

OIO No:206/ADC/SRV/O&A/2024-25
F. No. VIII/10-135/SVPIA-A/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद -380009.

दूरभाष: (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in, फ़ैक्स: (079) 2754 2343

DIN No.20241271MN000000DD8E

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-135/SVPIA-A/O&A/HQ/ 2024-25
B	कारणबताओनोटिससंख्या- तारीख / Show Cause Notice No. and Date	:	VIII/10-135/SVPIA-A/O&A/HQ/ 2024-25 dated: 11.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	206/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In- Original	:	23.12.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	23.12.2024
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Paresb Pavan Chauhan, B/6, Ambika Mil Ni Chali, Behind Sanman Hotel, Jetalpur Road, Vadodara, Gujarat, India, Pin- 390007
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		

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(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:
(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case: -

Shri Paresh Pavan Chauhan (hereinafter referred to as the said "passenger/ Noticee"), residing at B/6, Ambika Mil Ni Chali, Behind Sanman Hotel, Jetalpur Road, Vadodara, Gujarat, India, Pin - 390007, holding an Indian Passport No. W3260873 arrived from Abu Dhabi to Ahmedabad by Etihad Airways Flight No. EY 286 (Seat No:28C) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific Input Shri Paresh Pavan Chauhan, who arrived by Etihad Airways Flight No. EY 286 (Seat No.28C) on 27.02.2024 from Abu Dhabi to Ahmedabad at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad was intercepted by the officers of DRI, AZU, Ahmedabad/ Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad when he was trying to exit through Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. Accordingly, two independent Panchas were called for passenger's personal search and examination of his baggages under Panchnama proceedings dated 28.02.2024.

2. In presence of the Panchas on being asked about his identity by the DRI/ AIU officers, the passenger identified himself as Shri

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Paresh Pavan Chauhan and showed his Indian Passport bearing No. W3260873 and that he had travelled from Abu Dhabi to Ahmedabad on 27.02.2024 having Boarding Pass which showed that he has arrived by Etihad Flight No. EY286 (Seat No.28C) on 27.02.2024 at SVPI Airport, Ahmedabad. The DRI/ AIU officers asked Shri Paresh Pavan Chauhan if he has anything to declare, in reply to which he denied. The DRI/ AIU officers informed the passenger that he along with his accompanied officers would be conducting his personal search and detailed examination of his baggage. Thereafter, the DRI/ AIU officers asked the passenger whether he wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave his consent for personal search in front of the Superintendent of Customs.

2.1 In presence of two independent Panchas the DRI/ AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/ clothes. The passenger removed all the metallic objects such as mobile, belt etc. and kept in a plastic tray and passed through the DFMD Machine, however, no beep sound was heard indicating that there was nothing objectionable/ metallic substance on his body/ clothes. Thereafter, the said passenger, the Panchas and the officers of DRI/ AIU moved to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad alongwith the baggage of the passenger. The DRI/ AIU officers checked the baggage of the passenger, however nothing objectionable was found. The officers again asked the said

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passenger if he is having anything dutiable which is required to be declared to the Customs to which the passenger denied.

2.2 In presence of the Panchas, the AIU Officers questioned and interrogated the said passenger and upon sustained interrogation, the passenger finally confessed that he was carrying one capsule containing gold paste concealed inside his body i.e. rectum. Thereafter, the passenger Shri Paresh Pavan Chauhan was taken to the washroom in the arrival hall of Terminal 2, where he removed one capsule containing gold paste from his rectum. In presence of the Panchas it was found that the said capsule was covered with black coloured adhesive tape. The weight of the said black colour capsule was measured, which came to approximately 211.480 grams. In presence of the Panchas the DRI/ AIU officers took the photograph of the said capsule which was as under:



2.3. Thereafter, the DRI/ AIU officers called the Government Approved Valuer and informed him that black coloured capsule had been recovered from a passenger and the passenger has informed

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that it is of gold in semi solid/ paste form and hence, he was needed to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the DRI/ AIU officers that the testing of the said material is only possible at his workshop as gold has to be extracted from such semi solid/ paste form by melting it and also informed the address of his workshop. Thereafter the Panchas along with the passenger and the DRI/ AIU officers left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer located at Shree Ambica Touch, Gold Sook Complex, Near Iscon Arcade, C.G. Road, Ahmedabad.

