

**IN THE COURT OF MS. SUJATA KOHLI, PRINCIPAL DISTRICT &
SESSIONS JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE AVENUE
DISTRICT COURT COMPLEX, NEW DELHI**

Closure Report No. CBI/432/2019

CBI Vs. Sanjeev Kumar

26.09.2020

ORDER ON CLOSURE REPORT

1. Matter has been taken up in terms of orders of Hon'ble High Court bearing no. 26/DHC/2020 dated 30.07.2020 and 322/RG/DHC/2020 dated 15.08.2020, through "Hyperlink URL for Conferencing Via Cisco Webex."
2. IO has filed this closure report with the following facts:-
 - i. This case is one of the six cases registered in the matter of theft/replacement of gold from the Valuable Godown of Customs at IGI Airport, New Delhi. The same was registered on the basis of a complaint dated 14.03.2017 of Shri Vidhyadhar b. Pachore, Assistant Commissioner of Customs (Vigilance), IGI Airport, New Delhi alleging theft and replacement of about 15.9 Kgs of gold with non-precious metal from 23 packets.

- ii. During the course of investigation, a team of Finger Prints Expert visited at valuable godown and examined the said packets in which gold biscuits were replaced with non-precious metal pieces. In all, 13 chance finger prints were lifted in all six cases from the metal pieces by which the gold was replaced.
 - iii. Sample finger prints of custodians of the valuable godown were obtained and sent for comparison with the chance prints. One chance finger print from the replaced metal of packet No. S-217/85/4 matched with the specimen right thumb impression of one Sanjeev Kumar, who was posted as custodian of the valuable godown of customs during 19.09.2002 to 13.01.2003 and 13.10.2003 to 19.04.2004. Specimen finger prints of all the former custodians of valuable godown were also obtained and sent to CFSL for comparison with the chance prints of the case. However, no other sample finger prints matched with the chance finger prints.
3. It has been further mentioned in the closure report that thereafter, seizing officers of the seizures in this case were also examined during investigation and they proved the seizure of gold in cases pertaining to

exhibits S-21, S-22, S-23, S-25, & S-26 from packet no. S-67/86, S-30/1992, S-05/94, S-64/85/4 and S-232/85/4 respectively in which '+' sign on the piece of non-precious metal has matched with similar impression of '+' sign on the non-precious metal marked exhibit S- 19 from packet no. S-21/85/4. They also proved that the seized gold was entered in the valuable godown register of the Customs at IGI Airport.

4. It is also there in the closure report that the Master Stock Register of the valuable godown of Custom at IGI Airport, New Delhi, proves that the above mentioned packet Nos. S-67/86, S-30/1992, S-05/94, S-64/85/4 were kept in the valuable godown of custom at IGI Airport and on the say of stock taking too, the above mentioned packets were found kept in godown.
5. It has been further mentioned in the closure report that Sh. Sugam Kumar, who was posted as the custodian of the valuable Godown during the relevant period when stock taking exercise was carried out, and was a member of the committee which conducted the stock taking exercise, proved the proceedings of the committee in which the packets were physically checked and gold was found stolen and replaced with the non-previous metal pieces.
6. However, the evidence collected during the investigation, was not found

sufficient for launching prosecution against Shri Sanjeev Kumar, who was posted as Custodian of Valuable Godown of Customs during 19.09.2002 to 13.01.2003 and 13.10.2003 to 19.04.2004 or against the other custodians of the valuable godown of Customs at IGI Airport, hence custom department was asked to initiate Departmental Action against Sh. Sanjeev Kumar.

7. During the course of investigation, Shri Sanjeev Kumar accepted that he was posted as Custodian of Valuable Godown of Customs during 19.09.2002 to 13.01.2003 and 13.10.2003 to 19.04.2004. However, he stated that he neither opened any sealed packet in the godown, nor was involved in replacement of gold items with non-precious items. He reiterated and showed his surprise as to how his finger impressions were available on the non-precious metal kept inside the sealed packets.
8. CBI could neither collect sufficient evidence to further criminal proceedings against accused Sanjeev Kumar, nor the stolen gold was recovered during investigation.
9. After filing of the closure report, the IO DSP (Retired) filed reply submitting that “the evidence in the form of positive expert opinion on the thumb impression of accused Sanjeev Kumar and CFSL opinion on

the similarity and identity of specific mark of '+' found on the non-precious metal pieces of this case are scientific in nature. This evidence leads to one and only conclusion that one and the same person was involved in replacement of gold with non-precious metal pieces from the packet of this case as well as from the packet in which thumb impression of accused Sanjeev Kumar was found." He further submitted that CBI does not have any objection on the final disposal of the matter.

