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

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 10727 of 2026

[Arising Out Of Order-in-Appeal Nos. AHD-CUSTM-000-APP-020 to 021-26-27 dated 30.06.2026 passed by the Commissioner of Customs (Appeals), Ahmedabad.]

M/s V. Navinchandra Hirachand Malji
Jewellers & Co **.....Appellant**
Shop No. 1-2, Harsh Co-operative Housing Society,
Ram Chowk, Ghod Dod Road,
Surat-395007

VERSUS

Commissioner of Customs (Appeals)
The Principle Commissioner of Customs **.....Respondent**
The Principal Commissioner of Customs,
1sr Floor, Customs House, Opp. Old High Court
Nr. All India Radio, Navrangpura, Ahmedabad-380009

WITH

Customs Appeal No. 10729 of 2026

[Arising Out Of Order-In-Appeal Nos. AHD-CUSTM-000-APP-020 to 021-26-27 dated 30.06.2026 passed by the Commissioner of Customs (Appeals), Ahmedabad]

Shri Amish V. Malji **.....Appellant**
No. 6, Avkar, Sarjan Society,
Opp. Sargam Shopping Center,
Parle Point, Surat – 395007

VERSUS

Commissioner of Customs (Appeals)
The Principle Commissioner of Customs **.....Respondent**
The Principal Commissioner of Customs,
1st Floor, Customs House, Opp. Old High Court
Nr. All India Radio, Navrangpura, Ahmedabad 380009

APPEARANCE:
Shri. Hardik Modh, Advocate for the Appellant
Shri. Rahul J Dave, Superintendent (AR) for the Respondent

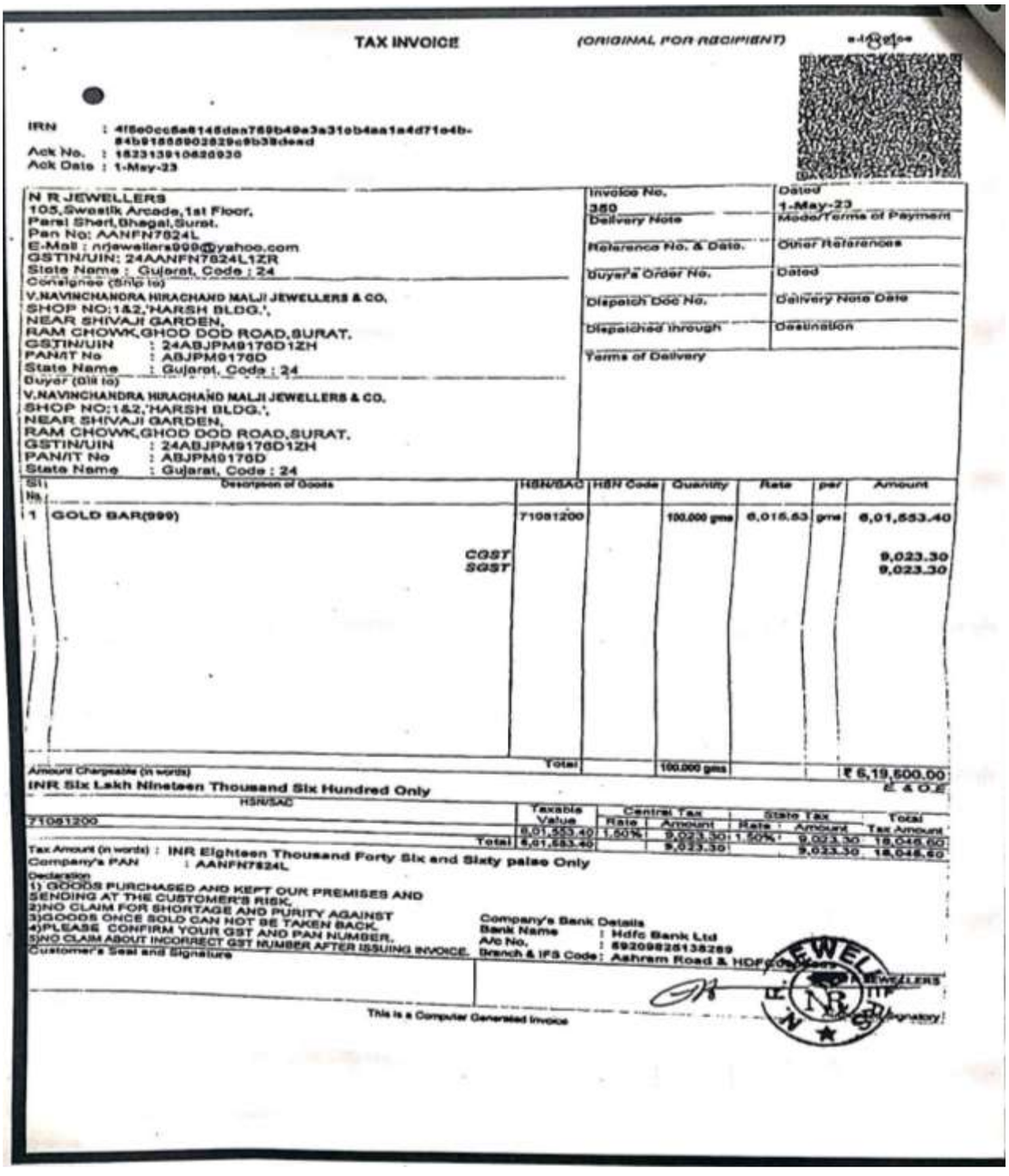
CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 10810-10811/2026

DATE OF HEARING:29.10.2026
DATE OF DECISION:04.11.2026

SOMESH ARORA

1.1 The matter involves absolute confiscation of two stated to be foreign marks gold bars weighing 200 grams and penalty thereof Rs. 1,75,000/-.The interception happened on 07.06.2023, while being on a domestic transit. There is no disputed date that the foreign gold bars bearing 'ARGOR-HERAEUS, SA" refinery mark were of foreign origin. However, the appellant backed it up with GST purchased invoices from M/s N R Jewellers and M/s Vidhi Jewellers, Surat. The copy of the invoice as is available at page 84 & 85 is reproduced.



