

OIO No: 202/ADC/SRV/O&A/2024-25  
F. No: VIII/10-94/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](mailto:cus-ahmd-adj@gov.in) फैक्स: (079) 2754 2343

**DIN:20241271MN000051035D**

**PREAMBLE**

A	फाइलसंख्या / File No.	:	VIII/10-94/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-94/SVPIA-A/O&A/HQ/2024-25 dated 18.06.2024.
C	मूलआदेशसंख्या / Order-In-Original No.	:	<b>202/ADC/SRV/O&amp;A/2024-25</b>
D	आदेशतिथि / Date of Order-In-Original	:	<b>19.12.2024</b>
E	जारीकरनेकीतारीख / Date of Issue	:	<b>19.12.2024</b>
F	द्वारापारित / Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<b>Shri Mahmadosen Ikbal Kosadiya,</b> Metar Faliyu, At. PO Tadkeshwar, Tal, Mandavi, Surat Rural, Pin-394170, Gujarat.
(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।		
(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;		

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(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 Mahmadosen Ikbal Kosadiya**, aged 31 years (DOB 10.02.1993) son of Shri Ikbal Musa Kosadiya holding Indian Passport No. M9343243 address (as per passport): Metar Faliyu, At PO Tadkeshwar, Tal. Mandvi, Surat Rural, Pin-394170 arrived from Jeddah to Ahmedabad on 19.03.2024 by Flight No. 6E92 at SVPI Airport, Ahmedabad around 12.22 hours approx. On the basis of passenger profiling and doubt that this male passenger was carrying dutiable/ contraband goods, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration to the Customs, under the panchnama proceedings dated 19.03.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggage.

2. The pax was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. Not being satisfied with the reply of the suspected passenger, the officer asked him to pass through the Door

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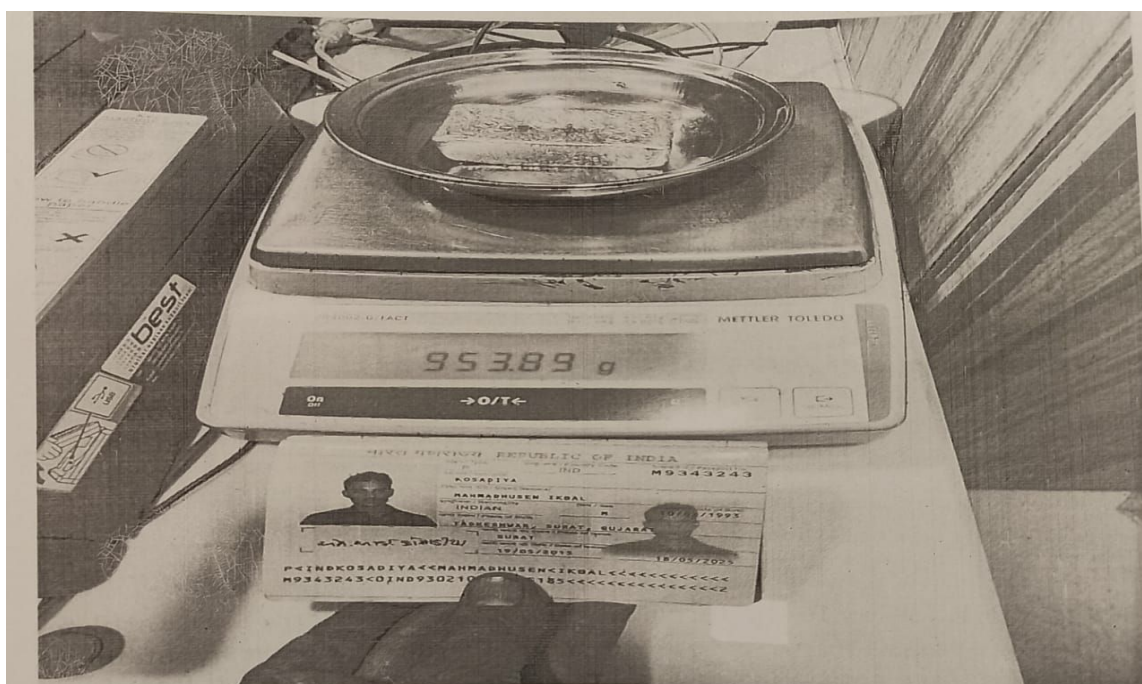
Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger was passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival Hall of Terminal 2 building; however, no beep sound was heard.