10. Sh. Vinod Kumar, IRS, Deputy Commissioner of Customs, Air Intelligence Unit, IGI Airport, New Delhi also filed reply to the closure report. He further submitted that CBI does not have any objection on the final disposal of the matter.

11. I have heard Ld. Senior P.P., the IO and the senior officers present in the Video Conference, at length.

12. **Brief facts of the case:**

- (i) An exercise for disposal of gold, lying at IGI, Airport, special efforts were made by inventorisation committee for their disposal under the camera and videography. In the process of camera inventorisation and disposal of RFD gold, replacement of confiscated gold was noticed in respect of certain cases and FIRs were lodged with PS IGIA, New Delhi.
- (ii) Vide letter dated 23.06.2015 Sh. B. K. Bansal, Chief Commissioner,

Customs, informed the Special Secretary & Member (Budget & Zonal) that the matter is serious and Board may consider assigning the matter to DG, Vigilance for an in-depth vigilance inquiry.

- (iii) The matter was discussed with Member (P&V) who had concurred for making a reference to DG, Vigilance in the view of the seriousness of the issue. Subsequently, vide letter dated 29.06.2015 Commissioner Customs, IGI Airport, forwarded the matter to DG, Vigilance along with details of earlier inventorisation. The same was further forwarded to North Zonal Unit (NZU) of DGoV for investigation.
- (iv) The preliminary investigation was carried out by the NZU and it was observed that there was a suspicion about substitution of gold by the officers of Customs, who physically handed the consignment where gold was replaced at the time of their deposits in the godown and at the time of exhibition of the goods before the Magistrate. It was also observed that replacement might have occurred at the time of shifting of godown at the new premises of IGI Airport, Terminal-3.
- (v) It is also seen that Customs officers are posted in valuable godown for a period of 3 to 6 months during Airport posting tenure. Since the period of seizure pertains to years spreading from 1985 to 2002, therefore, large numbers of officers were posted as in-charge of valuable godown

at IGI, Airport, New Delhi during the said period.

- (vi) In view of the seriousness of the issue, Central Board of Indirect Taxes and Customs had decided to refer the matter to CBI for detailed investigation.
- (vii) Accordingly, vide office letter dated 31.10.2016 the matter was referred to the CBI for detailed investigation. The CBI has concluded their investigation and vide letter dated 13.01.2020 forwarded the investigation report to this office in the matter.

13. **Findings of the CBI:**

- (i) The case RC 220 2017 E 0012/EOU-VI/CBI/New Delhi, is one of the six cases registered in the matter of theft/replacement of gold from the Valuable Godown of Customs at IGI Airport, New Delhi. The same was registered on the basis of a complaint dated 14.03.2017 of Sh. Vidhyadhar B. Pachore, Assistant Commissioner of Customs (Vigilance), IGI Airport, New Delhi alleging theft and replace of about 15.9 Kgs. of gold with non-precious metal from 23 packets.
- (ii) During the course of investigation, a team of Finger Prints Expert visited the valuable godown and examined the said packets. In all, 13 chance finger prints were lifted in all six cases from the metal pieces, with which the gold was replaced.

- (iii) Further, sample of finger prints of custodian of the valuable godown were obtained and sent for comparison with the chance prints. One chance finger print from the replaced metal of packet No. S-217/85/4 matched with the specimen right thumb impression of one Sanjeev Kumar, who was posted as custodian of the valuable godown of customs during 19.09.2002 to 13.01.2003 and 13.10.2003 to 19.04.2004. Specimen finger prints of all the former custodians of valuable godown were also obtained and sent to CFSL for comparison with the chance prints of the case. However, no other sample finger prints matched with the chance finger prints.
- (iv) After investigation, the evidence collected during the investigation was not sufficient for launching prosecution against Sh. Sanjeev Kumar, who was posted as Custodian of valuable godown of customs during 19.09.2002 to 13.01.2003 and 13.10.2003 to 19.04.2004. It was also found during investigation that there was no material against other custodians of the valuable godown of customs at IGI Airport for proceeding against them.