TAX INVOICE (ORIGINAL FOR RECIPIENT)

IRN : 4f5e0cc6a8145daa769b49a3a31eb4aa1a4d71e4b-84b918588903829e9b38dead
Ack No. : 182313910820930
Ack Date : 1-May-23

N R JEWELLERS
105,Swastik Arcade,1st Floor,
Parsi Sheri,Bhagal,Surat.
Pan No: AANFN7824L
E-Mail : nrjewellers999@yahoo.com
GSTIN/UIN: 24AANFN7824L1ZR
State Name : Gujarat, Code : 24
Consignee (Ship to)
V.NAVINCHANDRA HIRACHAND MALJI JEWELLERS & CO.
SHOP NO:1&2,'HARSH BLDG.',
NEAR SHIVAJI GARDEN,
RAM CHOWK,GHOD DOD ROAD,SURAT.
GSTIN/UIN : 24ABJPM9176D1ZH
PAN/IT No : ABJPM9176D
State Name : Gujarat, Code : 24
Buyer (Bill to)
V.NAVINCHANDRA HIRACHAND MALJI JEWELLERS & CO.
SHOP NO:1&2,'HARSH BLDG.',
NEAR SHIVAJI GARDEN,
RAM CHOWK,GHOD DOD ROAD,SURAT.
GSTIN/UIN : 24ABJPM9176D1ZH
PAN/IT No : ABJPM9176D
State Name : Gujarat, Code : 24

Invoice No. 380 | Dated 1-May-23
Delivery Note | Mode/Terms of Payment
Reference No. & Date. | Other References
Buyer's Order No. | Dated
Dispatch Doc No. | Delivery Note Date
Dispatched through | Destination
Terms of Delivery

Sl No.	Description of Goods	HSN/SAC	HSN Code	Quantity	Rate	per	Amount
1	GOLD BAR(999)	71081200		100.000 gms	6,015.53	gms	6,01,553.40
	CGST						9,023.30
	SGST						9,023.30
	Total			100.000 gms			₹ 6,19,500.00

Amount Chargeable (in words)
INR Six Lakh Nineteen Thousand Six Hundred Only

HSN/SAC	Taxable Value	Central Tax Rate	Central Tax Amount	State Tax Rate	State Tax Amount	Total Tax Amount
71081200	6,01,553.40	1.50%	9,023.30	1.50%	9,023.30	18,046.60
Total	6,01,553.40		9,023.30		9,023.30	18,046.60

Tax Amount (in words) : INR Eighteen Thousand Forty Six and Sixty paise Only
Company's PAN : AANFN7824L

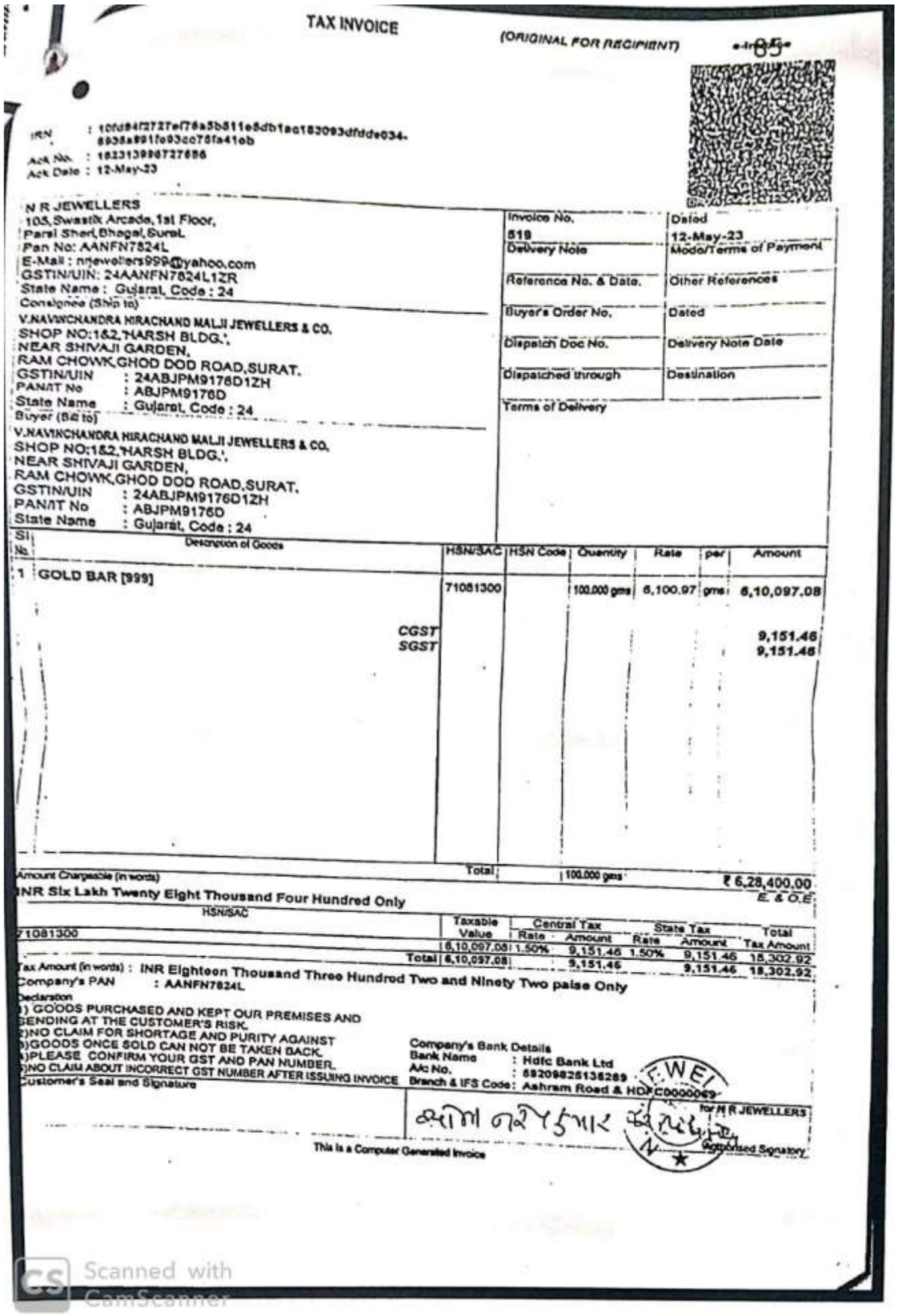
Declaration
1) GOODS PURCHASED AND KEPT OUR PREMISES AND SENDING AT THE CUSTOMER'S RISK,
2)NO CLAIM FOR SHORTAGE AND PURITY AGAINST
3)GOODS ONCE SOLD CAN NOT BE TAKEN BACK,
4)PLEASE CONFIRM YOUR GST AND PAN NUMBER,
5)NO CLAIM ABOUT INCORRECT GST NUMBER AFTER ISSUING INVOICE.

