRAs through the traders/brokers who had sold them the forged licences. The forged Custom letter confirming the genuineness of the TRAs supplied to them by their traders/brokers were presented by M/s.RIL before the Customs authorities and based upon the forged letters the utilization of the forged licences were allowed by the Customs Authorities at Dahej. I find that it is a settled position of law that the buyer cannot have better title than the seller. I also find that as rightly stated in the show cause notice, it is also a settled point of law that it is for the buyer to establish that he had no knowledge about the fake nature or otherwise of the licences/Release Advices in question and whether the buyer had made any enquiry as to the genuineness of the licences/Release Advices within his special knowledge. He has to establish that he made enquiry and took requisite precautions to find out about the genuineness of the licences/Release Advices he was purchasing. In absence of any evidence to establish that he had resorted to all reasonable means to verify the genuineness of the licences/Release Advices the consequences as envisaged in the Customs Act, 1962 will follow.

99. On the backdrop of evidences narrated above and the findings recorded hereinbefore, it is now beyond dispute that Shri Kalpesh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed had conspired and forged the 13 VKGUY licences which were eventually sold to M/s. Reliance; and the total duty credit involved in these 13 forged licences comes to **Rs.6,95,53,888/ -**. This duty credit was utilized by M/s. Reliance for paying duty in respect of the goods imported by them under the bills of entry, as detailed in Annexure "B" to the show cause notice. I find that the utilization of the duty credit involved in the VKGUY licences was in terms of Notification No.41/2005-Cus dtd.09/05/2005, as amended. However, in view of the fact that these 13 VKGUY licences were forged/fake licences which were not issued by the DGFT nor registered with the Customs authorities, I find that these documents are void *ab inito*. Accordingly the benefit of the said notifications was not admissible in as much as the exemption (debit of duty from the licences) under these notifications was available only to genuine licences issued by the DGFT and which are registered with the

Customs authorities. Further, I also note that the Release Advices in respect of these 13 licences presented before Customs, Dahej too have been established to be forged/fake documents and therefore, these Release Advices too are void *ab inito* and not valid documents. Therefore, the exemption under the said notification was wrongly claimed and availed by M/s. Reliance and hence the goods imported and cleared by them by debiting duty from the forged licences have become liable for confiscation under the provisions of Section 111 (o) of the Customs Act, 1962. Further, I also find that the goods imported and cleared by them by debiting duty from the forged licences are also liable for confiscation under the provisions of Section 111 (d) of the Customs Act, 1962. Rule 14 of the FTRR, 1993 prohibits making, signing or causing the making or using of any false declaration for the purposes of importing of any goods. It also prohibits employing of any fraudulent practice for importing of any goods. In the instant Shri Kalpesh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed have indulged in making, signing and causing the forging and utilization of forged documents for import of goods by Reliance. As per Section 111 (d) of the Customs Act, 1962 any goods which are imported contrary to any prohibition under the Customs Act or under any other law for the time being in force, are liable for confiscation. As the goods have been imported by Reliance using forged/fake documents which have been made/forged/prepared by the said persons, the said goods are those which have been imported contrary to the prohibition under Rule 14 of the FTRR, 1993 and hence are liable for confiscation under Section 111(d) of the Customs Act, 1962.

100. As already stated hereinbefore, in the instant case, all the 13 VKGUY licences, as detailed in Annexure A to the show cause notice, were forged licences which were not issued by DGFT. Similarly, the TRAs in respect of these 13 forged VKGUY licences as well as the letters confirming genuineness of these TRAs were also forged. Thus, put in other words, I find that in the instant case, clearances of the goods have been obtained by furnishing forged documents. Therefore, I find that all essential ingredients exist in the instant case to invoke the extended period of Section 28 of the Customs Act, 1962 as provided under sub-section (4) of Section 28 of the Customs Act, 1962 to demand and recover the duty not paid by furnishing fake documents along with Interest under Section 28 AB of the Customs Act, 1962. I also find that admitting the fake nature of the licences they had furnished before Customs seeking clearance, M/s. Reliance had in the

course of the investigations paid the total duty involved i.e. Rs.6,95,53,884/- along-with interest amounting to Rs.69,85,878/- vide TR6 Challan No.199/2010-11 dtd.09/08/2010. I also find that by furnishing such forged documents before the Customs Authorities and wrongly availing exemption on the basis of such fake documents, I have already held hereinbefore that the goods imported in the above said manner have become liable for confiscation under Customs Act, 1962. Consequently, by above said acts, M/s. Reliance have rendered themselves liable to penal action under Section 112A and 114A of the Customs Act, 1962.

101. I have also held hereinbefore that Shri Kalpessh Daftary, Shri Piyush S.Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed had conspired and knowingly indulged in the forging of the VKGUY licences involving duty credit of Rs.6,95,53,888/-. Shri Kalpessh Daftary with Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed knowingly indulged in the forging of the Release Advices and the Customs letters confirming the genuineness of the Release Advices. Shri Kalpessh Daftary had in collusion with Shri Piyush Virmagama and Shri Vijay Gadhiya sold the 13 forged VKGUY licences to M/s.Reliance which were used at Dahej Port. The sale proceeds of these 13 forged licences were received from M/s. Reliance by M/s.Hindustan Continental Ltd, Kolkata from whom the same was routed through various firms, mainly M/s.Shivangi Enterprise, Rajkot and distributed amongst Shri Kalpessh Daftary, Shri Piyush Viramgama and Shri Niyaz Ahmed. Shri Kalpessh Daftary had actively and knowingly concerned himself in fraudulent evasion of customs duty by selling such forged VKGUY licences sold to M/s.Reliance Industries Limited. He had also actively and knowingly concerned himself in violating the prohibition imposed under Rule 14 of the Foreign Trade (Regulation) Rules, 1993, inasmuch as he had knowingly indulged himself in selling such forged VKGUY licences along with complete set of documents viz. Release Advices and letters confirming the genuineness of the Release Advices used by M/s. Reliance Industries Limited at Dahej for importing goods. Accordingly, Shri Kalpessh Daftary, Shri Piyush S.Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed had rendered himself liable for punishment under Section 135 of the Customs Act, 1962 for which all of them, except Shri Niyaz Ahmed were arrested under Section 104 of the Customs Act, 1962 and produced before the Hon 'ble ACMM Court, Ahmedabad. Shri Niyaz Ahmed was not available during the course of investigation.

102. By the acts of omission and commission of forging and sale of VKGUY licences to M/s. Reliance Industries Ltd, which led to duty evasion of Rs.6,95,53,888/- Shri Kalpesh Daftary, Shri Piyush S.Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed have rendered the goods imported by M/s. Reliance liable for confiscation under the provisions of Section 111(d), (j) & (o) of the Customs Act, 1962. Consequently, Shri Kalpesh Daftary, Shri Piyush S.Viramgama, Shri Vijay Gadhiya and Shri Niyaz Ahmed have rendered themselves liable for penal action under Section 112 (a) and 114AA of the Customs Act, 1962.