14. **Response of the Accused person:-**

- (i) Sh. Sanjeev Kumar accepted that he was posted as Custodian of Valuable Godown of Customs during 19.09.2002 to 13.01.2003 and

13.10.2003 to 19.04.2004.

- (ii) He stated that he neither opened any sealed packet in the godown nor was involved in replacement of gold items with non-precious items. He reiterated and showed his surprise as to how his finger impressions were available on the non-precious metal kept inside the sealed packets.

15. **Response of the CBI:-**

- (i) The available evidence in the case, is forensic evidence, which is conclusive and irrefutable in nature.
- (ii) Non-recovery of stolen goods may be for reason of hardness of the accused or even incompetent investigation, but never for the reason of innocence of the accused.

16. **Final Recommendation of CBI:-**

The CBI recommended the following action in the matter:

- (i) RDA for Major penalty proceedings against Sh. Sanjeev Kumar, the then custodian valuable godown of customs, IGI Airport, New Delhi.
- (ii) The customs department was directed to prepare a detailed Standard Operative Procedure (SOP) for handling of precious metal and other valuable materials seized by the customs department.

17. **Observations of the Customs Department:**

- (i) It is fact that Sh. Sanjeev Kumar was posted as Custodian of Valuable Godown of Customs during 19.09.2002 to 13.01.2003 and 13.10.2003 to 19.04.2004.
 - (ii) The office was in agreement with the view of the CBI that the evidence in the case is forensic evidence which is conclusive and irrefutable in nature.
 - (iii) In respect of the recommendation of RDA for Major penalty proceedings against Sh. Sanjeev Kumar, the then Custodian of the valuable Godown of Customs, IGI Airport New Delhi, their office received documents/annexure (I to IV) from CBI on 29.06.2020, which required initiation of disciplinary proceedings against Sh. Sanjeev Kumar.
18. In respect of the recommendation of Standard Operative Procedure (SOP) for handling of precious metals and other valuable materials a Standard Operative Procedure (SOP) was issued on 27.01.2016 and duly implemented by the Commissionerate of Customs IGI Airport New Delhi. Further, the Central Board of Indirect Taxes & Customs published the Disposal Manual 2019 on 18.12.2019, consolidating all relevant instructions/circulars/guidelines regarding disposal of seized goods.
19. In order to maintain the safety and security of the valuable articles,

some procedure was already in practice at the Valuable Godown. Same is as under:-

Procedure:-

- I. As per guideline under head **STOCK CHALLENGE** it is mentioned that:
 - (i) Once every six months the Assistant Collector, Preventive, or an Assistant Collector nominated by the Collector, shall conduct a complete stock taking of all valuables in the custody of the Custom House. Similarly, once every six months the Chief Inspector, preventive or any other officer nominated by the Collector for the purpose shall conduct a complete stock taking of all packages counting articles other than valuables.
 - (ii) A report regarding the checks done and results should be submitted to the Collector within a week from the date of check. The officers verifying stock should particularly examine whether the packages stored show signs of deterioration, substitution or pilferage. They should also verify the seals and satisfy themselves that the seals are intact.
 - (iii) If the seals are intact it should not ordinarily be necessary to open the packages and verify contents but a token number of packages may be opened and contents be checked. The Assistant Collector, Preventive,

or any other officer nominated for the purpose by the Collector shall conduct random stock challenge by surprise, approximately once a quarter.

II. TRANSFER OF CHARGE:

- (i) Whenever the custodian or any other officer in charge of confiscated goods is transferred, the transfer should be so arranged that successor is given time to take complete stock of the goods. Whenever the packages and seals are intact, it should not be necessary to open the packages and count the individual articles. A special charge report indicating that the goods have been properly taken over should also be made out.
- (ii) Whenever the Custodian is absent, on casual leaves or otherwise for short period, another officer should be nominated to attend to the work. As soon as the permanent officer returns to duty, he should be posted with the development during the former's absence.
- (iii) Whenever goods are seized or detained, a complete inventory of the goods together with the identification marks, serial numbers etc. should be made out in triplicate in the proper form (Form-I) this should be done at the earliest opportunity and if possible immediately after the seizure. Separate inventories should be made

out in respect of (a) valuables; and (b) other than valuables.