Company's Bank Details
Bank Name : Hdfc Bank Ltd
A/c No. : 59209825138289
Branch & IFS Code : Ashram Road & HDFC

Customer's Seal and Signature

This is a Computer Generated Invoice

for N R JEWELLERS
Authorised Signatory



TAX INVOICE (ORIGINAL FOR RECIPIENT) -85-

IRN : 10fd84f272Tef78a3b811e8db1ac183093dfdde034-8938a991fe93cc75fa41eb
Ack No. : 182313996727686
Ack Date : 12-May-23

N R JEWELLERS
105,Swastik Arcade,1st Floor,
Parsi Sheri,Bhagal,Surat.
Pan No: AANFN7824L
E-Mail : nrjewellers999@yahoo.com
GSTIN/UIN: 24AANFN7824L1ZR
State Name : Gujarat, Code : 24
Consignee (Ship to)
V.NAVINCHANDRA HIRACHAND MALJI JEWELLERS & CO.
SHOP NO:1&2,'HARSH BLDG.',
NEAR SHIVAJI GARDEN,
RAM CHOWK,GHOD DOD ROAD,SURAT.
GSTIN/UIN : 24ABJPM9176D1ZH
PAN/IT No : ABJPM9176D
State Name : Gujarat, Code : 24
Buyer (Bill to)
V.NAVINCHANDRA HIRACHAND MALJI JEWELLERS & CO.
SHOP NO:1&2,'HARSH BLDG.',
NEAR SHIVAJI GARDEN,
RAM CHOWK,GHOD DOD ROAD,SURAT.
GSTIN/UIN : 24ABJPM9176D1ZH
PAN/IT No : ABJPM9176D
State Name : Gujarat, Code : 24

Invoice No.	Dated
519	12-May-23
Delivery Note	Mode/Terms of Payment
Reference No. & Date.	Other References
Buyer's Order No.	Dated
Dispatch Doc No.	Delivery Note Date
Dispatched through	Destination
Terms of Delivery	

Sl No.	Description of Goods	HSN/SAC	HSN Code	Quantity	Rate	per	Amount
1	GOLD BAR [999]	71081300		100.000 gms	6,100.97	gms	6,10,097.08
	CGST						9,151.46
	SGST						9,151.46
	Total			100.000 gms			₹ 6,28,400.00

Amount Chargeable (in words)
INR Six Lakh Twenty Eight Thousand Four Hundred Only
E & O.E

HSN/SAC	Taxable Value	Central Tax Rate	Central Tax Amount	State Tax Rate	State Tax Amount	Total Tax Amount
71081300	6,10,097.08	1.50%	9,151.46	1.50%	9,151.46	18,302.92
Total	6,10,097.08		9,151.46		9,151.46	18,302.92

Tax Amount (in words) : INR Eighteen Thousand Three Hundred Two and Ninety Two paise Only
Company's PAN : AANFN7824L

Declaration
1) GOODS PURCHASED AND KEPT OUR PREMISES AND SENDING AT THE CUSTOMER'S RISK.
2)NO CLAIM FOR SHORTAGE AND PURITY AGAINST
3)GOODS ONCE SOLD CAN NOT BE TAKEN BACK.
4)PLEASE CONFIRM YOUR GST AND PAN NUMBER.
5)NO CLAIM ABOUT INCORRECT GST NUMBER AFTER ISSUING INVOICE

Company's Bank Details
Bank Name : Hdfc Bank Ltd
A/c No. : 59209826136289
Branch & IFS Code : Ashram Road & HDFC0000069

Customer's Seal and Signature

for N R JEWELLERS
Authorised Signatory

This is a Computer Generated Invoice

Scanned with CamScanner

1.2 Department under the resonable belief that gold was smuggled seized the same and confiscated it. Aggrieved by the order of confiscation, the appellant is before us. It has been pleaded, *inter alia,* by the appellant that the gold was duly recorded in their ledger and the bar indicate purity of 999. They were indicating and agreeing that the gold bars was of foreign origin but was duly accounted.