2.4 On reaching the above referred premises, the DRI/ AIU officers introduced the Panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, the Government Approved Valuer. In presence of the Panchas, after weighing the said semi solid substance covered with black coloured adhesive tape on his weighing scale, Shri Kartikey Vasantrai Soni informed that the said one capsule containing gold paste wrapped in black coloured adhesive tape is weighing 211.480 grams. Thereafter, Shri Kartikey Vasantrai Soni led the officers, the Panchas and the passenger to the furnace. Thereafter, Shri Kartikey Vasantrai Soni started the process of converting the said semi solid material into solid gold, accordingly the white-coloured tape of the capsule was removed and brown coloured substance packed in transparent tape was obtained and put into the furnace and upon heating the said substance turned into liquid material. The said substance in liquid state was taken out of furnace, and poured in a mould and after cooling for some time, it became golden coloured solid metal in form of a bar. After completion of the procedure, the

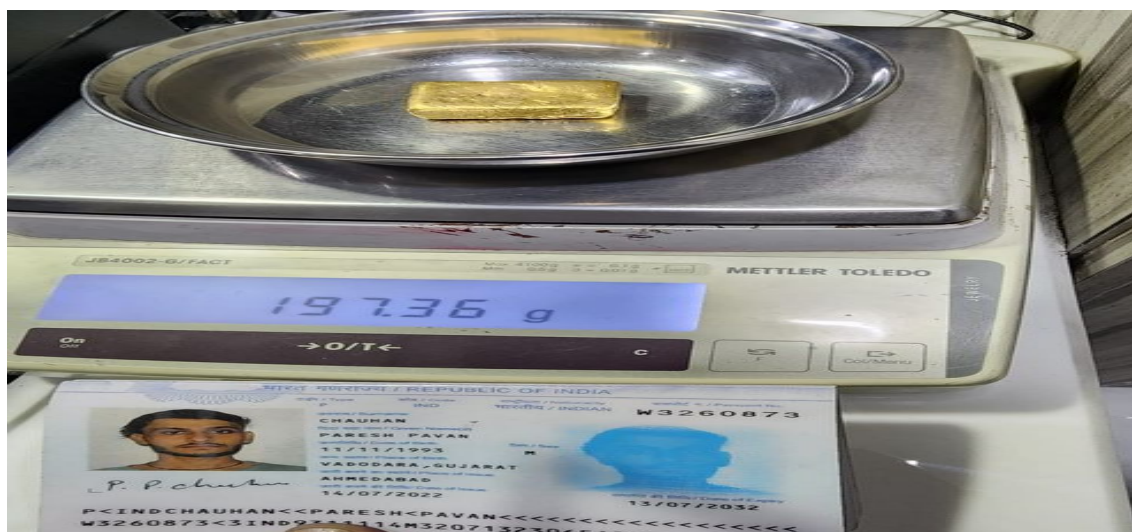
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Government Approved Valuer informed that the gold bar weighing 197.360 grams having purity 999.0 is derived from the 211.480 grams of capsule containing gold paste and chemical mix. After testing the said golden coloured metal, the Government Approved Valuer confirmed that it is of pure gold. Further, he informed that the Market Value of the said recovered gold bar having net weight of **197.360** Grams derived from Semi Solid substance Material Consisting of Gold & Chemical Mix is **Rs.12,65,472/-** (Rupees Twelve Lakhs Sixty-Five Thousand Four Hundred and Seventy-Two Only) and Tariff Value is **Rs.10,58,088/-** (Rupees Ten One Lakhs Fifty-Eight Thousand and Eighty-Eight only). The value of the gold bar was calculated as per the Notification No. 12/2024-Customs (N.T.) dated 15.02.2024 (Gold) and Notification No. 13/2024-Customs (N.T.) dated 15.02.2024 (Exchange Rate). The details of the Valuation of the said gold bar is tabulated in below table:

Sr. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1	Gold Bar	1	197.360	999.0 24Kt	12,65,472/-	10,58,088/-

2.5 in presence of the Panchas the DRI/ AIU officers placed the recovered gold bar derived from brown Semi Solid substance Material consisting of Gold & chemical mix on a table and took a photograph of it which was as under:

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2.6 Thereafter, on completion of the proceedings of the extraction of gold at the workshop the Panchas, DRI/ AIU officers and the passengers came back to the Airport in government vehicle alongwith the extracted gold bar. In presence of the Panchas asked the passenger Shri Paresh Pavan Chauhan to produce the identity proof documents and accordingly the passenger produced the same as under:

- (i) Copy of Passport No. W3260873 issued at Surat on 14.07.2022 valid up to 13.07.2032.
- (ii) Boarding pass of Etihad Airways Flight No. EY286 from Abu Dhabi to Ahmedabad dated 27.02.2024 having seat no. 28C.

3. The DRI/ AIU Officers informed the Panchas as well as the passenger, that the Gold bar of 24Kt. with purity 999.0 weighing 197.360 grams derived from Semi Solid substance material consisting of Gold & Chemical Mix having the Market Value of Rs.12,65,472/- (Rupees Twelve Lakhs Sixty Five Thousand Four Hundred and Seventy Two Only) and Tariff Value is Rs.10,58,088/- (Rupees Ten One Lakhs Fifty Eight Thousand and Eighty Eight only) recovered from the above said passenger was attempted to

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be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962. Thus, the DRI/ AIU officers informed that they have a reasonable belief that the above said gold is being attempted to be smuggled by Shri Paresh Pavan Chauhan and is liable for confiscation as per the provisions of the Customs Act, 1962 and hence the same was placed under seizure. The officers, then, in presence of the Panchas and in the presence of the said passenger placed the said 24 kt. gold bar of 999.0 purity weighing 197.360 grams recovered from Shri Paresh Pavan Chauhan in one transparent plastic box and after placing the packing list on the same, tied it with white thread and seals it with the Customs lac seal.

4. The copies of travelling documents and identity proof documents mentioned above have been taken into possession for further investigation of the case and the Panchas as well as the passenger put their dated signatures on copies of all the above-mentioned travelling documents and the passenger manifest, as a token of having seen and agreed to the same.

5. A Statement of Shri Paresh Pavan Chauhan, residing at B/6, Ambika Mil Ni Chali, Behind Sanman Hotel, Jetalpur Road, Vadodara, Gujarat, India, Pin-390007, holding an Indian Passport Number No. W3260873 was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 28.02.2024, wherein he inter alia stated that he went to Abu Dhabi on 08.02.2024; that he went to Abu Dhabi for the purpose of selling of cloths only; that the tickets were booked by the him from his money only from a travel agent; that the gold was purchased by him from Abu Dhabi; that the fund

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for gold purchase was arranged by him as loan from Bandhan Bank, Vadodara; that he had intentionally not declared the seized items which was concealed in his rectum before the Customs Authorities on his arrival at SVP International Airport Ahmedabad; that he wanted to clear it illicitly and evade payment of Customs Duty. On being asked he stated that he is fully aware that clearing gold illicitly without payment of Customs duty is an offence, under the provisions of Customs Act, 1962 and Regulations; that he agreed that he had evaded Customs duty on total 197.360 grams of 24Kt, with purity 999.0 involving Market Value of Rs.12,65,472/-(Rupees Twelve Lakhs Sixty Five Thousand Four Hundred and Seventy Two Only) and Tariff Value is Rs.10,58,088/-(Rupees Ten One Lakhs Fifty Eight Thousand and Eighty Eight only) which were recovered from his rectum.