- (iv) Duty of Station Duty Officer (SDO) (Arrival) have been explained in Delhi Airport Customs Manual.
- (v) Further, instructions have been issued by the CBEC, Ministry of Finance vide Circular No. CBR F.No.11/6/61-Cus.IV dated 13.06.61 for procedure for receipt, storage and disposal of seized goods. It is further informed that weighing of packages are not done at the time of handing over the charge by one custodian to his successor. Further, there is also no provision to weigh the packets when the packages and seals are intact.

III. Disposal of inventory and Sealing of goods:-

- (i) The inventory should be signed by the Seizing or Detaining Officer and also countersigned after due verification by the owner of the goods or his authorised representative, if available.
- (ii) The goods should then be sealed with the seal of the Seizing or Detaining Officer and the seal of the owner or his authorised representative.
- (iii) The Original copy of the inventory should be given by the Seizing or Detaining Officer to the owner of the goods or his authorised representative, if available.

- (iv) The goods together with the duplicate and triplicate copies of the inventory should be forwarded to the concerned departmental officer who has the custody of such goods (Seizure Shed Officer, Currency Officer etc.) hereafter called the 'Custodian', without avoidable delay and in any event within 24 hours of seizure or detention.
- (v) Immediately, on receipt of the goods and the duplicate and the triplicate copies of the inventory, the custodian should satisfy himself that the packages have been properly sealed and that the inventory has been made out in a proper manner to indicate the complete details of the contents of the packages. It is not necessary for him to examine the contents of the packages provided the seals are intact and the inventory is in proper form.
- (vi) If the seals and the inventory are in order, the Custodian should acknowledge receipt the sealed packages in the duplicate and triplicate copies, retain the duplicate with him and return the triplicate to the Seizing/ Detaining Officers to be kept with the case file.

IV. Register of Seized / Detained goods:

- (i) The Custodian should enter the details given in the inventory in the

Register of Seized / detained goods prescribed for the purposes (Form 2). Separate register should be maintained in respect of (a) valuables and (b) other than valuables.

V. Storage of Valuables :-

- (i) Valuables should be kept invariably in a special safe in the Custom House Treasury or in a locker in the Reserve Bank of India or State Bank of India, obtained exclusively for the purpose.
- (ii) Wherever they may be deposited, such packages shall be stored systematically, serial-wise and year-wise to facilitate easy check and location.
- (iii) Relevant particulars of the storage arrangements should also be recorded in the register of Valuables.
- (iv) The key of the safe or the locker shall be kept securely in the personal custody of the Custodian.

VI. An officer of the rank of ACO/ Inspector is custodian of the Valuable Godown. He is supervised by Air Customs Superintendent in the rank of Superintendent and by Deputy / Assistant Commissioner of the Valuable Godown / Disposal Branch. These officers are concerned with day to day operations of the Valuable Godown.

VI. Sh. Abhishek Mallick, Superintendent and Sh. Pankaj Kumar, ACO

(then Custodian of Valuable Godown) were deputed to appear before Sh. Harwinder Singh, CBI on 03.10.2019 to explain the aforesaid provisions.

20. As the arrangements for receipt, storage and disposal of seized/confiscated goods are stated to have not been working satisfactorily, a revised procedure was approved by the Board. The relevant portion of the said procedure is as under:-

“PROCEDURE FOR RECEIPT, STORAGE AND DISPOSAL OF SEIZED/DETAINED AND CONFISCATED GOODS.

- I. Whenever goods are seized or detained, a complete inventory of the goods together with the identification marks, serial numbers etc. should be made out in triplicate in the proper form (Form I), this should be done at the earliest opportunity and if possible immediately after the seizure. Separate inventories should be made out in respect of (a) valuables; and (b) other than valuables.

II. Definition of valuables: The term ‘valuables’ will include:

- (i) Precious and semi-precious stones
- (ii) Gold and articles made of gold.
- (iii) Jewellery
- (iv) Silver and articles made of silver.
- (v) Watches, and
- (vi) Such other articles of small bulk and high value as may be by special or general order be classified as valuables by the

Collector.

III. Disposal of inventory and Sealing of goods:

- (i) The inventory should be signed by the Seizing or Detaining Officer and also countersigned after due verification by the owner of the goods or his authorized representative, if available. If the owner or his authorised representative is not available', the inventory should be countersigned by a Gazetted Officer after due verification.
- (ii) The goods should then be sealed with the seal of the Seizing or Detaining Officer and the seal of the owner or his authorised representative. If the owner or his authorised representative is not available, the seal of the Gazetted Office Countersigning the inventory should, instead, be affixed.
- (iii) The Original copy of the inventory should be given by the Seizing or Detaining Officer to the owner of the goods or, his authorised representative, if available. If the owner or his authorised representative is not available, the original copy should be kept with the case file.
- (iv) The goods together with the duplicate and triplicate copies of the inventory should be forwarded to the concerned departmental

officer who has the custody of such goods. (Seizure Shed Officer, Currency Officer etc.), hereafter called the "Custodian", without avoidable delay and in any event within 24 hours of seizure or detention, Immediately can receipt of the goods, and the duplicate and the triplicate copies of the 'inventory', the Custodian should satisfy himself that the packages have been properly sealed and that the inventory has been made out in a proper manner to indicate the complete details of the contents of the packages. It is not necessary for him to examine the contents of the packages provided the seals are intact and the inventory is in proper form.

- (v) If the seals and the inventory are in order, the Custodian should acknowledge receipt the sealed packages in the duplicate and triplicate copies, retain the duplicate with him and return the triplicate to the Seizing/Detaining Officers to be kept with the case file.
- (vi) If there is any discrepancy, the Custodian should get the discrepancy reconciled before acknowledging receipts.

IV. Register of Seized/Detained goods:

- (i) The custodian should enter the details given in the inventory in the Register of Seized/detained goods prescribed for the purpose (Form

2). Separate register should be maintained in respect of (a) valuables and (b) other than valuables. Each package should then be securely tied, pinned or stuck with a stuck card in the proper form (Form 3).

V. Storage of valuables:

- (i) Valuables should be kept invariably in a special safe in the Custom House Treasury or in a locker in the Reserve Bank of India or State Bank of India; obtained exclusively for the purpose.
- (ii) Wherever they may be deposited, such packages should be stored systematically, serial-wise and year-wise to facilitate easy check and location. Relevant particulars of the storage arrangements should also be recorded in the register of valuables.
- (iii) The key of the safe or the locker shall be kept securely in the personal custody of the Custodian. It should also be arranged, that the Treasury Officers or the Bank Manager, as the case may be that access to the safe, or the locker, shall not be allowed except on a written authorization in an agreed form bearing the running number, signed by the Assistant Collector, incharge of the Preventive Department.
- (iv) Such authorization should be issued normally in the name of the custodian or in exceptional circumstances when the Custodian is not available, in the name of any other responsible officer. The serially

numbered authorization forms should be kept in the personal custody of the Assistant Collector, Preventive Department.

VI. STORAGE OF GOODS OTHER THAN VALUABLES: (not relevant for the purpose of this case).

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VII. OPENING AND RE-SEALING OF THE PACKAGES:

- (i) As far as possible, the necessity for opening of the sealed packages for further investigation should be avoided. Whenever such sealed packages are required to be opened, such opening should not be done without the specific authorization of the Assistant Collector, Preventive.
- (ii) When such authorization has been obtained, the Custodian should arrange to produce the packages for opening.
- (iii) After due verification of the seals, the packages should be opened in the presence of the Custodian, the owner or his authorized representative, if available, the seizing or detaining officers or a Gazetted Officer senior to the Custodian. After necessary verification, the packages should be resealed with the seals of the custodian, the owner or his authorized by representative, if available the seizing or detaining officer or a Gazetted Officer senior to the Custodian.

- (iv) After necessary verification, the packages should be immediately re-sealed with the seals of the Custodian, the owner or his authorized representative, if available and the seizing or detaining officer or the Gazetted Officer witnessing the opening.
- (v) The stock card should also be suitably endorsed and packages should be re-deposited in the original place of storage. If on such re-examination any discrepancy is noticed, such discrepancy should immediately be brought to the notice of the higher officers for appropriate action.

VIII. RETURN OF GOODS TO THE OWNER: (not relevant for the purpose of this case).

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IX. RESPONSIBILITY OF THE CUSTODIAN:

- (i) The Custodian will be responsible for the physical custody of the packages with seals intact. He will not be responsible for the inner contents of the package if they have been sealed.
- (ii) The Custodian should, however, insist before accepting the sealed packages that the inventory covering the goods should be completed in all respects. He should also take adequate precautions against theft and pilferage and keep watch on the condition of the goods.

(iii) If the goods shows signs of deterioration or damage, he should immediately bring it to the notice of the Assistant Collector, Preventive for appropriate action. Fragile goods should be Handled with care and if any goods are damaged in handling, he should immediately report the matter to the Assistant Collector, preventive. He will be responsible for maintaining the Register in the proper manner and for submitting the monthly return of goods ripe for disposal. Copies of all orders of confiscation should be endorsed to the Custodian.

X. MARKING OF ARTICLES:

- (i) With a view to prevent unscrupulous dealers attempting to dispose of smuggled goods as purchased from Customs auction, it is essential to have complete account of the serial number, colour and other details of the goods disposed of in auction. Where, however, such identification details are not available, the goods should wherever practicable be rubber stamped with the name of the Customs house and a code number or indicating the date of auction in code letter.
- (ii) Textiles, playing cards, etc. must be rubber stamped suitably in the above manner, the code being changed from time to time.

XI. STOCK CHALLENGE:

- (i) Once every six months the Assistant Collector, Preventive, or an Assistant Collector nominated by the Collector, shall conduct a complete stock taking of all valuables in the custody of the Custom House. Similarly, once every six months the Chief Inspector, preventive or any other officer nominated by the Collector for the purpose shall conduct a complete stock taking of all packages counting articles other than valuables.
- (ii) A report regarding the checks done and results should be submitted to the Collector within a week from the date of check. The Officers verifying stock should particularly examine whether the packages stored show signs of deterioration, substitution or pilferage. They should also verify the seals and satisfy themselves that the seals are intact.
- (iii) If the seals are intact it should not ordinarily be necessary to open the packages and verify contents but a taken number of packages may be opened and contents checked. The assistant Collector, Preventive, or any other officer nominated for the purpose by the Collector shall conduct random stock challenge by surprise, approximately once a quarter.

XII. TRANSESR OF CHARGE:

- (i) Whenever the Custodian or any other officer in charge of confiscated goods is transferred, the transfer should be so arranged that the successor is given time to take complete stock of the goods.
- (ii) Wherever the packages and seals are intact, it should not be necessary to open the packages and count the individual articles. A special charge report indicating that the goods have been properly taken over should also be made out.
- (iii) Whenever the Custodian is absent, on Casual leaves or otherwise for short period, another officer should be nominated to attend to the work. As soon as the permanent officer returns to duty, he should be posted with the development during the former's absence.

XIII. CHANGE IN PROCEDURE:

- (i) Collectors may in their discretion make any minor changes in this procedure which may be necessitated by local condition. No major changes should be made without the prior approval of the Board.

21. The statement of Shri Gurvindar Singh Sohal, Superintendent of CGST, Commissionarate, Rohtak is very essential and crucial highlighting the goings on in the valuable godown at the Custom Department. The same is reproduced as under:-

"I am as above. I state that I joined Customs & Central Excise Department in 1993, as Inspector in Faridabad. Thereafter, I served at different locations, I was posted at Customs, New Delhi from 1996 to 2001. During my tenure at Customs Delhi I was posted as Inspector at IGI Airport, New Delhi, Cargo Export and New Customs House. In year 2002, I was promoted as Superintendent. Thereafter, I served at different locations, I was posted as Superintendent at Customs, New Delhi from 2008 to 2012. During my tenure at Customs Delhi, I was posted at IGI Airport, New Delhi from 2008 to 2010 and New Customs House from 2010 to 2012. Thereafter, I served at different locations, I was posted as Superintendent of CGST, Commissionerate, Rohtak in June 2019.

Now, I have been shown file bearing No.VIII(AP)/OP/Misc./ST/08 of Disposal Section of Customs (MR No. 26/2019). After going through the same, I state that this file pertains to Stock Taking Report and it contains stock taking reports of Godowns of Customs which were submitted by me. As per note sheet page no.5, I and Shri S.S. Tanwar, ACO had submitted stock taking report to AC(P) on 24.11.2008. I identify my signature on the same. I also identify the signature of Shri S.S. Tanwar as he had put up the file to me.

On being asked I state that I alongwith Shri S.S. Tanwar, ACO and Shri K.N. Srivasthava, ACO was deputed to take stock taking of seized/confiscated goods lying in the Godowns under the control and custody of disposal unit, at IGI Airport vide order dated 5.9.2008 of Shri V.B. Parbhakar, Assistant Commissioner, Preventive, IGI Airport, New Delhi.

On being asked I state that in compliance of order dated 5.9.2008, I along with Shri S.S. Tanwar started the work of stock taking in the prescribed performa in the presence of concerned Godown incharge ACO. Shri K.N. Srivastava, ACO did not join us. There were 05 Godowns under the Customs, Disposal Branch. Four Godowns were at IGI Airport, and one was situated at New Customs House. One of the Godown is exclusively for Gold, Silver and Currency notes. I have conducted stock taking of goods lying in valuable Godown and prepared report of stock taking of goods lying in Godown. Sh. S.S.Tanwar conducted stock taking of other godowns and reports jointly submitted to Assistant Commissioner, Preventive on 24.11.2008.

On being asked I state that the list/ prescribed performa of the packets / DR number with the date, description of seized goods was

provided by the Incharge Godown, as per orders of AC(P). I have only noted the details mentioned on the packets in the list provided by the Incharge Godown, which are physically available in the Godown in the presence of Godown Incharge. During the stock taking exercise, we had not opened any packet being sealed/seized goods. The packets were beared SM No./DR No. and File Name etc. In some cases file number/DR No. were not clearly visible on the packets due to aging of the packing and sealing. It has been noticed that some packets were wet and in deteriorated and same was brought notice to the Assistant Commissioner (P).

*Now, I have been shown pages 43 to 129 of above said file. After seen the same I state that this is the list of Valuable Godown, which was provided by incharge Godown for stock taking exercise. I have written only the details of packet in list of those packets which were physically available in the Godown. I identify my handwriting on the list. **The column left blank against the packet no. mentioned in the above said list, these packets were not available in the Godown or shown to us.***

(There is no explanation forthcoming as to why those packets were not made available.)

22. I have perused the record carefully and have also given my thoughtful consideration to the facts of the case.
23. It is quite puzzling that, inspite of the almost fool proof procedure and guidelines laid down in order to safeguard any pilferage/replacement/substitution/theft/embezzlement etc., the IO did not even bother to examine this case on the most crucial aspects, which however, shall be touched later on, in this order.
24. The sketchy report, as submitted in the name of closure report, appears like deliberate botching up of the entire matter which was observed to be

serious in nature by the senior most officers referred above. Apart from this, the conclusion of the IO is also appearing like blowing hot and cold in one and the same breath, in as much as, he cites certain material i.e. CFSL report, which does connect the accused Sanjeev Kumar to the crime and just in next breath he submits that there is not enough material to proceed against the accused Sanjeev Kumar.

25. It was a matter of replacement of more than 15 kg of gold, and the manner in which the report has been presented, and the proceedings carried out by the IO, seem to be in utter ignorance, even, the basic manner, in which he should have investigated this case i.e. if, the IO had the will to do. The entire report appears like a cover up and an attempt to shield the accused.
26. In a case like the present one, had the investigation been normal and had the IO been diligent for his duties, and had the IO been willing to place the truth of the matter before the Court of law, light would have been thrown on the following aspects as to :-
 - i. At what stage, it was discovered that around 15 kg gold has been replaced with the non-precious metal,
 - ii. By whom or by which officer it was discovered,
 - iii. What exact date and time and at which place it was discovered,
 - iv. Since this gold was subject matter of another court case, had been

produced there for exhibiting, whether the seal of the court on the parcel was still intact or damaged or the condition of the envelop, whether it was torn from any of its sides and managed for removing its contents and putting the non-precious metal in place thereof,

- v. Whether the weight of the gold and the weight of the non-precious metal replaced therein, happened to be same,
- vi. The first point of time when it was discovered about the replacement of the gold, who was the custodian on the given date and time,
- vii. The entire trail of the custodians during the period right from seizure of the gold and deposit of the gold in the valuable godown of customs on one hand and the discovery about the replacement of the gold therein,
- viii. Whether statements of all these custodians had been recorded by the IO u/s 161 CrPC,
- ix. What all registers were being maintained in the valuable godown of customs regarding deposit, transit and return of case properties,
- x. Who had made the entries at the time of first deposit of the entire gold after seizure,
- xi. Who was the custodian when the gold was taken to Court for production,

- xii. What was the container i.e. cloth parcel or a box,
 - xiii. Whether the container itself had changed inside the parcel or whether it was that the container remained same but only the contents were replaced,
 - xiv. Whether the Malkhana in-charge was examined by the IO,
 - xv. Whether the official who took the case property to court and got it produced was examined by the IO,
 - xvi. What time the case property was actually produced in court and what time it was returned in the valuable godown of customs,
 - xvii. Why the case was not given the turn of a breach of trust by a Govt. servant who had been entrusted with a precious property as custodian,
 - xviii. Upon discovery of the gold replaced, it would have been for the custodians in question to have answered as to where it went, in other words the onus would have been completely upon the custodian to have explained his innocence.
27. It was clearly a case of breach of trust by Govt. servant, who had been entrusted with a lot of precious gold. While it was in his custody, it gets replaced/substituted with non-precious metal. There would be a case of presumption that, it is the custodian who directly or indirectly has been

involved in the replacement of the gold. In case it was otherwise, the onus would be heavy upon the custodian, as to in what circumstances, gold had been got removed and substituted by non-precious metal. The case was quite a serious one.

28. It is even more surprising that it is Mr. Pechori, who had first lodged the complaint of this serious incident, had not even made a part of the list of witnesses. In fact, he has not been reflected as being the complainant. It has been misled to the court that, IO himself was the complainant. It is a clear case of cover-up and shielding of accused persons, not only Sanjeev Kumar but other custodians, who may have been hand in gloves together for replacement of the huge quantity of gold.
29. Infact, the replies which have been filed by different custom officers, also do reflect, a kind of a pressure that, they were working under and it showed that, they were indeed reluctant to let this matter to go in for a closure and it did seem that as if they all had taken the matter seriously but as it happens in so many matters that there was a pressure from one quarter which one of the officers even referred to during the proceedings saying that he did not want to name, who wanted the case to be closed.
30. It is even more atrocious that on one other than the IO states that, there is FSL report connecting the accused to the crime, and yet on the other hand,

he only goes on to say that, there was not sufficient material for prosecuting Sanjeev Kumar. Yet again, most ironically, in the next immediate breath, the IO again states that, it was decided that, a departmental inquiry be initiated against the accused for imposing a major penalty against him.

31. It really does not become clear as to, what this customs department was actually wanting, whether to shield this custodian or to expose him. The entire report and the proceedings seems to be quite self –contradictory, and through and through, it is clear that, it is just not a botched up investigation, but a clear cut situation of an attempted cover-up.

32. In **N. Bhargavan Pillai (Dead) Vs State Of Kerala on 20 April, 2004 and State of Himachal Pradesh Vs Karanvir** on 12 May, 2006, in both the cases, the Supreme Court held that:

"The initial burden is on the prosecution to prove the entrustment of the property to the accused. Once the initial burden is discharged by the prosecution, the onus shifts on to the accused to prove as to how the property entrusted to him was dealt with. When the accused fails to prove as to how and in what manner the property entrusted to him was dealt with, he is liable for conviction for the offence punishable under Section 409 IPC."

33. It seems from the entire statement and the proceedings that, the very senior officer who was the complainant himself, and all other senior officers, have tried to disown their own statements, and to cover up the facts.

If there was nothing incriminating at all against the accused, action

should have been taken against the officers, for getting a false complaint lodged; and, if, there was an incriminating material, in that case, why this cover up has been done by those very senior officers, needs to be found out.

The IO is directed to further investigate this matter on the above lines, and fresh report be submitted within 3 months.

34. List the matter on **22.12.2020** for fresh report of the IO.

**Announced in open Court
today on 26.09.2020**

(SUJATA KOHLI)

Principal District & Sessions Judge-cum-Spl. Judge
(PC Act)(CBI)/RADC/ND