1.3 Despite this the department has neither recorded the statement of the supplier of the appellants nor tried to establish the foreign origin of the goods. Section 123 in this regard, reads as follows:-

> ***123. Burden of proof in certain cases.***
>
> *"(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-*
>
> *(a)in a case where such seizure is made from the possession of any person,-*
>
> *(i)on the person from whose possession the goods were seized; and*
>
> *(ii)if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*
>
> *(b)in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*
>
> *(2)This section shall apply to gold, [and manufactures thereof,] [Substituted by Act 40 of 1989, Section 2, for " diamonds, manufacturer of gold or diamonds" .] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."*

1.4 It is argued by the appellants that the section applies only when there is a reasonable belief that the goods are smuggled. It is party's contention that mere gold of foreign origin and each and every piece of foreign origin cannot be treated as smuggled gold, especially when evidence by way of GST invoice of the party was placed on the record. Onus therefore clearly shifted on the department. It has not only failed to discharge the onus, but also made no

efforts to establish the supply chain link to any smuggled gold. So as to justify the department's action of having a reasonable belief of it being smuggled. The founder of the gold in their books of accounts and also of the supplier as GST invoice is conclusive proof of the goods having originated in a accounted channel both of suppliers as well as receiver.

2. The common written submissions on behalf of both appellants have been made which are as follows:-

2.1 M/s. V. Navinchandra Hirachand Malji Jewellers& Co. (Appellant No. 1 or "the Firm") and Shri Amish V. Malji, its authorised signatory (Appellant No. 2), have preferred separate appeals against Order-in-Appeal Nos. AHD-CUSTM-000-APP-020 to 021-26-27 dated 30.06.2026 read with the corrigendum dated 29.07.2026 passed by the Commissioner of Customs (Appeals), Ahmedabad. The impugned order upholds Order-in-Original No. 212/ADC/SRV/O&A/2024-25 dated 30.12.2024 ordering absolute confiscation of the Firm's two gold bars weighing 200 grams valued at Rs.12,10,000/- under Sections 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962 ("the Act") and imposing separately on each Appellant penalties of Rs.1,50,000/- under Section 112(b) and Rs.25,000/- under Section 117.

2.2 The corrigendum substitutes Section 112(b) for the references to Section 112(a) in paragraphs 26, 36 and 38 of the appellate order. These submissions address the penalties imposed against each Appellant under Sections 112(b) and 117. Appellant No. 1 seeks release of its gold by setting and aside penalties imposed against both the Appellants.

2.3 The Ld. Commissioner (Appeals) considered foreign origin gold bars as smuggled gold bars by discarding the domestic purchase documents and trading

stock ledger. The statement of Shri Amish V. Maljidid not admit in his statement that the gold was smuggled.

2.4 The disputed point in the present proceeding is whether the evidence establishes lawful domestic acquisition and discharges the burden under Section 123 and whether the further ingredients of confiscation and personal penalty have been established.

2.5 The Commissioner (Appeals) upheld the order principally on the following grounds:

i. The bars bear the foreign refinery marking "Argor Heraeus SA" and an approved assayer confirmed their purity, weight and foreign origin.
ii. The Firm did not produce documents tracing the bars to a lawful importer; domestic purchase invoices were considered insufficient to discharge Section 123.
iii. The statement under Section 108 regarding possible arrival through Mumbai or Surat airports was treated as supporting illicit importation.
iv. As an experienced jewellery trader, the Firm was considered to have reason to believe that the gold was liable to confiscation.
v. An alleged separate failure to maintain a lawful, traceable supply chain was invoked to sustain the additional penalty under Section 117.

2.6 Before dealing with the above findings, the material facts and chronology are set out below.

Date	Particulars	Reference
06.06.2023	Appellant No. 1 entrusted two gold bars weighing 200 grams to M/s. Patel Amrut Kantilal & Co., Angadia, for delivery to M/s. Pahini Jewellers Ltd., Ahmedabad, towards an outstanding liability for earlier purchases of jewellery.	SCN (Page No 70–98); reply, (Page No 99–123)
07.06.2023	DRI intercepted Angadia employees outside Kalupur Railway Station, Ahmedabad and	SCN(Page 70)

Date	Particulars	Reference
	detained parcels, including the Firm's gold. The movement was within India.	
23.06.2023	The Angadia partner, Shri Amrutbhai Harjivandas Patel explained the parcel-handling procedure and submitted documents for the consignments. The SCN records a bill/invoice relating to Appellant No. 1's 200 grams and distinguishes these documents from import documents.	SCN (Page 73–74)
28.08.2023	The approved assayer issued the valuation report, recording 999 purity foreign markings and value of Rs.12,10,000/-.	SCN (Page 74)
25.10.2023	The two bars were seized under Section 110. This date is distinct from the initial detention on 07.06.2023.	SCN (Page 75)
25.01.2024	Statements of Shri Amish V. Malji and Shri Miteshbhai Devendrabhai Shah of Pahini were recorded. Shri Amish furnished trading stock details identifying purchases from N.R. Jewellers and Vidhi Jewellers; Pahini confirmed the proposed adjustment against outstanding jewellery dues.	SCN(paras 14–15 atPage No. 80–82)
03.06.2024	Show Cause Notice proposed confiscation and penalties.	Page 70–98
12.09.2024	The Firm contested the allegations, relied on domestic purchase records and sought cross-examination of the assayer.	Page 99–123
24.11.2024 and	Notice for disposal was opposed by the Firm seeking preservation of the gold pending	Page 178–182

Date	Particulars	Reference
28.11.2024	adjudication.	
30.12.2024	The Additional Commissioner ordered absolute confiscation and imposed the above penalties.	Page 124–177
30.06.2026 and 29.07.2026	The Commissioner (Appeals) rejected the appeals; the corrigendum corrected the penalty references to Section 112(b).	Page 42–69

SUBMISSIONS

DOMESTIC PURCHASE RECORDS AND THE BURDEN UNDER SECTION 123

3. The Appellant submits that they discharged the burden under Section 123 Gold is covered by Section 123(2) and the burden can fall both on the person from whose possession it is seized and on the person claiming ownership. The Appellant provided invoices issued by M/s. N.R. Jewellers and M/s. Vidhi Jewellers, Surat and relied on purchase invoices and its trading stock ledger during investigation. Paragraph 23.5.9 of the Order-in-Original itself reproduces Shri Amish's explanation that the ledger for 01.04.2023 to 10.06.2023 showed an opening stock of 400 grams as on 02.04.2023 subsequent purchases of 450 grams from N.R. Jewellers and 80.6 grams from Vidhi Jewellers.