103. Coming to the submissions made by M/s. Reliance in their defence reply. In sum and substance, the submissions of M/s. Reliance are that their annual requirement of duty credit scrips/licences run into about five hundred crores, an half of such requirements are met from licences/duty credit scrips issued to them against their own export and the remaining half they procure from the market. M/s. Reliance also submitted that such transferable licence/duty credit scrips are purchased by them through brokers; that one such broker through whom they have been regularly purchasing transferable licences/duty credit scrips was Mr. Bhavesh Doshi through whom they had procured about 417 licences/duty credit scrips during the period August 2008 – March 2010. That the payments for the purchase of the said licence/scrips are made through banking channels. M/s. Reliance pointed out that in the normal course of their business, in November 2009 they had purchased from Hindustan Continental Ltd., Kolkata, 17 transferable VKGUY licences/duty credit scrips through the said broker Mr. Bhavesh Doshi. For purchase of said licences/duty credit scrips, they had placed through Mr. Bhavesh Doshi a purchase order No. XB37209193 dated 07.11.2009 on the said Hindustan Continental Ltd. The said VKGUY licences/scrips were purchased at the prevailing market rate of 98% of the value of the duty credit scrips. The payment for the purchase of the said licence/scrips was made to Hindustan Continental Ltd., through RTGS. The release advices in respect of the said licences from the Customs Mangalore where the said licences were registered, and FAX letters from Mangalore Customs verifying the genuineness of the release advices were provided to them by the said broker Bhavesh Doshi. Based on the said licences / release advices, the Customs Dahej, granted clearance to the goods imported by them by debiting the duty in the said licences. M/s. Reliance pointed out that subsequent to the clearance of the goods, they were informed by the said Bhavesh Doshi by his e-mails dated 30.07.2010

and 02.08.2010 that some of the licences/duty credit scrips which they had purchased from Hindustan Continental Ltd., Kolkata through him, had been found to be forged by DRI in the course of investigations. M/s. Reliance stated that in the above said manner they came to know that 13 VKGUY licences and corresponding Release Advices used by them for debiting Customs Duty at Dahej Port were fake. M/s. Reliance insisted that they were innocent purchasers who were unaware of the wrong committed by a third party; that they were not aware that the licences were not genuine and that they were innocent buyers for value. M/s. Reliance also pointed out that immediately on realizing that the aforesaid licences were fake, in terms of provisions of Section 28(2B) of the Customs Act 1962 they had paid the duty involved with interest. Claiming that they are absolutely innocent in the matter, Reliance is resisting the proposals made in the show cause notice to confiscate the goods, impose penalty on them under Section 112(a) and 114A of the Customs Act, 1962. The other contention of Reliance is that since they have already paid duty with interest in terms of Section 28(2B) of the Customs Act 1962, the notice itself is not maintainable. M/s. Reliance has cited few case laws in support of above said submission.

103.1. I have carefully considered their submissions and at the outset, I find that M/s. Reliance has not disputed the fake nature of the 13 VKGUY licences and corresponding Release Advices used by them for debiting Customs Duty at Dahej Port. I find that M/s. Reliance had, in fact, conceded the fake nature of the licences/Release Advices and therefore forthwith paid duty of Rs.6,95,53,884/- involved in above said 13 licences alongwith interest of Rs. 69,85,878/-.

103.2. Coming to the contention raised by M/s. Reliance that Section 28(2B) provides that where any duty has not been levied or short levied or not paid, the person chargeable with the duty may pay the same **before service of notice on him** and inform the proper office about such payment in writing and thereupon no notice shall be served on person chargeable with duty. In the present case, since they have paid the duty with interest before the service of notice on them, the present notice is barred and not maintainable in view of the provisions of section 28(2B). In support of above contention they placed reliance on the following case laws:

- (a) CCE v Roshan Lal Lalit Mohan – 2006 (206) ELT 325
- (b) ~~Adecco Flexione~~ **Workforce Solutions Ltd.** 2012(26)STR 3
- (c) Reliance Industries Ltd. 2013 (287) E.L.T. 433
- (d) Blue Star Ltd. 2013 (31) S.T.R. 28



- (e) M.D.Engineers 2013 (30) S.T.R. 389
- (f) Manipal County 2010 (17) S.T.R. 474
- (g) Circular No.48/2008 dated 3-10-08

103.3. As already stated hereinbefore, in the instant case, it is beyond dispute that the 13 VKGUY licences and corresponding Release Advices used by them for debiting Customs Duty at Dahej Port were fake. It is also beyond dispute that these fake licences and corresponding fake Release Advices were presented before the Customs Authorities for debiting duty by Reliance. Thus, whether M/s. Reliance was actually involved in the commission of fraud or not is a different matter, but the fake documents were presented before Customs by them and the benefit of exemption was availed by them on the basis of such fake documents at the time of importation. Explanation 1 of the Section 28 (2B) of the Customs Act, 1962, lays down that the facility of waiver of show cause notice as provided in Section 28 (2B) of the Customs Act, 1962 would not be applicable if the duty so not paid were by reason of collusion or any wilful misstatement or suppression of facts by the importer. In the instant case, it is true that M/s. Reliance was not involved in the forgery of licences but they very well knew that the letter seeking genuineness of RA issued by Dahej Customs which happened to be sent through them were not being directly sent to Mangalore Customs and the confirmation which were also received through were not coming from Mangalore Customs directly. Had these facts been disclosed by Reliance, perhaps this forgery should not have taken place at the first place or would have detected long-back. Therefore, there was suppression of material facts by Reliance from the department therefore, as rightly held in the show cause notice, Section 28 (2B) of the Customs Act, 1962, is not applicable in the instant case.

103.4. Secondly, Section 28 (2B) of the Customs Act, 1962 states that where any duty has not been levied or has been short-levied the person, chargeable with the duty or the interest, may pay the amount of duty or interest before service of notice on him under sub-section (1) in respect of the duty or the interest, as the case may be, and inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the duty or the interest so paid. In this regard, at the outset, I find that Section 28 (2B) of the Customs Act, 1962 speaks about the notice to be served under sub-section (1) of Section 28 of the Customs Act, 1962. In the instant case, I find that the notice has been served on M/s. Reliance in terms of sub-section (4) of Section 28 of

the Customs Act, 1962. Thus, for this reason alone, Section 28 (2B) of the Customs Act, 1962 does not apply in the instant case.

103.5. In the case law of CCE v Roshan Lal Lalit Mohan - 2006 (206) ELT 325 cited by M/s. Reliance, the issue involved was a case of mis-declaration and not forgery and therefore, facts and circumstances of said case are clearly distinguishable. Again, the case law of Adecco Flexione Workforce Solutions Ltd. 2012(26)STR 3 cited by Reliance dealt with delayed payment of service tax and not the case of non-payment of duty arising out of forgery and therefore this case law has also got no application here. In the case of Reliance Industries Ltd., 2013 (287) E.L.T. 433, cited by M/s. Reliance, the Tribunal noted that the EOU had kept departmental authorities informed about availment of exemption notification, and filing returns showed that they had no intention to suppress material facts. In that view, the Tribunal noted that there was no need to issue any show cause notice. It is certainly not the case here. In the case of Blue Star Ltd. 2013 (31) S.T.R. 28, that Blue Star had paid commission to their foreign agents was found out from the records of Blue Star itself. Therefore, there was no suppression or forgery in that case and in the given situation, as service tax was paid before issuance of the notice, it was held in that case that there was no need to issue show cause notice. Admittedly, facts of the case on hand are not equitable and therefore cannot have any applicable here. Similarly, both the cases M.D. Engineers 2013 (30) S.T.R. 389 and Manipal County 2010 (17) S.T.R. 474 are related to service tax wherein service tax was not paid initially but certainly on account of reasons other than fraud or forgery. Therefore, the case laws cited by M/s. Reliance are out of context and not applicable to facts and circumstances of the case. As already stated hereinabove, Section 28 (2B) of the Customs Act, 1962 speaks about waiver of the notice to be served under sub-section (1) of Section 28 of the Customs Act, 1962 whereas in the instant case the notice has been served under sub-section (4) of Section 28 of the Customs Act, 1962. Thus, it clearly emerges from the above that in the cases of the nature where notice is to be served under sub-section (4) of Section 28 of the Customs Act, 1962 the waiver as envisaged in Section 28 (2B) of the Customs Act, 1962 is not applicable. Therefore, I do not find any merit in the argument advanced by M/s. Reliance that in the instant case, the notice issued is not maintainable and therefore I am not inclined to accept said submission.

104. The other plea raised by Reliance is regarding the proposal in the show cause notice to confiscate the goods under Section 111 of the

Customs Act, 1962. Reliance contended that Section 111(o) applies to any goods which are exempted from duty or any prohibition, subject to any condition and where such condition is not observed / fulfilled. Essentially, Reliance argued that Section 111(o) applies where an exemption is granted to the importer subject to the importer having to observe/fulfill certain post import conditions. In the present case the exemption granted to them was not subject to any conditions which we were required to observe and which we have failed to observe; Section 111(o) therefore does not have any application to the present case. M/s. Reliance also stated that Section 111(d) of the Customs Act, 1962 also does not have any application to the present case. Section 111(d) applies to goods which are imported or attempted to be imported etc. contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. In the present case the goods imported by them were freely importable without the requirement of any licence and there was no prohibition with regard to the import of the said goods either under the Customs Act or any other law. The provisions of section 111(d) therefore have no application to the present case.