6. The above said gold bar with a net weight of **197.360 grams** having purity of 999.0/24 Kt. involving tariff value of **Rs.10,58,088/-** (Rupees Ten One Lakhs Fifty Eight Thousand and Eighty Eight only) and market value of **Rs.12,65,472/-** (Rupees Twelve Lakhs Sixty Five Thousand Four Hundred and Seventy Two Only) recovered from the said passenger which was attempted to be smuggled into India with an intent to evade payment of Customs duty by of concealment of the gold capsule wrapped in black coloured adhesive tape containing gold in semi solid paste form in his rectum, which was in clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief the said gold bar, totally weighing 197.360 grams which was attempted to be smuggled by Shri Paresh Pavan Chauhan, is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, hence, the above said gold bar weighing 197.360 grams was

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placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 28.02.2024, issued from F. No. VIII/10-328/AIU/A/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. —*In this Act, unless the context otherwise requires, —*

(22) *"goods" includes-*

- (a) *vessels, aircrafts and vehicles;*
- (b) *stores;*
- (c) *baggage;*
- (d) *currency and negotiable instruments; and*
- (d) *any other kind of movable property;*

(3) *"baggage" includes unaccompanied baggage but does not include motor vehicles;*

(33) *"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;*

(39) *"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"*

II) Section 11A - Definitions -*In this Chapter, unless the context otherwise requires,*

(a) *"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"*

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III) Section 77 – Declaration by owner of baggage. —
The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.”

IV) Section 110 – Seizure of goods, documents and things.—(1) *If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:”*

V) Section 111 – Confiscation of improperly imported goods, etc.—*The following goods brought from a place outside India shall be liable to confiscation:-*

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;*
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;”*

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VI) Section 112 – Penalty for improper importation of goods, etc.– Any person, -

- (a) *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, or abets the doing or omission of such an act, or*
- (b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

VII) Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation.”

VIII) Section 79. Bona fide baggage exempted from duty. -

- (1) *The proper officer may, subject to any rules made under sub-section (2), pass free of duty –*

(a) *any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;*

(b) *any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.*

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.”*

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II) Section 3(3) - *All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."*

III) Section 11(1) - *No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."*

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

CONTRAVENTION AND VIOLATION OF LAWS

8. It therefore appears that:

(a) The passenger had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold bar weighing 197.360 grams having purity 999.0/ 24 Kt. by concealing in one gold capsule wrapped in black coloured adhesive tape containing gold in semi solid paste form in his rectum, totally weighing 197.360 grams and involving tariff value of **Rs.10,58,088/-** (Rupees Ten One Lakhs Fifty-Eight Thousand and Eighty-Eight only) and market value of **Rs.12,65,472/** (Rupees Twelve Lakhs Sixty-Five Thousand Four Hundred and Seventy-Two Only). The said gold was concealed in one capsule wrapped in black coloured adhesive tape containing gold in semi solid paste form in his rectum and not declared to the Customs. The passenger opted not to declare before Customs and

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denied for any declaration even though he was repeatedly suggested to declare if anything dutiable/ prohibited/ restricted are in his possession with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules, and Regulations. Therefore, the improperly imported 197.360 grams of gold bar of purity 999.0/24 Kt. by the passenger by way of concealment of one capsule wrapped in black colored adhesive tape containing gold in semi solid paste form in his rectum without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects as per Section 79 of the Customs Act, 1962. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- (b)** By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c)** The improperly imported gold by the passenger, Shri Paresh Pavan Chauhan, found concealed capsule wrapped in black coloured adhesive tape containing gold in semi solid paste form in his rectum, without declaring it to the

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Customs and now converted into gold bar is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

- (d)** Shri Paresh Pavan Chauhan, by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (e)** As per Section 123 of the Customs Act, 1962, the burden of proving that the gold bar weighing 197.360 Grams having purity 999.0/ 24 Kt. and involving tariff value **Rs.10,58,088/-** (Rupees Ten One Lakhs Fifty Eight Thousand and Eighty Eight only) and market value of **Rs.12,65,472/-**(Rupees Twelve Lakhs Sixty Five Thousand Four Hundred and Seventy Two Only) which was concealed in the capsule wrapped in black colored adhesive tape containing gold in semi solid paste form in his rectum by the passenger, totally weighing 197.360 grams without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee Shri Paresh Pavan Chauhan.

09. Accordingly, a Show Cause Notice was issued to **Shri Paresh Pavan Chauhan**, residing at B/6, Ambika Mil Ni Chali, Behind Sanman Hotel, Jetalpur Road, Vadodara, Gujarat, India, Pin-390007 holding an Indian Passport No. W3260873, as to why:

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- (i) The One Gold Bar weighing 197.360 grams having purity 999.0/24 Kt. and involving tariff value **Rs.10,58,088/-** (Rupees Ten One Lakhs Fifty Eight Thousand and Eighty Eight only) and market value of **Rs.12,65,472/-** (Rupees Twelve Lakhs Sixty Five Thousand Four Hundred and Seventy Two Only), derived from one capsule wrapped in white colored adhesive tape containing gold in semi solid paste form in the passenger's rectum was placed under seizure under Panchnama proceedings dated 28.02.2024 and Seizure Order dated 28.02.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) The packing material i.e. black coloured adhesive tape, used for packing and concealment of the above-mentioned gold bar which was attempted to be smuggled into India in violation of Section 77, Section 132 and Section 135, of the Customs Act, 1962, seized under panchnama dated 28.02.2024 and Seizure memo order dated 28.02.2024, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger Shri Paresch Pavan Chauhan holding Indian Passport No. W3260873 under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

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10. The noticee has not submitted any written submission to the Show Cause Notice issued to him.

11. The noticee was given opportunity for personal hearing on 09.12.2024. The noticee has attended the PH himself on 09.12.2024. He admitted his mistake and requested to take lenient action in the matter. He submitted that he is ready to pay the applicable duties, fine and penalty for release of gold.

Discussion and Findings:

12. I have carefully gone through the facts of this case and the submissions made by the noticee in personal hearing. I find that the noticee has attended the PH and requests for release of gold in lieu of payment of applicable duty/tax, fine and penalty, however, the noticee has not submitted any defense reply alongwith any documentary evidences which establishes his claim for the gold. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the 197.360 grams of one gold bar (derived from semi solid paste of gold and chemical mix concealed in rectum) of 24KT (999.0 purity), having Tariff Value of **Rs. 10,58,088/-** and Market Value of **Rs. 12,65,472/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 28.02.2024 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

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14. I find that the Panchnama has clearly drawn out the fact that on the basis of specific input that Shri Paresh Pavan Chauhan was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 28.02.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he is not carrying any high valued dutiable goods. Thereafter, the said passenger, the Panchas and the officers of DRI/ AIU moved to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad alongwith the baggage of the passenger. The DRI/ AIU officers checked the baggage of the passenger, however nothing objectionable was found. The officers again asked the said passenger if he is having anything dutiable which is required to be declared to the Customs to which the passenger denied. Upon sustained interrogation, the passenger finally confessed that he was carrying one capsule containing gold paste concealed inside his body i.e. rectum. Thereafter, the passenger Shri Paresh Pavan Chauhan was taken to the washroom in the arrival hall of Terminal 2, where he removed one capsule containing gold paste from his rectum. In presence of the Panchas it was found that the said capsule was covered with black coloured adhesive tape.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said One gold bar and informed that the weight of said bars is **197.360** Grams having

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purity 999.0/24KT which is derived from semi solid paste containing gold and chemical mix wrapped in black adhesive tape concealed in rectum. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said derived One gold bar is **Rs.10,58,088/-** and Market value is **Rs.12,65,472/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PC S	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold bar	1	197.360	999.0/24Kt	12,65,472/-	10,58,088/-

16. Accordingly, the said One gold bar (hidden/concealed in rectum in form of capsule containing gold and chemical mix) having purity 999.0/24 Kt. weighing 197.360 grams, recovered from noticee was seized vide Panchnama dated 28.02.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said One gold bar was smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 197.360 grams of One gold bar, having Tariff Value of **Rs.10,58,088/-** and Market value is **Rs.12,65,472/-** carried by the passenger appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 28.02.2024 under Section 108 of the Customs Act, 1962.

17. I also find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor

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controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he has clearly admitted that the said gold in form of paste was purchased by him from money which he taken as loan from bank. He clearly admitted that he was fully aware that gold was concealed in semi solid form in rectum. I find that under the statement, he admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. His intention was to evade the customs duty, so he had done this illegal carrying of gold of 24KT. in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

18. Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to

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smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said One gold bar, ('the said gold' for short), which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

19. From the facts discussed above, it is evident that noticee had carried the said gold weighing 197.360 grams, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold bar of 24KT/999.00 purity totally weighing 197.360 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold cut bars and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty.

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The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017-Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 197.360 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read

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with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 197.360 grams, having Tariff Value of Rs.10,58,088/- and Market Value of Rs.12,65,472/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 28.02.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in form of semi solid paste concealed in his rectum in form of capsule, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

21. I find that the Noticee confessed of carrying the said gold of 197.360 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962

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and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

22. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bars weighing 197.360 grams, having Tariff Value of Rs.10,58,088/- and Market Value of Rs.12,65,472/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 28.02.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bars weighing 197.360 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) &

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112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

23. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 197.360 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in form of paste containing gold and chemical mix concealed in his rectum. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

24. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. ***Further, no evidence has been produced to prove licit import of the seized gold bars (derived from semi solid paste concealed in rectum), which shows that the noticee has nothing to submit in his defense and sole purpose of the noticee to smuggle the same into India and***

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to avoid the payment of duty without declaring the same before customs authority at airport. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form paste wrapped in black adhesive tape concealed in rectum with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bars weighing 197.360 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 28.02.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment of the said gold bar concealed in form of paste in rectum. **I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.**

25. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional

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smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

26. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

27. Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the

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Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

28. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

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29. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

30. The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

"23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."

*"26. The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country.**"*

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing

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197.360 grams (derived from semi solid paste wrapped in black adhesive tape concealed in his rectum), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said One gold bar weighing 197.360 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.**

32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 197.360 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold paste concealed in his rectum from Abu Dhabi to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 197.360 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112 of the Act and I hold accordingly.

33. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of One gold bar weighing **197.360** grams having purity of 999.0 (24KT.) recovered/derived from semi solid paste containing gold

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and chemical mix wrapped in black tape and concealed in rectum, having Market value of **Rs.12,65,472/-** and Tariff Value of **Rs.10,58,088/-**, placed under seizure under Panchnama dated 28.02.2024 and seizure memo order dated 28.02.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- ii) I order absolute confiscation of packing material i.e. black coloured adhesive tape, used for packing and concealment of the above-mentioned gold bar derived from semi solid paste concealed in rectum, seized under panchnama dated 28.02.2024 and Seizure memo order dated 28.02.2024, under Section 119 of the Customs Act, 1962
- iii) I impose a penalty of **Rs. 3,00,000/- (Rupees Three Lakh Only)** on **Shri Paresh Pavan Chauhan** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-135/SVPIA-A/O&A/HQ/2024-25 dated 11.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-135/SVPIA-A/O&A/HQ/2024-25 Date:23.12.2024
DIN: 20241271MN000000DD8E

BY SPEED POST AD

To,

OIO No:206/ADC/SRV/O&A/2024-25
F. No. VIII/10-135/SVPIA-A/O&A/HQ/2024-25

Shri Paresh Pavan Chauhan,
B/6, Ambika Mil Ni Chali,
Behind Sanman Hotel, Jetalpur Road,
Vadodara, Gujarat, India, Pin-390007

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusamd@gov.in
6. Guard File.