3.1 The Ld. Commissioner (Appeals) incorrectly held in the impugned OIA dated 30.06.2026 that Shri Amish V. Malji, Authorized Signatory of the Appellant in his statement recorded under Section 108 of the Customs Act, 1962, admitted that he did not possess any documents evidencing the lawful import of the said gold bars and further stated that the gold might have been brought into India through Mumbai or Surat Airports by individual retail sellers. It is submitted that the authorized signatory of the Appellant stated in his statement as under:-

"On being asked specifically about the 2 numbers gold bars having total weight of 200 grams of 999 purity, I stated that the said gold bars, having total weight of 200 grams of 999 purity are of foreign origin. Further on being asked as to whether the said gold bars are smuggled into India, I state that we had purchased the gold bars from various persons who sell gold and jewellery in retail. Further I state that it might be possible that they had brought the said gold from Mumbai or Surat Airport.

I also stated that we have never been provided any import documents for the gold bars by any of the suppliers. On being asked as to why we did not seek any documents from suppliers I state that we did not have any legal knowledge of customs and any Rules so we had never sought from the supplier but always insist on the GST invoices from the suppliers for purchase of gold.

On being asked as to from which supplier the said gold bars of 200 grams were purchased I state that I cannot state for sure the suppliers name as we purchased gold from various suppliers. However, I am submitting herein our trading stock ledger for the period from 01.04.2023 to 10.06.2023, as per which we had 400 grams of gold as opening stock a son 02.04.2023 and after that we had purchased 450 grams of gold on several dates from M/s. N.R. Jewellers, Surat and 80.6 grams of gold from M/s. Vidhi Jewellers, Surat.

On being asked verification of foreign origin gold purchased form M/s. N.R. Jewellers, Surat I state that we usually verify the foreign origin gold by verifying the logo of foreign company. I further state that in the invoice they only marked gold bars (999/995) under the description of the goods and do not mention the origin of gold bars whether Indian origin."

3.2 It is submitted that the Appellant discharged his burden by providing name of the suppliers from whom the Appellant purchased the disputed gold bars. The Appellant provided the stock account and copies of the invoices submitted by the suppliers to show legitimate purchase of the disputed gold. Since the Appellant discharged his burden by producing the legitimate documents, the goods are not required to be confiscated. It is submitted that it is an obligation upon the investigating authority to verify authenticity of the purchase documents supplied by the Appellant. The investigating authority did not verify correctness of the statement made by the Authorized Signatory nor extended the investigation to M/s. N.R. Jewellers from whom the Appellant purchased the disputed gold bars. Since the Appellant discharged his burden, burden lies upon the Revenue to prove that the disputed gold was of smuggled

gold. The Revenue has not produced any single evidence in support of their case. Reliance is placed on the following decisions:

- R.V.E. Venkatachala Gounder Vs. ArulmiguViswesaraswami& V.P. Templeand Ors. – 2003 (10) TMI 639
- Commissioner of Customs Vs Manisha Devi Jain reported in 2019 (370) ELT 401 (T)

3.3 The Appellants rely upon Shri Gourav Jain v. Commissioner of Customs, Indore, 2026 (2) TMI 445 – CESTAT New Delhi which is squarely covered the case.

STATEMENTS OF THE AUTHORIZED SIGNATORY OF THE APPELLANT AND OTHERS ARE EXCULPATORY

4. During the investigation, the investigating authority recorded the statements of Shri Amrutbhai Harjivandas Patel, the Authorized Signatory, Shri Miteshbhai Shah, Director of M/s. Pahini Jewellers Ltd. None of the persons stated that the disputed seized gold are of smuggled gold. In the absence of any inculpatory statement, the goods should not be confiscated. In absence of any statement as well as contrary evidences, charges made in the Show Cause Notice for confiscation of gold cannot be sustained in view of the following decisions:

- C.C. Vs. Sadhan K.R. Das – 2010 (251) ELT 551 (T);
- Rasish Rathor – 2008 (226) ELT 641 (T);
- S.K. Chains Vs. C.C.E – 2001 (127) ELT 415 (T)

FOREIGN MARKINGS AND PURITY DO NOT ESTABLISH SMUGGLING

5. The Appellant submits that foreign markings and a purity of 999 does not support the case of the Revenue that it is smuggled gold considering the fats that the Appellant produced requisite documents to prove legitimate possession of gold. The decisive distinction is between foreign manufacture and unlawful

importation. Foreign-manufactured gold may enter lawful domestic circulation. The Appellant's purchase explanation must therefore be tested rather than displaced merely by the refinery mark.

5.1 The fact of domestic interception is relevant to the surrounding circumstances, but is not advanced as a jurisdictional immunity from Customs investigation. Likewise, the absence of a seizure at an airport or border does not by itself prove lawful import. The submission is that neither an international crossing by this Appellant nor a particular act of duty evasion is established in the findings, and the domestic records require meaningful evaluation under Section 123.

DOCUMENTARY RECORDS CANNOT BE DISREGARDED IN FAVOUR OF SPECULATIVE INFERENCES

6. The purchase records and trading stock ledger are relied upon to substantiate the explanation given during investigation. The Appellant relies upon the following decisions:

- Philip Fernandes v. Commissioner of Customs, 2002 (146) E.L.T. 180 (Tri.),
- Santogen Textile Mills Ltd. v. Commissioner of Central Excise, 2017 (347) E.L.T. 581 (Bom.).