104.1. I have carefully considered the above submission and find that in the instant case, the utilization of the duty credit involved in the VKGUY licences was done in terms of Notification No.41/2005-Cus dtd.09/05/2005, as amended. However, these 13 VKGUY licences based on which exemption was availed were found to be forged/fake licences and therefore become void ab inito. Consequently, exemption under above said notification was wrongly availed. For availing exemption under said notifications, Reliance was duty bound to fulfill the conditions of the Notification and exemption under said notification can be availed only on the basis of valid licences issued by DGFT. In the instant case, exemption under the notifications has been availed without valid license which contravened the condition of the notification and this contravention, in turn, makes the goods liable for confiscation under Section 111(o) of the Customs Act, 1962. In the case of Bharath Diagnostic Centre versus C.C. Air Cargo (I&G), New Delhi, reported in 2007 (207) E.L.T. 113 the larger bench of the Hon'ble Tribunal held that "As far as fulfillment of exemption notification is concerned, the non-fulfillment entails confiscation of the impugned goods under Section 111(o) of the Customs Act". Ratio of aforesaid decision is squarely applicable to facts of the case on hand.

104.2. I do not find any merit in the contention raised by Reliance that the goods are liable to confiscation in terms of Section 111(d) of the Customs Act, 1962 only when goods are imported into India contrary to any prohibition imposed on them under the laws of India; that the goods imported by them are freely importable as per the customs laws of India as well as under any other law for the time being in force in India and therefore the proposal to hold the goods imported by them liable for confiscation under Section 111(d) of the Customs Act, 1962 is not tenable. In the instant case, importation of goods availing exemption contained in the Notification No.41/2005-Cus dtd.09/05/2005 is subject to restriction stipulated in the said notifications. Under this notification exemption is subjected production of valid VKGUY licences. This restriction has not been fulfilled in the instant case, by presenting fake licenses. In the case of Sheikh Mohd. Omer versus Collector of Customs, Calcutta and others, reported in 1983 (13) E.L.T. 1439 (S.C.), the Hon'ble Supreme Court held that :

"We are not impressed with this argument. What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947 uses three different expressions "prohibiting", "restricting" or "otherwise controlling," we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restriction is one type of prohibition. "

104.3. It is settled position that on a forged licence, the benefit of exemption notification cannot be allowed as that would amount to legalizing fraud. In such situation, the knowledge of fraud is a factor only relevant to the question of penalty and not duty and confiscation of the goods. In the case of ICI India Ltd versus Commissioner of Customs, Calcutta reported in 2003 (151) E.L.T. 336, an identical, if not the same, came up before the Northern Bench of the Tribunal. After careful consideration of entire gamut of the matter, the Hon'ble Tribunal held as under:

"7. The challenge in this appeal is, indeed, only against the adjudicating authority's findings noted at (c), (d) and (e) in Para 3 above. The main issue which we have to examine in the case is as to whether the benefit of

exemption availed by the appellants under Notification No. 34/97 on the strength of fake DEPB scrips should be held to be admissible to them by reason of the fact that the proper officer of Customs verified and endorsed the scrips. We have examined this issue. A fake document is *ab initio* unlawful and void. Any amount of official action upon such a document cannot sanctify it or otherwise make it lawful. Such a document cannot give rise to any right or benefit in law. This is the legal position settled by the Hon'ble Supreme Court in *New India Assurance Co. v. Kamla & Others*, 2001 (4) SCC 342. In that case, the main issue which was considered by their Lordships, with reference to relevant provisions of the Motor Vehicles Act, 1988, was as to whether a fake driving licence would get legally sanctified by reason of its renewal by the statutory authority. Their Lordships gave their ruling in Para 13 of their judgment as under : -

"The observation of the Division Bench of the Punjab and Haryana High Court in *National Insurance Co. Ltd. v. Sucha Singh* [1994 ACJ 374 (P & H)] that renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. *What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it.* Forgery is antithesis to legality and law cannot afford to validate a forgery."(emphasis supplied)

8. Following the above ruling, we hold that the DEPB "licences" which have been found to be forged and fake documents are null and void *ab initio* and whatever verification or other proceedings made or taken on the documents by any authority in the Customs department has not had any effect whatsoever on the inherent nullity of the "licences". No right or benefit could accrue from the null and void "licences". In other words, no credit of duty was available to the appellants under the forged DEPB scrips. The paramount condition under Notification No. 34/97 remained unfulfilled and consequently the appellants were not entitled to the benefit of exemption under the notification. The appellants were liable to pay duty on the imported goods. The Commissioner's order confirming the demand of duty is legally correct and hence cannot be interfered with."

104.4. In view of the above, I hold that the goods imported and cleared by Reliance by debiting the duty in the fake/forged licenses are liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962.

105. Yet another argument advanced by M/s. Reliance is that they are victim of fraud and not involved in commission of the fraud, they are innocent by all means. M/s. Reliance also stated that on realizing that the

licences were fake, they have paid the duty involved voluntarily with interest. Their claim of victim and innocence is not tenable, because in the cases of this nature, the principle of *caveat emptor* is clearly applicable which means the purchaser has to be careful i.e. Let the purchaser beware, therefore, after having purchased such fake licences they cannot plead that they were victims of fraud therefore they should be spared from the legal consequences thereof. Secondly, once it is established that the licences used by them were fake, these are void *ab initio*. The legal principle is that fraud nullifies everything. Thus, once having established that the licences are fake, they hardly had any option but to pay the duty involved and therefore, the claim of voluntarily payment by invoking Section 28(2B) is afterthought to escape the legal consequences that may arise.

105.1. While dealing with an identical case relating to Import of gold and silver under forged Special Import Licence, in the case of Commissioner of Customs (Preventive) versus Aafloat Textiles (I) Pvt. Ltd, reported in 2009 (235) E.L.T. 587, the Hon'ble Supreme Court had occasion to deal with such a situation. The observations made by the Hon'ble Court in the above said case, are reproduced below:

21." *Caveat emptor* does not mean either in law or in Latin that the buyer must take chances. It means that the buyer must take care." (See *Wallis v. Russell* (1902) 21 R 585, 615).

22." *Caveat emptor* is the ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist." (See *William R. Anson, Principles of the Law of Contract* 245 (Arthur L. Corbin Ed. 3d. Am. ed.1919) Applying the maxim, it was held that it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner.

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26.No one ought in ignorance to buy that which is the right of another. The buyer according to the maxim has to be cautious, as the risk is his and not that of the seller.

27.Whether the buyer had made any enquiry as to the genuineness of the license within his special knowledge. He has to establish that he made enquiry and took requisite precautions to find out about the genuineness of the SIL which he was purchasing. If he has not done that consequences have to follow. These aspects do not appear to have been considered by the CESTAT in coming to the abrupt conclusion that even if one or all the respondents had knowledge that the SIL was forged or fake that was not sufficient to hold that there was no omission of commission on his part so as to render silver or gold liable for confiscation.

28. As noted above, SILs were not genuine documents and were forged. Since fraud was involved, in the eye of law such documents had no existence. Since the documents have been established to be forged or fake, obviously fraud was involved and that was sufficient to extend the period of limitation."

105.2 Further reliance is placed on the decision of Hon'ble Tribunal in the case of Dow Agrosciences India Pvt. Ltd versus Commissioner of Customs, Mumbai reported in 2012 (283) E.L.T. 524. In the said case, the Hon'ble Tribunal held as under:

"9.29 The contention of the appellant is that, as they had purchased the DEPBs *bona fide* for valuable consideration without notice of the transferors' fraud, they cannot be denied DEPB credit. Per contra, the Revenue has invoked the *caveat emptor* principle by pointing out that it was for the appellant to make sure that the original allottees (transferors) had actually earned transferable credits of duty by exporting goods and realizing proceeds, as the Exemption Notification itself clearly indicated that no credit could be earned without exports. We are inclined to accept this plea and hold that the above principle was rightly invoked in this case. In this manner only, fraud on the Revenue can be made actionable. Any different view will only perpetuate the menace of fraud on the Revenue and defeat the public interest. If the appellant's argument is accepted, the results will be catastrophic for the Revenue. In our view, it is to secure the revenue that the licensing authority under the FT (D&R) Act has been empowered to cancel DEPBs (whether utilized or unutilized) retrospectively. The rule of law demands that the orders issued under the said provision of law be given full effect to."