2.1 The said passenger was carrying one trolley bag and one backpack. All the bags were scanned in the X-Ray Baggage Scanning Machine (XBIS) located near the green channel counter at terminal 2 of SVPI Ahmedabad. On checking his baggage nothing objectionable was found. Thereafter, the passenger was taken to the AIU Office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad. On sustained interrogation, the passenger asked whether he has concealed any high value dutiable goods, then the passenger confessed that he had three capsules consisting of gold and chemical mix paste concealed in his body i.e. rectum. Then the officer took him to the washroom and asked to remove it, the same was removed and handed over to the AIU Officer.

2.2 The said material in paste form needed to be confirmed and the purity as well as weight of the paste needed to be ascertained by a Government Approved Valuer. The AIU officer called the Government Approved Valuer for testing of said packets. The Government Approved Valuer informed the AIU officer that the testing of the said material was only possible at his workshop as gold has to be extracted from such paste form by melting it and also informed the address of his workshop and requested the AIU officers to come for testing and valuation. Thereafter, at around 3.20 Hrs. of



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2.3 After testing the said bar, the Government Approved Valuer confirmed vide his Valuation Certificate No. 1568/2024-25 dated 19.03.2024 that it was pure gold. Further, he informed that as per the total Market Value of the said recovered gold bar **953.890** grams derived from the paste substance consisting of Gold & Chemical Mix, total having net weight of gold 953.890 grams, purity 999.0, Market Value at **Rs.64,37,804/-** (Rupees Sixty-Four Lac Thirty-Seven Thousand Eight Hundred and Four only) and Tariff Value is **Rs.55,60,225/-** (Rupees Fifty-Five Lac Sixty Thousand Two Hundred and Twenty-Five Only). The value of the gold bar has been calculated as per the Notification No. 22/2024-Customs (N.T.) dated 15.03.2024 (gold) and Notification No. 18/2024-Customs (N.T.) dated 07.03.2024 (exchange rate).

Sr. No.	Details of Items	Pieces	Purity	Net Weight (in Grams)	Market Value (In Rs.)	Tariff Value (In Rs.)
1	Gold Bar	01	24kt./999.0	953.890	64,37,804/-	55,60,225/-

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**3.** A statement of the passenger Shri Mahmadosen Iqbal Kosadiya, dated 20.03.2024 was recorded under Section 108 of the Customs Act, 1962 wherein he stated that –

- i. he is working in Ekta Transport service as a labour and his mobile number is 7227998609;
- ii. His monthly income is Rs.70,000/- (approx.).
- iii. On being asked regarding his overseas travels, he stated that he went to Jeddah for the purpose of Umrah and came to SVPI International Airport, Ahmedabad at approx. 12.22 AM on 19.03.2024 by Indigo Airlines Flight No.6E92, after immigration checks I picked up my checked in bag and walked towards the exit gates through the Green Channel after crossing the Customs counter at the red channel. At the time of taking exit the Customs officers intercepted me and repeatedly asked about carrying any high valued item. I confessed/admitted that I have concealed three capsules consisting of gold and chemical mix paste in my body i.e. rectum.
- iv. On being asked regarding the gold paste concealed in the rectum, he stated that he went to visit Jeddah, Saudi Arabia for Umrah. Also stated that he had visited abroad many times. This time, one unknown person met me and gave this gold to me to handover some unknown person at SVPI Airport, Ahmedabad and for this transaction he will pay Rs.15,000/- and free tickets for Umrah. The tickets were booked by the unknown person who gave me this gold. The gold was not purchased by him He is only the carrier.
- v. On being asked why he had opted for green channel without declaring the dutiable goods, he stated that in the greed of quick money he did not make any declaration at Ahmedabad Airport regarding concealment of gold done by him. He had full confidence that the gold concealed in the body i.e. rectum could not be found by Customs. Hence, he had opted for green channel without the declaration with an intent to clear the gold to evade the payment of Customs Duty.