7. Learned AR has made following written submissions:-

RESPONDENT'S CONTENTIONS & REVENUE'S REBUTTALS:

7.1 **Ground-1** Alleged Discharge of Burden of Proof via Domestic GST Invoices

Department's Submission:

Production of generic domestic GST invoices does NOT discharge the statutory burden cast under Section 123 of the Customs Act, 1962.

Section 123 explicitly applies to gold, placing the burden of proving that the gold is not smuggled entirely upon the possessor/claimant. Domestic invoices lacking foreign refinery serial numbers, batch numbers, or verifiable import Bill of Entry details fail to establish lawful importation. Under settled law, local paper invoices created post-importation cannot legitimize foreign bullion lacking customs clearance documents.

7.2 **Ground-2** Challenge to Statutory Presumption and Application of Section 123

Department's Submission:

Section 123 triggered the moment gold bearing foreign refinery markings ('Argor Heraeus SA') is seized under reasonable belief. The presence of foreign refinery markings and 999 purity on the bullion seized in transit, combined with the total absence of import documentation at the time of seizure, constitutes robust 'reasonable belief' under Section 110. Once triggered, the statutory burden shifts squarely onto the claimant. The Revenue is not required to establish the exact smuggling route or method with mathematical certainty [Natwarlal Damodardas Soni v. State of Gujarat, 1983 (13) ELT 1620 (SC)].

7.3 **Ground-3 Evidentiary Value of Statements under Section 108 & Demand for Cross-Examination**

Department's Submission:

Shri Amish V. Malji is the Authorized Signatory and Appellant himself. A voluntary admission made under Section 108 by a party to the proceeding constitutes substantive evidence against him (K.I. Pavunny v. Assistant Collector, 1997 (90) ELT 241 (SC)). The statutory mandate of cross-examination under Section 138B applies to third-party witnesses, not to the noticee examining himself. The admission that no import documents were held remains unrefuted on record.

7.4 **Ground-4 Alleged Illegality of Seizure under Section 110 in Domestic Town Transit**

Department's Submission:

Section 110 empowers customs officers to seize goods anywhere within Indian territory if there exists reasonable belief that they are liable to confiscation. Smuggled gold transported via domestic angadia transit retains its smuggled character. The physical presence of foreign markings 'Argor Heraeus SA' on 999 bullion without customs cover anywhere in India provides complete legal justification for seizure under Section 110.

7.5 **Ground -5** **Contention regarding Simultaneous Penalties under Section 112(b) and Section 117**

Department's Submission:

Penalty under Section 112(b) is levied for acquiring, carrying, harboring, and dealing with smuggled gold known or believed to be liable to confiscation. Penalty under Section 117 is a general penalty for statutory non-compliances. Both penalties are distinct, legally sustainable, and highly proportionate considering the value of the seized bullion (~Rs.13.50 Lakhs).

7.6 **Ground–6** **Claim of 'Live Consignment' and Loss due to 39-Month Storage**

Department's Submission:

Under Section 126 of the Customs Act, 1962, once goods are absolutely confiscated by an adjudicating authority, they vest unconditionally in the Central Government. Confiscated gold bullion is non-perishable under Section 110(1B). Furthermore, the Appellant never sought provisional release under Section 110A during the entire pendency, disentitling them from claiming hardship or treating confiscated government property as a 'live consignment'.

8. RELEVANT JUDGEMENTS/ CIRCULARS/ NOTIFICATIONS:

8.1 Collector of Customs, Madras v. D. Bhoormull [1983 (13) E.L.T. 1546 (S.C.) / AIR 1974 SC 859]

Issue Covered:

Burden of proof and standard of evidence in customs smuggling cases under Section 123.

Legal Ratio:

The Supreme Court held that the Revenue is not required to prove its case with mathematical certainty or establish the exact smuggling operation. Smuggling is committed in secrecy. Where goods are recovered under circumstances giving rise to reasonable belief, the burden shifts to the possessor under Section 123.

Relevance with the present case:

Directly supports the Revenue's position that the presence of foreign refinery marks 'Argor Heraeus SA' combined with lack of import bills creates an insurmountable legal presumption against the Appellant.

8.2 K.I. Pavunny v. Assistant Collector (HQ), Central Excise, Cochin [1997 (90) E.L.T. 241 (S.C.)]

Issue Covered:

Evidentiary value of statements recorded under Section 108 of the Customs Act, 1962.

Legal Ratio:

The Apex Court held that a statement recorded by a Customs Officer under Section 108 is a substantive piece of evidence. If made voluntarily, a confession recorded under Section 108 can form the sole basis for confiscation and penalty without requiring independent corroboration.

Relevance with the present case:

Directly validates the evidentiary reliance placed on the Section 108 statement of Shri Amish V. Malji admitting foreign origin and lack of import documents.

8.3 Natwarlal Damodardas Soni v. State of Gujarat [1983 (13) E.L.T. 1620 (S.C.)]

Issue Covered:

Seizure of foreign gold in domestic transit and invocation of Section 123 presumption.

Legal Ratio:

The Supreme Court affirmed that seizure of foreign gold bars carrying foreign marks from a person in domestic transit who fails to produce immediate proof of lawful import justifies seizure and triggers statutory presumption under Section 123.

Relevance with the present case:

Directly covers the present transit seizure of 200g 'Argor Heraeus SA' gold bars in Gujarat.

8.4 P. Balamurugan v. Commissioner of Customs, Tiruchirappalli [2019 (370) E.L.T. 472 (Tri. - Chennai)]

Issue Covered:

In a seizure of gold bars bearing foreign refinery markings, does the statutory burden under Section 123 of the Customs Act, 1962 rest on the possessor or claimant to prove lawful importation, and the mere production of domestic purchase invoices or local credit bills, without supporting Bills of Entry, is legally insufficient to discharge that burden.