105.3. In the case of DIC India Ltd versus Commissioner of Customs (Port), Kolkata reported in 2008 (226) E.L.T. 545, the Eastern Bench of CESTAT held as under:

"5.8 It is an elementary principle of jurisprudence that Legal Fraud vitiates everything even judgments and orders of the Court. If a transaction has been founded on fraud, the vice will continue to taint it, and not only is the person who has committed fraud is precluded from deriving any benefit under it, but also who derive advantage of it. In the case of *Golden Tools International v. Joint DGFT, Ludhiana*, 2006 (199) E.L.T. 213 (P & H), the Hon'ble High Court has also upheld cancellation of DEPB obtained fraudulently and levy of penalty under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 was sustained.

5.9 The observations of the former Lord Chief Justice of England, Sir Edward Coke, more than three centuries ago, that "fraud avoids all judicial acts, ecclesiastical or temporal" was noticed by the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 SC 853. The Apex Court observed that a person whose case is based on falsehood has no right

to seek relief in equity. In *Delhi Development Authority v. Skipper Construction Company (P) Limited*, AIR 1996 SC 2005, the Hon'ble Supreme Court considered the concept of resulting trust and equity. It was held that where a person earned properties by smuggling or other illegal activities, all such properties whether standing in his name or in the name of his relations or associates will be forfeited to the State. Though, the question herein is not of forfeiture of property illegally acquired but on parity, a person committing fraud is required to restore the benefits taken and cannot be held to say that since the benefit was transferred to an innocent person and since an innocent person cannot be punished, such a person should also be exonerated."

105.4. Further in the case of *Munjal Showa Ltd versus Commissioner of Central Excise, Faridabad* reported in 2008 (227) E.L.T. 330, the Principal Bench, New Delhi held as uner:

"5. We have carefully considered the submissions from both sides. We take note of the fact that immediately on communication of the results of verification by the Customs authorities, the appellant company paid on 12th August, 2003 the entire duty involved. The appellants claimed that they have purchased the scrips through the broker Shri Bishnoi which has been denied by the said agent. We find that the appellants have entered into transactions for purchase of the DEPB scrips with M/s. ACME and Ankur Impex, Mumbai both of whom are reportedly not traceable. They have made payments to these firms by cheques. It is their contention that Mr. Bishnoi also acted as an agent of M/s. ACME and Ankur Impex, Mumbai. It was claimed that after commencement of the investigation, the representatives of the appellant company approached Mr. Bishnoi to inform them about the nature of DEPB i.e. whether they were genuine or otherwise; that Bishnoi visited their factory at Gurgaon and discussed with them and their advocate on the recovery of the licence value they had paid and that later Mr. Bishnoi has denied everything he promised to them. From these one thing is clear. The appellant company themselves have come to a conclusion that the licences are forged. They are not contesting that the licences are forged. They are claiming that they were not having knowledge when they used those licences and that they are only victims of fraud by others. Forged licences have no legal sanctity or validity. On a forged licence, the benefit of exemption notification cannot be allowed as it will amount to legalizing fraud. We are of the considered view that no benefit arising out of fraud cannot be claimed by the appellant company".

105.5. While dealing with an identical issue in the case of *K.I. International Ltd versus Commissioner of Customs, Chennai* reported in



2012 (282) E.L.T. 67, the Hon'ble Tribunal observed that the failure of importer to make enquiry with issuing authority of DEPB scrips/TRAs disentitled them to claim bona fide; that they were ultimate beneficiaries of fake TRAs and were not innocent. The Tribunal noted that their claim at the threshold was based on fake TRAs, and they could not acquire better title if it was not acquired legitimately; that the Fruits of forbidden tree being always forbidden, importer had no right to make gain out of fake TRAs. The relevant portion of the above said decision reads as under:

"10.1 Evidence gathered by Revenue unambiguously and succinctly proved that the TRAs used by the importer appellants were fake, false, forged and fabricated for discharge of customs duty and caused prejudice to Revenue. Similarly, the traders, brokers and sub-brokers supplying such instruments were conduit and instrumentality in commitment of offence of causing loss to Revenue consciously and deliberately having intimate connection to each other. Neither the importer appellants nor the conduits could demolish the evidence gathered by Revenue making enquiry from DGFT Authority. Their ill-design was unearthed by investigation.

10.2 It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he fails to exercise due care and diligence. Failing to cause enquiry with the issuing authority of DEPB scrips/TRAs crippled the importer appellants to claim *bona fide*. Findings of the learned Adjudicating Authority do not appear to have been made suspiciously or under surmise but seems to have been based on cogent evidence.

10.3 When the importer appellants acquired DEPB scrips from market without being acquired from original acquirer, as an abundant caution, to avoid evil consequence of fraudulently obtained scrips, could have safeguarded their interest causing enquiry from JDGFT as to genuineness of the scrips. But that was not done. Such appellants failed to acquire title over the scrips but became beneficiary of ill got scrips. Notificational benefit was availed at the cost of public exchequer which is required to be surrendered for the undue gain made. *Bona fides* were not established by the appellants for which they submitted themselves to the loss of duty caused to Revenue by their act of use of DEPB scrips not acquired legitimately.

10.4 The observations of the former Lord Chief Justice of England, Sir Edward Coke, more than three centuries ago, that "fraud avoids all judicial acts, ecclesiastical or temporal", noticed by the Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 SC 853, are apt for the instant case. The Apex Court has also observed that an act of deliberate deception with the design of securing something by taking unfair advantage of another is a "fraud". "Fraud" is a cheating intended to get an advantage. A person whose case is based on falsehood has no right to seek relief in equity. In *Commissioner of Customs v. Essar Oil Ltd.*, (2004) 11 SCC 364 =

2004 (172) E.L.T. 433 (S.C.), their Lordships of the Supreme Court have observed that it is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. Being the ultimate beneficiaries of the fake TRAs, the importer Appellants were not innocent. Claim at the threshold was based on fake TRAs. Therefore, Revenue has rightly invoked extended period under Section 28 of the Customs Act, 1962 to adjudicate the matter.

10.5 It has been held in *ICI India Limited v. CC (Port), Calcutta* - 2005 (184) E.L.T. 339 (Cal.) that the DEPB licence/scrip is admittedly a negotiable one and is available in the market. Anyone can purchase it from the market and avail of the credit out of it. But, ultimately if it is found that the said DEPB scrips were not acquired lawfully nor transferred by original owners thereof credit cannot be derived from forged TRA. The decision of Hon'ble Calcutta High Court was affirmed by Apex Court in appeal by *ICI India Ltd.* as reported in 2005 (187) E.L.T. A31 (S.C.). Thus invoking of extended period for adjudication was justified and importer appellants were liable to consequence under Customs law.

10.6 Following decision of Hon'ble High Court of Punjab & Haryana in the case of *Friends Trading Co. and Another v. Union of India* - 2010 (254) E.L.T. 652 (P&H), it can be said that it is settled principle of common law that a purchaser does not acquire better title if such title was not acquired legitimately. Therefore, if there was no genuine sale of DEPB scrips by original owners thereof, the purchaser fails to acquire title over the same. This principle has also been recognized under Section 27 of the Sales of Goods Act, 1932. Judgment of the Hon'ble High Court of Punjab & Haryana was affirmed by Apex Court as reported in 2010 (258) E.L.T. A72 (S.C.). It has also been held by the Hon'ble High Court of Bombay in a batch of cases reported as *CC, Mumbai v. M/s. Vaibhav Exports, Mumbai & Others* - 2009-TIOL-673-HC-MUM-Cus. = 2009 (244) E.L.T. 527 (Bom.) that forged licensees, in law are no licensees. The argument regarding non-applicability of Section 28AAA of Customs Act, 1962 retrospectively does not get appreciation in a fraud involving the deals of fake DEPBs/TRAs which nullifies everything and makes the importers liable to pay duty and penalty".

105.6. Applying ratio of aforesaid decisions, it can be said that whether Reliance was involved in the fraud or not, is a different matter, but they cannot escape from their responsibilities and eventually it was Reliance who had presented these forged documents before the Customs seeking exemption. Consequently the show cause notice is not only very much maintainable but also the extended period of Section 28(4) of the Customs Act, 1962 was rightly invoked for demanding duty not paid by producing such forged documents.

**Shri. Kalpesh.N.Daftary**

106. Shri Kalpesh Daftary has filed his written submission vide his letter dated 16.01.2013 and denied the charges made in the show cause notice. In fact his reply does not actually counter the allegations made in the show cause notice and makes allegations on other conspirators who happened to be his associates when the offence was committed. Such allegations on other associates are not reproduced here in view of the fact that it has got nothing to do with the charges made in the show cause notice against Shri Daftary.

106.1. He claimed that it is case of Padvamati Agencies (P) Ltd., in connivance with Custom Officers of the port issuing and confirming the licenses and forged the documents and used the same for their personal gain. He also stated that he has retracted the statement recorded by DRI. Shri Daftary argued that Shri Dharmesh Gathani of Padmavati Agencies Pvt. Ltd in his statement has stated that they have been supplying licences to Reliance Industries Ltd. Therefore, Daftary stated that Shri Dharmesh Gathani was having easy access to Xerox copies of these licenses used by Reliance Industries Ltd at Dahej or Magdala port.

106.2. Shri Kalpesh Daftary also stated that allegations against him made in the show cause notice are on the basis of statements of various persons. Accordingly, he requested to provide opportunity to cross examine such persons through his lawyer so as to prove that statements of such persons are not completely true. He also contended that right to cross examination is a right under statue and it cannot be taken away. He also stated that the show cause notice is prima-facie time barred as DRI had arrested him therefore all details prior to arrest wee with DRI. Now the show cause notice has been issued after two years of his arrest and hence the SCN is time barred as the extended period is not available as all facts were with DRI. He has also resisted the proposal to impose penalty on him.

106.3. I have gone through the lengthy submission made by Shri Kalpesh Daftary vide his letter dated 19.08.2013. At the outset, I find that Shri Daftary has not replied the allegations made in the show cause notice. The focus of his reply is to make allegations of other conspirators which have got nothing to do with the allegations made in the show cause notice, therefore I do not find it necessary to consider the reply relating to such allegations and counter allegations. So far as request for cross examination is concerned, the allegations made in the show cause notice are not based on the

statements of others alone. There substantial documentary evidences, including financial transactions arising out of sale of forged licences to indicate his culpability in forging the licences.

106.4. In fact evidences available on records indicate that it was Shri Kalpesh Daftary who thought of doing the business of forged transferrable licences and discussed this idea with Shri Piyush Viramgama who was an old associate of Kalpesh Daftary from his days in Rajkot. Once having decided to forge the licences, Shri Piyush Viramgama introduced Shri Niyaz Ahmed of Kanpur to Shri Kalpesh Daftary. Shri Niyaz Ahmed was already into the business of forging such licences. Thereafter Kalpesh Daftary and Shri Niyaz Ahmed had met on number of occasions and decided to go ahead with forging licences. Shri Kalpesh Daftary was already into the trading business of genuine licences and by that way he had access to genuine licences so he had agreed to Shri Niyaz Ahmed to supply photo copies of genuine licences based on which Niyaz Ahmed agreed to forge parallel fake licences. It is relevant to place on record that the 13 VKGUY genuine licences were sold by SCPL under their invoice to M/s. Sun Export Pvt. Ltd., Mumbai, which were subsequently forged/ faked and supplied to Reliance which also goes to prove that as agreed upon, after selling the genuine licences. Kalpesh Daftary had supplied Photostat copies of the same to Shri Niyaz Ahmed which eventually facilitated forging of 13 VKGUY licences supplied to Reliance. Further, on verification of letters alleged to have been issued by Mangalore Customs confirming the genuineness of the 13 Release Advices found to have been fabricated by Kalpesh Daftary and Piyush Viramgama and it is evident from the header at the top of these letters that the same were faxed by/from M/s.Sunkkalp Creations Pvt Ltd, Mumbai of Shri Kalpesh Daftary. Therefore, there are several documentary evidences, apart from financial transactions, which clearly bring out involvement of Shri Kalpesh Daftary in the commission of offence. Apart from the above, Shri Kalpesh Daftary himself had admitted in his statements recorded under Section 108 of the Customs Act, 1962 that he alongwith other conspirators forged the licences supplied to Reliance as well as Hindalco Industries Ltd. Therefore, the contentions of Shri Daftary that charges made against him in the SCN are on the basis of statement of others are factually incorrect, and does not merit acceptance. Consequently, the reason cited justifying cross examination does not exist.

106.5. The Hon'ble Madras High Court, in the case of K. Balan Vs. Govt. of India, reported in 1982 ELT (386) Madras, had held that right to

cross examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. In the present case, as already noted hereinabove, no case has been made out to allow cross examination of other accused and charges leveled against Shri Viramgama are based on documentary evidences and his own confessions. In the case of Surjeet Singh Chhabra versus Union of India reported in 1997 (89) E.L.T. 646, the Hon'ble Supreme Court held that "When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner."

106.6. In view of above stated position, I do not find any justification for cross examination, as demanded by Shri Kalpesh Daftarry and therefore the same is rejected.

**Shri Piyush Viramgama**

107. The defence submission made by Shri Piyush Viramgama vide his letter dated 01.01.2014 does not have any substance. In fact, he has not seriously contested the allegations made in the notice and simply denied the charges. So far as his request for cross examination of other accused in this case is concerned, I find that the only reason put forward justifying demand for cross examination is that statements of other persons have been relied upon to sustain the charges made against him in the notice.

107.1. I have carefully examined the above submission and find that it is factually incorrect to say that the charges leveled against him in the notice are on the basis of statements of other individual. Fact of the matter is that in the statements recorded on various dates by DRI under Section 108 of the Customs Act, 1962, Shri Piyush Viramgama himself has categorically admitted his role in the entire episode of forging the licences and other allied documents. The above said admission made by Shri Piyush Viramgama gets substantiated from various incriminating documents/articles recovered from his office as well as residential premises during the course of searches in these premises which include:

- i) Rubber stamp of Oriental Bank of Commerce,
- ii) Rubber stamp of HDFC Bank Ltd,
- iii) Rubber stamp of one V.NAGARAJAN (329), Chief Manager.
- iv) Negative for preparing rubber stamp of Union Bank of India, Kollam Civil Stn.Branch
- v) Negative for preparing rubber stamp of The Federal Bank Ltd, Kollam
- vi) Negative for preparing rubber stamp of ING Vysya Bank Ltd, Kollam
- vii) Negative for preparing rubber stamp of Indian Bank, Kollam
- viii) Negative for preparing rubber stamp of Bank of Baroda.
- ix) Negative for preparing rubber stamp of The Catholic Syrian Bank
- x) Negative for preparing rubber stamp of Axis Bank Ltd, Kollam.
- xi) Negative for preparing rubber stamp of The South Indian Bank Ltd, Kollam
- xii) Negative for preparing rubber stamp of State Bank of India, Kollam
- xiii) Negative for preparing rubber stamp of Emmanuel Cashew Industries
- xiv) Negative for preparing rubber stamp of Abbas Cashew Company
- xv) Negative for preparing rubber stamp of Quilon Export Enterprises
- xvi) Negative for preparing rubber stamp of Bola Raghvendra Kamath & Sons.
- xvii) Negative for preparing rubber stamp of Lekshmi Enterprises.
- xviii) Negative for preparing rubber stamp of Poornachandra Cashew Co
- xix) Negative for preparing rubber stamp of Peniel Cashew Co.

107.2. Apart from the above incriminating documents/articles, Shri Piyush Viramgama had in the course of his statement recorded on 06/09/2010 submitted the bills of Shree Maruti Courier Service Pvt. Ltd., Rajkot, in respect of documents / parcels sent from his firm M/s Krish Overseas, Rajkot to various persons / firms. The said bills contained datewise consignee name to whom documents were sent. From the details contained in the said bills it is seen that there are a number of consignments sent to Shri Niyaz Ahmed, Kanpur. This corroborates the statements of Shri Piyush Viramgama and Shri Kalpessh Daftary that the photocopies of the genuine licences were sent to Shri Niyaz Ahmed for preparing a forged set of licences. Additionally the account of M/s.Krish Overseas, Rajkot submitted by M/s.Sunny International, Rajkot - a travel agent - vide their letter dtd.12/07/2012 indicates quite a number of air ticket bookings made for Shri Niyaz Ahmed and his associates by Shri Piyush Viramgama. The payments in respect of these air tickets have been made by M/s.Krish Overseas, Rajkot of Shri Piyush Viramgama.

107.3. Moreover, Shri Piyush Viramgama had in his statements admitted to having received an amount of Rs.1.75 crores for his role in the forgery out of which about Rs.60 lakhs was received by him in the account of his firm M/s.Krish Overseas from M/s.SCPL and the balance amount was received by him in cash from the account of M/s.Shivangi Enterprise, Rajkot. Shri Kalpessh Daftary in his statement stated that Shri Piyush Viramgama had in fact got about Rs.10 crores for his role in the forgery of the licences. Even going by the admission made by Viramgama himself, he had received an amount of 1.75 crores and he has even given the break-up this amount. Therefore, the contentions of Shri Viramgama that charges made against him in the SCN are on the basis of statement of others are factually incorrect, and does not merit acceptance. Consequently, the reason cited justifying cross examination does not exist.

107.4. As already stated elsewhere in this Order, the Hon'ble Madras High Court, in the case of K. Balan Vs. Govt. of India, reported in 1982 ELT (386) Madras, had held that right to cross examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. In the present case, as already noted hereinabove, no case has been made out to allow cross examination of other accused and charges leveled against Shri Viramgama are based on

documentary evidences and his own confessions. In the case of Surjeet Singh Chhabra versus Union of India reported in 1997 (89) E.L.T. 646, the Hon'ble Supreme Court held that "When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner."

107.5. In view of above stated position, I do not find any justification for cross examination, as demanded by Shri Viramgama and therefore the same is rejected.

107.6. I also do not find any merit in the submission made by Shri Viramgama that the show cause notice is time-barred. I find that no worthwhile reason has been put forward substantiating the claim of time bar except by saying that he was arrested and therefore DRI was aware about the forged nature of the licences, hence extended period is not available for issuance of show cause notice after disclosure of facts on the basis of which he was arrested. According to Section 28(4) of the Customs Act, 1962, where any duty has not been levied or has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts by the importer the proper officer can within five years from the relevant date, serve notice on the person chargeable with duty which has not been so levied or which has been so short-levied or short-paid. Thus, in the instant case, the notice has been issued within the time limit prescribed under Section 28(4) of the Customs Act, 1962. The Customs Act, 1962 does not prescribe any time limit



for the other actions proposed in the show cause notice such as confiscation of the goods and imposition of penalty. Therefore, the issue of time-bar raised by Shri Viramgama is devoid of substance and hence the same is rejected.

107.7. So far as non-applicability of various provisions of Section 111 of the Customs Act, 1962 raised by Shri Viramgama is concerned, this issue has already been elaborately dealt with elsewhere in this Order in response to the same issue raised by Reliance and the same hold good here also and therefore not discussed here again to avoid repetition. The other submissions made by Shri Viramgama are not relevant to the case as it has got nothing to do with the charges leveled against him in the show cause notice.

107.8. As already noted hereinbefore, the utilization of the duty credit involved in the VKGUY licences is in terms of Notification No.41/2005-Cus dtd.09/05/2005, as amended. However, in view of the fact that these 13 VKGUY licences were forged/fake licences which were not issued by the DGFT nor registered with the Customs authorities, these documents are void *ab inito*. Accordingly the benefit of the said notifications is not admissible in as much as the exemption (debit of duty from the licences) under these notifications is available only to genuine licences issued by the DGFT and which are registered with the Customs authorities. Further, the Release Advices in respect of these 13 licences presented before Customs, Dahej too have been established to be forged/fake documents and therefore, these Release Advices too are void *ab inito* and not valid documents. Therefore, the exemption under the said notification was wrongly claimed and availed by M/s. Reliance and hence the goods imported and cleared by them by debiting duty from the forged licences are liable for confiscation under the provisions of Section 111 (o) of the Customs Act, 1962.

107.9. Rule 14 of the Foreign Trade (Regulation) Rules, 1993 (FTRR,) 1993 prohibits making, signing or causing the making or using of any false declaration for the purposes of importing of any goods. It also prohibits employing of any fraudulent practice for importing of any goods. In the instant Shri Kalpesh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya, Shri Niyaz Ahmed and Shri Dharmesh Gathani have indulged in making, signing and causing the forging and utilisation of forged documents for import of goods by Hindalco. As per Section 111 (d) of the Customs Act, 1962 any goods which are imported contrary to any prohibition under the

Customs Act or under any other law for the time being in force, are liable for confiscation. As the goods have been imported by Reliance using forged/fake documents which have been made/forged/prepared by the said persons, the said goods are those which have been imported contrary to the prohibition under Rule 14 of the FTRR, 1993 and hence are liable for confiscation under Section 111(d) of the Customs Act, 1962.

108. Shri Vijay Amrutlal Gadhiya did not file any reply to the show cause notice despite repeated requests. I find that from the case records, it is quite apparent that Shri Vijay Amrutlal Gadhiya was aware about the fact that Shri Piyush Viramgama and Shri Kalpesh Daftary were engaged in preparing and sale of forged/bogus license of DGFT. This was disclosed by he himself in one of the statements recorded by DRI during the course of investigation. Apart from the above, during the course of search at his residential premises on 26.4.2010 articles like Rubber Stamp, negative of Rubber Stamp, Butter Paper Print, etc., of various authorities were seized. He further disclosed in one of his statements that Shri Piyush Viramgama used to give him the print of the required stamp on butter paper and he used to prepare the negative from butter paper with the help of the rubber stamp making machine. He also stated that the negative was cleaned by submerging it into Chemicals. The rubber chemical was processed on negative and heated for some time and cleaned with water. There after it was pasted on Plastic Pad to prepare rubber stamp. Further, it is also evident from records that he allowed the bank account of his firm used for the transactions in M/s.Bansi Overseas and M/s.Krish Overseas. The amount deposited in that account was the sales proceeds of fake licences. There are evidences to conclude that he was one of the beneficiaries of sale of such fake licences. Therefore, his role in commission of offence cannot be discounted and by doing so he has rendered himself liable for penalty.

109. Shri Niyaz Ahmed did not file any reply to the show cause notice despite repeated requests to do so. However, I find that he was one of the key players in the entire operation of forgery. It is evident from records that was already into the business of forging such licences. Shri Piyush Viramgama introduced Shri Niyaz Ahmed of Kanpur to Shri Kalpesh Daftary. Thereafter Kalpesh Daftary and Shri Niyaz Ahmed had met on number of occasions and decided to go ahead with forging licences. Shri Kalpesh Daftary was already into the trading business of genuine licences and by that way he had access to genuine licences so he had agreed to Shri Niyaz

Ahmed to supply photo copies of genuine licences based on which Niyaz Ahmed agreed to forge parallel fake licences. There are evidences in the form of courier receipts show that photo copies of genuine licences were sent to Shri Niyaz Ahmed which facilitated him to prepared parallel licences. There are also evidences to conclude that in connection with such forgery Shri Niyaz Ahmed has visited to Rajkot on number of occasions. Thus, the fake licences were, in fact, prepared by Shri Niyaz Ahmed and therefore he has rendered himself liable for penalty.

110. Evidences available on records indicate that Shri Kalpesh Daftary thought of doing the business of forged transferrable licences and discussed this idea with Shri Piyush Viramgama who was an old associate of Kalpesh Daftary from his days in Rajkot. Once having decided to forge the licences, it was Shri Piyush Viramgama who introduced Shri Niyaz Ahmed of Kanpur to Shri Kalpesh Daftary. Shri Niyaz Ahmed was already into the business of forging such licences. Thereafter Kalpesh Daftary and Shri Niyaz Ahmed had met on number of occasions and decided to go ahead with forging licences. Shri Kalpesh Daftary was already into the trading business of genuine licences and by that way he had access to genuine licences so he had agreed to Shri Niyaz Ahmed to supply photo copies of genuine licences based on which Niyaz Ahmed agreed to forge parallel fake licences. Thereafter Shri Kalpesh Daftary decided to supply such forged licences to M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd for its usage at Dahej Port. The Dahej port was specifically selected in view of the fact that at that point time it was a non-EDI port, it would be easy to utilize the forged licences there. Thereafter, Kalpesh Daftary started supplying forged licences to Hindalco and Reliance under cover of invoice/debit note of various firms/companies though the trusted licence brokers of Hindalco and Reliance. Thus, it is clearly evident that lot of planning and strategy have gone into the commission of offence which also exhibit the criminal mind set of above said individuals. There are evidences to hold that sales proceeds of such forged licences were shared amongst Shri Kalpesh Daftary, Piyush Viramgama, Shri Niyaz Ahmed of Kanpur, and Shri Vijay Gadhiya in a pre-determined manner.

111. From the above, it is quite obvious that it was a well thought out strategy to forge the licences and the selection of Dahej port for said purpose being a non-EDI port, suggest the planning they have gone into in the matter. From the above, it also clearly emerges that Shri Kalpesh

Daftary, Piyush Viramgama, Shri Niyaz Ahmed of Kanpur, and Shri Vijay Gadhiya had actively and knowingly concerned themselves in fraudulent evasion of customs duty by selling such forged VKGUY licences to M/s. Reliance Industries Limited. These individuals had also actively and knowingly concerned themselves in violating the prohibition imposed under Rule 14 of the Foreign Trade (Regulation) Rules, 1993, inasmuch as they had knowingly indulged themselves in selling such forged VKGUY licences along with complete set of documents viz. Release Advices and letters confirming the genuineness of the Release Advices used by M/s. Reliance Industries Limited at Dahej for importing goods. By doing so, the above said individuals have rendered themselves liable for punishment under Section 135 of the Customs Act, 1962 for which, I find, Shri Kalpesh Daftary, Shri Piyush Viramgama and Shri Vijay Gadhiya were arrested under Section 104 of the Customs Act, 1962 by DRI during the course of investigation. Shri Niyaz Ahmed was not available during the searches carried out at his office and factory premises. His known residential premise too was found locked.

112. From the foregoing, it is evident that the above said individuals have by their acts of omission and commission in forging and sale of forged VKGUY licences to M/s. Reliance Industries Ltd. led to duty evasion of Rs.6,95,53,888/- and consequently the goods imported by M/s. Reliance Industries Ltd., have become liable for confiscation under the provisions of Section 111(d), (j) & (o) of the Customs Act, 1962. By doing so, the above said individuals have rendered themselves liable for penal action under Section 112 (a) as well as under Section 114AA of the Customs Act, 1962.

113. According to Section 112(a) of the Customs Act, 1962, any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, is liable for penalty under this section. After elaborate discussion hereinabove, I have already held that by various fraudulent acts of above said individuals viz. Shri Kalpesh Daftary, Piyush Viramgama, Shri Niyaz Ahmed of Kanpur, and Shri Vijay Gadhiya, the goods imported and cleared by Reliance by debiting in forged VKGUY licences are liable for confiscation under Section 111 of the Customs Act, 1962. Consequently, the above individuals are liable for penalty under Section 112(a) of the Customs Act, 1962. In the case of K.I. International Ltd versus Commissioner of Customs, Chennai, reported in 2012 (282) E.L.T. 67 (Tri. - Chennai), penalty imposed under Section 112 of the Customs Act, 1962 on the Traders, brokers

and sub-brokers involved in forging and obtaining the Telegraphic Release Advice fraudulently was upheld by South Zonal Bench of the Tribunal.

114. Coming to the question of penalty on M/s. Reliance, I find that in the show cause notice, penalty has been proposed on them under Section 112(a) as well as under Section 114A of the Customs Act, 1962. The submission of Reliance with regard to imposition of penalty on them is that they have committed no offence or made no omissions or commissions in the entire matter. In fact there is no such allegation in the impugned notice. Moreover, penalty under Section 112 of the Act can be imposed only when their acts have resulted in the confiscation of goods in terms of Section 111 of the Customs Act, 1962. Where there is no confiscation of goods, no penalty is imposable on them. Regarding proposal to impose penalty under Section 114A of the Customs Act, 1962, Reliance pointed out that a bare perusal of Section 114A shows that penalty is imposable under this section only in a case where there is collusion / willful misstatement / suppression of facts by the person who is chargeable to pay duty. Reliance submitted that they had no role to play in the fraud and hence, there cannot be ascribed any malafide intent on their part to evade payment of customs duty; that they were acting in a bonafide manner at all times, as is evidenced from the Show Cause Notice also.

114.1. For the reasons spelt out hereinabove, I have already recorded in my findings that in the instant case, goods are liable for confiscation under various provisions of Section 111 of the Customs Act, 1962. Consequently, the submission made by Reliance that as there is no confiscation and therefore no penalty under Section 112(a) of the Customs Act, 1962 is not tenable. However, I find force in the other arguments propounded by Reliance that they were acting in a bona-fide manner at all times and they had no role to play in the fraud committed. It emerges from the case records and statements of the concerned individual of Reliance that they procure export incentive licences, through the brokers selected by them for said purpose after a through scrutiny. Reliance has also stated that one such broker through whom they regularly purchased transferable licences/duty credit scrips was Mr. Bhavesh Doshi through whom they had procured about 417 licences/duty credit scrips during the period August 2008 - March 2010. In the instant case, the forged/fake licences were purchased through said Mr. Bhavesh Doshi and before accepting the licences, Reliance has been resorting to necessary verification. It is also emerging from case records that on receipt of the licences through their

broker, they have been verifying the genuineness of the licence from DGFT website. The individual concerned stated in his statement recorded under Section 108 of the Customs Act, 1962 that in the website of DGFT, they have to input the licence number and IEC code of the original licence holder in the requisite boxes in the website and the website shows the details of the licence like name and address of the original licence holder, licence category and FOB amount, the same are tallied with the details mentioned in the licence and then the licences are approved for acceptance. Thus, it has to be accepted that Reliance has been exercising adequate diligence before accepting the licence. Further, it is also on record that Reliance has made payments towards purchase of the forged/fake licences through proper banking channel which goes to prove that they have been acting in a bonafide manner in the matter. It needs no special mention here that no prudent business house will knowingly purchase forged/fake licences and pay for it. Thus, I find merit in the submission of Reliance that they themselves have become victim of the fraud. Therefore, the proposal for penalty on Reliance is to be examined keeping in mind above said factual aspects.

115. So far as penalty under Section 114A of the Customs Act, 1962 is concerned, the prerequisite for considering penalty under this Section is that duty has not been levied or short levied by reason of collusion or any wilful mis-statement or suppression of facts. In the instant case, it is true that duty was not paid on account of the fact that forged/fake licences were presented for debiting duty at the time of importation. It is also a fact that such forged/fake licences were presented by Reliance. However, fact of the matter is that Reliance presented these forged/fake licences assuming that these are genuine licences and therefore they were acting in a bonafide manner. It is also on record that the forged/fake nature of the licences cannot be attributed to Reliance. It is also fact that these licences were purchased by them from Mr. Bhavesh Doshi who has been one of their time tested vendor for supplying such licences. Therefore, the prerequisite for imposing penalty under Section 114A such as collusion or any wilful mis-statement or suppression of facts, in this case, cannot be attributed to Reliance. Therefore, I am of the considered view that they are not liable for penalty under 114A of the Customs Act, 1962 in the fact and circumstances of the case.

115.1. So far as penalty under Section 112(a) of the Customs Act, 1962 is concerned, any person, who, in relation to any goods, does or omits to do

any act which act or omission would render such goods liable to confiscation under section 111, is liable for penalty under this section. I have already held hereinbefore that the forged/fake nature of the licences cannot be attributed to Reliance notwithstanding the fact that these forged/fake licences were presented before the Customs by Reliance. Thus, it is not any act of Reliance, but the forged/fake nature of the licences against which duty free clearance of imported goods were obtained, make the goods liable for confiscation under Section 111 of the Customs Act, 1962. Thus, I do not find that even under Section 112(a) of the Customs Act, 1962 they are liable for penalty considering specific facts and circumstances of the case. Long back in the year 1978, dealing with the issue of penalty in the case of Hindustan Steel Ltd versus State of Orissa reported in 1978 (2) E.L.T. (J 159), the Hon'ble Supreme Court observed that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.

115.2. Few vital points emerge from the above said judgment of the Apex Court are that:-

- Penalty should not be imposed merely because it is lawful to do so;
- Penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.
- Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.

- Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, where the breach flows from a bona fide belief that the offender.

115.3. In the instant case, there is nothing on record to conclude that Reliance acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. In fact they themselves have become victim of the fraud and have already been inflicted with monetary loss of more than six crores. In the given circumstances, any penalty on Reliance, despite the fact that it stood established on record that they were acting in bona-fide manner, would be a miscarriage of justice. Dealing with an identical situation wherein like in the instant case, forged DEPB licences were used, in the case of ICI India Limited versus Commissioner of Customs (Port), Calcutta, reported in 2005 (184) E.L.T. 339, the Hon'ble High Court of Calcutta held that:

"4. The DEPB licence/scrip is admittedly a negotiable one and is available in the market. Any one can purchase it from the market and avail of the credit out of it. This was so done by the appellant. But ultimately it was found that the said DEPB licences/scrips were forged. These facts are not in dispute as we find from the finding of the learned CEGAT. The only question that has been put forward, on the basis of the finding of the facts without challenging the same, is about the effect of absence of collusion on the part of the appellant, as pointed out earlier, in relation to the availability of the credit under the forged DEPB scrips. But in the decision in *United India Insurance* (supra), the forgery related to the driving licence of the driver engaged by the insured, but the Insurance Policy was not found to be forged. The question would be different if the document itself, on the strength whereof credit is claimed is forged. In that event, the same cannot be equated with merely an irregularity in the licence of the driver driving the vehicle in relation to the liability of the insurer in relation to a valid insurance policy under the Motor Vehicles Act providing for compulsory insurance to secure third party interest. In this case, the document itself having been found to be forged whether there was collusion or fraud on the part of the appellant in the issue of the DEPB licences/scrips becomes absolutely immaterial and irrelevant since no credit can be derived from a forged DEPB. The credit is made available on the strength of a valid DEPB. If the DEPB is forged, then the same is *non est* and therefore, there is no valid DEPB. As such no credit can be derived thereunder. In such circumstances, one may defend his case that one may not be liable for collusion or fraud and exposed to other penalties therefor, but still then one would be liable to pay the duty and interest and for other statutory consequences which one cannot avoid."

(Emphasis supplied)



115.4. I find that ratio of above said decision of Calcutta High Court, which has been affirmed by the Hon 'ble Supreme Court, is squarely applicable to facts and circumstances of the present case. A similar view was also taken by the Hon 'ble Supreme Court in the case of M/s.Afloat Industries Ltd referred to hereinbefore wherein while it was held that the importer is liable to pay the duty involved along with interest, penalties were waived. I have already categorically held that despite the fact that Reliance was not involved in the forgery committed, as long as the licences are of forged nature, their liability to pay duty and interest is inevitable, but so far as penalty is concerned, there is nothing on record to conclude that Reliance had acted in mala-fide manner and therefore does not call for penalty on them.

116. In view of above said findings, I do not find any ground to impose penalty on M/s. Reliance.

117. Having regard to facts and findings discussed hereinabove, I pass the following Order:

#### O R D E R

- (a) I hold that the goods valued at Rs.38,92,76,299/-, (details as per Annexure 'B') imported by presenting 13 forged/fake VKGUY forged/fake are liable for confiscation under Section 111 (d), (j) and (o) of the Customs Act, 1962. However, respectfully following the decision of Larger Bench of the Hon'ble Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd verus Commissioner of Central Excise & Customs, as the said goods are not physically available for confiscation, I refrain from actual confiscation of said goods. Consequently, no fine is imposed under Section 125 of the Customs Act, 1962 in lieu of confiscation in respect of above said goods.
- (b) I determine the Customs duty payable as Rs.6,95,53,888/- (Rupees six crores ninety five lakhs fifty three thousand eight hundred eighty eight only) which was debited utilizing the forged/fake 13 VKGUY licences (details as per Annexure 'B'), under Section 28(8) of the Customs Act, 1962 and order recovery of the same from M/s. Reliance Industries Ltd, which was not paid by them on the goods mentioned at (a) above at the time of importation.

(c) I order recovery of interest at the applicable rate on the amount confirmed at (b) above from M/s. Reliance Industries Ltd under Section 28AA of the Customs Act, 1962.

(d) For the reasons recorded hereinabove, I do not impose any penalty on M/s. Reliance Industries Ltd either under Section 112(a) or Section 114A of the Customs Act, 1962.

(e) I appropriate the amount of **Rs.6,95,53,884/-** and **Rs.69,85,878/-** paid by M/s. Reliance Industries Ltd., voluntarily vide TR6 Challan No.199/2010-11 dtd.09/08/2010 towards their duty and interest liabilities respectively.

(f) I impose penalty on the following individuals as detailed below:

Sl.No.	Name of the person whom penalty is imposed	Amount of penalty	
		Under Section 112(a) of the CA,1962	Under Section 114AA of the CA,1962
01	Shri Kalpesh Daftary, of M/s.Sunkalp Creations Pvt Ltd, Mumbai and M/s.Bansi Overseas, Rajkot	Rs.48,00,000/-	Rs.21,00,000/-
02	Shri Piyush Virangama of M/s.Krish Overseas and M/s.Bansi Overseas, Rajkot;	Rs.48,00,000/-	Rs.21,00,000/-
03	Shri Niyaz Ahmed of M/s.Indiyana Shoes and M/s.Indiyana Marketing, Kanpur	Rs.70,00,000/-	Rs.70,00,000/-
04	Shri Vijay Gadhiya of M/s.Krish Overseas and M/s.Shivigangi Enterprise, Rajkot	Rs.15,00,000/-	Rs.15,00,000/-



Capt. Sanjay Gahlot  
Commissioner  
Customs  
Ahmedabad

**By Regd.Post A/D.**

F.No.VIII/10-14/Commr/O&A/DRI/13

Dated:24.03.2014

To

1) M/s. Reliance Industries Ltd,  
Dahej, Bharuch, Gujarat.

- 2) Shri Kalpessh Daftary  
301, Shubhagan, 14 Swastik Society  
2, JVPD Scheme, Vile Parle West  
Mumbai 400 056
- 3) Shri Piyush Viramgama,  
Aashiyana, Fulwadi Park Plot No.16, Street No.2,  
Nana Mauva, Nr. Shastri Nagar, 150 Ft Ring Road, Rajkot. 360 001
- 4) Shri Vijay Gadhiya  
C/o.Mr. Subhasbhai D.Makadiya  
"Shree Sadguru krupa"  
Mayani Nagar, Street No.4  
Opp. Water Tank  
Rajkot 360004
- 5) Shri Niyaz Ahmed  
M/s.Indiyana Shoes, EWS, 192, Ganga Vihar, KDA Colony,  
Jajmau, Kanpur

**Copy to:**

- 1) The Chief Commissioner of Customs,  
Gujarat Zone  
Customs House,  
Near All India Radio, Navrangpura,  
Ahmedabad.
- 2) The Additional Director General  
Directorate of Revenue Intelligence  
Zonal Unit  
Ahmedabad
- 3) The Assistant Commissioner of Customs,  
Dahej
- 4) Guard File.