**4.** In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as

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revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold amounting to **Rs.64,37,804/-** totally weighing **953.890** grams recovered from **Shri Mahmadosen Ikbal Kosadiya** is more than Rs.50,00,000/-, hence this case is fit for arrest of the said passenger under Section 104 of the Customs Act, 1962.

The provisions of Section 104 (6) & (7) of the Customs Act, 1962 are reproduced as under:-

*(6) Notwithstanding anything contained in the Code of [(6) Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to –*

*(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or*

*(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or*

*(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or*

*(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.*

*(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.*

**5.** From the above, it is clear that cases other than those mentioned in 104 (6) are bailable offences. In the instant case, tariff value of the gold weighing **953.890** grams is **Rs.55,60,225/-** and Market value is **Rs.64,37,804/-**, therefore, the offence committed

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by the above passenger was bailable offence as the value of goods was not more than Rs.1 Crore. Therefore, Superintendent of Customs (AIU), SVPI Airport, Ahmedabad was authorized to arrest **Shri Mahmudusen Ikbal Kosadiya** under Section 104 of the Customs Act, 1962 and after arresting the passenger, he was offered bail subject to conditions in terms of Circular No. 38/2013-Cus dated 17.09.2013. The passenger accepted the bail conditions, deposited bail bond amount of Rs.96,000/- paid by Foil No. 39713 dated 20.03.2024 and released on bail.

**6.** In view of the above, 953.890 grams Gold Bar had been placed under Seizure on under panchnama proceedings dated 19.03.2024 (RUD-01) and Seizure Memo dated 19.03.2024 on the reasonable ground that the same are liable for confiscation under the Customs Act, 1962 in as much as the said Act was an attempt to smuggle the said goods inside India illegally. The seized goods i.e. one gold bar weighing 953.890 grams having purity 999.0 (24 Kt.) recovered/ derived from the paste comprising of Gold and chemical Mix totally weighing 1050.90 grams had been handed over to the warehouse in-charge for safe keeping vide E. No. 6045 dated 19.03.2024.

## **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;*

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(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;"*

**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 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 bonafide 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.*

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**V) "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:"*

**VI) "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;"*

**VII) "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.*

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**VIII) "Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation."**

**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."**

**II) "Section 3(3) - All goods to which any Order under subsection (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 law:**

**8.** It therefore appears that:

- (a) The passenger viz. Shri Mahmadosen Iqbal Kosadiya had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had

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improperly imported gold weighing 953.890 grams having purity 999.0/24 Kt. derived from semi solid gold paste weighing grams and having Market value of Rs.64,37,804/- (Rupees Sixty-Four Lac Thirty-Seven Thousand Eight Hundred and Four only) and Tariff Value is Rs.55,60,225/- (Rupees Fifty-Five Lac Sixty Thousand Two Hundred and Twenty-Five Only). The said semi solid gold paste was concealed in his rectum and not declared to the Customs. The passenger opted for the green channel to exit the Airport with the deliberate intention to evade the payment of Customs Duty and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 953.890 grams of purity 999.0/24 Kt. by Shri Mahmadsen Ikbal Kosadiya by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. 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

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Regulation 3 of Customs Baggage Declaration Regulations, 2013.

- (c) The improperly imported gold by the passenger viz. Shri Mahmadosen Iqbal Kosadiya, consisting gold and chemical mix paste concealed in his body, i.e. rectum, without declaring it to the Customs 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 Mahmadosen Iqbal Kosadiya 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 weighs 953.890 grams of purity 999.0/24 Kt. and having Market value of Rs.64,37,804/- (Rupees Sixty Four Lac Thirty Seven Thousand Eight Hundred and Four only) and Tariff Value is Rs.55,60,225/- (Rupees Fifty Five Lac Sixty Thousand Two Hundred and Twenty Five Only), derived from semi solid gold paste weighing 953.890 grams in the form of semi-solid gold paste without declaring it to the Customs, is not smuggled goods, is upon the passenger Shri Mahmadosen Iqbal Kosadiya.

**09.** Accordingly, a Show Cause Notice was issued to **Shri Mahmadosen Iqbal Kosadiya** Son of Shri Iqbal Musa Kosadiya, holding an Indian Passport Number No. M934343 residing at Metar

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Faliyu, At PO Tadkeshwar, Tal. Mandvi, Surat Rural, Pin-394170, as to why:

- (i) One gold bar weighing **953.890** grams having purity of 999.0 (24 Kt.) recovered/ derived from the paste consisting of Gold and chemical Mix and its Market Value at **Rs.64,37,804/-** (Rupees Sixty Four Lac Thirty Seven Thousand Eight Hundred and Four only) and Tariff Value is **Rs.55,60,225/-** (Rupees Fifty Five Lac Sixty Thousand Two Hundred and Twenty Five Only), which has been calculated as per the Notification No. 22/2024-Customs (N.T.) dated 15.03.2024 (gold) and Notification No. 18/2024- Customs (N.T.) dated 07.03.2024 (exchange rate), should not be confiscated under the provisions of Sections 111(d), 111 (f), 111(i), 111 (j) and 111 (l) and 111(m) of the Customs Act, 1962; and
- (ii) Penalty should not be imposed upon the passenger under Section 112 of the Customs Act, 1962.

**Defense reply and record of personal hearing:**

**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 14.11.2024, 28.11.2024 & 16.12.2024 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense. I am of the

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opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

### **Discussion and Findings:**

**12.** I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

**13.** In the instant case, I find that the main issue to be decided is whether the **953.890** grams of gold bar, derived from semi solid gold paste in 03 capsules containing gold and chemical mix in semi-solid paste concealed in rectum having **tariff value of Rs.55,60,225/-** and **Rs.64,37,804/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 20.03.2024, 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 noticee is liable for penal action under the provisions of Section 112 of the Act.

**14.** I find that the panchnama dated 20.03.2024 clearly draws out the fact that the noticee, who arrived from Jeddah in Indigo, Flight No. 6E-92(Seat No. 11C) was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on

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the basis of passenger profiling, when he was trying to exit through green channel of the Arrival Hall of Terminal 2 of SVPI Airport, without making any declaration to the Customs. While the noticee passed through the Door Frame Metal Detector (DFMD) Machine no beep sound was heard which indicated there was no objectionable/dutiable substance on his body/clothes. After thorough interrogation by the officers, the noticee accepted that he is hiding three capsules containing semi solid substance consisting of Gold and Chemical mix concealed inside his rectum. The noticee handed over the 03 capsules containing semi solid substance consisting of Gold and Chemical mix after returned from washroom. It is on record that the noticee had admitted that he was carrying the gold in paste form concealed in his rectum in capsule form, with intent to smuggle into India without declaring before Customs Officers. It is also on record that Government approved Valuer had tested and converted said capsules in Gold Bar with certification that the gold is of 24 kt and 999.0 purity, weighing 953.890 Grams. The Tariff Value of said Gold bar weight 953.890 grams having purity 999.0/24 Kt. derived from 1050.92 grams of 03 capsules containing semi solid paste consisting of gold and chemical mix concealed in rectum, was **Rs.55,60,225/-** and market Value of **Rs.64,37,804/-**, which was placed under seizure under Panchnama dated 20.03.2024, in the presence of the noticee and independent panch witnesses.

**15.** I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the

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presence of the panchas as well as the passenger/noticee. In fact, in his statement dated 20.03.2024, he has clearly admitted that he had travelled from Jeddah to Ahmedabad by Indigo Flight No. 6E-92 dated 20.03.2024 carrying gold paste in form of capsule concealed in his rectum. He admitted that his to and fro tickets were booked by the person who gave him gold at Jeddah and the gold was purchased by someone else and handed over to him at his hotel of stay at Jeddah and he had intentionally not declared the substance containing foreign origin gold before the Customs authorities as he wanted to clear the same illicitly and evade payment of customs duty; that he was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016.

**16.** I find that the noticee has clearly accepted that he had not declared the gold in paste form concealed in his rectum, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that 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

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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.

**17.** From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 953.890 gms., retrieved from the gold paste in form of capsules concealed by the noticee in his rectum, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 953.890 gms., seized under panchnama dated 20.03.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By secreting the gold in form of capsules having gold and chemical mix concealed in his rectum and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**18.** 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

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under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended 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 953.890 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 with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**19.** It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity weighing 953.890 gms., retrieved from gold paste concealed in rectum in form of capsules, having total Tariff Value of Rs.55,60,225/- and market Value of Rs.64,37,804/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 20.03.2024 liable to confiscation under the provisions of Sections

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111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in rectum and without declaring to the Customs on arrival in India, it is observed that the passenger/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 to the Customs on his arrival at the 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 were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**20.** I find that the passenger/noticee has confessed of carrying gold of 24 kt having 999.0 purity, weighing 953.890 grams and attempted to remove the said gold by concealing the gold in his rectum and attempted to remove the said gold from the Customs 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 Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. 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

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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 noticee 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.

**21.** 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 records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. One Gold Bar weighing 953.890 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bar Rs.64,37,804/- and Tariff Value Rs.55,60,225/-, retrieved from the gold paste concealed in rectum, were placed under seizure vide panchnama dated 20.03.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, he attempted to remove the gold by concealing in the rectum and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) and Section 112(b) of Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

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**22.** I further find that 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 goods, non-fulfillment 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 the same was not eligible passenger to bring or import gold into India in baggage. The gold was recovered in a manner concealed in rectum in form of capsules and kept undeclared with an intention to smuggle the same and evade payment of customs duty. 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.

**23.** In view of the above discussions, I hold that the gold weighing 953.890 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner for extraneous consideration. In the instant case, 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.

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**24.** In the case of Samynathan Murugesan [ 2009 (247) ELT 21 (Mad)], the Hon'ble 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 has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**25.** Further I find that in a 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 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)."

**26.** The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)] has held-

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*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.*

**27.** 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 7-10-2019 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 10-5-1993 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".

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**28.** 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."*

24.....

**25.....**

*"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.**"*

**29.** Given the facts of the present case before me and the judgements and rulings cited above, 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. 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 his rectum with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 953.890 grams of 24Kt./999.0 purity in form of gold bar, derived from the gold and chemical paste concealed in

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rectum in form of capsules is therefore, liable to be **confiscated absolutely**. I therefore hold in unequivocal terms that the gold weighing 953.890 grams of 24Kt./999.0 purity, 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 Act.

**30.** I further find that the passenger had involved himself in the act of smuggling of gold weighing 953.890 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules. Further, it is fact that the passenger/noticee has travelled with gold weighing 953.890 grams of 24Kt./999.0 purity, retrieved from paste concealed in his rectum from Jeddah 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 thereunder. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Sections 112 of the Customs Act, 1962 and I hold accordingly.

**31.** Accordingly, I pass the following Order:

### **O R D E R**

- i.)** I order absolute confiscation of the One Gold Bar weighing 953.890 grams having Market Value at **Rs.64,37,804/-** (Rupees Sixty Four Lakh Thirty Seven Thousand Eight Hundred and Four only) and Tariff Value is **Rs.55,60,225/-** (Rupees Fifty Five Lakh Sixty

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Thousand Two Hundred and Twenty Five Only) derived from semi solid gold paste in three capsules concealed inside rectum by the passenger/noticee Shri Mahmadosen Iqbal Kosadiya and placed under seizure under panchnama dated 20.03.2024 and seizure memo order dated 20.03.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- ii.) I impose a penalty of **Rs. 16,00,000/-** (Rupees Sixteen Lakh Only) on Shri Mahmadosen Iqbal Kosadiya under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

**32.** Accordingly, the Show Cause Notice No. VIII/10-94/SVPIA-A/O&A/HQ/2024-25 dated 18.06.2024 stands disposed of.

**(Shree Ram Vishnoi)**  
Additional Commissioner  
Customs, Ahmedabad

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DIN: **20241271MN000051035D**

By SPEED POST A.D.

To,  
**Shri Mahmadosen Iqbal Kosadiya,**  
Metar Faliyu, At. PO Tadkeshwar,  
Tal,Mandavi, Surat Rural, Pin-394170,  
Gujarat

Copy to :-

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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.