Legal Ratio:

The Hon’ble CESTAT, Chennai Bench, held that gold seized even in domestic town seizures bearing foreign refinery markings attracts the presumption of smuggled origin under Section 123 of the Customs Act, 1962. The burden then lies on the person from whom it was seized, or claiming ownership, to prove lawful import through verifiable documents such as Bills of Entry or customs clearance records.Mere domestic invoices, GST purchase bills, or trading ledgers do not discharge this burden. Absent proof of lawful import, absolute confiscation under Section 111 and penalty under Section 112 are sustainable.

Relevance with the present case:

The ratio in P. Balamurugan squarely supports the Revenue in M/s V. Navinchandra Hirachand Malji Jewellers& Co.’s appeal. Two 200-gram gold bars bearing “Argor Heraeus SA” foreign refinery markings and 999 purity were seized under Panchanama dated 07.06.2023. The Appellant relies only on local GST invoices and stock ledgers of Surat vendors, while its

authorized signatory admitted under Section 108 that no import documents were obtained. Such domestic records do not displace the Section 123 presumption; absent proof of lawful import, absolute confiscation under Section 111 and penalties under Sections 112(b) and 117 are sustainable before the Hon'ble CESTAT, Ahmedabad.

9. DISTINGUISHING THE RESPONDENT'S JUDGEMENTS:

9.1 Shri Gourav Jain v. C.C., Indore [2026 (2) TMI 445 - CESTAT NEW DELHI]

Issue Covered:

The Tribunal set aside confiscation of gold bars recovered during a town seizure because the seized gold completely lacked foreign refinery markings and was of non-standard purity (99.30% to 99.39%), leading the Tribunal to hold that Section 123 did not apply and the Revenue failed to prove foreign origin.

Why non-relevant with the present case:

The present case involves two gold bars bearing prominent, undisputed foreign refinery marks 'Argor Heraeus SA' with 999 purity. Foreign refinery markings on 999 bullion trigger the statutory presumption under Section 123 directly, shifting the burden of proof entirely onto the Appellant. Thus, the facts and legal ratio of Gourav Jain are completely distinguishable and inapplicable to the present case.

9.2 Basudev Garg v. C.C. [2013 (294) ELT 353 (Del.)], Flevel International v. CCE [2016 (332) ELT 416 (Del.)], and J & K Cigarettes Ltd. v. CCE [2009 (242) ELT 189 (Del.)]

Issue Covered:

These precedents pertain to relying upon third-party statements (co-accused, suppliers, or witnesses) without offering them for cross-examination.

Why non-relevant with the present case:

The primary admission relied upon is that of Shri Amish V. Malji himself (Authorized Signatory/Appellant). A party cannot demand cross-examination of his own voluntary Section 108 statement. Hence, these cross-examination precedents are wholly inapplicable.

9.3 Aadil Majeed Banday [2021 (378) ELT 540] and Nand Kishore Modi [2015 (325) ELT 781]

Issue Covered:

These decisions involved unrefined gold or melted ornaments without foreign brand marks.

Why non-relevant with the present case:

In the instant case, the presence of 'Argor Heraeus SA' foreign stamps on 999 bullion establishes foreign origin on the face of the record, rendering these cases irrelevant.

Findings:

10. This Court has considered the rival submissions and rebuttal made by both the parties. It finds that once the invoices are on record which are through the GST system in which there is no charge of goods not having been supplied by the supplier and invoices indicated matching purity, the onus clearly shifted to the department to verify. It is also found that the statement of Angadiya was that it has carried goods in transit and same indicates that it picked up gold from the mentioned supplier, therefore it is clear that the previous link of supply of goods of .999 purity is established. The department still if it had any doubt, should have verified at the end of the supplier and established that the supply chain was vitiated so that onus shifted back on the purchaser. The statement of Angadiya is as follows:

61. Shri Amrutbhai Harjivandas Potel. Partner of M/s. Patel Amrut Kantilal Angadiya voluntarily presented himself on 23.00.2023 before the Senior Intelligence Officer. DRI, Ahmedabad Zonal Unit to tender his statement. His statement was thus recorded on 23.06.2023 (RUD-3), wherein he stated that he is engaged in the business in the field of Angadiya (Courier) and that they receive goods in the form of parcels at one location and deliver the same to the location as specified by the sender of the parcel. He stated that they pay GST@18% as per the CGST rules and regulations. Their firm, M/s Patel Amrut Kantilal Angadia has specialized in courier services of Precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. He further stated that their company provides the above business services in Ahmedabad, Mumbai, Delhi. Vadodara. Sural. Navsari. Annad, Rajkot, Bhavnagar, Junagari Surendranagar, Morbi, Kolhapur. On being asked about the procedure of booking and dispatch of parcels, he stated that their company's pickup vehicles generally go to the customers' office to collect the goods, whereas in some case customer drop the goods at their office. Further, in their dealing of precious parcels, while collecting goods, the parcels are sealed by the sender of the parcel and they believe in the description of goods as mentioned on the parcel by the sender and collect freight on the basis of value declared by the sender of the parcel. On being asked about the documents of KYC collected from the sender and recipient he stated that in most of cases they pick up the parcels from the office or business premises of the customer and also deliver the parcel at the address and details provided by the sender. He further stated that the details like name and contact number are provided by the sender of the parcel and almost in all cases same is mentioned on the parcel. On being asked he further stated that they insist to take copy of invoice or delivery challan from the senders of the parcel to which majority of the customers informs them that the same is attached inside the parcel or sometimes outside the parcel. Regarding verification of value of cargo while doing collection of goods, he stated that they receive goods on "said to contain" basis and act on the basis of invoice or the description provided by

the customers. On being asked about procedure of delivery of the parcels, he stated that the parcels are delivered by them to the customers at their premises and sometimes in case of urgency the customer collects the parcel from our branch. On being further asked about the type of goods they transport in parcels, he stated that any legitimate goods with proper invoice can be transported but they mainly accept parcels related to precious and valuable goods, documents, Gems and Jewellery, Diamonds, Cash etc. He was shown the Panchnama dated 07.06.2023, wherein the parcels carried by their Angadiya employee were detained. On perusal, he submitted following documents in respect of the gold detained vide Panchnama dated 07.06.2023

TABLE-II

S. No.	Item Description	Weight of the gold (in grams)	Details of Sender	Details of recipient	Documents submitted
1	Gold (I) 1 Cut Bar	52.120	Shri Dipanker	M/s. Bharat Chain	Delivery challan/Insurance certificate of Aanagadiya dated 06.06.2023
2.	Gold (I) 4 bar+1 cut bar+ 1 Piece	478.030	M/s. Heer Gold, Surat	M/s. Pahini Jewellers	Copy of invoice stating return issue for job work by M/s. Heer Gold to M/s. Rushabh Jewels submitted.
3.	Gold (I) 8 Bars	800	M/s. Sapna Bullion, Surat,	M/s. Gujarat Bullion	Letter stating that gold is sent for job work. Also, invoice issued by M/s. Elvee Jewels Pvt. Ltd. and M/s. Jay Renuka Gold to M/s. Sapna Bullion submitted.
4.	Gold (I) 2 Bars	200	Shri Amish V Malji	M/s. Pahini Jewellers	Copy of Bill, Invoice submitted
5.	Gold (I) lumps	500	Pramod Shah (M/. Poonam Jewellers, Surat)	M/s. Gujarat Bullion (Chandresh Bhai)	Letter stating that gold is sent for job work. Also invoice issued by Ms Anitaben Shah & Lishaben Shah to M/s. Poonam Jewellers.
6.	Gold Bar (I) 1 Pc.	100.00	M/s.Damod ardas Jewellers	M/s. V N Exports (Labour)	Copy of delivery challan submitted
7.	Gold Bar (I) 2 Pcs.	150.00	M/s. Vasundhara Jewellers	M/s. R.B. Ornaments	Delivery challan submitted
8.	Gold Bar (I) 1 Pc.	100.00	M/s. Damodardas Jewellers	M/s. N D Jewellery	Copy of delivery challan submitted
9.	Gold Bar (I) 2 Pcs.	100.00	M/s. Jenny Silver	M/s. Nageshwar Chain	Copy of invoice dated 06.06.2023 issued by M/s. Jeni Silver submitted
10.	Gold Bar (I) 1 Pc.	100.00	M/s. Vasundhara Jewellers	M/s. Gopinath Jewellers	Delivery challan submitted
11.	Gold Bar (I) 2 Pcs. (Cut Pcs)	50.00	M/s. Vasundhara Jewellers	M/s. S M Gold	Delivery challan submitted
12.	Gold Bar (I) 1 Pc (Cut Pc)	50.140	M/s. Vama Gold	M/s. Aadey Jewellers	Copy of invoice dated 06.06.2023 submitted
13.	Gold Bar (I) 1 Pc (Cut Pc)	30.00	M/s. Vama Gold	M/s. Tanisha jewellers	Copy of invoice dated 06.06.2023 submitted

6.2. On being asked to produce documents related to import of gold bars as mentioned at Sr. No. 1 and 4 of the table above, Shri Amrutbhai Harjivandas Patel, stated that the customers have submitted copy of Delivery Challan and invoices pertaining to Shri Dipankar Ghosh and Shri Amish V. Malji of M/в. V.Navinchandra Hirachand Malji Jewellers & Co, and he informed that he is having only these documents in relation to gold bars as mentioned at Sr. No. 1 and 4 of the above table.

6.3. On being asked as to what kind of goods can be transported by them. he stated that any legitimate goods with proper invoice can be transported bul mainly they accept parcels related to precious and valuable goods, documents, Gems and Jewellery, Diamonds, Cash etc. He admitted that they cannot accept parcels related to foreign currency and foreign origin gold in bars or any other form, but sometimes the customer misdeclares the correct description and nature of the goods in the parcel.

10.1 It is clear that even the Angadiya Shri. Amrutbhai Harjivandas clearly indicated that the suppliers had submitted copy of delivery challan and invoices. Which he was having in his possession relating to gold bars. Therefore, even by the statement recorded by the department in relation to the seized gold bar, it is established that they were duly accounted for at the end of the supplier, which in any case cannot be doubted as the invoices are GSTN generated and there is nothing on the side of department indicating that that they doubted the authenticity of the same. It is also clear that 99.9 is the purity indicated in the invoice. Again as the policy stands today, the gold bullion in general is a restricted item but many authorized channels are available including banks and of gift city etc. which sell the foreign bars which are allowed to be imported for specified purposes. This being the situation at present it cannot be said that when invoice is possessed of .999 purity gold duly recorded in the GST network with date as well as in the books of accounts of supplier and buyer, the onus does not shift on the department. The date of invoice is not very old compared

to date of seizure. The case law put-forth by the party on inland seizure are found relevant. With this factual matrix in this case, the case of the department is not established, it cannot be said that in the face of documentary evidences, department had a reasonable belief that the gold was smuggled. Again, if the gold was of offending nature in the hands of appellants, it was equally offending in the hands of supplier in the whole supply chain, not all of them have been investigated or show caused. Seizure therefore is liable to be vacated, the same is done with consequential relief to the party.

11. Appeals are allowed.

(Pronounced in the open court on 04.11.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi