प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन", पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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DIN: 20250871MN0000555CBA

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/26-18/AIU/CUS/2024-25
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	VIII/26-18/AIU/CUS/2024-25 dated 07.03.3025
C	मूल आदेश संख्या/ Order-In-Original No.	:	**25/ADC/SRV/SRT-AIRPT/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**28.08.2025**
E	जारी करने की तारीख/ Date of Issue	:	**28.08.2025**
F	द्वारा पारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner
G	आयातक/यात्री का नाम और पता / Name and Address of Importer / Passenger	:	1. Ms. Safa Abadur Rehman Sayed, W/o Mr. Abadur Rehman Sayed, 1007, 10th Floor, A Wing, Habib Palace, 2nd Sankli Street, Byculla, Mumbai-400008, Maharashtra 2. Mrs. Priti Yogesh Arya, A/303, Summeru Silver Leaf Apt., Near Pal Lake, Pal, Surat 3. Mr. Viral H. Degarwala S/o Shri Harishkumar Degarwala Socorro Gardens, Brunia B-402, Ambrina, near Datta Mandir Succor, Porvorim, Goa-403501
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे 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 मंज़िल, 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;		
(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:

Ms. Safa Abadur Rehman Sayed, aged 23 years, W/o Shri Abadur Rehman Sayed, residing at Irfan Palace, Flat No. 305, 3rd floor, 2nd Sankhli Street, Byculla, Mumbai, PIN-400008, Maharashtra, India, having passport No. X7336926 arrived at Surat International Airport on 08.06.2024 from Dubai in Indigo Flight No. 6E1508 on 08.06.2024.

2. Whereas, based on information gathered and passenger profiling, one passenger, Safa Abadur Rehman Sayed, was suspected to be carrying high value dutiable/prohibited goods in-person or in the baggage, who was intercepted by the officers of the Air Intelligence Unit (AIU) (hereinafter referred to as the "officers"), in the presence of panchas under Panchnama proceedings dated 08/09.06.2024, near the green channel of the Arrival Hall of International Terminal of International Airport, Surat. The passenger was found to be carrying two pieces of baggage, viz, one grey trolley bag and one hand purse. The officers asked the passenger whether she had anything to declare, which the passenger denied. The officers informed the passenger that they would conduct a personal search and a detailed examination of her baggage. The officers offered their search to the passenger, but the passenger politely denied it. Thereafter, the officers asked the passenger whether she wanted to be searched in the presence of the Executive Magistrate or the Superintendent (Gazetted Officer) of Customs. In reply, the passenger consented to be searched before the Superintendent of Customs. Thereafter, the officers and the passenger entered the room meant for Baby Care, which was located in the arrival area. Meanwhile, during frisking and scanning of the passenger with a hand-held metal detector, a beep sound was heard when the hand-held metal detector was passed over the waist area of the passenger. In the course of frisking and physical search of the passenger, the waist area of the black colour jeans worn by the passenger was found to be abnormally hard and heavy in comparison to other parts of the pants. Accordingly, the passenger was asked to change her pants, and then the said black colour jeans were passed through the XBIS scanner machine located in the arrival hall of Surat International Airport. While scanning, a dark image, indicating the presence of some metallic object in the waist area of the pants that the passenger was wearing, was seen in the scanner machine. Thereafter, the said pant was cut with the scissors at the waist area, whereupon a thick paper strip was recovered, which appeared to contain some paste. The gross weight of the said strip was found to be 455.08 gms, and appeared to be gold in paste form.

3. Afterwards, the officers passed the luggage carried by her through the XBIS Scanner machine and thoroughly checked it after withdrawing its contents; however, nothing objectionable or prohibited goods were found.

4. The customs officer, panchas, and the passenger proceeded to Shri Ambica Touch Refinery to melt the paste-like material in the paper strip recovered from the passenger's pants. At Shri Ambica Touch Refinery, the said material was melted in the furnace, whereupon, a yellow colour metal, which appeared to be gold, in nugget form, was obtained, and some ashes remained in the process. Thereafter, the 02 gold nuggets so obtained were kept in a pouch, packed in a green envelope and sealed in such a manner that it could not be tampered with. Further, upon arrival at the hall of Surat International Airport, Shri Vikasraj Juneja, Government Approved Valuer, was contacted by the officers who came to the Customs office at Surat International Airport. The customs officer informed him about the recovery of a metal, which appeared to be gold, from the passenger and requested him to

test and evaluate the said material. After examining and weighing the said 02 nuggets on his weighing scale, Shri Vikasraj Juneja certified the same as a 24 kt gold weighing 360.000 gms. The valuer certified that the market value of the 02 gold nuggets was Rs. 26,44,200/- (Rupees Twenty-Six Lakh Forty-Four Thousand Two Hundred only) and its tariff value was of Rs. 22,94,309/- (Rupees Twenty-Two Lakh Ninety-Four Thousand Three Hundred Nine only) as per Notification No. 38/2024-Customs-(NT) dated 31.05.2024 and 40/2024 – Customs (NT) dated 06.06.2024. Thereafter, Shri Vikasraj Juneja, Government Approved Valuer, issued a valuation certificate dated 09.06.2024/04. The Customs officers again sealed the 02 gold nuggets weighing 360.000 gms and handed them over to the warehouse in charge, Surat International Airport, Surat.

5. Whereas, the above mentioned 24 kt gold nuggets weighing 360.000 gms having market value Rs. 26,44,200/- (Rupees Twenty-Six Lakh Forty-Four Thousand Two Hundred only) and its Tariff value was Rs. 22,94,309/- (Rupees Twenty Two Lakh Ninety Four Thousand Three Hundred Nine only) recovered from the passenger, Ms. Safa Abadur Rehman Sayed, along with one black colour jeans pant used for concealment of gold item, were placed under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 09.06.2024 under Panchnama proceedings dated 08/09.06.2024, on a reasonable belief that the said gold was smuggled into India and were liable for confiscation under provisions of the Customs Act, 1962.

6. The following documents were withdrawn from the Passenger for further investigation:

- Copy of Boarding Pass, from Dubai to Surat, of Indigo Flight No. 6E1508 dated 08.06.2024, Seat No. 10A, PNR No. OSY1MF.

- Copy of Passport No. X7336926 issued on 30.03.2023 at Mumbai, valid up to 29.03.2033. Her address as per passport was Irfan Palace, Plot No.305, 3rd floor, 2nd Sankhli Street, Byculla, Mumbai, Pin-400008, Maharashtra, India.

7. Whereas, a statement of Ms. Safa Abadur Rehman Sayed was recorded on 09.06.2024 under the provision of Section 108 of the Customs Act, 1962, wherein she inter alia stated:

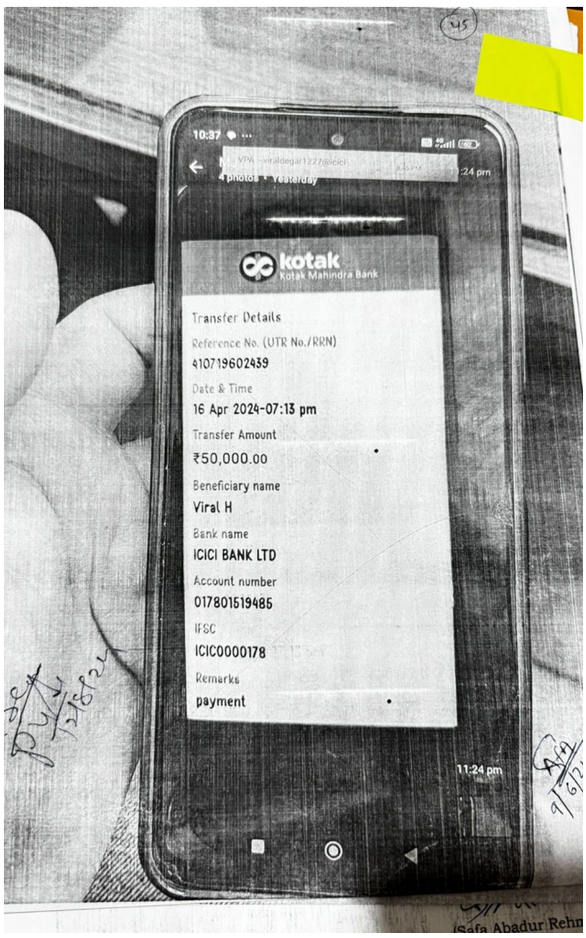
- that in India she was residing at 1007, 10th Floor, A Wing, Habib Palace, 2nd Sankli Street, Byculla, Mumbai-400008, Maharashtra, with her husband; that she was in the business of ladies' dresses; that she had studied till 12th; that she could read, write and understand Hindi and English Languages.

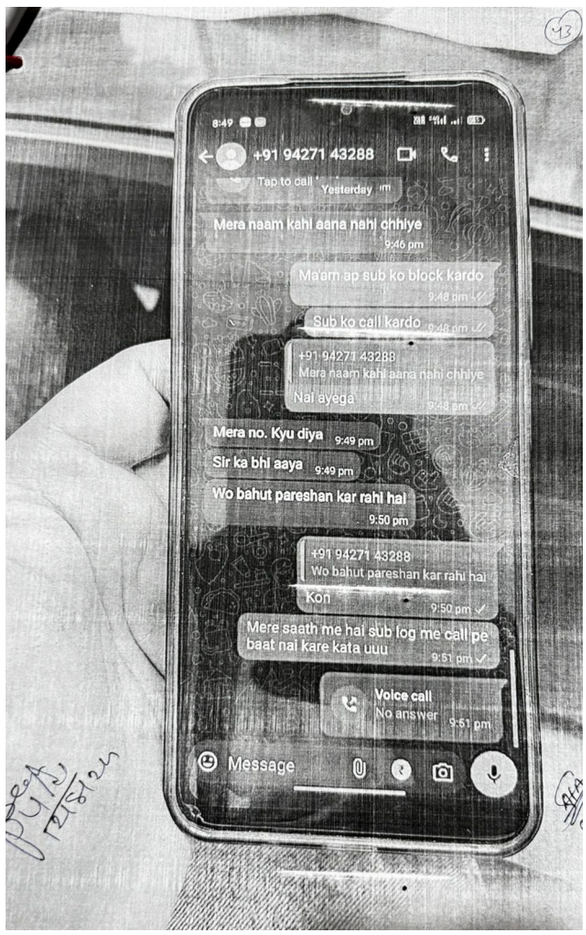
- that she was shown and explained the panchnama dated 08/09.06.2024 drawn at International Airport, Surat by the officers of Customs AIU, International Airport, Surat, which was in English and after understanding the same, she put her dated signature on the panchnama in token of acceptance of the facts stated therein.

- that she had visited to Dubai/Sharjah three times earlier; she had gone to Dubai on 06.06.2024 from Chhatrapati Shivaji International Airport, Mumbai; that the gold nugget of 24 kt recovered from her possession belonged to her and she was the owner of the same; that her husband Mr. Asif Shaikh had handed over the jeans pant containing the gold paste to her

at Dubai; that she did not know about the purchase of the gold; that the amount was from the savings of her family; that her husband informed that he had a setting with a Custom officer at Surat; that a lady Customs officer would help her named Mrs. Priti Arya at Surat Airport; that her number was 9427143288 for which she submitted a screenshot of WhatsApp chat; that she was aware that import of Gold without payment of Customs duty was an offence, but she had intention to get some monetary benefit on account of such activity. Therefore, she tried to smuggle the gold into the country; that as she was to smuggle the gold by concealing the same, she did not declare the goods brought by her before any Customs Officer; that she had to face the consequences as prescribed under the Customs Law.

- that after clearing the immigration procedures, she collected her baggage and during checkout, the Customs officials intercepted her, and further procedures as stated in Panchnama dated 08/09.06.2024 were carried out.





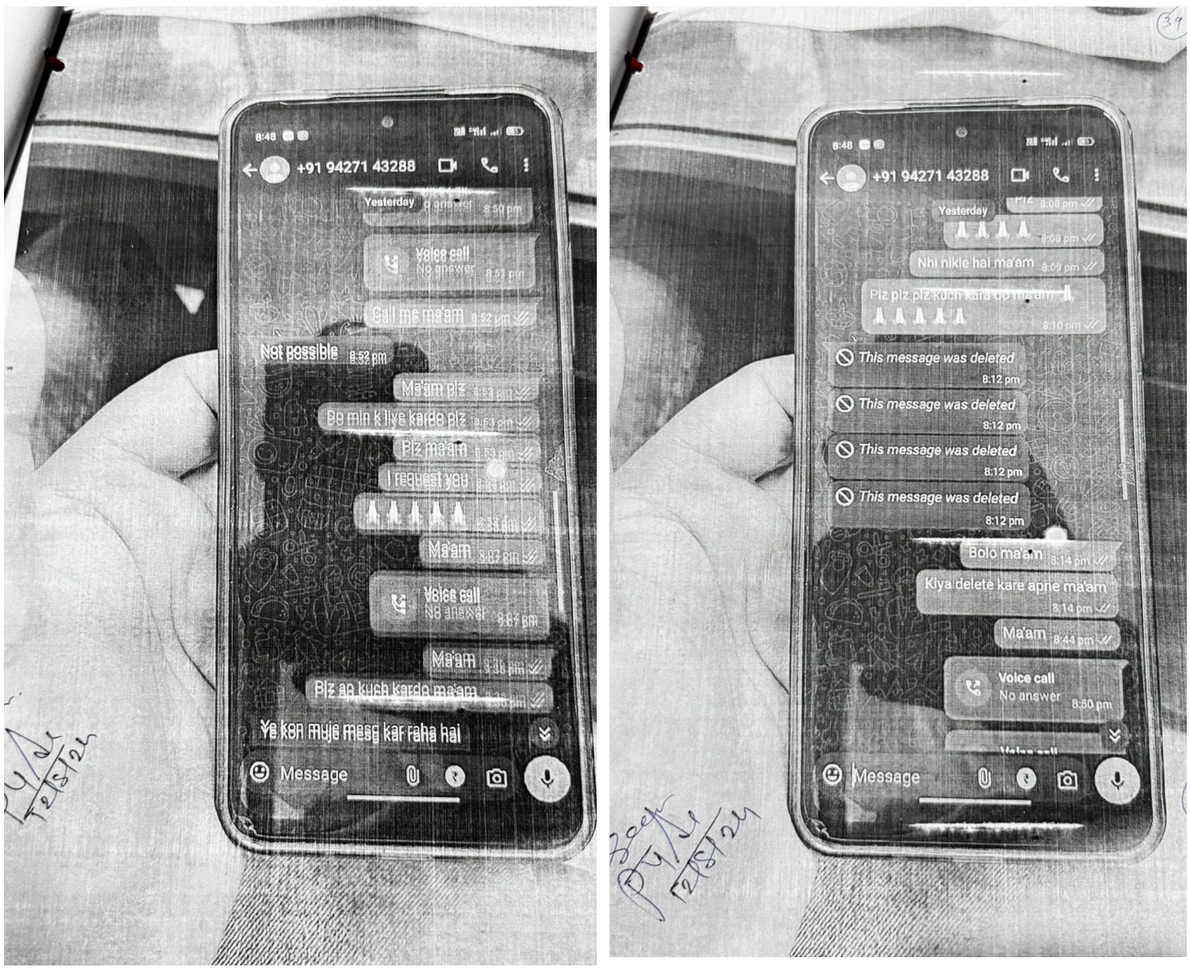


Fig: WhatsApp chat images submitted by the passenger during the statement dated 09.06.2024

7.1 Whereas the WhatsApp images submitted by the passenger during her statement dated 09.06.2024, it appeared that chatting with mobile number 9427143288 was going on at the material time and was available to the passenger. Also, it was learnt that the mobile number 9427143288, provided by the passenger, belonged to Mrs. Priti Arya (hereinafter referred to as "Noticee No. 2/ Mrs. Arya), who was posted at Surat International Airport, Surat as Additional staff. Further, account number 017801519485 of ICICI Bank, with the account holder's name Mr. Viral H Degarwala (hereinafter referred to as "Noticee No. 3/ Mr. Viral), was also available to the passenger at the time of seizure proceedings. Accordingly, summons were issued to Mrs. Priti Arya and Mr. Viral Degarwala to give their statement and to produce documents.

8. Whereas, the statement of Mrs. Priti Yogesh Arya was recorded on 12.08.2024 under the provision of Section 108 of the Customs Act, 1962, wherein she inter alia stated:

- that she was working as Superintendent, Customs Division, Surat; that she was shown and explained the panchnama dated 08/09.06.2024 drawn at International Airport, Surat by the officers of Customs-AIU, International Airport, Surat in the case of Ms. Safa Abadur Rehman Sayed and others which was in English and after understanding the same she put her dated signature on the panchnama in token of acceptance of the facts stated therein; that she was shown the statements dated 09.06.2024 of Ms. Safa Abadur Rehman Sayed recorded at International Airport, Surat by the officers of Customs-AIU, International Airport, Surat which was in English

and after perusing the same she put her dated signature on the statement in token of having read and understood the same.

- that the mobile number 9427143288 reflecting in the WhatsApp chats submitted by the passenger belongs to her; that she did not know the person Mr. Mirza as well as Ms. Safa Abadur Rehman Sayed; that she knew one person Mr. Muzammil, who was friend of her sister's son, Mr. Viral, since 2019; that she was chatting with Mr. Muzammil on his mobile number +919833007869; that Mr. Muzammil resided at somewhere in Meera Road, Mumbai; that she did not know complete address of Mr. Muzammil; that she was not aware about gold being brought by Ms. Safa Abadur Rehman Sayed; that Mr. Muzammil called her on her WhatsApp number around 7.00 PM on 09.06.2024 and asked her whether anything had happened at Airport as three of his passengers were coming to Surat from Dubai; that in the chat she had just asked whether his passengers (three ladies) had been cleared or not; that he requested her to see if she could be any help in releasing these three ladies to which she had stated in the chat that it was not possible; that as soon as she found that Mr. Muzammil was a suspected person and connected with some illegal activity and hence she deleted those chats and also his mobile number from her phone; that she did not know whether Mr. Muzammil and Mr. Atif were the partners of Mr. Mirza, who stays in Dubai; that she knows Mr. Muzammil as he was the friend of her sister's son and also same age as her sister's son.

- that the ICICI bank account number 017801519485, the screenshot of which had been perused by her, on which payments had been made by the accused persons (whose gold was seized at Surat Airport on 09.06.2024) through Mr. Muzammil belonged to Mr. Viral, who was the son of her sister and lived in Goa at Socorro Gardens, Brunia B-402, Ambrina, near Datta Mandir Succor, Porvorim, Goa-403501; that Mr. Muzammil and Mr. Viral were friends since 2019 and Mr. Muzammil had given him the money for the business of Airbnb, which Mr. Viral had started at Goa in January-2024; that she had also given Rs. 27 Lakh to Mr. Viral as his firm was closed in September, 2023 and he was starting his new business of Airbnb; that she broke her 3 FDs of Rs. 5 Lakh each and also broke her 2 RDs of Rs. 25000/- each per month, which came to Rs. 6.20 Lakh approx. each, that all those transactions were done from her salary account;

- that she had not taken any money, nor had she made any dealings with any person named as Mr. Mirza in particular to the above case of Ms. Safa Abadur Rehman Sayed and others; that she had given her mobile number to many persons for giving her information regarding smugglers, so many people might have her number.

8.1 Whereas, a further statement of Mrs. Priti Yogesh Arya was recorded on 05.11.2024 under the provision of Section 108 of the Customs Act, 1962, wherein she inter alia stated:

- that she was residing at A/303, Summeru Silver Leaf Apt., Near Pal Lake, Pal, Surat; that she was then Superintendent, Customs, Surat Division (under suspension since 14.06.2024); that she was shown her statement dated 13.06.2024 & 12.08.2024 and she put her signature on the same in token of seen and agreeing with the content of the same; that she submitted statement of her salary account number 10328924234 (State Bank of India)

showing the transactions were made to Mr. Viral during 16.05.2024 to 24.05.2024 due to urgent need of money by him to start his business; that no deposits were made by Mr. Viral to my account which was clearly reflecting in my salary account.

9. Whereas, a statement of Mr. Viral H. Degarwala, S/o Shri Harishkumar Degarwala was recorded on 20.07.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was residing at Socorro Gardens, Brunia B-402, Ambrina, near Datta Mandir Succor, Porvorim, Goa-403501 with his wife; that earlier he was a Growth hacker and worked as a freelancer; that since last 6-8 months, he was in the process of starting his own business of Airbnb; that he also invested money in share market and F & O trading, by which he earned some money for his livelihood; that his business address was same as residence address; that he carry out his business from his home at Goa; that he had studied till M. Tech (Wireless Communications);

- that he was shown and explained the panchnama dated 08/09.06.2024 drawn at International Airport, Surat by the officers of Customs-AIU, International Airport, Surat in the case booked against Ms. Safa Abadur Rehman Sayed (Z7567373), Ms. Alfiya Javed Ahmed Ansari (W6989061) and Ms. Safa Abadur Rehman Sayer (X7336926) which was in English and after understanding the same he put his dated signature on the panchnama in token of acceptance of the facts stated therein; that he did not know any of the passengers;

- that he was shown the statement of Mrs. Priti Arya dated 13.06.2024 recorded under Section 108 of the Customs Act, 1962; that he put his dated signature after reading and understanding the facts mentioned therein; that Mrs. Priti Arya was his aunt (mother's sister);

- that he knew Mr. Muzammil since the year 2019 and he was his friend; that he used to do a job in Mumbai and in course of his job, he came in contact with Mr. Muzammil; that he did not know his full name; that once he went to see a flat in Mumbai and Mr. Muzammil was a broker, since then they became friends; that he did not have the mobile number of Mr. Muzammil; that Mr. Muzammil lives in Meera Road, Mumbai; that he did not have his full address; that his mobile was not working correctly and so he had not brought the mobile phone along with him at the time of statement;

- that the ICICI bank account No. 017801519485 was in his name since last 15 years and there was no other joint holder; that the frequent payments deposited by Mrs. Priti Arya was given to him for business purpose; that Mrs. Priti Arya had given him an amount of around Rs. 25-30 Lakh which had been deposited through electronic means i.e. transferred through her bank account; that Mrs. Priti Arya had given him the amount for investment in Airbnb business; that he had not yet commenced the Airbnb business; that he intended to start the said business within the following six months;

- that Mrs. Geetanjali Sharma was his wife and he had transferred the amounts to her HDFC bank account for further investment in the share market (F&O trading); that he used his wife's accounts for trading purposes

as his account had some loans, due to which cheque bounce charges were being incurred;

- that deposits made by Mr. Muzammil were for investment purpose; that Mr. Muzammil had given around Rs. 3.95 Lakh to him for investment purpose and he had invested the same in F&O trading; that he had not returned the money to him till date as no time had been fixed for the same; that being a friend, he used to discuss about his family members with Mr. Muzammil and accordingly he (Mr. Muzammil) came to know about his aunty i.e. Mrs. Priti Arya, who was working in Customs Department at the Airport at that time; that he was not aware as to how Mr. Muzammil contacted his aunty i.e. Mrs. Priti Arya and what was the nature of work that he intends to do with Mrs. Priti Arya; that Airbnb project was still under process; that he was not aware of any other activities of Mr. Muzammil; Mr. Muzammil had deposited that amounts for trading/investment purpose.

9.1 Whereas, a further statement of Mr. Viral H. Degarwala, S/o Shri Harishkumar Degarwala was recorded on 05.11.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he was shown his earlier statement dated 20.07.2024 and put his dated signature in token of seen and accept the facts of the same; that he did not have the mobile number of Mr. Muzammil; that the statement of ICICI bank account No. 017801519485 belonged to him and proper; that he did not have any other bank account other than this ICICI Bank account; that total amount deposited by Mr. Muzammil was Rs. 5,75,010/- out of which he had returned Rs. 1,70,000/- to Mr. Shahrukh Khan on 22.04.2024 whose name and details were also provided by Mr. Muzammil; that Mrs. Priti Arya had no connections with the deposits made by Mr. Muzammil in his ICICI Bank account; that he would submit the bank account statement of his mother and wife; that his Airbnb project was not started due to over costing.

9.3 Whereas, vide email dated 11.11.2024, Mr. Viral submitted the following documents through email:

- Wife's Bank statement (Ms. Geetanjali Sharma)
- Mother's Bank statement (Ms. Dipika Degarwala)
- F&O PNL statement (Mr. Viral/Mrs Geetanjali)
- Rent Agreement
- Indian Post (Dipika Degarwala)

On going through the documents Mr. Viral submitted, it appeared that Mr. Muzammil had deposited Rs. 5.57 Lakh into the ICICI bank account no. 017801519485 of Mr. Viral; Mrs. Priti Arya deposited an amount of Rs. 23.35 Lakh through electronic transfer from her bank account. Whereas, despite all such deposits made by Mr. Muzammil in Mr. Viral's ICICI bank account, Mr. Viral failed to provide any contact details or mobile number of Mr. Muzammil, which appeared to be intentional. Further, Mr. Viral had not produced his mobile during his statement, stating that his mobile was not working, which appeared suspicious and distrustful, as if he was hiding something. Mr. Viral again failed to provide any contact details of Mr. Muzammil in his statement dated 05.11.2024, despite having multiple transactions made by Mr. Muzammil through various other persons, which appeared to be intentional, as without any contact/communication, how Mr. Viral got to know who and why all such amounts had been deposited in his

account. Whereas, Mr. Viral returned Rs. 1.7 Lakh to Mr. Muzammil through one person, Mr. Shahrukh Khan, without having their contact details appeared vague/planned.

10. Whereas, the mobile phone of make OnePlus 8T (Model KB2001, 256 GB) of Mrs. Priti Arya, containing number 9427143288, which reflected in the WhatsApp screenshots submitted by the passenger, was seized on 13.06.2024 for further investigation. The seized mobile phone of Mrs. Priti Arya was sent to RFSL, Surat, on 15.06.2024 to retrieve all its data, including deleted data and WhatsApp chats. RFSL, Surat vide letter dated 22.07.2024, submitted the examination report regarding the data recovered. However, vide letter dated 08.08.2024, RFSL, Surat again requested the re-examination of the mobile phone of Mrs. Priti Arya.

10.1 Whereas, the RFSL, Surat vide letter dated 13.01.2025 submitted a detailed examination report on the mobile phone of Mrs. Priti Arya. On going through the report submitted by the RFSL, Surat, it appeared that Mrs. Priti Arya was continuously engaged in chats and calls with Mr. Muzammil on his mobile number 919833007869 through WhatsApp Messenger. Some of the chats extracted by the RFSL are reproduced as follows:

Table 1: Reproducing Chat-83 of the RFSL data extracted from the WhatsApp data

From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:43:49(UTC+5:30) Source App: WhatsApp Body: Deleted by the sender ---------- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:44:05(UTC+5:30) Source App: WhatsApp Body: Pele ap kuch Khao ma'am ---------- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:46:18(UTC+5:30) Source App: WhatsApp Body: Haa mere ma'am me sub pata Kara huu ---------- From:	From: 919427143288@s.whatsapp.net Priti Arya (owner) Timestamp: 11-06-2024 01:50:08(UTC+5:30) Source App: WhatsApp Body: Bat hui kuch ---------- From: 919427143288@s.whatsapp.net Priti Arya (owner) Timestamp: 11-06-2024 01:51:58(UTC+5:30) Source App: WhatsApp Body: Un logo ka advocate bhi aaya tha airport mai wo kon hai ---------- From: 919427143288@s.whatsapp.net Priti Arya (owner) Timestamp: 11-06-2024 02:08:17(UTC+5:30) Source App: WhatsApp Body: Muje bilkul neend nahi AA Rahi muje batao please ----------	From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 02:34:27(UTC+5:30) Source App: WhatsApp Body: **Or me unlog se baat Kara huu ma'am** ---------- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 02:34:35(UTC+5:30) Source App: WhatsApp Body: Me apko karta huu msg ma'am ---------- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 02:34:44(UTC+5:30) Source App: WhatsApp Body: Ap ku itna pareshan hore hoo ---------- From:

919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:46:30(UTC+5:30) Source App: WhatsApp Body: Ap tnsn mat loo ap bs pele abi khana Khao --- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:46:42(UTC+5:30) Source App: WhatsApp Body: Ap khana nai khaoge to mere ko pata b chalega me nai batauga --- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:55:09(UTC+5:30) Source App: WhatsApp Body: Haa haa ma'am --- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:55:15(UTC+5:30) Source App: WhatsApp Body: Lekin ap pele khana Khao --- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 00:55:20(UTC+5:30) Source App: WhatsApp Body: Or rest Karo --- From:	From: System Message System Message Timestamp: 11-06-2024 02:10:36(UTC+5:30) Source App: WhatsApp Body: Outgoing call from Priti Arya (919427143288@s.whatsapp.net) --- From: 919427143288@s.whatsapp.net Priti Arya (owner) Timestamp: 11-06-2024 02:17:51(UTC+5:30) Source App: WhatsApp Body: Please call me --- From: 919427143288@s.whatsapp.net Priti Arya (owner) Timestamp: 11-06-2024 02:30:47(UTC+5:30) Source App: WhatsApp Body: So Gaye kya --- From: 919427143288@s.whatsapp.net Priti Arya (owner) Timestamp: 11-06-2024 02:31:29(UTC+5:30) Source App: WhatsApp Body: Aap sachi Mai wo pata kar rahe ho ki muj se juth bol rahe ho --- From: System Message System Message Timestamp: 11-06-2024 02:32:22(UTC+5:30) Source App: WhatsApp Body: Outgoing call from Priti Arya (919427143288@s.whatsapp.net owner) ---	919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 02:34:55(UTC+5:30) Source App: WhatsApp Body: Nai nai ye sub jhute baat hai ma'am --- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 02:35:25(UTC+5:30) Source App: WhatsApp Body: **Ye log bolre hai koi b proof nai diye hai bs waha pe humlog bolre the baki kuch b nhi diye hai** --- From: 919833007869@s.whatsapp.net Hello Timestamp: 11-06-2024 02:35:52(UTC+5:30) Source App: WhatsApp Body: **Darare the taki unlog kuch settlement k kuch baat kare** --- From: System Message System Message Timestamp: 13-06-2024 12:27:09(UTC+5:30) Source App: WhatsApp Body: Outgoing call from Priti Arya (919427143288@s.whatsapp.net owner) --- From: System Message System Message Timestamp: 13-06-2024 12:36:06(UTC+5:30) Source App: WhatsApp Body: Outgoing call from Priti Arya (919427143288@s.whatsapp.net

919833007869@s.whatsapp.net Hello

Timestamp: 11-06-2024 00:55:23(UTC+5:30)

Source App: WhatsApp

Body:

Me apko sub batata huu

From: 919833007869@s.whatsapp.net Hello

Timestamp: 11-06-2024 00:56:17(UTC+5:30)

Source App: WhatsApp

Body:

Nai abi khao ap pele

From: 919833007869@s.whatsapp.net Hello

Timestamp: 11-06-2024 01:38:06(UTC+5:30)

Source App: WhatsApp

Body:

Haa ma'am ap befikar raho ma'am

From: 919427143288@s.whatsapp.net Priti Arya (owner)

Timestamp: 11-06-2024 01:48:14(UTC+5:30)

Source App: WhatsApp

Body:

Kya chat diya wo sab se pehle pata kar lo

From: 919427143288@s.whatsapp.net Priti Arya (owner)

Timestamp: 11-06-2024 01:49:41(UTC+5:30)

Source App: WhatsApp

Body:

Aur kya proof diya sab

From: 919833007869@s.whatsapp.net Hello

Timestamp: 11-06-2024 02:33:56(UTC+5:30)

Source App: WhatsApp

Body:

Ma'am, me kaise souga

From: 919833007869@s.whatsapp.net Hello

Timestamp: 11-06-2024 02:34:00(UTC+5:30)

Source App: WhatsApp

Body:

Kisse or k ghar me

From: 919833007869@s.whatsapp.net Hello

Timestamp: 11-06-2024 02:34:09(UTC+5:30)

Source App: WhatsApp

Body:

Itna to barosa karo ma'am

From: 919833007869@s.whatsapp.net Hello

Timestamp: 11-06-2024 02:34:20(UTC+5:30)

Source App: WhatsApp

Body:

Mera cell charge pe laga huwa hai

---

owner)

From: System Message System Message

Timestamp: 13-06-2024 12:42:42(UTC+5:30)

Source App: WhatsApp

Body:

Outgoing call from Priti Arya (919427143288@s.whatsapp.net owner)

From: System Message System Message

Timestamp: 13-06-2024 12:48:55(UTC+5:30)

Source App: WhatsApp

Body:

Outgoing call from Priti Arya (919427143288@s.whatsapp.net owner)

From: System Message System Message

Timestamp: 13-06-2024 14:36:56(UTC+5:30)

Source App: WhatsApp

Body:

Messages and calls are end-to-end encrypted. No one outside of this chat, not even WhatsApp, can read or listen to them. Tap to learn more

---

From: System Message System Message

Timestamp: 13-06-2024 14:53:15(UTC+5:30)

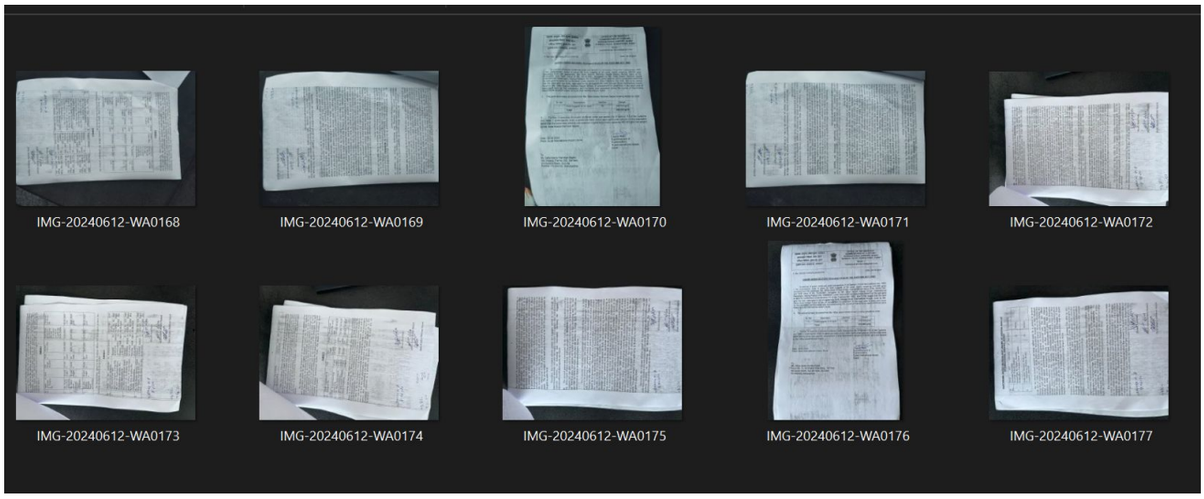
Source App: WhatsApp

Body:

You blocked this contact. Tap to unblock.

From the above chats, it appeared that Mrs. Priti Arya was continuously in contact with Mr. Muzammil on his mobile number 9833007869 as provided by her in her statement dated 13.06.2024. Further, on going through the chats as produced above, Mrs. Priti Arya was very much concerned about what proof had been submitted by the passengers, which reflected in her chat dated 11.06.2024 at 01:48:14 Hrs "**Kya chat diya wo sab se pehle pata kar lo**"; at 01:49:41 Hrs on same date "**Aur kya proof diya sab**" in reply to her chat Mr. Muzammil responded on same date at 02:34:27 Hrs that "**Or me unlog se baat Kara huu ma'am**"; at 02:35:25 Hrs "**Ye log bolre hai koi b proof nai diye hai bs waha pe humlog bolre the baki kuch b nhi diye hai**"; at 02:35:52 Hrs that "**Darare the taki unlog kuch settlement k kuch baat kare**" etc. Also, many chats with Mr. Muzammil had been deleted by Mrs. Priti Arya, which appeared to be intentional. Therefore, all such chats between Mrs. Priti Arya and Mr. Muzammil reflected that Mrs. Priti Arya was well aware of the smuggling of the gold attempted by the passenger.

10.2 Whereas, on going through the images extracted from Mrs. Priti Arya's mobile phone by the RFSL, Surat (**Pic-1**), images of Panchnama dated 08/09-06-2024 and Seizure order dated 09-06-2024 were available, which had a date stamp of 12-06-2024. However, the statement of Mrs. Priti Arya was recorded on 13.06.2024, wherein Mrs. Priti Arya was shown the Panchnama, supposed to be for the first time after the case was booked, and in token of having seen the same, she put her dated signature. Therefore, it appeared that Mrs. Priti Arya had received the Panchnama well before it was shown to her during her statement. Thus, it appeared that Mrs. Priti Arya was in touch with either the passenger or Mr. Muzammil. Therefore, it appeared that Mrs. Priti Arya was very well aware of the smuggling of gold attempted by the passenger.



Pic-1: Showing the image of Seizure Order dated 09-06-2024 and Panchnama dated 08/09-06-2024 extracted from the mobile phone of Mrs. Priti Arya

11. LEGAL PROVISIONS RELEVANT TO THE CASE:

a) As per para 2.27 of Foreign Trade Policy 2023-"Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance."

b) As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 – "the Central Government may by Order 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."

c) As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992-"AII 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."

d) As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 – "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."

e) As per Section 11(3) of the Customs Act, 1962- "Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit."

f) As per Section 2(3) of the Customs Act, 1962 — "baggage" includes unaccompanied baggage but does not include motor vehicles.

g) As per Section 2(22), of Customs Act, 1962, the definition of 'goods' includes-

a. vessels, aircrafts and vehicles;
b. stores;
c. baggage;
d. currency and negotiable instruments; and
e. any other kind of movable property;

h) As per Section 2(33) of Customs Act 1962-"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 such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

i) As per Section 2(39) of the Customs Act 1962 –"'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."

j) As per Section 77 of the Customs Act 1962-"the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

k) As per Section 110 of the Customs Act, 1962-"if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods."

l) Any goods which are imported or attempted to be imported or 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 shall be liable to confiscation under section 111 (d) of the Customs Act 1962.

m) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.

n) 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 are liable to confiscation under Section 111 (j) of the Customs Act 1962.

o) As per Section 112 of the Customs Act 1962-"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, harbouring, 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."

p) SECTION [114AA. Penalty for the use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

q) As per Section 119 of the Customs Act 1962, any goods used for concealing smuggled goods shall also be liable for confiscation.

r) As per Section 123 of the Customs Act 1962 (Burden of proof in certain cases)

(1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, [and manufactures thereof,] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

s) As per Customs Baggage Declaration Regulations, 2013- "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."

t) As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import

policy of gold in any form, other than monetary gold and silver in any form, iwas amended from 'Free' to 'Restricted'; import was allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

CONTRAVENTION AND VIOLATION OF LAWS

12. Whereas, from the above, it appeared that:

(a) Ms. Safa Abadur Rehman Sayed had actively involved herself in the instant case of smuggling gold into India. The said passenger had improperly imported gold concealing the same in her pant in paste/powder form weighing 360.000 gms after obtaining in 02 nuggets form having market value of Rs. 26,44,200/- (Rupees Twenty-Six Lakh Forty-Four Thousand Two Hundred only) and its Tariff value was Rs. 22,94,309/- (Rupees Twenty-Two Lakh Ninety-Four Thousand Three Hundred Nine only), without declaring it to the Customs, by way of concealment in-person. She concealed the gold in her pants in paste/powder form with a deliberate and mala fide intention to smuggle the said gold into India and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The gold improperly imported by her with commercial considerations without declaration before the proper officer of Customs could not be treated as bona fide household goods or personal effects. Ms. Safa Abadur Rehman Sayed had thus contravened the Foreign Trade Policy 2023, 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 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.

(b) By not declaring the value, quantity, and description of the goods imported by her, the said passenger had violated the provisions of the Baggage Rules, 2016, read with section 77 of the Customs Act, 1962, read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

(c) The gold nugget of 360.000 gms improperly imported by the passenger, Ms. Safa Abadur Rehman Sayed by concealing the same in her pant in paste/powder form without declaring it to the Customs was thus liable for confiscation under Section 111(d), 111(i) and 111(j) 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. One black colour jeans pants used for concealing the Gold in paste form seized vide order dated 09.06.2024 was thus liable for confiscation under Section 119 of the Customs Act, 1962.

(d) Ms. Safa Abadur Rehman Sayed, by her above-described acts of omission and commission, had rendered herself liable to penalty under Section 112(a) of the Customs Act, 1962.

(e) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold, weighing 360.000 gms, having market value of Rs. 26,44,200/- (Rupees Twenty-Six Lakh Forty-Four Thousand Two Hundred only) and its tariff value was Rs. 22,94,309/- (Rupees Twenty-Two Lakh Ninety-Four Thousand Three Hundred Nine only) without declaring it to the Customs, were not smuggled goods, was upon the

passenger/Noticee, Ms. Safa Abadur Rehman Sayed.

13. Whereas, from the statement of Mrs. Priti Yogesh Arya, it appeared that the mobile number 9427143288, provided by the passenger, belonged to her. Also, it appeared that Mrs. Priti Arya was in regular contact with one person, Mr. Muzammil, whose WhatsApp Chat screenshot was provided by the passenger. Further, Mrs. Priti Arya had agreed that the account number shown in the WhatsApp screenshot provided by the passenger belonged to her nephew, Mr. Viral, to whom Mr. Muzammil had deposited the amount. Also, as discussed at Para-10, 10.1 & 10.2 above, Mrs. Priti Arya was continuously in contact with Mr. Muzammil. Therefore, it appeared that Mrs. Priti Arya had long been in contact with Mr. Muzammil. Also, while going through the WhatsApp chat as shown in Table 1 above and the screenshot submitted by the passenger, Mrs. Priti Arya was in regular contact with Mr. Muzammil during the proceedings of Panchnama dated 08/09-06-2024 and seizure of gold paste. Also, the act of deleting Mr. Muzammil's chats appeared to be intentional to avoid any consequences, if any. Further, the availability of account details of Mr. Viral H Degarwala, nephew of Mrs. Priti Arya, with the passenger, from whom gold paste was seized, appeared to be pre-planned for the purpose of transfer of any consideration in lieu of facilitation of such smuggling activities. Whereas, it appeared that Mrs. Priti Arya submitted no proper justification regarding the availability of the bank account details with the passenger. From the above, Mr. Viral H Degarwala appeared to be the mediator between Mrs. Priti Arya and the passenger/Mr. Muzammil. Therefore, it further appeared that Mrs. Priti Arya had abetted the smuggling of the gold from Dubai to Surat through the passenger under the influence of her nephew, Mr. Viral Degarwala. Mrs. Priti Yogesh Arya, by her above-described acts of omission and commission on her part, had rendered herself liable to penalty under Section 112(a) & 114AA of the Customs Act, 1962.

14. From Mr. Viral's statement, it appeared that he had been in contact with Mr. Muzammil since 2019, but he failed to provide his mobile number or any details of Mr. Muzammil. Also, he confirms that Mr. Muzammil was in contact with him and made various deposits to his ICICI Account. Mr. Viral has returned some amount to Mr. Muzammil through Mr. Shahrukh Khan, as provided by Mr. Muzammil. Also, he agreed that Mr. Muzammil and Mrs. Priti Arya were known to each other; however, he did not know how Mr. Muzammil contacted his aunt, i.e. Mrs. Priti Arya. This act of hiding details of Mr. Muzammil by Mr. Viral appeared to be intentional. Further, Mr. Viral failed to produce any documentary evidence showing the investment transaction regarding the amount deposited by Mr. Muzammil into his account. Also, as per Mrs. Priti Arya’s statement, she knew Mr. Muzammil as her nephew, Mr. Viral’s friend; however, Mr. Viral, in his statement, stated that he did not know how Mr. Muzammil contacted his aunt, i.e. Mrs. Priti Arya. Therefore, it appeared that Mr. Viral failed to justify his relationship with Mr. Muzammil and was also unable to justify how his ICICI account number was available to the passenger. Also, Mr. Viral failed to produce his mobile phone before the investigating officer, stating a vague reason for the non-working of his mobile phone, which appeared to be intentional. Also, he again failed to provide any contact details of Mr. Muzammil in his statement dated 05.11.2024, despite having multiple transactions made by Mr. Muzammil through various other persons, for which Mr. Viral returned Rs. 1.7 Lakh to Mr. Muzammil through one person, Mr. Shahrukh Khan, without having their contact details, appeared to be planned. Therefore, it appeared that Mr. Viral H Degarwala was involved in smuggling the gold in connivance with his aunt, Mrs. Priti Arya, posted at Surat

International Airport at that time. Mr. Viral H Degarwala, by his above-described acts of omission and commission on his part, had rendered himself liable to penalty under Section 112(a) & 114AA of the Customs Act, 1962.

15. Therefore, a Show Cause Notice F. No. VIII/26-18/AIU/CUS/2024-25 dated 07.03.2025 was issued to **Ms. Safa Abadur Rehman Sayed** calling upon her to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 as to why: -

(i) The recovered 24 carat gold nuggets weighing 360.00 gms., having market value of Rs. 26,44,200/- (Rupees Twenty-Six Lakh Forty-Four Thousand Two Hundred only) and its tariff value was Rs. 22,94,309/- (Rupees Twenty-Two Lakh Ninety-Four Thousand Three Hundred Nine only), seized vide Seizure Order dated 09.06.2024 under panchnama proceeding dated 08/09.06.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;

(ii) One black colour jeans pants, seized vide order dated 09.06.2024, which was used for concealment of gold in paste form, should not be confiscated under Section 119 of the Customs Act,1962;

(iii) A penalty should not be imposed upon Ms. Safa Abadur Rehman Sayed under Section 112 of the Customs Act, 1962.

16. Therefore, a Show Cause Notice F. No. VIII/26-18/AIU/CUS/2024-25 dated 07.03.2025 was issued to **Mrs. Priti Yogesh Arya** calling upon her to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 as to why:-

(i) A penalty should not be imposed upon her under Section 112(a) of the Customs Act, 1962.

(ii) A penalty should not be imposed upon her under Section 114AA of the Customs Act, 1962.

17. Therefore, a Show Cause Notice F. No. VIII/26-18/AIU/CUS/2024-25 dated 07.03.2025 was issued to **Mr. Viral H. Degarwala** calling upon him to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 as to why:-

(i) A penalty should not be imposed upon him under Section 112(a) of the Customs Act, 1962.

(ii) A penalty should not be imposed upon him under Section 114AA of the Customs Act, 1962.

18. <u>DEFENCE REPLY</u>

In the Show Cause Notice dated 07.03.2025 issued to the noticee(s), they were asked to submit a written reply/defence submission within the stipulated time.

18.1 The noticee No. 1, Ms. Safa Abadur Rehman Sayed, has not filed any defence submission in reply to the notice issued to her, within the time specified or thereafter.

18.2 The noticee No. 2, Mrs. Priti Yogesh Arya, filed two defence submissions dated 10.05.2025 and a further submission dated 17.07.2025, in reply to the notice issued to her, through Dr. Pranay Ramkumar Rajput, Advocate. In the defence submission dated 10.05.2025, the noticee No. 2 has stated/contended that:

- The legal notice issued to her is ex facie illegal, bad in law, and is not in conformity with the statutory provisions of the applicable Act. The Department has issued the notice merely as a pressure tactic to harass her.

- The department has no legal or any enforceable cause of action to invoke any provisions under the applicable Act, and also has no locus to issue such false and frivolous show cause notices to her.

- The authority has suppressed various true and correct facts available on record and selectively referred to contents, averments and documents to suit its convenience; the authority has therefore misused its office in issuing such a groundless and frivolous notice against her.

- It is an admitted fact that on the alleged date of the incident, she, namely Smt. Priti Arya was having additional duty on Airport along with her regular duty at Surat Customs Division having charges of Adjudication (ADC power), Preventive Section, Go-down Charge, Recovery, Statistics etc. and as she was suffering from significant medical issue of 3 fibroids in her stomach on that day, she performed only her regular duty on 29/05/2024 and due to severe health issues she did not attend her additional Airport duty on that day, further due to the same health issues, she also did not attended her airport duties on the alleged date of incident i.e. 08/06/2024 & 09/06/2024 because of her major health issue.

- It is pertinent to note that she has categorically informed the department about the chat with Mr. Muzzamil (Informer) in her statement dated 13/06/2024; she further informed that Mr. Muzzamil (Informer) was known to her through her sister's son, Mr. Viral. That said, Mr. Muzzamil and Mr. Viral came in contact with each other regarding a rented house in Mumbai, as Mr. Muzzamil was a real estate agent/broker in the year 2018/2019 in Mumbai. Still, thereafter, Mr. Viral was moved to Delhi in 2020 because of his new job there; she had a chat with Mr. Muzzamil only to obtain certain airport information. Further, due to the tips given by the informer, Mr. Muzzamil at Ahmedabad Airport, she had previously booked 48 Cases of gold smuggling.

Further, she after being relieved from Ahmedabad, had given two to three good information to Shri Himanshu Garg, Deputy Commissioner (AIU), Ahmedabad Airport, and the said tip was also provided by the said Mr. Muzzamil and accordingly, cases were also booked. Further, the said informer also gave some suggestions for Surat Airport; hence, she was solely having a formal relationship with the officer and the informer to book smuggling cases, and thus, the authority has suppressed all the said facts in the said notice.

- Fur

ther, she in her statement categorically stated that on the alleged date of incidence the said Muzammil called her and told that "madam mere relative *aaj aane wale hai aap airport par ho*, and she informed muzammil that she was not going to Airport due to her major health issues and also because of a small function of *"aanu"* at her sister in law's house and at that time she was at railway station to pick her daughter and husband. It is also stated that after some time, the Inspector called her and told her that madam *"3 ladies ko pakada hai aur 3 cases hue hai, app hote toh accha hota*. Further, Mr. Muzzamil once again asked her, *Airport pe kuch hua hai kya*? She said yes, *three ladies ko pakda hai, as* her inspector told her that. Similarly, the Assistant Commissioner, Shri Sachin Dalvi, also called her and informed her that *three ladies ko pakda hai aur wo control mai nahi aa rahi hai aap bhi aa jao,"* but due to health issues, she could not visit the same.

- Fur

ther, regarding the deletion of the WhatsApp chat, she categorically stated in her statement that she had a hobby of singing. For this reason, she had joined various singing groups on WhatsApp. For the said reason, she was getting so many messages daily in her WhatsApp from such groups, and hence she used to delete all her WhatsApp chats except her husband's and her daughter's chat. Thus, the allegation of intentionally deleting the said chat is totally wrong and frivolous. Further, no such disputed chat and/or data was found by the forensic departments either.

- Reg

arding payment of 27 Lacs to Mr. Viral, she has categorically stated in her statement that Mr. Viral's father has been suffering from mental illness for a long time. Hence, she has taken care of Mr. Viral's education and other expenses since childhood. Further, in September 2023, Viral's firm was closed, and he wanted to start a startup. For this reason, she gave him a friendly loan of Rs. 27 Lacs for the said startup. It is admitted that she paid the sum of Rs. 27 Lacs from her salary account, having 29 years of service, which she solely gave to help her sister's son, Mr. Viral. It is also stated that since his childhood, she took care of his livelihood, and no such evidence was found on record showing any monetary transaction from Mr. Viral to her, which the department has suppressed in the present notice.

- Fur

ther, Mr. Muzzamil knows that Mr. Viral has extensive share market knowledge and investments. For the said reason, initially, he gave Rs. 5,75,010/- for investment purposes from various accounts of his relatives and told Viral that his sister's marriage was fixed in December 2024; hence, within these 7 to 8 months, he wanted to grow his money. Similarly, on

22/04/2024, the initial profit was transferred to Shahrukh Khan, one of Muzzamil's relatives' accounts, 44 days before the incident/case.

- She further stated that the three accused ladies first took the name Smt. Jagruti Patel was at the airport during their investigation, but later on, they wrongly alleged her despite knowing she was not present at the time of the incident. That said, the three ladies never knew Smt. Arya, and no financial transactions took place between Mr. Muzzamil, the three ladies, and her. The authority in the present notice ignores and suppresses the critical fact.

- Fur ther, the statement of the alleged main accused, Mr. Muzzamil, was never taken by the department, and no such statement has ever been shown to her. Also, one of the accused, Ms. Safa's statement was taken at the Airport on the date of the incident, which the Customs Officer took, and based on that, she was suspended without any investigation. Out of three ladies, two submitted an affidavit taken on oath before the gazetted officer, and the statement taken at the airport is questionable and needs a detailed investigation by the higher authority, which, in the present case, the department has knowingly neglected to do so.

- If any honest person is wrongly involved in any case, she should be asked, and the chats that the department retrieved are all about that, not about any involvement in smuggling activities or any facilitation of such smuggling activities. As in the affidavit, she stated that she knew Mr. Muzzamil and Mr. Viral had a financial relationship, so they used that to save their Gold. Mr. Viral is an M.Tech in Wireless Communication and is very busy with his start-up project.

Further, **Section 112(a) in the Customs Act, 1962 provides as under:**

(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,

She, Smt. Priti Arya has no involvement or relation to any goods and would render such goods for which she is alleged to be liable to confiscation under Section 111 or abet the doing or omission of such an act.

(b) Further **Section 114AA in the Customs Act, 1962 114AA. [Penalty for use of false and incorrect material.** ***[Inserted by Act 29 of 2006, Section 27 (w.e.f. 13.7.2006).] provides that*** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.] *[Substituted by Act 10 of 2000, Section 85, for the first and second proviso (w.e.f. 12.5.2000).]*

Mrs. Priti Arya has not knowingly or intentionally made signs or uses or caused to be made or used any declaration, statement or document

which is false or incorrect in any material particular in the transaction of any business for the purposes of this Act. Invocation of this Section against her is nothing but mere harassment. It is questionable that the hero of the story, Mr. Muzzamil, is not the co-noticee or shown any involvement in the case. However, based on Mr. Muzzamil, Mrs. Arya, an honest officer, has been suspended, and her growing career is spoiled. Further, the office has a regular duty in the Surat Customs Division office with heavy 4 to 5 sections charges, giving her additional Airport duty three or four times a month. That said, the inquiry and involvement in the case were made only on the statement of the alleged three accused ladies, which is also questionable because they had already submitted an affidavit on oath regarding the same. Further, the inquiry officers have intentionally suppressed the fact that Mr. Viral also transferred money to Muzzamil, and they both had a normal friendship only for business/investment purposes. Given the above, all the allegations, the penalty and sections invoked without conducting any fair trial or investigation are a clear violation of her fundamental rights, and the same may be disposed of from scratch.

- It is stated that the person with whom normal chat is done for taking a tip at the airport is not made a co-noticee to the present case, but the departmental officer has been suspended for 9 months without any proof/evidence. Mrs. Arya is an honest officer who wants to book more cases for the government, and her enthusiasm landed her in trouble. She has a well-educated, well-settled, financially sound family background.

- She has called upon to immediately withdraw the said false, fictitious and frivolous notice within 7 days from the date of receipt of the said notice, failing which she may proceed against the department in the Hon'ble court of law entirely at departmental risk as to costs and consequences.

- It is also stated that she has already initiated appropriate proceedings before the competent court of law/tribunal, which is pending adjudication. It is further called upon that no further action be initiated in the said proceedings as the matter is subjudiced before the competent court of law/tribunal, and the Adjudicating Authority is requested to take serious note of the same kindly.

Further, the noticee No. 2, Ms. Priti Yogesh Arya, has filed a further submission in Affidavit dated 17.07.2025, in reply to the notice issued to her, through Dr. Pranay Ramkumar Rajput, Advocate, wherein she has reiterated the contents of her earlier reply dated 13.05.2025 and further submitted as follows:

- She has categorically denied all the allegations levelled against her in the aforementioned Show Cause Notices; the charges are unfounded, factually incorrect, and legally unsustainable; at no point was she involved, directly or indirectly, in any activity that would attract the provisions of Section 112 or 114AA of the Customs Act; it is a matter of record that she was not present at the location or involved in any operational activities at the time the alleged incident took place; the SCNs do not provide any concrete or credible evidence establishing her involvement. Mere association or unverified third-

party statements do not constitute proof of complicity; the SCNs rely heavily on assumptions, hearsay, and uncorroborated electronic communications, none linking her conclusively to the alleged smuggling or facilitation thereof. The Hon'ble Courts have repeatedly held that a penalty under Section 112 requires clear mens rea and proven involvement, which is absent in this case.

- The written submissions have been filed in response to the Show Cause Notice bearing Nos. VIII/26-17/AIU/CUS/2024-25 dated 07.03.2025 and Show Cause Notice bearing F. No. VIII/26-18/AIU/CUS/2024-25 dated 07.03.2025 and Show Cause Notice F. No. VIII/26-16/AIU/CUS/2024-25 dated 07.03.2025 issued under the provisions of the Customs Act, 1962.

- She has submitted that the action taken for passing an illegal order of suspension and renewing the same without assigning any cogent reasons violates the law and prescribed guidelines.

- She has further submitted that she is aggrieved by the decision of issuing an order dated 14.06.2024 under seal and signed by the Principal Commissioner of Customs, Customs House, Navrangpura Road, Shreyas Colony, Navrangpura, Ahmedabad, thereby suspending her from the post of Superintendent Surat Customs Division, Surat, Ahmedabad Customs, Ahmedabad, Gujarat. A copy of the order dated 14.06.2024 is annexed. In furtherance of the said order, the Principal Commissioner of Customs, Customs House, Navrangpura Road, Shreyas Colony, Navrangpura, Ahmedabad, passed an order on 06.09.2024, renewing the suspension order for a further period of 180 days without assigning any reasons.

1. **FACTS OF THE CASE:**

She submitted that:

a) She was promoted as Superintendent on 27.06.2017 and has joined as Superintendent in Range-I, Division-I of Surat Commissionerate, Surat in September 2017. At that time, GST was introduced and implemented by the Government.

b) In F.Y. 2017-18, she had completed the following tasks;
   i. Verification of Trans-1 Data of 15 units done and disallowment of clean energy cess of 1.57 crores in one case and 57 lakhs in another case.
   ii. Amendment of Registration in GST daily.
   iii. Timely Verification of refund claims/ Bond/ LUT.
   iv. Issuance of order in original of the Superintendent's power.
   v. Maintaining Range Records.
   vi. Recovery of Government outstanding dues, made maximum efforts and accordingly recoveries were done in cases more than 5 years old and in third-party cases.
   vii. Preparation and submission of Monthly/Quarterly/Ad-hoc report, etc.
   viii. Online Refund verification submission of the reports to the higher authorities.
   ix. Her APAR grading in the year 2017-18 is 9.12 out of 10.

c) In the year F.Y.2018-19, she was posted to DGGI, Surat Zonal Unit, DGGI, Surat. She joined as Senior Intelligence Officer in August 2018 and was assigned all work related to Administration and Accounts. She also worked as SIO in Group-XI and initiated 13 inquiries and three intelligences were filed. She successfully detected evasion of Rs . 105.33 lakhs and recovered 4.27 lakhs. She also participated in around 60 search operations of other groups. Her APAR Grading in the year 2018-19 is 8.04 out of 10.

d) In F.Y. 2019-20, she was posted to DGGI, Surat Zonal Unit, DGGI, Surat. During this period, she was assigned the task of a 1000 crores fake invoice case, and with the directions and support from all superiors, the case was successfully booked, and a recovery of Rs. 8 crores was made from this case. She also booked cases of non-payment of GST where the Assessee received GST from their customers. She also booked one case for Builder, and with the directions and support from all my superiors, a Rs. 1 crore recovery was made from this case; she was also handling the Administration and Accounts work of DGGI, Surat successfully, and all periodic reports were submitted timely by her. My APAR Grading in 2019-20 is 9.53 out of 10.

e) In the F.Y. 2020-21, she was posted to Range-I, Division-I, Surat Commissionerate, Surat once again. She made a recovery of Rs. 12 crores from Non-filers, Trans-1 verification, transaction of fake firms, difference between GSTR1/GSTR-3B, and difference between GSTR3B/GSTR2A, etc. She also did all the work related to Range-I, viz. Refund verification, legal matters, adjudication, proposal of DSCNs in respect of third-party verification, preliminary scrutiny of GSTR returns, DGARM reports processing, issuance of ASMT-13. My APAR GRADING in 2020-21 was 9.77 out of 10.

f) In the F.Y. 2021-22, she was posted to H.Q. (Preventive), Surat Commissionerate, Surat. From 08.09.2021 to 31.03.2022, she successfully put up to intelligence and recovered Rs . 1.11 crores and 0.30 crores. She also put up a draft alert notice for higher authorities. She also put up a Draft IR to higher authorities for approval. Verifying DGARM reports. Recovery made during the period amounted to Rs . 13.00 crores. My APAR GRADING in 2021-22 was 9.00 out of 10.

g) In the F.Y. 2022-23, she was posted to AIU, Ahmedabad Airport, Ahmedabad. During this period, we booked 48 cases of Gold smuggling, Foreign currency, and cigarette cases in a group. Preparation of all documents related to a case. Prepared DSCN for issuance to the higher authority in the stipulated period. Preparation of all reports, PQ, etc. She completed all the work allotted to her by her superiors. During her posting, i.e. from 13.09.2022 to 28.07.2023, to Ahmedabad Airport, our group has booked 48 cases amounting to Rs. 6 crores. My APAR GRADING in 2022-23 is 9.20 out of 10. The copy of all APARs from the F.Y.2017-18 to F.Y. 2022-23 is annexed.

h) After relieving from Ahmedabad International Airport, Ahmedabad on 28.07.2023, she joined my duties at Customs Division, Surat on

02.08.2023 and all the work related to Recovery, Periodical reports, Technical, P.Q., Statistics were allotted to her at Surat Customs Division.

i) In the first week of February, 2024, one superintendent was promoted as Assistant Commissioner and transferred to Mumbai. She was allotted work of Adjudication (ADC power), Disposal, Preventive, all periodical reports, P.Q., Statistics and all technical reports.

j) As the flight frequencies increased at the Surat International Airport, higher authorities decided to post additional staff at Surat International Airport and accordingly with the approval of Principal Commissionerate, Ahmedabad, almost all officers who already worked at Ahmedabad Airport (Except two or three officer) were posted as Additional staff at Surat International Airport, Surat as Additional Staff, all of them have to work 3 to 4 times per month at Airport after completing his/her duty at Surat office.

k) It is relevant to mention that she was the only female officer who was posted as additional staff at Surat International Airport, Surat, because of my sincerity and excellent work, as well as cases made at Ahmedabad Airport.

l) She was ordered to perform her 1st duty order on 20.1.2024 at Surat International Airport. The copy of the order is annexed.

m) She was previously posted at AIU, SVPIA, Ahmedabad, and our group successfully booked 48 cases based on intelligence. She was awarded for the same. The copy is annexed.

n) Three cases of seizure of gold at Surat International Airport were effected on 8.06.2024 from three passengers who had arrived from Dubai via Indigo Flight No. 6E 1508 and investigation was conducted by the AIU, Customs which revealed that each of these three lady passengers namely Ms. Husna Yusuf Kazi, Ms. Alfiya Javed Ahmed Ansari and Ms. Safa Abadur Rehman Sayed bought gold in paste form concealed in the waist area of jeans pent worn by them carrying gold about 1150 grams amounting to Rs.73,30,380/- of Tariff value.

o) She was suffering from Abdomen & PFLVIS (Tvs), Enlarged, bulky uterus with anterior and left lateral wall subserosal intramural fibroids problem since 2012. The medical reports about the said treatments are annexed.

p) On 08.06.2024, Saturday (week off), she was at Surat Railway station to pick up her daughter, who was coming from Bharuch to Surat. After that there was a function of aanu of my sister in laws daughter, for that they all gathered at her sister-in-law house and meanwhile Assistant Commissioner (Airport), Shri Sachin Dalvi and Shri Akshay (Superintendent) called her at around 21.00 hours and informed her that three cases were booked at Surat Airport and the ladies were troubling them. As she could handle this case, he called her to come to the Airport, but she informed him that it would be difficult for her to reach the Airport due to a family function and health issues.

q) On 10.06.2024, when she reached the office, her inspector told her the cases were booked at Surat Airport on 08.06.2024. During their interrogation, one lady out of three named Smt. Jagruti Patel, but after returning from the melting Station, she changed her statement and gave her name. She immediately called Ms. Jagruti Patel, who was present at the airport. Thereafter, she also called Ms. Priyanka, who told her that the entire thing was baseless and meaningless, and if she talked with the senior, the whole controversy could be put to an end. Therefore, she immediately called DRI Officer Himanshu Lambaji, who said that DRI had some information, and then cases were booked by AIU because of a small case; the whole responsibility of the case was of an AIU officer, so they didn't have that case.

r) Thereafter, on 13.06.2024, the Assistant Commissioner (Airport), Shri Sachin Dalvi, called her in his cabin, and when she reached there, Smt. Jagruti Patel, Superintendent (AIU), SIA, Surat, Shri Kush Bisht, Superintendent (AIU) and Shri Modi, Inspector (AIU) were present in the office of the Assistant Commissioner, Surat Customs Division, Surat. Firstly, they took her phone forcefully and checked it without permission or prior notification. Thereafter, they started taking her statement at 12.20 p.m. and began asking her various questions, and she cooperated with them and answered all their questions one by one. She further submitted that she was detained up to 6.30 p.m. at the 4th Floor, at the Assistant Commissioner (Airport) office and showed Panchnama dated 8.06.2024 and 9.06.2024, along with the statements of two ladies and chats. She noticed that in the statements they wrote all other officers' names who previously worked at Ahmedabad Airport, but the name of Smt. Jagruti Patel was missing from the said statements, as previously, those ladies gave the name of Smt. Jagruti Patel, but because of the inquiry officer, Smt. Jagruti Patel was present at the Airport on the date of the incident; hence, her name was removed from the statements of all the ladies.

s) On 14.06.2024 at 8.45 p.m., the Superintendent and Inspector (both Vigilance) came to her house and handed over the order of suspension to her.

t) Thereafter on 27.07.2024, she received summons and was called for recording the statement on 29.07.2024, but due to sudden panic attack because of baseless allegation by the department and breathing problem she could not attend the said date of hearing and the same was informed by her vide my gov-id on Surat Airport email and also on personal gov-id of the Assistant Commissioner (Airport) and requested for 25 days for recording the statement. Her request was not accepted and they did not give the time for medical treatment and finally on 30.07.2024, she was once again summoned to remain present on 12.08.2024 and she stayed present and gave her statement on 12.08.2024 accordingly for the third lady passenger only 15 min statement had been taken by the inquiry office viz. Smt. Jagruti Patel which was same as statement for other two ladies.

u) The three ladies who were detained and, upon their statement, her

name was revealed, have filed an Affidavit in favour of me. The copy of the Affidavit is annexed.

2. **GROUNDS OF REPLY WITH LEGAL PROVISION:**

She has submitted that:

1) She is a law-abiding female officer serving in the department meticulously without any black spot since 1995, and no such departmental enquiries/, allegations/or incidents have ever been filed during her tenure of 29 years of service. Further, she is a hard-working lady officer serving sincerely and honestly in such a senior-most designation for the last 3 decades, and hence, merely on the grounds of some incomplete bias and cryptic inquiry conducted by the same officer, whose name is suspected in the same incident, is not legally justifiable under the Law.

2) It is a settled law that the office that has passed an order of suspension cannot be an inquiry/reviewing officer. If that is so, the entire investigation is biased and must be quashed and set aside at this stage. Not only is it violating my Fundamental rights, too. It is also mentioned that based on only three statements, she was suspended, which shows how the department is eager to suspend officers to hide other things, and how the department is in a hurry to suspend such an honest officer.

3) The alleged incident is dated 08.06.2024 (Saturday), and she was having my weekly off on 08.06.2024. It is obvious that if she were having a week off, admittedly, she would not be present at the time of the incident. The authority totally overlooked this fact.

4) She was never given any opportunity to justify her stand in the present case, nor was she given the chance to meet personally with higher officials of her department to explain her stand. Without considering her submissions and without giving any opportunity of hearing, the order of suspension is passed, and the same is renewed without assigning any reasons. In the same submission, the said action is a gross violation of the principles of Natural justice. It is also stated that the department has suspended the honest officer and given 50% of her salary without allotting an inquiry officer, since almost 8 months have passed. It is also stated that after completing 3 months in suspension, 75% of the salary should be given to the applicant, but due to the department's bias, they have not passed any order for 75% of the salary to be given to the applicant. As per FR 53 1(ii) (a) (i) and (ii), the subsistence allowance is required to be increased after 3 months to 50% of the allowance already sanctioned.

5) She lastly attended her duty on 22.05.2024, since she never attended her duty at the airport on 29.05.2024 and 8.06.2024. The said fact ought to have been verified by the authority by examining CCTV footage before initiating any action against her. She has further submitted that in the additional airport duty she had never done frisking work, only did passport checking work, and after that, handed

over the passenger to the regular lady staff, which is also confirmed from the CCTV footage of the Surat Airport.

6) The present inquiry is being investigated by Smt. Jagruti Patel, whose name was already revealed, was initially taken by three lady passengers. After returning from the melting point, the name of Smt. Jagruti Patel was removed, and my name was recorded in the statement. The sudden change of name of Smt. Jagruti Patel and dragging her name is a fact that ought to have been inquired about before dragging her into the so-called inquiry. The fact remains that the same is not taken into consideration.

7) It is relevant to submit that on 25.07.2024, she received one email on her official government ID, pritiya.g209501@gov.in, in which the said two ladies out of three submitted the scanned copies of the Affidavit, which itself is self-explanatory and stipulates that she was not involved in the entire matter. Despite that, just to harass and drag her into a so-called justifiable inquiry, the present proceedings have been initiated.

8) In the Panchnama shown to her, the total gold detained from all three lady passengers was about 1150 grams of gold, amounting to Rs. 73,30,380/- of tariff value. For such a small value for three lady passengers, the order of suspension is not justifiable. It is also relevant to note that, as per the Act, a Citizen can carry gold as per the limit prescribed under the Act. It's not the case here that she was a beneficiary or has received any monetary benefits from the same. Nothing is revealed or concealed during the inquiry.

9) She was allotted additional duties at Surat International Airport vide 1st order dated 20.1.2024. Previously, she was at AIU, SVPIA, Ahmedabad, wherein she was allotted the duty of passport check only, which can be verified from the CCTV cameras of Surat Airport. She was never given any Frisking work on any passenger. She and additional staff came to the Airport only at the time of the flight and left the Airport after completing the flight. This fact has been overlooked before initiating any inquiry against her.

10) Her order of suspension was made merely based on presumption and assumption as the reason the Investigating officer, whose name is already revealed in the investigation of the entire case, and for the said reason, all the evidence available on record is being ignored by the authority.

11) Before initiating any inquiry, the authority should have taken into consideration her past conduct. She always worked sincerely and honestly. Not only that, she had put all her efforts into an honest investigation. The said fact ought to have been taken into consideration.

12) It is also a settled position of law that at the time of renewing her suspension, the authority ought to have assigned reasons for the same. If we peruse the copy of the order, no reasons are mentioned. This act is contrary to the settled position of law, and given this fact,

the order of renewing suspension is not maintainable.

13) As per FR 53 (ii) (a)- (i) & (ii), the Subsistence Allowance is required to be increased after a period of 3 months. So far, the facts of the present case are concerned, while passing the review order, there is no reference to the Subsistence allowance either.

14) Almost eight months later, no inquiry has been conducted until today. Suspension orders were passed only based on three statements.

15) The Hon'ble Courts have time and again held that penalty under Section 112 requires clear mens rea and proven involvement, which is totally absent in this case.

16) This is a clear violation of the Principle of Natural Justice. She was not provided with sufficient opportunity to respond before issuance of the SCNs. There appears to be a lack of independent inquiry or verification of the statements made by co-accused or third parties. It is also submitted that the department did not even give her time to understand the facts and collect the proofs as they gave personal hearing opportunity in a very short period of time, i.e. 10.06.2025, 24.06.2025 and 03.07.2025. It is a proven fact that the department is in such a hurry to punish an honest officer and a young youth who is M.Tech in Wireless Communication and brilliant in data science.

17) She also wants to bring Section 155(2)–Protection for Government Officers to your attention.

As per Section 155(2) of the Customs Act, 1962: *"No suit, prosecution or other legal proceeding shall lie against any officer of the Government for anything which is in good faith done or intended to be done under this Act."*

18) **Implication of Section 155(2)**

- It provides statutory protection to honest officers of the Central Government who have acted in good faith while performing their duties under the Customs Act.

- The phrase "in good faith" means that the act was done with honest intent, without malice, fraud, or corrupt motives.

- Therefore, SCNs or penalties under Section 112 or 114AA cannot be sustained against a Government officer unless there is clear evidence of mala fide or bad faith.

19) **Judicial View on Section 155(2)**

Indian courts have consistently upheld the principle that:

- "Good faith actions by government officers are protected" from prosecution, penalty, or departmental action unless it is shown that the officer acted with intent to cause harm or aided wrongdoing.

- The burden of proof lies on the Department to show mala fide involvement.

20) **Legal Protection under Section 155(2) of the Customs Act, 1962**

She has further submitted that, as a serving Central Government officer, actions—if any—have always been performed in good faith while discharging official duties. As such, she is protected under Section 155(2) of the Customs Act, 1962, which bars any legal proceeding, including the issuance of Show Cause Notices and penal actions, for anything done in good faith under the Act. The absence of evidence suggesting mala fide, dishonesty, or deliberate collusion on her part makes the invocation of Sections 112 and 114AA not only legally untenable but also violative of the protection accorded to Government officers under Section 155(2).

She has wanted to draw the kind attention to the Relevant Judgments on Section 155(2), Customs Act, 1962

I. ***Hari Bansh Lal vs. Sahodar Prasad Mahto*** **[(2010) 9 SCC 655] Court: Supreme Court of India**
Government officers acting in the discharge of their official duties are protected from legal proceedings unless malafide or abuse of power is clearly shown.

II. ***L. D. Jadhav v. Union of India*** **[(2005) 190 ELT 488 (Bom HC)] Court: Bombay High Court**
Section 155(2) bars proceedings against officers if they acted in good faith.

"*The Customs officer cannot be penalized unless his action was shown to be lacking bona fides or was actuated by ulterior motives.*" The court quashed departmental action against an officer where there was no evidence of wrongful intent.

III. ***S. Ganesan v. Union of India*** **[(2008) 230 ELT 145 (Mad)] Court: Madras High Court**
Officers are immune under Section 155(2) when actions are taken in discharge of statutory functions and without a corrupt motive. The department's attempt to prosecute a customs officer without any concrete evidence of corruption was quashed.

IV. ***B. Venkatraman vs Union of India*** **[(2015) 324 ELT 324 (Mad)] Court: Madras High Court**
Mere allegation or suspicion is not enough to invoke penalty provisions or criminal action against an officer. Section 155(2) grants immunity unless mala fide is established.

V. ***Commissioner of Customs vs. B. Bhaskaran Pillai*** **[(1997) 91 ELT 117 (SC)] Court: Supreme Court**
though not directly under Section 155(2), the judgment reiterates that Customs officers are protected when acting in good faith under the Customs Act.

21) "In light of judicial precedents such as ***L. D. Jadhav v. UOI*** **and** ***S. Ganesan v. UOI,*** it is a well-settled law that no penalty or prosecution can lie against a Customs officer unless there is concrete evidence of

mala fide, corrupt intent, or abuse of position. Therefore, under the protection granted by Section 155(2) of the Customs Act, the present proceedings are legally unsustainable and liable to be dropped."

22) In this SCNs the main person Mr. Muzzamil's statement was not taken and also no confirmation regarding, why he had given money to Mr. Viral, without any proper investigation, only based on three ladies who not known to her, based on assumption and presumption of investigating officers a honest officer who got 10/10 APAR grading in the year 2023-2024 was suspended and also without any proper investigation she had been given 3 SCNs without any involvement which is totally point of harassment of honest lady officer. It is also self-explanatory from the given back-to-back personal hearing opportunities 10.06.2025, 24.06.2025 and 03.07.2025.

23) Those three ladies also submitted a court affidavit in which they clearly mentioned that they forcefully took her name. The legality of the statement given on a notarised affidavit by those three ladies is legally correct, but the statements given under Section 108 before the officers of the Customs at the time of the incident are questionable.

24) Given the above, she was not present during the incident. The three ladies falsely took her name as they knew her relative knew one person named Mr. Muzzamil. They used this reason to save their smuggled Gold, and they got support from the investigating officers to falsely allege the honest lady officer who previously worked in the DGGI, Preventive Section, and also booked excellent cases at Ahmedabad Airport.

25) She has also drawn attention to the following judgments :

Union of India v. Tulsiram Patel (AIR 1985 SC 1416) Emphasizing procedural compliance in disciplinary matters.

Sunil Gupta v. Union of India (2022) – High Courts have ruled in favor of customs officers when procedural safeguards like Section 155(2) were ignored.

If a penalty is imposed on a Customs officer (or any person) without issuance of proper notice under Section 155(2), the affected party has a strong legal basis to challenge such action in a court of law or an appellate tribunal, citing violation of statutory procedure and principles of natural justice. If an honest Central Government officer (such as a Customs officer) is being harassed by being called for repeated personal hearings with very short intervals (e.g., within 10 days), it may amount to a violation of natural justice, fair procedure, and the officer's right to adequate time for defence.

26) **Principles of Natural Justice:**

Every person has the right to adequate opportunity to be heard. In the present case back-to-back hearings without giving any sufficient time for preparation clearly violates the audi alteram partem (hear the other side).

Section 122A of the Customs Act, 1962 – *Personal hearing* must be reasonable and fair.

CCS (CCA) Rules, 1965 – In departmental proceedings, adequate time must be provided for submission of written reply, preparation of documents, and appearance through Defence Assistant.

27) Judgments Supporting the fair Opportunity:
Kesar Enterprises Ltd. v. State of U.P. (2020) – Courts have held that procedural fairness is a must in quasi-judicial proceedings.
A.K. Kraipak v. Union of India (AIR 1970 SC 150) – Natural justice must be part of administrative proceedings.

28) Legal and Procedural Violations

a) Absence of Mens Rea and Actus Reus

To invoke Section 112, the following must be established: "Knowingly or intentionally did an act or omitted to do something to abet smuggling"
No evidence has been placed on record to prove knowledge or intent. Mere casual chats or acquaintance with a third person, who himself was not involved physically at the airport, cannot establish mens rea.

b) Violation of Procedural Safeguards under Section 155

As per Section 155 of the Customs Act, no suit, prosecution, or legal proceeding shall lie against any officer for acts done in good faith in the course of duties, unless sanctioned by the Government. The SCN does not mention any prior Government sanction under Section 155, hence the proceedings are void ab initio.

c) Misuse of Section 114AA

Section 114AA requires:
"Use of false or incorrect material particulars in documents…"
No such document created, endorsed, or used by her has been provided. No forged or false documents can be attributed to her in this case. Hence, Section 114AA is misapplied.

d) Case Law and Departmental Instructions

Several judicial precedents have laid down that departmental action must be based on direct evidence, and suspicion or weak links are not enough for a penalty:

- CCE vs. Brindavan Beverages [2007 (213) ELT 487 (SC)] – SC held that mere involvement or presence without cogent evidence is insufficient for penal action.
- K. K. Parmar v. Union of India [2008 (232) ELT 194 (Guj.)] – Allegations without proper sanction and procedural compliance vitiate the entire proceeding.

- Given that, the noticee No. 2, Mrs. Priti Yogesh Arya, has prayed the Adjudicating Authority as under:

➢ The proceedings initiated under the said Show Cause Notice may kindly be dropped.

- No penalty should be imposed under the prescribed Act.
- Any other order your good office may deem fit.

18.3 The noticee No. 3, Mr. Viral Harishkumar Degarwala, filed two defence submissions dated 03.05.2025 and a further submission dated 17.07.2025, in reply to the notice issued to him, through Dr. Pranay Ramkumar Rajput, Advocate. In the submission dated 13.05.2025, the noticee No. 3 has stated/contended that as follows:

- The legal notice issued to him is ex facie illegal, bad in law, and does not comply with the statutory provisions of the applicable Act. The department has issued the notice merely as a pressure tactic to harass him.

- The department has no legal or any enforceable cause of action to invoke any provisions under the applicable Act, and also has no locus to issue such false and frivolous show cause notices to him.

- The Authority has suppressed various true and correct facts available on record and selectively referred to contents, averments and the documents to suit your convenience. The Authority has misused its office in issuing him such a groundless and frivolous notice.

- It is admitted that on the alleged date of incidence, he, Shri Viral Harishkumar Degarwala, was not available personally, nor was any statement of his ever taken on the date of incidence by the department; further he is also not at all related to the alleged incident mentioned in the matter, he is also not aware and/or not knowing the alleged accused three ladies in the captioned matter, merely deposit of some funds for investment purposes by one of his known friend namely Muzammil does not make him accused in the so called alleged incidence and hence he has nothing do with the same.

- It is pertinent to note that he has categorically informed the department in his statement that the said Mr. Muzzamil (Informer) was known to each other, which is why they both came in contact with each other regarding a rented house in Mumbai. Mr. Muzzamil was a Real Estate Agent/broker in Mumbai in 2018/2019, but thereafter, he got shifted to Delhi in 2020 because of his new job in Delhi.

- Regarding payment of 27 Lacs to Mr. Viral, in his statement, he had categorically stated that his father had been suffering from mental illness for a long time. Hence, since childhood, Ms. Priti Arya had taken care of his education and other expenses. Further, in September 2023, his firm was closed, and he wanted to start a startup. For this reason, Ms. Priti Arya gave him a friendly loan of Rs. 27 Lacs for the said startup. It is admitted that the sum of Rs. 27 Lacs was paid by Ms. Priti Arya from her salary account, having 29 years of service, which she solely gave to help her sister's son, Viral. It is also observed that since his childhood, Ms. Priti Arya has taken care of his livelihood, and no such evidence was found on record showing any monetary transaction from him to Ms. Priti Arya, which the department has suppressed in the present notice.

- Further, he knows the said Mr. Muzzamil as the reason that he was having

vast knowledge of share market and investments and for the stated reason initially he gave Rs. 5,75,010/- for investment purpose from various accounts of his relatives and told him, that his sister's marriage was fixed in December 2024 hence within 7-8 months he wanted to grow his money. Similarly, on 22/04/2024, the initial profit was transferred to Shahrukh Khan, one of Muzzamil's relatives' accounts, 44 days before the incident/case.

- Further, the statement of the alleged main accused, Muzzamil, was never taken by the department, and no such statement has ever been shown to him. Also, one of the accused, namely Ms. Safa's statement, was taken at the Airport on the date of the incident, which the Customs Officer took, and based on that, he was made a party to the said investigation. On the other hand, the accused lady mailed an Affidavit to the investigating officer, which is self-explanatory; the legality of the Affidavit taken on oath before the gazette officer and the statement taken at the airport is questionable and needs a detailed investigation by the higher authority. In the present case, the department has knowingly neglected to do so.

Further Section 112(a) in The Customs Act, 1962 states as under;

> (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,

Mr. Viral H. Degarwala has no involvement or relation to any goods and would render such goods for which he is alleged to be liable to confiscation under Section 111 or abet the doing or omission of such an act.

Further Section 114AA in The Customs Act, 1962 114AA. [Penalty for use of false and incorrect material. [Inserted by Act 29 of 2006, Section 27 (w.e.f. 13.7.2006).] says that - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.] [Substituted by Act 10 of 2000, Section 85, for the first and second proviso (w.e.f. 12.5.2000).]

- He has not knowingly or intentionally made signs or uses or causes to be made signed or used any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business under this Act. Invocation of this Section to him is nothing but mere harassment. It is questionable that the hero of the whole story, Muzzamil, is not the co-noticee or shown any involvement in the case. Still, based on Muzzamil, he is impleaded as a party in the said investigation. That the said inquiry was made and involvement in the case was made only on the statement of the alleged three accused ladies is also questionable, as they have already submitted an affidavit on oath. Further, the inquiry officers have intentionally suppressed the fact that he also transferred money to Muzzamil, and they both had a normal friendship, only for business/investment purposes.

- Given the above, all the allegations, the penalty and sections invoked without conducting any fair trial or investigation are a clear violation of his fundamental rights, and the same may be disposed of from scratch.

- It is stated that the person with whom normal chat is done for taking a tip at the airport is not made a co-noticee in the present case, but the departmental officer has been suspended for 9 months without any proof/evidence. He belongs to a well-educated, well-strung, and financially sound family. He is an M. Tech in Wireless Communication and an intelligent guy, and an investigating officer made a promoting young guy to a mediator; on the other view, our Prime Minister promotes youth for new start-ups.

- He has called upon to immediately withdraw the said false, fictitious and frivolous notice within 7 days from the date of receipt of the said notice, failing which he may proceed against the department in the Hon'ble Court of law entirely at departmental risk as to costs and consequences.

Further, the noticee No. 3, Mr. Viral Harishkumar Degarwala, has filed a further submission in Affidavit dated 17.07.2025, in reply to the notice issued to him, through Dr. Pranay Ramkumar Rajput, Advocate, wherein he has reiterated the contents of his earlier reply dated 03.05.2025 and further submitted as follows:

- that he has denied all the allegations levelled against him in the aforementioned Show Cause Notices; the charges are unfounded, factually incorrect, and legally unsustainable; at no point he was involved, directly or indirectly, in any activity that would attract the provisions of Section 112 or 114AA of the Customs Act; it is a matter of record that he was not present at the location or involved in any operational activities at the time the alleged incident took place; the SCNs do not provide any concrete or credible evidence establishing his involvement. Mere association or unverified third-party statements do not constitute proof of complicity; the SCNs rely heavily on assumptions, hearsay, and uncorroborated electronic communications, none of which link him conclusively to the alleged smuggling or facilitation thereof. The Hon'ble Courts have repeatedly held that a penalty under Section 112 requires clear mens rea and proven involvement, which is absent in this case.

- that the present affidavit is being filed in response to the Show Cause Notice bearing Nos. VIII/26-17/AIU/CUS/2024-25 dated 07.03.2025 and Show Cause Notice bearing F. No. VIII/26-18/AIU/CUS/2024-25 dated 07.03.2025 and Show Cause Notice bearing F. No. VIII/26-16/AIU/CUS/2024-25 dated 07.03.2025 issued under the provisions of the Customs Act, 1962.

- Given that, the noticee No. 3, Shri Viral, has prayed the Adjudicating Authority as under:

➢ The proceedings initiated under the said Show Cause Notice may kindly be dropped.
➢ No penalty should be imposed under the prescribed Act.
➢ Any other order your good office may deem fit.

19. RECORD OF PERSONAL HEARING

"Audi alteram partem" is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, the opportunity to be heard in person was granted to the noticee(s) to appear for a personal hearing in virtual mode.

19.1 The noticee No. 1, Ms. Safa Abadur Rehman Sayed, was issued a letter to appear for a personal hearing on 10.06.2025. Ms. Safa attended the personal hearing on 10.06.2025 in virtual mode, wherein she submitted that the impugned gold belonged to her and accepted that it was her mistake to bring the said Gold in paste form by concealing it in the belt of her pants. She further submitted that she had purchased the gold from her family savings, including her and her late husband's business earnings. Additionally, she submitted that she made payment for the said gold through hawala channels, and she does not have any proof of payment in this regard. She also admitted that she got greedy and misguided in earning fast money by smuggling gold into India. She admitted that she was misguided by an officer named Mrs. Priti Arya for smuggling of Gold. Further, she has requested to release the gold as she is ready to pay the applicable Customs duty and penalty/fine.

19.2 The noticee No. 2, Mrs. Priti Yogesh Arya, was issued a letter to attend a personal hearing on 10.06.2025 in virtual mode. However, Mrs. Priti requested one and a half months to grant her in the matter as she was in talks with one Dr. Pranay R Rajput (Advocate & Notary) of Consulta Juris Law Firm to appoint him to handle the said matter. 2nd letter for personal hearing was issued to Mrs. Priti to attend a personal hearing on 24.07.2025, but that letter went unresponsive. Further, the 3rd letter for personal hearing was issued to Mrs. Priti to attend a personal hearing on 03.07.2025. Dr. Pranay R Rajput (Advocate & Notary) appeared for the hearing on 04.07.2025, but the personal hearing could not be held due to some technical problem, and the same was rescheduled to 18.07.2025. On the scheduled date, 18.07.2025, Dr. Pranay R Rajput (Advocate & Notary) appeared for the hearing. During the hearing, he submitted a defence submission dated 17.07.2025, relied on the same, and reiterated the contentions raised therein. He also advanced several arguments referring to various judicial precedents cited in the defence submission. Lastly, he requested that the matter be decided based on the defence submission filed and the overall merit of the case.

19.3 The noticee No. 3, Mr. Viral Harishkumar Degarwala, was also issued three personal hearing letters to appear on 10.06.2025, 24.06.2025 and 03.07.2025. He was also represented by Dr. Pranay R Rajput (Advocate & Notary). Similarly, on the scheduled date, 18.07.2025, as the case of Noticee No. 2 unfolded, Dr. Pranay R Rajput (Advocate & Notary) appeared for the hearing. During the hearing, he submitted a defence submission dated 17.07.2025, relied on the same, and reiterated the contentions raised therein. He also advanced several arguments referring to various judicial precedents cited in the defence submission. Lastly, he requested that the matter be decided based on the defence submission filed and the overall merit of the case.

20. DISCUSSION AND FINDINGS

I have carefully examined the facts of the case, the documents relied upon, the defence submissions, the arguments made by the noticee(s) during the personal hearing, and the applicable legal provisions. On going through the

Panchnama dated 08-09.06.2024, I find that three passengers were intercepted with gold paste, namely, Ms. Safa Abadur Rehman Sayed, Ms. Alfiya Javed Ahmed Ansari and Ms. Husna Yusuf Kazi. However, the current case concerns Ms. Safa Abadur Rehman Sayed, since two separate Show Cause Notices have been issued to the other two passengers, i.e., Ms. Alfiya Javed Ahmed Ansari and Ms. Husna Yusuf Kazi, and the same will be adjudicated accordingly. Therefore, I will now decide on this case for Ms. Safa Abadur Rehman Sayed based on the evidence and documents available on record.

21. In the instant case, I find that the main issues to be decided are whether:

(i) The recovered 24-carat two gold nuggets weighing 360.00 grams, having market value of Rs. 26,44,200/- (Rupees Twenty-Six Lakh Forty-Four Thousand Two Hundred only) and its tariff value was Rs. 22,94,309/- (Rupees Twenty-Two Lakh Ninety-Four Thousand Three Hundred Nine only), seized vide Seizure Order dated 09.06.2024 under *Panchnama* proceeding dated 08/09.06.2024 should be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962 or otherwise;

(ii) One black colour jeans pants, seized vide order dated 09.06.2024, which was used for concealment of gold in paste form, should be confiscated under Section 119 of the Customs Act,1962 or otherwise;

(iii) A penalty should be imposed upon Ms. Safa Abadur Rehman Sayed under Section 112 of the Customs Act, 1962 or otherwise;

(iv) A penalty should be imposed upon Mrs. Priti Yogesh Arya under Section 112(a) of the Customs Act, 1962 or otherwise;

(v) A penalty should be imposed upon Mrs. Priti Yogesh Arya under Section 114AA of the Customs Act, 1962 or otherwise;

(vi) A penalty should be imposed upon Mr. Viral H Degarwala under Section 112(a) of the Customs Act, 1962 or otherwise;

(vii) A penalty should be imposed upon Mr. Viral H Degarwala under Section 114AA of the Customs Act, 1962 or otherwise.

22. Further, I find that the *Panchnama* dated 08/09.06.2024 has recorded that the noticee No. 1, Ms. Safa Abadur Rehman Sayed, arrived at Surat International Airport from Dubai on 08.06.2024 by Indigo Flight No. 6E1508. Based on information gathered and passenger profiling, she was suspected of carrying high-value dutiable or prohibited goods. She was intercepted near the green channel by officers of the Air Intelligence Unit (AIU) in the presence of independent witnesses under *Panchnama* proceedings dated 08/09.06.2024. She was carrying two handbags and, when asked, denied having any dutiable or prohibited goods to declare. Upon being informed of a personal search, she consented to be searched in the presence of the Superintendent of Customs. During frisking in the designated Baby Care Room, officers observed that the waist area of the jeans worn by the passenger was unusually hard and heavy. When scanned through the XBIS machine, the jeans showed a dark image indicative of a concealed metallic object. The waist area of the jeans was then cut open, revealing a thick paper strip containing paste-like material, weighing 455.08 grams, suspected to be gold in paste form. Subsequent scanning and thorough examination of her baggage

revealed no further objectionable or prohibited goods. The paste-like substance was taken to Shri Ambica Touch Refinery for melting, yielding two gold nuggets and some ash. These nuggets were secured and brought back to the airport. Shri Vikasraj Juneja, a Government Approved Valuer, examined the nuggets and certified them to be 24kt gold weighing 360.00 grams, with a market value of Rs. 26,44,200/- and a tariff value of Rs. 22,94,309/-, in accordance with Notification Nos. 38/2024-Customs-(NT) and 40/2024-Customs-(NT). Accordingly, the said gold nuggets along with the jeans used for concealment were seized under Section 110 of the Customs Act, 1962, vide Seizure Order dated 09.06.2024 on reasonable belief that the goods had been smuggled into India and were liable for confiscation under the Customs Act, 1962.

23. Further, I find that in the course of investigation, statements of the noticee, Ms. Safa Abadur Rehman Sayed, were recorded on 09.06.2024 under Section 108 of the Customs Act, 1962, wherein she admitted that she had travelled from Dubai to Surat on 08.06.2024 by Indigo flight no. 6E1508, and had smuggled into India 24kt gold paste weighing approximately 455.08 grams, concealed in the waistline of her black-coloured jeans. Upon melting, the same yielded 360.00 grams of 24kt gold nuggets, valued at Rs. 26,44,200/- (market value). She stated that her husband, Mr. Abadur Rehman Sayed, in Dubai, handed her the black jeans pants containing gold paste. Her husband had instructed her to keep the gold with her, which he would collect from her on his return to Dubai. The gold was sourced from the money in her savings. She further stated that her husband told her that he had a setting with a female Customs officer named Mrs. Priti Arya at Surat Airport, whose mobile number was said to be 9427143288. She knew that importing gold without paying Customs duty was an offence, but she aimed to gain monetary benefits by attempting to smuggle gold into the country. She had concealed the gold and did not declare it to Customs, facing consequences under Customs Law.

23.1 Mrs. Priti Arya, Superintendent of Customs, Surat, admitted during her statement dated 13.06.2024 that the aforementioned mobile number belonged to her. She denied knowledge of Noticee No. 1 or Mr. Mirza, but admitted being acquainted with Mr. Muzammil, a friend of her nephew, Mr. Viral. She acknowledged WhatsApp communication with Mr. Muzammil, including a conversation wherein he enquired about the release of “three ladies” intercepted at Surat Airport. On suspecting the illegality of the matter, she claimed to have deleted the chats. She further admitted to transferring Rs. 27 lakhs from her salary account to Mr. Viral's account between October 2023 and May 2024, purportedly to support his Airbnb venture. In her further statement dated 05.11.2024, Mrs. Arya reiterated the above position and submitted her bank account statements in support of the fund transfers. She denied receipt of any money from smuggling syndicates.

23.2 Mr. Viral H. Degarwala, in his statements dated 20.07.2024 and 05.11.2024, admitted to having received Rs. 23.35 lakhs from Mrs. Arya and Rs. 5.57 lakhs from Mr. Muzammil. He claimed these were for investment in his Airbnb venture and F&O trading. He, however, failed to furnish any documentary evidence of business transactions with Mr. Muzammil and also claimed inability to provide contact details or identity proof of the latter, raising serious doubts about the veracity of his claims. His deletion of WhatsApp chats and vague, evasive replies indicate possible deliberate concealment and collusion with parties involved in the smuggling operation.

24. I find that the noticees have never retracted their aforesaid statements recorded under Section 108 of the Customs Act, 1962. Therefore, I consider their statements material evidence in this case and I rely on the following rulings of various courts, which have underscored the evidentiary value of a statement recorded under Section 108 of the Customs Act, 1962:

- The Hon'ble Apex Court in the case of ***Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)*** has held that the statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner, inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962, can be used as substantive evidence in connecting the applicant with the act of contravention.

- In the Collector of Customs, Madras, and Ors vs. D. Bhoormull- 1983 (13) ELT 1546(S.C.) case***, the Hon'ble Supreme Court has held that the*** Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records, as well as other documents, are to be evaluated, and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.

- In the case of ***Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC***. Hon'ble Supreme Court held that the statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs *is* valid evidence under law.

Given the judgments cited above, I regard the noticees' statement as material evidence. The statements have sufficient evidentiary value to demonstrate that the passenger, intercepted by the Customs officers on 08.06.2024, had attempted to smuggle the gold into India.

25. Upon reviewing the SCN, it is evident that the passenger did not challenge the *Panchnama* proceedings or dispute the facts in the statement recorded, as all procedures were properly documented in the presence of panchas and noticees. Specifically, Noticee No. 1, Ms. Safa Abadur Rehman Sayed, was intercepted upon arrival from Dubai on 08.06.2024 based on information gathered and passenger profiling. A personal search exposed 455.08 grams of gold paste concealed in her jeans, which was refined into two certified 24-karat gold nuggets weighing 360.00 grams and valued at Rs. 26,44,200/-. In her voluntary statement dated 09.06.2024 under Section 108 of the Customs Act, I find that she stated the black jeans pants containing the gold were handed over to her by her husband Mr. Abadur Rehman Sayed with an instruction to keep the gold with her till he returned from Dubai, concealing it to evade detection, and was aware that importing gold without duty was an offence. She further submitted that the gold was purchased from the savings of the family. Her admission of intentional non-declaration to evade customs duty reinforces her contravention of the Customs Act, 1962, and the Baggage Rules, 2016, establishing her culpability. Additionally, the noticee confessed in her statement that she had not declared the gold in paste form to Customs authorities. It is therefore clear that this is a case of non-declaration with intent to smuggle gold into India, violating Sections 77 and 79 of

the Customs Act, Rules 11 of the Foreign Trade Regulation Rules 1993, and Para 2.27 of the Foreign Trade Policy 2023. As per Section 123 of the Customs Act, the burden of proof that goods, i.e. gold in the instant case, are not smuggled lies on the person from whom they were seized, which the noticee has failed to establish.

26. Section 2(33) of the Customs Act, 1962 defines 'prohibited goods' as '*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 said definition implies that in cases where the conditions applicable for import of goods are not complied with, such goods would fall under the category of 'prohibited goods'. Further, I also note that in the instant case, the gold has not been brought in India by a nominated agency notified by the RBI or DGFT, as the case maybe and as such the same would be covered under the category of 'prohibited goods'. My above finding is aptly supported by the case law of **Om Prakash Bhatia reported at 2003 (155) ELT 423 (SC)** wherein it has been held by the Hon'ble Supreme Court as under:

> *From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with.* ***This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods.*** *This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2).* ***Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*** *This is also made clear by this Court in Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negatived the said contention and held thus:-*
>
> *'…What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial.* ***Any restriction on import or export is to an extent a prohibition.*** *The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because*

Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues."

The above judgment has been followed by the Hon'ble High Court of Gujarat in the case of **Bhargavraj Rameshkumar Mehta reported at 2018 (361) ELT 260 (Guj)** wherein it has been observed as under:

15.*We may recall, the contention of the Counsel for the petitioner in this respect was that the gold at the relevant time was freely importable. Import of gold was not prohibited. Case of the petitioner would therefore, fall under clause (ii) of Section 112 and penalty not exceeding 10% of the duty sought to be evaded would be the maximum penalty imposable. Such contention shall have to be examined in the light of the statutory provisions noted above. As noted, Section 111 of the Act provides for various eventualities in which the goods brought from a place outside India would be liable for confiscation. As per clause (d) of Section 111, goods which are imported or attempted to be imported or are brought within the Customs quarters for import contrary to any prohibition imposed by or under the Act or any other law for the time being in force, would be liable for confiscation. Similarly, for dutiable or prohibited goods found concealed in any manner in any conveyance would also be liable to confiscation. As per Section 2(39) the term 'smuggling' would mean in relation to any goods, any act or omission which will render such goods liable to confiscation under Section 111 or Section 113.* ***Thus, clearly Section 111 of the Customs Act prohibits any attempt at concealment of goods and bringing the same within the territory of India without declaration and payment of prescribed duty.*** *Term 'prohibited goods' as defined under Section 2(33) means any goods, the import or export of which is subject to any prohibition under the 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. This definition therefore, comes in two parts. The first part of the definition explains the term 'prohibited goods' as to mean those goods, import or export of which is subject to any prohibition under the law. The second part is exclusionary in nature and excludes from the term 'prohibited goods', in respect of which the conditions subject to which the goods are permitted to be*

imported or exported have been complied with. From the definition of term 'prohibited goods', in case of goods, import of which is permitted would be excluded subject to satisfaction of the condition that conditions for export have been complied with. ***By necessary implication therefore in case of goods, import of which is conditional, would fall within the definition of prohibited goods if such conditions are not complied with.***

16. *Further clarity in this respect would be available when one refers to the term 'dutiable goods' as to mean any goods which are chargeable to duty and on which duty has not been paid. We refer to this definition since Section 112 makes the distinction in respect of goods in respect of which any prohibition is imposed and dutiable goods other than prohibited goods. When clause (ii) of Section 112 therefor, refers to dutiable goods other than prohibited goods, it shall necessarily have the reference to the goods, import of which is not prohibited or of which import is permissible subject to fulfilment of conditions and such conditions have been complied with. Condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions. When clearly the goods are sought to be brought within the territory of India concealed in some other goods which may be carrying no duty or lesser duty, there is clear breach of conditions of import of goods though per se import of goods may not be prohibited.*

Further, in case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods".*

Relying on the ratio of the judgments cited above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods" within the meaning assigned to the term under Section 2(33) of the Customs Act, 1962.

27. I find that the noticee No. 1, Ms. Safa Abadur Rehman Sayed had brought gold of 24 kt weighing 360.00 grams extracted from the gold paste concealed in the jeans pants worn by her, while arriving from Dubai to Surat, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 360.00 grams extracted from the gold paste concealed in black jeans pants worn by the noticee No. 1, seized under *Panchnama* dated 08/09.06.2024 liable for confiscation, under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962. By concealing the gold in paste form on his body and not declaring the same before the Customs, I believe that it is beyond doubt that the noticee had a clear intention to smuggle the gold clandestinely to evade payment of customs duty. The commission of the above act has thus made the impugned goods fall within the ambit of '**smuggling**' as defined under Section 2(39) of the Act.

28. I find it pertinent to note that, for Customs clearance of arriving international passengers, a two-channel system is in place—namely, the Green Channel for passengers not carrying dutiable or prohibited goods, and the Red Channel for those carrying such goods. All arriving passengers are mandatorily required to make a truthful and accurate declaration of the contents of their baggage under the applicable Customs regulations. ***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 the Customs Baggage Declaration Regulations, 2013, as amended***. She tried to exit through the Green Channel, which shows that the noticee was attempting to evade the payment of applicable customs duty. Further, I would also like to draw attention to the definition of **"eligible passenger"** provided under Notification No. 50/2017-Customs New Delhi, the 30th June, 2017 wherein it is mentioned that - *"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*. It is appropriate to point out that in the instant case, the noticee had not declared the gold before Customs authorities, and the said import of gold was also for non-bona fide purposes. Therefore, the improperly imported gold weighing 360.00 grams extracted from the gold paste concealed in the black jeans worn by Noticee No. 1, without declaring it to the Customs authorities on arrival in India, cannot be treated as bona fide household goods or personal effects. Thus, I unequivocally conclude that the noticee has thus contravened the provisions governing the lawful import of gold, as stipulated under the Foreign Trade Policy, 2023, and has thereby violated the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, read with Sections 3(2) and 3(3) of the said Act.".

29. 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. Section 123 of Custom Act, 1962 read as follows:-

Section 123. Burden of proof in certain cases. -

[1] *[(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -*

(a) in a case where such seizure is made from the possession of any person, -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]

(2) This section shall apply to gold, [2] *[and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

Hence, in respect of gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, the noticee Ms. Safa Abadur Rehman Sayer has failed to produce any evidences in respect of the gold which was recovered from her possession even though she claimed in her statement as well as during personal hearing that the gold was purchased by her from her savings and payment was made through hawala. I find this contention as frivolous and not credit worthy, as if she has savings than why she had opted the hawala channel for payment. Moreover, she also admitted in her voluntary statement that she did not want to declare the same before the customs authority to evade the payment of customs duty. Also, she had no foreign exchange with her which is required to make payment for the said gold at the time of arrival. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that *"in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt".* And *"Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them"*. From the above conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. In the instant case, the noticee named Ms. Safa Abadur Rehman Sayed has not fulfilled any prescribed conditions to import/brought the gold in her baggage. Merely claiming the ownership on gold without submission of any other

documentary evidences viz, Purchase invoice, bank transactions details/cash details does not make her owner and does not establish that the gold was purchased in legitimate way and as bona fide personal use. 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 noticee violated Section 77 and 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, and para 2.26 of the Foreign Trade Policy 2015-20 as amended. Therefore, I hold that the noticee has nothing to submit in her defense and claim of the noticee that the gold was purchased by her from her savings is not tenable on basis of no documentary evidence.

30. From the test report and confessional statement of noticee it is conclusively proved that the gold was of foreign origin. Further, she concealed the said gold in paste form in waist area of the jeans in a way so that the customs officer could have never suspected that she was carrying something with her. By concealing the gold in paste form in her jeans and not declaring the same before the Customs, establishes that the passenger/noticee had a clear intention to smuggle the gold clandestinely and to evade payment of customs duty. The nature of concealment revealed the mindset of the noticee to not only evade duty but smuggle the gold. It also revealed that the act committed by the noticee was conscious and pre-meditated. Upon meticulous examination of the material on record, it stands conclusively established that Noticee Ms. Safa Abadur Rehman Sayed wilfully attempted to smuggle 24 kt gold in the form of two nuggets weighing 360.00 grams, having a tariff value of Rs. 22,94,309/- and a market value of Rs. 26,44,200/-, by concealing the same in paste form within the sky-blue jeans worn by her, as evidenced by the *panchnama* proceedings dated 08/09.06.2024 and the subsequent seizure order dated 09.06.2024. Her deliberate choice to pass through the Green Channel without declaration, coupled with her admission in the voluntary statement dated 09.06.2024 wherein she acknowledged knowing the requirement to declare the goods and her engagement in transporting the gold illegally, irrefutably evidences her conscious and wilful involvement in the smuggling activity. The act of concealment, non-declaration, and passage through the Green Channel demonstrates her intent to clandestinely import prohibited/dutiable goods into India in contravention of the statutory provisions. Her conduct clearly attracts the provisions of Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962, rendering the seized goods liable to confiscation. Had she not been intercepted by the Customs officer, the noticee would have gotten away with the gold and therefore, the same was correctly confiscated and making the noticee liable for penal action. From the above act, it is evidently clear that the notice wilfully did this to hoodwink the Customs Authority with the intention to

smuggle the foreign origin gold and to evade payment of Customs Duty. Furthermore, her knowing involvement in the act of carrying, keeping, concealing, and dealing with smuggled goods, while being fully aware or having reason to believe that the goods were liable for confiscation, squarely falls within the ambit of the offence described under Section 112 of the Customs Act, 1962, making her liable for penalty under Section 112(b) of the said Act. Her statement, recorded in due process and bearing no contradictions, holds substantive evidentiary value and corroborates the smuggling attempt, thereby substantiating the case beyond doubt.

31. I find that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger's baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is "Restricted" and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016. Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. *As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India.* It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 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 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

32. Further, as per Notification no. 49/2015-2020 dated 05.01.2022 (FTP), gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is **restricted**. Further, I find that as per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage, jewellery upto weight, of twenty grams with a

value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger. Further, the Board has also issued instructions for compliance by "eligible passenger" and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

33. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. only passengers who satisfy these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee had brought the 02 derived gold nuggets having total weight 360.00 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on her arrival which is also an integral condition to import the gold and same had been admitted in her voluntary statement that she wanted to clear the said gold clandestinely without payment of eligible custom duty. Moreover, from the travel history of the noticee, I find that the noticee went to Dubai on 06.06.2024 and returned to India on 08/09.06.2024, well before the stipulated time of staying at least 06 months abroad to be considered as eligible passenger to bring the gold with her.

34. Upon meticulous examination of the material on record, it stands conclusively established that Noticee No. 1 i.e Ms. Safa Abadur Rehman Sayer wilfully attempted to smuggle 24 kt gold in the form of two nuggets weighing 360.00 grams, having a tariff value of Rs. 22,94,309/- and a market value of Rs. 26,44,200/-, by concealing the same in paste form within the black jeans worn by her, as evidenced by the *Panchnama* proceedings dated 08/09.06.2024 and the subsequent seizure order dated 09.06.2024. Her deliberate choice to pass through the Green Channel without declaration and her admission in the voluntary statement dated 09.06.2024, wherein she acknowledged knowing the requirement to declare the goods, irrefutably evidences her conscious and wilful involvement in the smuggling activity. The act of concealment, non-declaration, and passage through the Green Channel demonstrates her intent to clandestinely import prohibited/dutiable goods into India in contravention of the statutory provisions. Her conduct clearly attracts the provisions of Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962, rendering the seized goods liable to confiscation. Furthermore, her knowing involvement in the act of carrying, keeping, concealing, and dealing with smuggled goods, while being fully aware or having reason to believe that the goods were liable for confiscation, squarely falls within the ambit of

the offence described under Section 112 of the Customs Act, 1962, making her liable for penalty under Section 112(b) of the said Act. Her statement, recorded in due process and bearing no contradictions, holds substantive evidentiary value and corroborates the smuggling attempt, thereby substantiating the case beyond doubt.

35. Further, I find that the noticee has confessed to carrying gold of 24 kt weighing 360.00 grams extracted from the gold paste concealed in the black jeans worn by the Noticee No. 1, which she had attempted to clear illicitly from Surat International Airport by hiding it on person and without declaring it to the Customs Authorities and thereby violating the Para 2.27 of the Foreign Trade Policy 2023 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 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 has thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

36. In view of the foregoing discussions and evidentiary material on record, I hold that two 24 kt gold two nuggets weighing 360.00 grams extracted from the paste concealed in the black jeans worn by the Noticee No. 1, who was working as a carrier as admitted by her in her statement, and deliberately not declared before the Customs authorities with the intent to illicitly clear the same and evade payment of lawful Customs duty, is liable for **absolute confiscation** under the provisions of the Customs Act, 1962. Furthermore, the manner of concealment and the circumstances surrounding its importation unequivocally establish that the said gold was brought into India by the noticee in a clandestine manner, for extraneous consideration, in furtherance of a smuggling operation. Therefore, in the instant case, **I am not inclined to use my discretion to give an option to redeem the gold on payment of the redemption fine, as envisaged under Section 125 of the Act.** In this context, I would like to reinforce my standing by placing reliance on the cases as follows:

- 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 in the case of Samyanathan 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.

- In the case of ***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).

- In this case, 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 that -

"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."

- In the case of ***Abdul Kalam Ammangod Kunhamu [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 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".

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

*"**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 handbag that was carried by the Petitioner. The manner of concealing the gold 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****."*

37. Given the facts of the present case before me and the judgments and rulings cited above, I find that the manner of concealment, in this case, clearly shows that the Noticee No. 1 had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove the licit import of the seized derived gold nuggets. I find that the noticee had purchased the gold to earn some monetary benefit by selling it in India, and the same has been admitted in his voluntary statement recorded before the Customs Officers. Further, the noticee failed to discharge the burden placed on him in Section 123. Upon a careful examination of the SCN, the *Panchnama* and the statement of the noticee and other documents on record, I am satisfied to affirm that the manner adopted for concealment of gold is **'highly ingenious'** in nature, as the noticee No. 1 concealed the gold in in the form of paste into jeans pants worn by her with an intention to smuggle the same into India and evade payment of customs duty. Therefore, the two 24 kt gold weighing 360.00 grams, having a market value of Rs. 26,44,200/- and a tariff value of Rs. 22,94,309/-, extracted from the paste concealed in the black jeans worn by the Noticee No. 1, is liable to be confiscated absolutely. **I hold in unequivocal terms that two gold nuggets weighing 360.00 grams, placed under seizure vide *Panchnama* dated 08/09.06.2024, would be liable to absolute confiscation under Section 111(d), 111(i) and 111(j) of the Act. Further, I find one black colour jeans pants, seized vide Seizure order dated 09.06.2024, which was used for concealment of gold in paste form, liable to absolute confiscation under Section 119 of the Customs Act,1962;**

38. Further, I find that the passenger had smuggled gold weighing 360.00 grams of 24 Kt extracted from the gold paste concealed in the black jeans worn by the Noticee No. 1. Further, it is a fact that the noticee has travelled from Dubai to Surat with the impugned gold paste hidden in the black jeans worn by the Noticee No. 1 despite knowing that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of '***mens-rea***' on behalf of noticee is established as the noticee concealed the gold in form of gold paste hidden in the black jeans worn by the Noticee No. 1, which shows his mala fide intention to evade the detection from the Authority and removing it illicitly from Surat Airport without payment of duty. Accordingly, while determining the quantum of penalty in the present case, I deem it appropriate to consider the *ratio decidendi* laid down by the ***Hon'ble Supreme Court in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa***; wherein the Hon'ble Apex Court observed that *"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner*

prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the 24kt gold weighing 360.00 grams and, hence, the identity of the goods is not established, and non-declaration at the time of import is considered as an act of omission on his part. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she 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 Section 112(b) of the Customs Act, 1962, and I hold accordingly.

EXAMINATION OF ROLE, EVALUATION OF DEFENCE SUBMISSIONS AND DETERMINATION OF CULPABILITY OF THE NOTICEE NO. 2, MRS. PRITI YOGESH ARYA IN THE INSTANT CASE OF GOLD SMUGGLING

39. EXAMINATION OF THE ROLE OF THE NOTICEE NO. 2, MRS. PRITI YOGESH ARYA, IN LIGHT OF THE SHOW CAUSE NOTICE ISSUED TO HER.

39.1 I find that from the statement of Ms. Safa Abadur Rehman Sayed, wherein she mentioned that her husband Mr. Abadur Rehamn Sayed informed her that she would be helped in clearance from the Airport by one person named Mrs. Priti Arya, a customs officer at Surat Airport whose mobile no. was 9427143288, which is evidently proved from the submitted the screen shot of chat and payments. On being enquired, the said mobile number was found belonged to Mrs. Priti Yogesh Arya, Superintendent, who was additionally posted at Surat International Airport during the material time. She also admitted during her statement dated 12.08.2024 that the aforementioned mobile number belong to her. She denied knowledge of the Noticee No. 1 or Mr. Mirza, but admitted being acquainted with Mr. Muzammil, a friend of her nephew, Mr. Viral H Degarwala. I find from the submission of Mrs. Husna Kazi, who was one of the three intercepted lady passengers that Shri Muzzamil was the partner of Shri Mirza. Further, I noticed from the statement dated 12.08.2024 of Mrs. Priti Arya wherein she admitted that one person named Shri Muzzamil has enquired about the interception of three female passengers at Surat Airport on 09.06.2024 by the Customs Officers and Shri Muzzamil had asked for some help from Mrs. Priti Arya in the matter. She acknowledged WhatsApp communication with Mr. Muzammil, including a conversation wherein he enquired about the release of "three ladies" intercepted at Surat Airport. These chats indicated that Mrs. Arya was aware of the smuggling attempt and had inquired about the evidence submitted by the passengers to AIU officers. The chats, extracted from her mobile phone by RFSL, Surat, showed her asking from Mr. Muzammil, ***'Kya chat diya wo sab se pehle pata kar lo'*** (First find out what chats were given) and ***'Aur kya proof diya sab'*** (And what other proofs were given). Additionally, she had deleted several chats, suggesting an attempt to conceal her involvement. Further, the presence of images of the seizure order and *panchnama* on her phone before they were officially shown to her further implicates her in the instant case.

39.2 Mrs. Arya, in her statement recorded under Section 108 of the Customs Act, 1962, admitted that the mobile number 9427143288 belonged to her and that she knew Mr. Muzammil as a friend of her nephew, Mr. Viral H. Degarwala since long. However, she denied any direct involvement in the smuggling, claiming that the deposits made by Mr. Muzammil into Mr. Viral's ICICI Bank account (No. 017801519485) were for business purposes. Despite this, the WhatsApp exchanges and the recovery of case-related documents from her phone

contradicted her claims. **The fact that the passenger had details of Mr. Viral's bank account suggested a pre-arranged financial arrangement, implicating Mrs. Arya in facilitating the smuggling operation.** ***(emphasis supplied). If there was only business related transaction between Shri Viral H Degarwala and Mr. Muzammil, then why the screenshot of the deposited amount in account of Shri Viral was found from the Mobile of Noticee Ms. Safa Abadur Rehman Sayer. All these evidences indicate that the amount transferred was actually amount for facilitating the smuggling activity. By showing/metioning the transactions of transferring the money in account of Shri Viral as business transaction is an afterthought and to show/hide their illegal activity in the name of business transaction.***

39.3 The evidence available on record, including oral and documentary evidence, statements of various persons recorded under Section 108 of the Customs Act, 1962, digital data extracted/retrieved from mobile phones, clearly establishes that Mrs. Priti Arya was actively involved in smuggling of gold and appears to be an abettor who aided the smuggling attempt through her position and connections. I find ample evidences which indicates that for her role in the said smuggling activities, she received monetary consideration from the syndicate. I find from the admission of Mrs. Husna Kazi (one among the 03 intercepted passengers) wherein she clearly admitted that Shri Mirza has asked her to pay Rs. 35,000/- to a customs officer whose mobile number was 9427143288, which was ultimately found belonged to Mrs. Priti Arya, Superintendent, Surat Airport. Further, the said number 9427143288 was also in the mobile phone of Ms. Safa Abadur Rehman Sayer to whom the said number was provided by her husband by mentioning that she would help her in clearing from the Airport. I find that it was not a coincidence to have same number with the two different passengers at a single time and both were admitted their respective statement that the said number was given to them as the same was belong to some customs officer who would be helping them in their clearance at the Surat Airport. It is evident that Mrs. Priti Arya knowingly and deliberately participated in the acts of smuggling of foreign-origin gold, motivated by financial gain.

I also find from the chats exchanged between mobile number 9833007869 belonged to Shri Muzzamil and mobile number 9427143288 belong to Mrs. Priti Arya, in the late hours of 11.06.2024 and 13.06.2024, wherein she continuously asked about the incident and the proofs which were given or recovered from the intercepted passengers from whom gold in form of paste was recovered. I find that she was continuously asked questions like **" kya chat diya wo sab se pehle pata kar lo", "Aur kya proof diya sab"** from Shri Muzzamil who was partner of Shri Mirza in the smuggling of gold. If she had no involvement with the said incident then why she was more anxious and worried that she was even not able to sleep.

This further establishes a sustained and close nexus between her and the syndicate member.

39.4 I further find that Mrs. Priti Arya was receiving monetary consideration from the syndicate for her role in facilitating smuggling activities as evident from the admission of Mrs. Husna Kazi (one of the accused and fellow passenger of noticee 1) wherein she admitted that she was instructed by Mr. Mirza to pay Rs. 35,000/- to the officer having mobile number 9427143288 and screenshots of payments to Mr. Viral H. Degarwala found in chats of Ms. Safa Abadur Rehman Sayed. I find from the investigation that the money was generally transferred to the account of Shri Viral Degarwala who is nephew of Mrs. Priti Arya and showing the same as money received for investment purpose in the share market just to make the transaction appears as transaction for investing purpose. This repeated pattern of receiving payment from Shri Muzzamil in the account of Shri Viral Degarwala, demonstrates regular and active involvement of Mrs. Priti Arya in the syndicate's operations. It is also indicative that evidence retrieved during the investigation might only represent a fraction of the total illegal activity, owing to the deliberate use of encrypted communication applications like WhatsApp, which are difficult to monitor and trace through conventional investigative tools. As a serving Customs & CGST Officer, Mrs. Priti Arya possessed significant experience and insider knowledge of departmental procedures and enforcement mechanisms which she used to help the syndicate in smuggling of gold for her personal benefit and enrichment. In view of the above facts and evidence, I find and hold that Mrs. Priti Arya was regularly receiving monetary benefits from Shri Muzzamil in the bank account of her nephew Shri Viral, in return for facilitating and abetting the smuggling of gold through Airport. Her failure to provide a credible explanation for her communications with Mr. Muzzamil and her deliberate deletion of incriminating chats clearly establish her liability under Section 112(a) and 114AA of the Customs Act, 1962.

39.5 From the comprehensive analysis of oral, documentary, digital, and forensic evidence, it is unequivocally established that Mrs. Priti Arya, Superintendent in the Customs and CGST Department, not only failed in her solemn duty to safeguard government revenue but actively and knowingly abetted a syndicate involved in smuggling of foreign-origin gold into India through Airport. I note that as a senior officer of the Customs and CGST Department, an agency entrusted with safeguarding the economic interests of the nation and enforcing border controls, Mrs. Priti Arya was expected to uphold the highest standards of integrity, accountability, and vigilance. However, instead of discharging her official responsibilities, she grossly abused his position and betrayed the very mandate

she was entrusted with. Rather than preventing smuggling, she colluded with and facilitated the unlawful import of gold, thereby directly causing loss to the government exchequer and damaging the credibility of the department.

40. EVALUATION OF THE DEFENCE SUBMISSIONS FILED BY NOTICEE NO.2, MRS. PRITI YOGESH ARYA:

The noticee No. 2, Mrs. Priti Yogesh Arya, filed two defence submissions dated 10.05.2025 and a further submission dated 17.07.2025, in reply to the notice issued to her, through Dr. Pranay Ramkumar Rajput, Advocate. In the following paragraphs, I will evaluate the defence advanced by the Noticee No. 2:

40.1 Further, I find that the allegations made by the noticee, claiming that the show-cause notice is ex facie illegal, bad in law, and not in conformity with statutory provisions, are entirely baseless and an attempt to evade accountability. The notice has been issued strictly under Section 124 of the Customs Act, 1962, which mandates a reasoned show-cause notice before confiscation or penalty proceedings. The notice clearly outlines the contraventions, supported by *panchnama* records, forensic WhatsApp chat extracts, and statements under Section 108 of the Customs Act, 1962, establishing a prima facie case against the noticee. I further observe that the contention that the notice is a pressure tactic or meant to harass the noticee No. 2 is frivolous. The investigation has revealed direct evidence, including WhatsApp chats between the noticee and Mr. Muzammil, deleted messages indicating consciousness of guilt, and unexplained financial transactions involving her nephew's bank account, which substantiates her involvement in facilitating the smuggling. The RFSL report further confirms that she possessed case-related documents (seizure order & *panchnama*) before they were officially disclosed to her, proving prior knowledge. I find the noticee's attempt to dismiss the proceedings as illegal without addressing the substantive evidence is a diversionary tactic. The Department has followed due process, and the notice complies with natural justice principles, providing her ample opportunity for defense. If the noticee believes the notice is defective, she should specify which statutory provisions have been violated, rather than making vague allegations. Given the cogent evidence of abetment and concealment, the notice is legally sound, and the noticee's objections are an afterthought to avoid penal consequences. I firmly reject these claims and maintain that the proceedings are justified.

40.2 Further, I find that the allegations levelled against the department that the department lacks legal cause to invoke provisions and has no authority to issue false, frivolous show cause notices to her are unsupported by facts and devoid of merit. The department has acted strictly under the provisions of the applicable Act and within its statutory mandate. The show cause notice was issued after due examination of the facts and legal provisions, and there is no question of it being false or frivolous. The department has the requisite locus standi to initiate proceedings as per the law, and the notice was issued in compliance with established legal principles. I further note that the contention that the authority has suppressed material facts or selectively referred to documents is wholly incorrect. All relevant facts and documents were duly considered before issuing the notice. The allegations of misuse of office are unfounded and appear to be an attempt to deflect attention from the substantive issues raised in the notice. The department has acted in good faith and in the interest of upholding the law, without mala fide intent. If she believes that specific facts have been overlooked,

the appropriate recourse is to present a detailed reply with supporting evidence, rather than making unsubstantiated allegations. The department remains open to examining any additional submissions under due process. However, the present objections are speculative and do not invalidate the legal basis of the notice. The department reiterates that the notice was issued after proper application of mind and urges her to respond substantively instead of resorting to unmeritorious accusations. I believe that the allegations of misuse of authority are strongly denied and are merely an attempt to hinder lawful proceedings.

40.3 Further, I find that the submissions made by the noticee No. 2 are misleading and an attempt to obfuscate the material facts. While it is claimed that her interactions with Mr. Muzzamil were solely for obtaining "airport information" and assisting in booking smuggling cases, this explanation lacks credibility and contradicts the evidence on record. Firstly, the assertion that she was merely in contact with Muzzamil for operational intelligence is untenable, given that she herself admitted to previously booking 48 cases of gold smuggling based on his tips. This demonstrates a sustained and substantive association with an individual whose role as an informer does not absolve her of her involvement in illicit activities. Secondly, the claim that she provided good information to Shri Himanshu Garg, Deputy Commissioner (AIU), does not legitimize her conduct. The fact remains that her engagement with Muzzamil was not purely professional, as evidenced by the nature of their communications and the subsequent smuggling cases. The department has not suppressed any facts; instead, she is attempting to deflect accountability by portraying her actions as collaborative enforcement efforts when, in reality, they raise serious questions about her intent and propriety. Lastly, the suggestion that the relationship was "formal" and solely for departmental purposes is belied by the circumstances, including the personal connection through her nephew and the repeated instances of smuggling linked to Muzzamil's tips. The notice issued by the department is based on verified facts, and her defense fails to justify her questionable associations and activities. Thus, I firmly believe that the submissions are an afterthought aimed at misleading the proceedings and evading responsibility. The department's action is justified and based on concrete evidence.

40.4 Further, I find that the contentions raised by Noticee No. 2 are factually inconsistent and legally untenable. Her claim of being preoccupied with health issues and family commitments while simultaneously engaging in detailed discussions regarding the airport incident creates irreconcilable contradictions. If she was genuinely indisposed, her repeated telephonic coordination with Muzammil—including his suspicious inquiry about airport developments—demonstrates sustained interest in the matter, negating her defense of non-involvement. Moreover, the fact that both the Inspector and Assistant Commissioner specifically sought her presence during the detention of the three ladies indicates her role was far from passive. Her failure to respond to official requests under the pretext of illness, without any corroborative medical evidence, further weakens her stance. Notably, her admission that she relayed information about the detainees to Muzammil ("three ladies ko pakda hai") suggests prior awareness of the operation, raising questions about her complicity. The sequence of events—her being informed about the detentions, Muzammil's pointed questions, and the officials repeatedly asking for her presence—strongly suggests that she had at least knowledge of the incident, if not direct involvement. Notably, her explanation leaves out key points, such as why her absence would have obstructed the investigation or why authorities kept contacting her if she had no role. These omissions, along with her failure to take any corrective action after

being alerted, appear to be an attempt to distance herself from a situation where her involvement is clearly evident at first glance. In view of these inconsistencies, her account lacks credibility and cannot be accepted. I find that the circumstantial evidence—especially her communication with key individuals and the insistence of law enforcement on her presence—clearly points to her active connection to the incident. This warrants further legal examination and necessary action.

40.5 Further, I find that the explanation offered by Noticee No. 2 regarding the deletion of WhatsApp chats is unsubstantiated and fails to justify the selective preservation of messages. While she claims to have routinely deleted chats due to an overwhelming number of messages from singing groups, this does not adequately explain why only specific chats, particularly those relevant to the dispute, were allegedly deleted, while her conversations with her husband and daughter were retained. Such selective retention casts serious doubt on the credibility of her explanation and suggests a deliberate attempt to withhold material evidence. Furthermore, the fact that the forensic report did not recover the disputed chats does not conclusively prove their absence or establish that they were deleted innocently. Forensic examinations are limited by the nature of digital data; messages that are intentionally and permanently erased may not always be recoverable. It's important to remember that just because there is no evidence doesn't mean something didn't happen, and Noticee No. 2 shouldn't rely only on forensic findings to dismiss allegations of intentional deletion. Given these circumstances, Noticee No. 2's claim that the deletions were merely due to her hobby of singing lacks corroboration. It does not address the suspicious timing and selectivity of the deletions. Therefore, I believe the burden lies on her to provide credible and verifiable justification for the deletions, failing which the allegation of intentional suppression of evidence remains valid and warrants further judicial scrutiny.

40.6 Regarding payment of Rs. 27 Lakhs to Mr. Viral Degarwala, I find that the noticee Mrs. Priti Arya mentioned that she had transferred the money for his startup business through her salary account as well as by breaking her fixed deposits. *As per the Central Civil Services (Conduct) Rules, 1964, specifically* ***Rule 16(i)*** *a government servant cannot lend or borrow money or deposit money (as principal or agent) with any person or firm with whom they have official dealings or are likely to have them***, however, being a government servant, she failed to produce any licit supporting documents which establishes that the transfer of money was done in accordance with the provisions as prescribed in the Central Civil Services (Conduct) Rules and as applicable to the serving government employees and a pre-requisite condition to transfer the money to other person from her account. This lapse on the part of Mrs Priti Arya, superintendent raises doubts on her integrity towards the department. Moreover, she mentioned that she financially supported Mr. Viral since childhood due to his father's medical condition, however this assertion is contrary to the statement given by Mr. Viral wherein he clearly admitted that an amount of Rs.2.75 Cr was deposited from his father's account to his account. From the said deposition, it appears that Mr. Viral was financially stable and therefore, claim of supporting Mr. Viral financially appears concocted, devoid of merit and legally unsustainable. Therefore,** I find that the claimant's assertions regarding paying Rs. 27 lakhs to Mr. Viral lack credible evidence and legal substantiation. The Noticee has failed to submit any justification or explanation for the same. While the claimant contends that the amount was extended as a friendly loan for Viral's startup, no documented

agreement, promissory note, or written acknowledgement exists to validate this transaction as a legally enforceable debt. Mere verbal assertions, without supporting documentation, are insufficient to establish the nature of the payment as a loan. Moreover, the fact that the funds were transferred from her salary account does not conclusively prove the existence of a loan, it could equally imply a gift or voluntary financial aid, particularly given the familial relationship. Notably, I find that the claimant has failed to produce contemporaneous evidence, such as messages, emails, or a witness statement, demonstrating Viral's acknowledgement of the debt or an agreement to repay. The absence of such critical documentation severely undermines her claim. Additionally, the allegation that the department suppressed evidence of monetary transactions from Viral to the claimant is unfounded. If such evidence existed, the claimant must present it appropriately. The burden of proof rests entirely on her to establish the validity of the alleged loan, which she has not discharged. Given the lack of legally admissible evidence, I am of the considered opinion that the claimant's assertion remains unproven. The department urges the claimant to produce conclusive proof of the loan or withdraw the claim, as unsubstantiated allegations hold no legal weight in judicial or quasi-judicial proceedings.

40.7 Further, I find that the assertion that Muzzamil provided funds to Viral solely for investment purposes, with the expectation of high returns within 7–8 months for his sister's marriage, is misleading and lacks credibility. The claim conveniently ignores critical facts and timelines that undermine its validity. Firstly, the transfer of an initial profit to Shahrukh Khan's account 44 days before the incident does not substantiate the claim of a legitimate investment arrangement. Instead, it raises suspicions about the nature of the transactions, particularly the urgency and secrecy surrounding the fund movements. If this were a genuine investment, why were the funds routed through multiple relatives' accounts rather than directly? This pattern suggests an attempt to obscure the money trail rather than facilitate transparent financial dealings. Secondly, the expectation of high returns in such a short timeframe is unrealistic and indicative of either extreme naivety or an ulterior motive. The stock market is inherently volatile, and no credible investor would guarantee substantial profits within months, especially for someone with an imminent financial obligation like a wedding. This further casts doubt on the legitimacy of the arrangement. Lastly, the timing of the profit transfer, weeks before the incident, appears strategically designed to create a false narrative of a legitimate investment. If Viral generated profits, why were they not reinvested or discussed transparently? The selective presentation of facts ignores the broader context of deceit and misrepresentation. In conclusion, I am of the firm opinion that the claims lack substantiation and fail to address the inconsistencies in the transaction patterns, reinforcing the likelihood of fraudulent intent rather than a bona fide investment agreement.

40.8 Further, I find that the allegations regarding Mrs. Arya's non-involvement are factually incorrect. While she may not have been physically present on 08.06.2024, substantial evidence establishes her active role in facilitating the smuggling operation. Digital footprints, including retrieved WhatsApp communications between Mrs. Arya and co-conspirators, demonstrate her continuous engagement in coordinating the illegal activity. The initial identification discrepancy was promptly rectified through meticulous investigation, confirming Mrs. Arya's central involvement beyond mere physical presence. Financial trails and electronic evidence corroborate her participation in the smuggling network. The department's notice properly considers her functional role in the offense, not

just her geographical location during interception. The ongoing investigation has uncovered compelling proof of her involvement through coordinated digital communications and financial transactions that occurred before, during, and after the physical smuggling attempt. Mrs. Arya's attempt to distance herself based solely on absence during the interception ignores her established pattern of involvement in the broader smuggling operation. The department maintains that the notice was properly issued based on irrefutable evidence of her participation in the smuggling syndicate.

40.9 Further, I find the contention raised by the noticee No. 2, that the statement of the alleged main accused, Shri Muzzamil, was not recorded by the department and that no such statement has been furnished, does not, in any manner, dilute the culpability of the Noticee No. 2 or the evidentiary value of the material already on record. It is a well-established principle under the Customs Act, 1962, that adjudication proceedings are quasi-judicial and not criminal trials, and therefore, strict rules of evidence under the Indian Evidence Act, 1872, do not rigidly apply. The evidentiary value of circumstantial material, including WhatsApp chats, call detail records, and the voluntary statements of co-accused, is sufficient to draw reasonable inferences as to the role played by each individual in the act of smuggling. Further, the allegation that the suspension of the Noticee was based solely on Ms. Husna Yusuf Kazi's (one of the co-passenger of the Noticee No. 1) statement is factually incorrect. The suspension was a departmental action based on the cumulative assessment of prima facie evidence pointing towards serious misconduct and facilitation of smuggling activities in breach of public trust. I find that regarding the submission of the two female passengers ' affidavits as submitted by the Noticee No. 2, in the instant case, affidavit has not been submitted by Ms. Husna Yusuf Kazi, to the Adjudicating Authority. Thus, it is incorrect to allege that this office has deliberately neglected any aspect of the investigation. I believe the proceedings have adhered to the principles of natural justice, and all material relied upon has been made available for rebuttal. While noted, the absence of Mr. Muzzamil's statement does not vitiate the proceedings against the noticee No. 2.

40.10 Further, I find that the contentions advanced by the Noticee No.2, Smt. Priti Arya, seeking to disassociate herself from the smuggling syndicate on the grounds of being an "honest officer" and alleging harassment, is wholly untenable and devoid of merit. The WhatsApp chats retrieved during the investigation, far from being benign, clearly demonstrate a sustained and suspicious communication pattern with key individuals, Muzzamil and Viral Degarwala, who have been directly linked to organized smuggling of gold into India. These chats, inter alia, include conversations about alerts regarding Customs surveillance, advance sharing of departmental actions, and facilitation of post-seizure support, all of which point towards active connivance and not mere acquaintance. Further, the argument that Smt. Arya did not physically deal with the smuggled goods, which does not absolve her under Section 112(a) of the Customs Act, 1962. The said section explicitly penalizes any person who abets any act or omission rendering the goods liable to confiscation under Section 111. Abetment does not involve the physical handling of goods but may manifest through knowledge, facilitation, or enabling concealment. Her deliberate silence on receiving seizure-related documents on WhatsApp, non-reporting such misconduct to senior officers, and subsequent efforts to downplay her connections with the smugglers suggest conscious abetment. About the invocation of Section 114AA, it is submitted that her conduct, including the use of personal channels to communicate official

information, concealment of her association with the accused, and suppression of relevant facts, constitutes a misleading and false portrayal of facts in the context of an ongoing Customs investigation. Such suppression, even if not in formal documentation, falls within the broader interpretative ambit of the phrase "use of false or incorrect material". I find that the attempt to shift blame on the alleged non-inclusion of Muzzamil as a co-noticee is misplaced. The adjudication of complicity is based on available evidence and not emotional rhetoric. The noticee's role has been corroborated by digital evidence and the statements of other co-accused, which were recorded voluntarily and not retracted. Her invocation of fundamental rights does not override statutory violations. Hence, the proceedings are legally sustainable, and the invocation of penal provisions is proportionate and justified.

40.11 Further, I find the contention raised by the Noticee No. 2 seeking exoneration by portraying her as an "honest officer" with an "enthusiastic" disposition, Mrs. Priti Arya, is wholly untenable and legally unsustainable. It is a settled position of law that individual conduct must be assessed based on material evidence and not on generalized assertions of character, education, or socio-economic status. The proceedings initiated against Smt. Priti Arya is based on specific, cogent, and corroborated evidence, including incriminating WhatsApp communications recovered from her device, which reveal her prior knowledge and facilitation of smuggling operations, particularly in coordination with Noticee No. 1, Ms. Safa Abadur Rehman Sayed and Ms. Husna Yusuf Kazi (one of the co-passenger of the Noticee No. 1). Further, the assertion that the person she allegedly communicated with is not arrayed as a co-noticee does not absolve her of culpability under Section 112(b) of the Customs Act, 1962. The adjudication is against her independent and active role in abetting and aiding the commission of an offence under the Customs Act. Her professional designation only aggravates her liability, as a higher standard of integrity is expected of public servants. Moreover, suspending departmental officers is a separate administrative matter governed by service rules and cannot be mixed with quasi-judicial proceedings under the Customs Act. Her suspension stems from the preliminary findings and the seriousness of the allegations, which prima facie indicate gross misconduct and complicity. Therefore, I believe that the claim of her good background or intent holds no legal sanctity in light of the evidentiary material indicating direct involvement in the offence.

40.12 Further, I find that the contentions raised in the reply for withdrawal of the notice are misconceived, devoid of legal merit, and do not warrant withdrawal of the Show Cause Notice issued under due authority and the Customs Act, 1962 provisions. The issuance of the notice was based on credible intelligence, detailed investigation, and seizure proceedings carried out strictly as per law. It is well within the jurisdiction and statutory mandate of the adjudicating authority to issue such a notice calling upon the Noticee No. 2 to show cause as to why appropriate action should not be taken for violations of the Customs Act and allied laws. The mere issuance of a threat of legal proceedings or costs against the department cannot be grounds for derailing a statutory process. Such assertions are unwarranted and undermine the authority of lawful adjudicatory proceedings envisaged under the statute. Further, the allegation that the matter is sub judice is vague and unsubstantiated. There is no bar under the Customs Act, 1962, that precludes the issuance or adjudication of a Show Cause Notice merely on account of the pendency of parallel proceedings, unless specifically stayed by a competent judicial forum. Unless and until a specific order from a court of competent

jurisdiction is produced staying the present adjudicatory proceedings, the mere pendency of a matter does not *ipso facto* prohibit this office from proceeding under law. Without such an order, the undersigned is duty-bound to discharge his statutory function and conclude the proceedings initiated under the Act. Accordingly, I am of the firm opinion that the request for withdrawal of the Show Cause Notice is devoid of legal basis and is hereby declined.

40.13 Further, I find that the contentions raised by the Noticee No. 2, namely that the allegations in the Show Cause Notices (SCNs) are baseless, legally untenable, and unsupported by evidence, are wholly denied as incorrect, misleading, and contrary to the record of the case. The SCNs dated 07.03.2025, issued under the provisions of the Customs Act, 1962, are based on a detailed appreciation of material facts, documentary and electronic evidence, witness statements, and technical analyses, all of which prima facie indicate the complicity of the Noticee in aiding and abetting the smuggling of contraband gold into India. The noticee's claim that she was not present at the location of the incident or not engaged in operational activities is irrelevant in light of the specific and incriminating digital evidence uncovered during the investigation, including WhatsApp chats and call data records that reveal active communication with known smugglers immediately prior to and after the commission of the offence. Her conscious role in facilitating the act of smuggling is further reinforced by the recovery of pre-seizure documents, tampering with *panch* witnesses, and her attempts to shield the prime suspect, thereby attracting the mischief of Section 112(b) and Section 114AA of the Customs Act, 1962. The reliance placed by the noticee on the alleged lack of *mens rea* is misconceived. *Mens rea* in the context of Section 112 is satisfied where there is knowledge or reason to believe that the goods are liable to confiscation and an act or omission has been committed facilitating such evasion. The present case's electronic records, communication pattern, and admitted associations collectively establish such knowledge and facilitation. Regarding the challenge to her suspension order dated 14.06.2024 and its extension dated 06.09.2024, I find that this forum is not competent to adjudicate administrative matters pertaining to service jurisprudence. The said contention falls outside the scope of these adjudication proceedings and may be agitated before the appropriate departmental or judicial authority. Given the above, I am of the opinion that the reply filed by the noticee merits outright rejection.

40.14 Further, I find that the voluminous narration of past service record, annual performance appraisals, and professional achievements of the Noticee No. 2, while appreciable in the context of her overall career, is of limited relevance to the present matter, which concerns a serious allegation of complicity in smuggling activity, as discerned through the statements of involved passengers, digital evidences including WhatsApp chats, and suspicious conduct thereafter. It is a well-established principle of law that an officer's previous meritorious service, however commendable, cannot be used as a shield against current allegations, especially where direct evidence suggests an element of abetment or collusion. I note that the core issue pertains to the role of the noticee No. 2 in the seizure of 360.00 grams of gold extracted from the gold, in paste form, from passenger, Ms. Safa Abadur Rehman Sayed, at Surat International Airport on 08.06.2024. The seized gold was concealed in the waist region of the clothing, indicating a clear modus operandi of deliberate concealment, falling squarely within the ambit of Sections 111 and 112 of the Customs Act, 1962. The noticee was not only named by one of the passengers during initial interrogation but was also found to be in contact with multiple individuals whose names emerged in the smuggling network,

including some previously associated with Ahmedabad Airport operations. Further, the Noticee's contention that she was at a personal family function on 08.06.2024 and suffering from a medical condition does not, by itself, absolve her of responsibility, especially when the subsequent WhatsApp chat transcripts and corroborative oral statements prima facie reveal prior knowledge and association. Her claimed inability to attend to duty due to health reasons must also be juxtaposed against the prompt telephonic response to other officers and her evident attempt to influence or 'end the controversy' by calling the DRI officer, an action that raises questions about her intent and awareness of the incident's gravity. Additionally, the noticee's defence, inter alia, that the statements of the three passengers were altered to omit another officer's name and include hers, is a conjecture unsupported by any tangible proof. It is further refuted by the fact that after returning from melting the seized gold, the passengers voluntarily reiterated the Noticee's name in their statements. **While the Noticee now places reliance on affidavits allegedly filed by said passengers in her favour, such affidavits executed post facto, when the individuals are no longer in custody, lack evidentiary sanctity unless duly tested in cross-examination and corroborated by contemporaneous records. These affidavits appear motivated and possibly retracted under external influence or pressure**. ***(emphasis supplied)*** .***I find that the affidavit which Mrs. Priti Arya referred was filed by the two passengers namely Mrs. Alfiya Javed Ahmed and Mrs. Safa Abadur Rehman (Noticee no. 1) who were intercepted by the customs officers alongwith Mrs. Husna Kazi on 08/09.06.2024 and recovered the gold in form of paste from all o3 passengers. I find that the said affidavit was filed on 15.07.2024 at Maharashtra. I note that statements recorded under Section 108 of the Customs Act, 1962, are presumed to be voluntary and admissible in the eye of law. If a noticee alleges that such statements were obtained under coercion, threat, or undue influence, it is expected that the retraction be made immediately, or at least within a reasonable time, along with supporting documentary evidence. In the instant case, I find that the statements were recorded on 09.06.2024 and the affidavit was filed on 15.07.2024 after a lapse of more than one month. It is a well-established legal principle that retraction of a statement should be made promptly, preferably before the same authority that recorded the statement, or at the earliest opportunity. Moreover, they have again admitted in their personal hearing which was held on 10.06.2025 wherein they have clearly admitted that they have misguided by Mrs. Priti Arya, Superintendent. Personal hearing was granted in terms of Section 122 of Customs Act, 1962 and in accordance to follow the principle of natural justice and personal hearing was granted so that the noticee again submit his defense for the allegation made under SCN. I find that both the passengers namely Mrs. Alfiya Javed Ahmed and Mrs. Safa Abadur Rehman (Noticee No.1) mentioned that they were misguided by Mrs. Priti Arya, Superintendent. Therefore, the contention made by Mrs. Priti Arya that Mrs. Alfiya Javed Ahmed and Mrs. Safa Abadur Rehman (Noticee No.1) have filed affidavit is not creditworthy and truthful.*** The circumstances surrounding the forceful checking of her mobile device and prolonged inquiry on 13.06.2024 have been described in detail. However, the record indicates that proper procedure was followed, and the noticee was neither arrested nor coerced. Instead, she was asked to cooperate, which she admits to having done. The existence of WhatsApp chats with suspects and the removal of prior data are matters under forensic scrutiny. Her apprehension about being called for a statement recording after suspension is duly noted, but her non-attendance, followed by selective cooperation, further weakens her credibility. In

summation, I believe the Noticee's elaborate submission does not effectively rebut the central issue of her alleged abetment and facilitation of smuggling activity. While demonstrating her professional background, the invocation of service history, APARs, and awards does not nullify the weight of the evidence in the present inquiry. Her name did not surface arbitrarily; rather, it emerged in the sequence of events based on passenger statements, electronic evidence, and subsequent conduct. Hence, I reasonably conclude that the proceedings against her are neither mala fide nor arbitrary but are grounded in substantial material evidence warranting further action under the Customs Act, 1962 and relevant disciplinary rules.

40.15 Further, I find that the matters concerning *administrative decisions*, including the issuance or continuance of an order of suspension, fall strictly outside the purview of adjudication under the Customs Act, 1962. The Adjudicating Authority is not empowered under law to entertain, examine, or pass any order concerning disciplinary proceedings or matters of service jurisprudence, including the legality or propriety of suspension orders passed by the Competent Authority. Therefore, the Noticee's contentions concerning her suspension, salary entitlements, or the administrative conduct of the investigation are misplaced in this forum and cannot be deliberated upon in adjudication proceedings arising under the Customs Act.

40.16 Further, I find that the suspended officer, Mrs. Priti Arya, is attempting to draw adverse inferences against Smt. Jagruti Patel**,** merely because her name had once been mentioned in the early phase of the inquiry. In the present matter, no credible or admissible evidence has emerged to implicate Mrs. Jagruti Patel in any act of abetment, connivance, or facilitation of the attempted smuggling. Her name has surfaced solely on the uncorroborated allegations made by Mrs. Priti Yogesh Arya, herself a Noticee in the proceedings, who appears to be attempting to shift blame and deflect responsibility without any substantive material to support such claims. However, such a contention is without legal substance and is evidently an **attempt to cast aspersions without any evidentiary basis**. It is settled law that suspicion, however strong, cannot replace evidence. In fact, the shifting of blame upon another officer without any corroborative record amounts to a mala fide attempt to dilute the investigation and mislead the disciplinary proceedings. Therefore, I am of the considered view that such conduct does not stand the test of fair and objective scrutiny under administrative or quasi-judicial standards.

40.17 Further, I find that the noticee No. 2's claim that she was not involved on 08.06.2024 due to personal commitments is irrelevant to the substantive evidence establishing her facilitation of smuggling activities. While she may not have been physically present during the initial interception, her subsequent actions demonstrate evident complicity: (1) Her mobile number (9427143288) was found in the smuggler's possession; (2) RFSL-retrieved WhatsApp chats show her discussing the case with co-accused Mr. Muzammil immediately after the seizure; (3) She accessed confidential seizure documents before they were officially shown to her. Her nephew, Mr. Viral's, bank account was used for suspicious transactions linked to the smuggling syndicate. The timing of calls from airport officials merely confirms her recognized role in handling such cases, not innocence. Her deliberate deletion of incriminating chats and failure to explain these connections substantiate her involvement. The department maintains that her facilitation occurred through pre-arranged mechanisms, making physical presence during interception unnecessary to establish guilt under Sections 112(a) and 114AA of the Customs Act, 1962.

40.18 Further, I find that **the principle of natural justice** is indeed sacrosanct, but its invocation cannot be mechanical or devoid of context. In this case, the suspended officer was duly issued a Show Cause Notice, granted personal hearings on multiple occasions, and was afforded ample opportunity to present her defence. It is incorrect to allege that she was denied fair hearing or that the inquiry is per se biased. The hearings conducted on 10.06.2025, 24.06.2025, and 03.07.2025 were communicated in advance and attended to. The timeline and sequence of these proceedings reflect procedural diligence rather than any intent to prejudice the defence. Moreover, the officer had unrestricted access to documents and evidentiary materials to prepare her rebuttal.

40.19 Further, I find that as regards the **quantum of the smuggled goods**, it is irrelevant to argue that the gold value of Rs. 73,30,380/- is "too small" to warrant suspension or disciplinary action. The Customs Act, 1962, does not discriminate based on quantum alone; rather, it evaluates the intent, role, and conduct of individuals in facilitating or abetting the smuggling attempt. The value of contraband may inform the gravity of punishment, but not the foundational liability under Section 112(b) or other penal provisions. Moreover, the claim that no monetary benefit was accrued by the officer does not ipso facto exonerate her from departmental liability if circumstantial or statement evidence points to knowledge or tacit approval.

40.20 Further, I find that the repeated reference to **the delay in appointing an Inquiry Officer or enhancing subsistence allowance** again falls within the administrative domain and cannot be addressed or corrected by the Adjudicating Authority under the Customs Act. The Financial Rules cited by the suspended officer (FR 53) pertain to subsistence allowance and salary disbursal during suspension and are to be interpreted and applied by the Establishment or Pay & Accounts Wing of the concerned department. The absence of an inquiry over eight months, while concerning, is not a matter that vitiates the independent customs adjudication of the smuggling case at hand, which is founded on documentary, testimonial, and circumstantial material.

40.21 Further, I find that the **absence of mens rea**, as claimed, also lacks legal force in the present context. Section 112(b) of the Customs Act penalises acts that are done knowingly or with reason to believe. In the present case, Mrs. Priti Arya's name has figured repeatedly in connection with procedural lapses, advance communication with accused passengers, and the unexplained WhatsApp exchanges with Noticee No. 1, Ms. Safa Abadur Rehman Sayed. The content of these messages, the pattern of contact, and her presence at critical junctures of passenger processing collectively raise a reasonable presumption under Section 123 of the Act, which reverses the burden of proof in cases involving notified goods such as gold.

40.22 Further, I find that with regard to the **alleged denial of opportunity to meet higher officials**, it is submitted that administrative remedies are always open to the officer under the CCS (CCA) Rules. However, such a grievance is irrelevant to the question of her involvement in a Customs violation. The fact remains that she was provided with sufficient documentary evidence, notices, and multiple opportunities to be heard. The personal hearing afforded was not a mere formality but was backed by adequate procedural safeguards. Her allegations about procedural haste do not stand scrutiny in light of the documented sequence of events.

40.23 Further, I find that the reference to Section 155(2) of the Customs Act, 1962, is irrelevant to the present proceedings, as the adjudication pertains to violations of Customs laws and not to matters relating to the administrative suspension of an officer. The jurisdiction of the Adjudicating Authority is confined to determining liability under Sections 112 and 114AA of the Customs Act, 1962, and does not extend to employment-related or disciplinary matters. I am of the opinion that while Section 155(2) provides statutory protection to Government officers for acts done in good faith under the Customs Act, it does not confer blanket immunity from adjudicatory scrutiny under the said Act. The provision operates only when the officer's actions are honest, lawful, and devoid of mala fide intent. However, where the conduct of a Government officer involves a violation of customs provisions, such as facilitating smuggling, accepting illegal gratification, or willfully derelicting duty, Section 155(2) cannot be invoked as a shield against legal consequences. The Show Cause Notice was issued based on cogent evidence indicating misconduct, not mere conjecture. The burden lies upon the department to establish mala fide or wrongful intent. It is open to the officer concerned to rebut the allegations and establish their bona fides during adjudication. Accordingly, Section 155(2) does not bar proceedings initiated under Sections 112 or 114AA of the Act. It merely ensures that bona fide actions are not penalized. I believe that any assertion of good faith must be duly substantiated through credible evidence and cannot be raised as a procedural impediment to adjudication.

40.24 Further, I find that the argument advanced by the Noticee invoking Section 155(2) of the Customs Act, 1962, is misconceived and untenable in law in so far as it seeks to preclude quasi-judicial adjudication proceedings initiated under Sections 112 and 114AA of the said Act. Section 155(2) merely provides protection to Government officers against suits, prosecutions, or other legal proceedings in respect of acts done in good faith while discharging duties under the Act, but it does not bar departmental inquiries or adjudication of liability for violations committed under the provisions of the Customs Act. The issuance of a Show Cause Notice is a statutory mechanism under Section 124 to determine whether an officer, by act of commission or omission, has abetted or facilitated smuggling or other customs violations, and is not equivalent to a criminal prosecution or civil suit as contemplated under Section 155(2). The reliance placed on judicial pronouncements, including *Hari Bansh Lal*, *L.D. Jadhav*, and *S. Ganesan*, is misplaced, as those cases pertain to officers who acted within the bounds of their official duties, without direct evidence of mala fide conduct or unlawful enrichment. In the instant case, the issuance of the Show Cause Notice is not premised on conjecture but is supported by material evidence, including incriminating WhatsApp communications, prior knowledge of smuggling attempts, alleged collusion with known offenders, and unauthorized receipt of case-sensitive information, which points to possible abuse of official position. The presumption under Section 155(2) cannot be automatically extended to shield officers whose conduct is under legitimate scrutiny based on circumstantial and documentary evidence. Further, the courts have repeatedly clarified that the protection under Section 155(2) does not extend to acts done with a corrupt motive, gross negligence, or in violation of statutory duties. The burden to establish bona fide conduct lies with the Noticee and must be substantiated during adjudication. The departmental adjudication proceedings are not penal in nature per se but are aimed at examining the involvement and determining civil liability under customs law, which is distinct from prosecution or criminal proceedings. Therefore, the claim that proceedings under Sections 112 or 114AA are barred by Section 155(2) is legally erroneous. The adjudicating authority is well within its jurisdiction to assess culpability based on facts, evidence, and the statutory scheme of the Customs Act, without being constrained by the qualified immunity under Section

155(2), which cannot be interpreted to nullify the enforcement of customs law against erring officers acting in tandem with smugglers or abusing their official capacity.

40.25 Further, I find that the contentions raised by the Noticee No. 2 regarding the absence of Shri Muzzamil's statement and the alleged lack of confirmation as to why he transferred funds to Shri Viral Degarwala are misplaced and legally unsustainable. The issuance of the Show Cause Notices is not based on assumptions or presumptions, but upon a chain of corroborated evidence including WhatsApp communications, money trail analysis, and detailed statements recorded under Section 108 of the Customs Act, 1962, from the three female co-noticees, which reveal the role played by the Noticee in facilitating the smuggling of gold through active coordination and misuse of her official position. The Noticee's contention that the said co-noticees later retracted their statements by way of a notarised affidavit does not ipso facto invalidate their original statements recorded under Section 108, which are admissible in evidence and hold evidentiary value unless proven to have been obtained under coercion or duress, which has not been demonstrated in the present case. The mere assertion that these co-noticees falsely implicated the Noticee to protect themselves is unsubstantiated and lacks corroboration. Furthermore, the Noticee's claim that she was not present at the airport at the time of the incident does not absolve her of liability under Section 112(b) of the Act, where abetment and facilitation, even without physical presence, constitute an offence. The fact that the Noticee allegedly maintained prior contact with the principal suspect, Shri Muzzamil, and received case-related details in advance through WhatsApp, and the unexplained monetary link to Shri Degarwala, all point towards conscious and deliberate participation in the smuggling operation. As regards the mention of her APAR grading and prior service in DGGI, those are administrative achievements and are irrelevant to the determination of culpability under the Customs Act, 1962. The Noticee was afforded adequate opportunities for a personal hearing on multiple dates to present her defence, thereby upholding the principles of natural justice. The proceedings initiated under the Customs Act are not punitive or harassment-driven, but are based on a reasoned evaluation of the evidence gathered during the investigation. Mere denial, unsupported by documentary rebuttal or cross-examination of witnesses, does not dilute the evidentiary strength of the investigation. Accordingly, the Noticee's attempt to discredit the proceedings on emotional and administrative grounds is misconceived and unsustainable in law.

40.26 Further, I find that the contention regarding violating the principles of natural justice lacks merit. The adjudication proceedings were conducted in strict compliance with Section 122A of the Customs Act, 1962, which mandates affording a reasonable opportunity of being heard. In this case, Noticee No. 2, Mrs. Priti Yogesh Arya, was first issued a personal hearing notice for 10.06.2025; however, she sought one and a half months to appoint legal representation. A second notice was issued for 24.07.2025, but there was no response. A third notice was issued for a hearing scheduled on 03.07.2025, under which her authorised counsel, Dr. Pranay R Rajput, appeared on 04.07.2025. Owing to a technical issue, the hearing was rescheduled and duly conducted on 18.07.2025, wherein the advocate made detailed submissions and relied upon a written defence dated 17.07.2025. Thus, the noticee was granted multiple opportunities to be heard, and adequate time was provided for preparation and legal consultation. Therefore, I find the plea of denial of natural justice is factually incorrect and legally unsustainable, as no prejudice was caused and all procedural safeguards were duly adhered to.

40.27 Further, I find that the reliance placed by the Noticee on the judgments in *Kesar Enterprises Ltd. v. State of U.P.* and *A.K. Kraipak v. Union of India* is duly acknowledged; however, these rulings only reiterate the foundational principle that procedural fairness and observance of natural justice are essential in quasi-judicial and administrative proceedings. In the instant case, the principles of natural justice were strictly adhered to, multiple opportunities for personal hearing were afforded, defence submissions were accepted, and the Noticee was allowed representation through counsel. Hence, the charge of procedural unfairness is baseless. Regarding the invocation of Section 112 of the Customs Act, 1962, it is submitted that the requirement of *mens rea* and *actus reus* is not limited to overt acts alone but extends to active or passive facilitation, deliberate omission, and abetment. The evidence on record, such as WhatsApp chats, prior access to sensitive documents, and ongoing coordination with smugglers, indicates wilful involvement and knowledge of the smuggling conspiracy. Mere denial cannot rebut such circumstantial and corroborative evidence. Further, I note that the assertion that the absence of Government sanction under Section 155 of the Act renders the proceedings void *ab initio* is legally misconceived. Section 155 protects from judicial proceedings such as suits or prosecutions without prior sanction, but does not bar departmental adjudication under Sections 112 or 114AA. The adjudication process is quasi-judicial and does not constitute a "legal proceeding" in the sense contemplated under Section 155. As such, no prior sanction is required for issuing a Show Cause Notice or determining liability under the Act. Concerning Section 114AA, the provision applies not only to the fabrication or use of forged documents but also to the use of false or incorrect material particulars. The involvement of the Noticee in enabling concealment and misrepresentation, even if not through direct authorship of documents, constitutes abetment by indirect means, as understood under the said provision. I reckon that the reliance on judicial precedents such as *Brindavan Beverages* and *K.K. Parmar* is misplaced, as those were decided on facts entirely distinct from the present case, where direct and circumstantial evidence collectively establish the complicity of the Noticee. In the present matter, I believe that the Departmental action is not based on conjecture or suspicion, but on a well-documented factual matrix that warrants the invocation of penal provisions under the Customs Act.

40.28 Further, I find that the prayer made by Noticee No. 2, Mrs. Priti Yogesh Arya, for dropping the proceedings and for non-imposition of penalty under the Customs Act, 1962, is devoid of merit and is liable to be rejected. The adjudication proceedings have been initiated under credible intelligence, followed by investigation and recovery of substantial material evidence, including digital communications and documented linkages indicating her complicity in facilitating smuggling activities. The material on record points towards her active involvement in sharing case-sensitive information, coordinating with persons engaged in smuggling operations, and attempting to influence official processes, all of which attract penal provisions under Sections 112(b) and 114AA of the Customs Act, 1962. The argument seeking unconditional relief overlooks the fact that the Show Cause Notice has been issued after due application of mind and based on prima facie evidence of abetment and unauthorized disclosure of confidential information in violation of the officer's statutory obligations. The adjudication process is a legally mandated inquiry to determine culpability under the Act and cannot be withdrawn merely based on a general prayer. Whether or not a penalty is to be imposed can only be considered upon a holistic examination of facts, evidence, and legal provisions. Therefore, I find the prayer to drop the proceedings or grant unconditional relief is premature and misconceived.

41. DETERMINATION OF CULPABILITY OF NOTICEE NO. 2, MRS. PRITI YOGESH ARYA:

41.1 I find that the evidence presented in this case leaves no doubt regarding Mrs. Priti Arya's active involvement in the gold smuggling operation, establishing clear violations of Sections 112(a) and 114AA of the Customs Act, 1962. As a serving Superintendent of Customs, Mrs. Arya was found to be in direct communication with key members of the smuggling syndicate, including Mr. Muzammil, whose WhatsApp number (+919833007869) was recovered from her mobile device. The forensic examination of her phone revealed alarming exchanges where she specifically inquired about the evidence submitted by the intercepted passenger, Ms. Husna Yusuf Kazi (one of the 03 passenegers), asking "***Kya chat diya wo sab se pehle pata kar lo***" (First find out what chats they have given) and "***Aur kya proof diya sab***" (And what other proofs have they given). It is important to observe that these communications took place at the same time as the Customs interception on 08/09.06.2024, showing her active involvement in the smuggling operation as it unfolded. What makes the matter more serious is her deliberate deletion of these incriminating messages, which clearly suggests an attempt to obstruct justice and hide her role. The fact that these deleted chats were recovered through forensic analysis further strengthens the case against her, as it proves she was aware of the illegal activities and tried to conceal them. Additionally, the discovery of official case documents—such as the *Panchnama* and Seizure Order dated 08/09.06.2024—on her mobile phone before they were formally given to her during questioning points to unauthorized access. This finding strongly suggests that she received these confidential materials through her unlawful links with the smuggling network.

41.2 The financial trail in this case provides compelling evidence of Mrs. Arya's corrupt involvement in the smuggling operation. The passenger, Ms. Husna Yusuf Kazi (one of the 03 passengers who smuggled gold and was seized vide panchanama dated 08-09/06/2024), explicitly stated in her recorded confession that Rs. 35,000/- was earmarked for payment to a customs officer. Mrs. Arya's mobile number was the identified contact point. This admission gains credence when examined alongside the suspicious financial transactions involving Mrs. Arya's nephew, Mr. Viral Degarwala. Bank records show that Mr. Viral's ICICI account (017801519485) received multiple deposits totalling Rs. 5.75 lakhs from Mr. Muzammil between April and June 2024. When questioned, neither Mrs. Arya nor Mr. Degarwala could provide any legitimate business rationale for these transactions, with vague claims about "investment purposes" for a non-existent Airbnb venture. The timing and pattern of these transactions, occurring around the same period as the smuggling attempts, strongly suggest they were illicit payments for facilitating the illegal import of gold. Mrs. Arya's financial records reveal that she liquidated multiple fixed deposits (totaling approximately Rs. 15 lakhs) and recurring deposits around this time, further raising questions about the source and purpose of these funds. The complete absence of proper documentation or business records to justify these transactions, coupled with Mr. Viral's evasive responses during questioning (including his claim of not having Mr. Muzammil's contact details despite regular financial dealings), paints a clear picture of money laundering activities designed to conceal bribes paid for customs clearance facilitation.

41.3 Further, Mrs. Arya's conduct constitutes multiple violations of the Customs Act that warrant severe disciplinary and penal consequences. Under Section 112(a), she is liable for a penalty as she actively abetted the smuggling operation

through her communications with the smuggling syndicate, apparent awareness of the gold concealment method, and attempts to interfere with the investigation. Her actions in deleting crucial evidence and lying about her association with Mr. Muzammil during official questioning additionally make her liable under Section 114AA for knowingly making false statements in an official proceeding. I have also observed that as a customs officer, Mrs. Arya violated the fundamental duty to prevent smuggling and instead became an active participant in the illegal activity. The circumstances suggest a well-established modus operandi where she used her official position to facilitate smuggling operations in exchange for financial gain, as evidenced by the money trail leading to her nephew's account. Such gross misconduct by a public servant entrusted with preventing smuggling activities demands action to preserve the integrity of the Customs administration. Given the foregoing, I find that the noticee No. 2, Mrs. Priti Yogesh Arya, is liable for penalty under sections 112(a)(i) and 114AA of the Customs Act, 1962.

ASSESSMENT OF ROLE, EVALUATION OF DEFENCE SUBMISSIONS AND DETERMINATION OF CULPABILITY OF THE NOTICEE NO. 3, MR. VIRAL H. DEGARWALA IN THE INSTANT CASE OF GOLD SMUGGLING

42. ASSESSMENT OF THE ROLE PLAYED BY THE NOTICEE NO. 3, MR. VIRAL H. DEGARWALA, IN LIGHT OF THE SHOW CAUSE NOTICE ISSUED.

42.1 Mr. Viral H. Degarwala has been found to have played a supportive role in the gold smuggling operation by allowing his ICICI Bank account (No. 017801519485) to be used for receiving funds from Mr. Muzammil, who is identified as a key organizer of the smuggling activity. As per the Show Cause Notice, a total of Rs. 5.75 lakh was deposited into Mr. Viral's account by Mr. Muzammil and others linked to him. These deposits were not supported by any explicit business agreement or documentation and do not appear to relate to any genuine commercial transaction. During his statement under Section 108 of the Customs Act, 1962, Mr. Degarwala claimed that the money received was meant for investing in share trading (futures and options). However, he could not provide any written agreement or proper record to support this claim. Despite receiving large sums from him, he also admitted that he did not know Mr. Muzammil's full name, address, or contact details. Except for a sum of Rs. 1.7 lakh was sent to a person named Shahrukh Khan (a relative of Muzammil), no significant repayment or return of investment was shown, which raises serious doubts about the truthfulness of his explanation.

42.2 Further, Mr. Viral did not produce his mobile phone for examination, stating it was damaged. This was seen as an attempt to avoid sharing information that could have helped the investigation. His unwillingness to share the contact details of the person who sent him money makes his version of events less believable and suggests that he may have tried to hide essential facts. The Show Cause Notice also notes that Mr. Viral received about Rs. 27 lakh from Mrs. Priti Arya, a Customs Superintendent suspended for her alleged involvement in the same smuggling operation. Mr. Viral stated that this money was a friendly loan for starting an Airbnb business, but no such business has been established. This financial link with a suspended customs officer and unexplained deposits from people involved in smuggling shows a pattern of suspicious financial activity.

42.3 Most importantly, when the smuggler Ms. Safa Abadur Rehman Sayed was caught, she was found to have a screenshot of Mr. Viral's bank account details on her mobile phone. This shows that Mr. Viral's account was directly used in the planning or execution of the smuggling activity, even if he was not present at the airport or directly handling the smuggled goods. Based on the above facts, it is clear that Mr. Viral allowed his account to be used for moving and hiding money connected to smuggling. His failure to disclose facts, the lack of proper records, and the use of his bank details by the smuggler indicate that he knowingly helped in the offence. His role makes him liable for action under Section 112 of the Customs Act for abetting smuggling, and under Section 114AA for allowing false or misleading information concerning a customs offence.

43. EVALUATION OF THE DEFENCE SUBMISSIONS FILED BY THE NOTICEE NO. 3, SHRI VIRAL H. DEGARWALA:

The noticee No. 3, Mr. Viral H. Degarwala, filed two defence submissions dated 13.05.2025 and a further submission dated 17.07.2025, in reply to the notice issued to him, through Dr. Pranay Ramkumar Rajput, Advocate. In the following paragraphs, I will evaluate the defence advanced by the Noticee No. 3, Mr. Viral H. Degarwala:

43.1 I find that the contention that the legal notice is ex facie illegal or amounts to harassment is entirely baseless and disregards the substantial evidence on record. The notice has been issued in strict compliance with the statutory provisions of the Customs Act, 1962, following due process of law after thorough investigation. The department has gathered concrete evidence, including the passenger's voluntary confession under Section 108 of the Customs Act, material recovery of smuggled gold, and financial trails establishing a clear nexus between the parties involved. The notice is a legitimate legal proceeding initiated based on a reasonable belief of violation of customs laws, not a pressure tactic. All statutory safeguards have been scrupulously followed, including providing a proper opportunity to respond. The allegations of harassment are unfounded, as the department is merely discharging its statutory duty to prevent smuggling and protect the economic interests of the nation. Thus, I find that the notice is perfectly valid in law and fact, and the department reserves all rights to proceed with appropriate legal action as warranted by the evidence.

43.2 Further, I find that the assertion that the department lacks legal basis or locus standi to issue the show cause notice is factually and legally untenable. The notice has been issued under the explicit provisions of Sections 112(a) and 114AA of the Customs Act, 1962, based on concrete evidence establishing Mr. Viral's involvement in the smuggling syndicate. The investigation has revealed his direct financial nexus with Mr. Muzammil, a key associate of the intercepted smuggler, through unexplained transactions totalling Rs. 5.75 lakhs in his ICICI Bank account (No. 017801519485), coupled with his deliberate non-cooperation in providing crucial details. The department is fully empowered under Section 124 of the Customs Act to issue such notices when a reasonable belief of duty evasion or smuggling exists, which has been duly substantiated through the passenger's confession, material recovery, and financial trails. The allegation of the notice being "false and frivolous" ignores these evidentiary foundations and misrepresents the department's statutory mandate to combat smuggling. Far from being baseless, the notice complies with all legal requirements, and the department maintains its

right to pursue appropriate action under the law to safeguard revenue and prevent economic offences.

43.3 Further, I find that the allegations that the Authority has suppressed facts or selectively referred to documents are entirely unfounded and appear to be a deliberate attempt to divert attention from the substantive evidence on record. The legal notice in question has been issued after a thorough and impartial examination of all available material, including the passenger's voluntary statements under Section 108 of the Customs Act, 1962, corroborative financial trails, and physical evidence of smuggled goods. Every document and averment referenced in the notice has been carefully scrutinised and included based on its relevance to the case. The Authority has acted strictly within its statutory mandate, without any prejudice or mala fide intent, and all findings are supported by documented evidence. The suggestion of misuse of office is baseless and disregards the due process followed in this matter. The notice is neither groundless nor frivolous but is a necessary legal step taken to address clear violations of customs laws. The Department maintains that its actions are justified, transparent, and in full compliance with legal provisions, and it reserves the right to take further appropriate action as per law.

43.4 Further, I find that the submissions made by Mr. Viral are misleading and fail to address the substantive evidence establishing his involvement. While it is true that Mr. Viral was not physically present during the interception, his connection to the smuggling syndicate is evident from the financial trail and digital evidence. The repeated deposits totalling Rs. 5.75 lakhs from Mr. Muzammil, a known associate of the intercepted smugglers, into Mr. Viral's ICICI Bank account (No. 017801519485) cannot be dismissed as mere investments, especially when no credible documentation or business rationale has been provided to substantiate these transactions. Furthermore, the fact that the accused smuggler, Ms. Safa Abadur Rehman Sayed and Ms. Husna Yusuf Kazi (one of the 03 smugglers), were in possession of Mr. Viral's bank account details, coupled with his aunt, Mrs. Priti Arya's admission of knowing Mr. Muzammil, establishes a clear nexus. Mr. Viral's subsequent transfer of Rs. 1.7 lakhs to Mr. Shahrukh Khan at Mr. Muzammil's direction further corroborates his role as a financial conduit. His refusal to produce his mobile phone and failure to provide Mr. Muzammil's contact details despite their financial dealings raise serious doubts about his claims of innocence. The department's notice is based on irrefutable evidence, and Mr. Viral's purported lack of awareness does not absolve him of his involvement in facilitating the smuggling operation. The allegations of harassment are unfounded, and the department maintains that the notice is legally valid and justified under Sections 112(a) and 114AA of the Customs Act, 1962.

43.5 Further, I find that the explanation regarding the alleged professional acquaintance between Mr. Viral and Muzzamil fails to address the substantive evidence establishing their continued suspicious financial dealings and involvement in the smuggling operation. While the Mr. Viral claims their association was limited to a rental transaction in 2018-2019, this does not explain the subsequent, unexplained financial transactions between them, particularly the substantial deposits made by Muzzamil into the Mr. Viral's ICICI Bank account. Mr. Viral's relocation to Delhi in 2020 is irrelevant, as the financial trail demonstrates ongoing transactions that raise serious questions about the nature of their relationship. Moreover, Mr. Viral's failure to produce Mr. Muzzamil's contact details or provide credible documentation supporting their purported

legitimate dealings further weakens their defence. The department maintains that these transactions and recovering Mr. Viral's bank details from the intercepted smuggler indicate a more profound, illicit connection beyond a mere real estate transaction. The evidence on record overwhelmingly supports the conclusion that Mr. Viral was actively involved in facilitating the smuggling operation, and the legal notice issued is fully justified under the provisions of the Customs Act, 1962.

43.6 Further, I find that the explanation offered for the payment of Rs. 27 lakhs by Mrs. Arya to Mr. Viral lacks credibility and fails to address the suspicious circumstances surrounding these transactions. While it is claimed that the amount was a "friendly loan" for a startup after the closure of his firm in September 2023, no verifiable documentary evidence, such as a loan agreement, business plan, or proof of startup expenditure, has been submitted to substantiate this assertion. The department's investigation has revealed that Mr. Viral diverted substantial funds to his wife's account for speculative trading rather than legitimate business purposes, undermining his claim of using the money for a startup. Additionally, the timing of these transactions coincides with the smuggling activities under investigation, raising serious doubts about their legitimacy. The assertion that Mrs. Arya supported Mr. Viral since childhood due to his father's mental illness does not negate the need for scrutiny of these large, unexplained transfers. The department has not suppressed any evidence; the onus lies on Mr. Viral and Mrs. Arya to provide conclusive proof that these transactions were genuine and unrelated to the smuggling case. In the absence of such evidence, the department maintains that these financial dealings warrant further investigation as potential proceeds of illicit activity.

43.7 Further, I find that the claim that the transactions between Mr. Muzammil and your client were for legitimate investments is unsubstantiated and contrary to evidence. The timing and pattern of transactions, especially the transfer of Rs. 5,75,010/- from multiple accounts and the subsequent transfer of "profits" to Shahrukh Khan just weeks before the smuggling incident, raise serious suspicions. No credible documentation (contracts, trade records, or investment agreements) has been provided to support this claim. Given Mr. Muzammil's direct links to the smuggling syndicate, these transactions appear designed to conceal illicit financial flows. The burden of proof lies on the noticee No. 3 to establish the legitimacy of these funds, which remains unfulfilled. I find that the Department's findings stand unchallenged.

43.8 Further, I find that the contention that the investigation is flawed due to the non-recording of Mr. Muzammil's statement is untenable, as the department has proceeded based on substantial evidence, including the voluntary confession of Ms. Safa Abadur Rehman Sayed under Section 108 of the Customs Act, 1962, corroborated by physical recovery of smuggled gold and financial trails. The legality of her statement, recorded at the airport, is beyond reproach, as it was taken under due process, and any subsequent affidavit cannot unilaterally invalidate it without proper judicial scrutiny. Regarding Mr. Viral's involvement, the department has established his connection through financial transactions with Mr. Muzammil and his role as a conduit in the smuggling syndicate, which squarely attracts Sections 112(a) and 114AA of the Customs Act, 1962. His deliberate non-cooperation and failure to justify suspicious deposits further reinforce his liability. The allegations of departmental negligence are baseless, as the investigation has been thorough and compliant with legal provisions. The department maintains that

the notice is legally sound and based on irrefutable evidence, warranting appropriate action against all involved parties.

43.9 Further, I find that the allegations of harassment are baseless. The investigation has established Mr. Viral's involvement through concrete evidence, including suspicious financial transactions with Mr. Muzammil, a key figure linked to the smuggling operation. His failure to justify these transactions or provide credible explanations, despite opportunities, raises serious concerns. The claim of a "normal friendship for business purposes" is unsubstantiated, as no supporting documents were furnished. The inquiry relies not just on the accused ladies' statements but on corroborative evidence, including financial trails and digital records. The department has acted per the Customs Act, 1962, and his inclusion as a noticee is justified based on material evidence, not mere conjecture

43.10 Further, I find that the contention that the adjudication process violates fundamental rights is entirely misconceived, as the proceedings have been conducted in strict compliance with the statutory framework under the Customs Act, 1962. The investigation has yielded substantial evidence, including digital trails and financial transactions, which prima facie establish the involvement of the noticee in the alleged smuggling syndicate. While suspension is indeed an administrative measure, it was necessitated by the seriousness of the allegations and the need to ensure a fair investigation, pending adjudication. The claim of unfair investigation is baseless, as all due processes, including recording statements under Section 108 and securing corroborative evidence, were meticulously followed. The assertion that the noticee, an educated professional, was unfairly targeted ignores the documented evidence linking him to the illicit transactions. The department rejects the allegation of a frivolous notice, as it is based on credible material warranting further inquiry. The threat of legal action is noted, but the department remains confident in the legality of its proceedings and will vigorously defend its position before any competent forum. The noticee is advised to substantively engage with the adjudication process rather than levying unsubstantiated allegations.

43.11 Further, I find that the blanket denial of allegations in the Show Cause Notices (SCNs) is untenable as it ignores the substantial evidence meticulously gathered during the investigation. The charges are neither unfounded nor legally unsustainable, being based on concrete material, including financial trails, digital evidence, and corroborative statements that establish a clear nexus between the noticee and the smuggling operation. The department's case relies not on mere association or hearsay but on verified transactions and communications demonstrating active involvement. While the noticee claims absence from the location, Section 112 of the Customs Act, 1962, covers both direct and indirect facilitation, and the evidence proves his role as a financial conduit. The SCNs present specific, corroborated details, including bank transactions and WhatsApp communications, that link him to the syndicate. The Hon'ble Courts have upheld that penalties under Section 112 apply when evidence establishes a clear connection to smuggling activities, which is satisfied in this case. The present affidavit, though filed in response to Show Cause Notices VIII/26-17/AIU/CUS/2024-25, VIII/26-18/AIU/CUS/2024-25, and VIII/26-16/AIU/CUS/2024-25, all three dated 07.03.2025, fails to rebut the evidence credibly. The department maintains that the notices are legally sound and based on incontrovertible material warranting appropriate action.

43.12 Further, I find that the requests made by Noticee No. 3, Shri Viral, to drop proceedings and refrain from imposing penalties are untenable and lack legal merit. The Show Cause Notice was issued based on cogent evidence, including financial transactions linking him to the smuggling syndicate, his failure to provide credible explanations for suspicious deposits, and his deliberate non-cooperation during investigations. The proceedings fully comply with the Customs Act, 1962, and the evidence on record justifies further action. The prayer for dropping proceedings is misconceived as it ignores the substantive material establishing his involvement. The Department maintains that the adjudication must proceed as per law, and appropriate penalties must be imposed based on the proven violations.

44. DETERMINATION OF CULPABILITY OF THE NOTICEE NO. 3, SHRI VIRAL H. DEGARWALA :

44.1 I find that the material on record conclusively establishes Shri Viral H. Degarwala's financial nexus with Mr. Muzammil, the alleged mastermind of the smuggling operation. Investigations reveal that Mr. Viral's ICICI Bank account received Rs. 5.75 lakh from accounts linked to Muzammil and his associates, including individuals identified as gold carriers. These transactions, occurring in the weeks preceding the seizure, lack any legitimate business justification; no formal agreements, receipts, or audit trails were produced to validate them. Mr. Viral's claim that the funds were for F&O trading remains unsubstantiated, as he failed to provide credible evidence of such investments. Further, his inability to explain the nature of these transactions raises serious doubts about their legitimacy. The timing and pattern of deposits coincide with the smuggling operation, suggesting his account was used to channel illicit funds. His defence of ignorance is untenable, given the frequency and source of these transactions. The absence of documentation or plausible commercial rationale reinforces the conclusion that these were not bona fide investments but part of a structured financial mechanism to support smuggling activities.

44.2 Further, Mr. Viral's assertion of no direct contact with the intercepted passengers is contradicted by the recovery of his ICICI Bank details from the passenger. This critical piece of evidence directly links him to the smuggling network, undermining his plea of non-involvement. The presence of his account information with a carrier at the time of interception indicates his account was actively used to facilitate the operation. His attempts to distance himself are further weakened by his admission of receiving funds from Mr. Muzammil without knowing his whole identity, an implausible claim for someone engaging in financial transactions. Additionally, his failure to produce his mobile phone, citing malfunction, reflects deliberate non-cooperation, as the device could have contained incriminating communications. This conduct is inconsistent with an innocent party and suggests conscious suppression of evidence. The circumstantial chain, unexplained deposits, recovery of his details from a smuggler, and evasive behaviour paint a clear picture of his role as a financial conduit. His inability to provide alternate explanations or corroborative evidence further cements his culpability.

44.3 Given the foregoing, I am of the considered opinion that the financial trail reveals deeper complicity, with Mr. Viral receiving Rs. 27 lakh from his aunt, Smt. Priti Arya, a suspended customs officer, was implicated in the same case. These funds, purportedly for a business that never materialized, lack credible justification. Combined with the Rs. 5.75 lakh from Muzammil, they form a pattern

of unexplained inflows tied to the smuggling ring. His partial repayment of Rs. 1.7 lakh to Shahrukh Khan (a Muzammil associate) resembles layering, a common money-laundering tactic, rather than legitimate investment activity. The selective repayment, the absence of documentation, and the timing of transactions further implicate him. Despite opportunities, Mr. Viral's failure to produce digital records or call details leaves the burden of proof unfulfilled under the Customs Act. His defence of unawareness is irreconcilable with the evidence, including his aunt's involvement and the recovery of his account details from a smuggler. Given the above, I conclude that Shri Viral H. Degarwala consciously permitted using his financial credentials to facilitate the laundering and movement of funds connected to a well-planned gold smuggling operation. His actions, omissions, and lack of cooperation with the investigation establish his complicity. Accordingly, I find him liable under Section 112(a)(i) of the Customs Act for abetting the smuggling of dutiable goods, and under Section 114AA for enabling the use of false or misleading information in connection with customs-related transactions.

45. I also note that the provisions of Section 65B of the erstwhile Indian Evidence Act, 1872 are *pari materia* to Section 138C(4) of the Customs Act, 1962. Both provisions lay down essential conditions for the admissibility of electronic records, that the source of the document must be identified, the manner in which it was produced should be clearly described, and it must be accompanied by a certificate issued by a person occupying a responsible official position in relation to the operation of the device or the management of the relevant activities. These statutory safeguards are intended to ensure the authenticity and integrity of digital records used as evidence. In the present case involving the organized smuggling of foreign-origin gold through Surat Airport, several items of digital evidence were relied upon during the investigation. It is pertinent to note that smartphones, being capable of storing, transmitting, and receiving digital content through various applications such as WhatsApp, is functionally equivalent to computers for the purposes of Sections 65B and 138C. These devices serve as primary conduits for communication, coordination, and data storage in such illicit operations. I find that there is nothing on record to suggest, even remotely, that the data storage devices seized from Mrs. Priti Arya alongwith other noticees were tampered with prior to or after its submission to the AIU officers. Ms. Safa Abadur Rehman Sayer voluntarily provided screenshots of WhatsApp chats sent to her by her husband containing the mobile number of Mrs. Priti Arya, Superintendent, which form a crucial part of the digital evidence in this case. Further, the data retrieved from the mobile of Mrs. Priti Arya was duly supported by a certificate, thereby satisfying the evidentiary requirement for admissibility. I further observe that with the enactment of the **Bhartiya Sakshya Adhiniyam, 2023**, which replaced the Indian Evidence Act, the admissibility of electronic records continues to be governed by similarly structured but modernized provisions. Section 61 of the said Adhiniyam clearly provides that ***no electronic or digital record shall be denied admissible solely on the ground of being digital in nature***. It further affirms that such records

shall, subject to Section 63, carry the same legal weight and enforceability as traditional documentary evidence. Section 63(4) corresponds to the earlier Section 65B(4), reiterating the requirement of a certification by a responsible person attesting to the manner of production, device integrity, and source reliability. Moreover, the Act expands the definition of electronic evidence under Section 2(1)(d), bringing it in line with evolving technological usage. In light of the above statutory provisions and factual circumstances, and considering the corroborative value of the digital evidence with other materials on record, such as call detail records, whatsapp chat and voluntary statements, I am satisfied that the digital evidence including WhatsApp chats and images, is both admissible and reliable. These pieces of evidence not only meet the legal threshold for admissibility but also substantively establish the complicity and coordination among the noticees in the present gold smuggling case. Accordingly, I hold that the digital evidence gathered during the investigation is admissible and carries significant probative value in this case.

46. Accordingly, in the exercise of the powers vested in me as the Adjudicating Authority, I hereby issue the following order:

O R D E R

(i) I order the **absolute confiscation** of **two gold nuggets of 24 Kt, weighing 360.00 grams,** having market value of Rs. 26,44,200/- (Rupees Twenty-Six Lakh Forty-Four Thousand Two Hundred only) and its tariff value of Rs. 22,94,309/- (Rupees Twenty-Two Lakh Ninety-Four Thousand Three Hundred Nine only), seized vide Seizure Order dated 09.06.2024, under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;

(ii) I order the **absolute confiscation** of one **black colour jeans pants**, seized vide Seizure order dated 09.06.2024, which was used for concealment of gold in paste form, under Section 119 of the Customs Act,1962;

(iii) I impose a **penalty** of **Rs. 7,00,000/- (Rupees Seven Lakh Only)** upon **Ms. Safa Abadur Rehman Sayed** under Section 112 (b)(i) of the Customs Act, 1962.

(iv) I impose a **penalty** of **Rs. 7,00,000/- (Rupees Seven Lakh Only)** upon **Mrs. Priti Yogesh Arya** under Section 112(a)(i) of the Customs Act, 1962.

(v) I impose a **penalty** of **Rs.15,00,00/- (Rupees Fifteen Lakh Only)** upon **Mrs. Priti Yogesh Arya** under Section 114AA of the Customs Act, 1962.

(vi) I impose a **penalty** of **Rs. 7,00,000/- (Rupees Seven Lakh Only)** upon **Mr. Viral H. Degarwala** under Section 112(a)(i) of the Customs Act, 1962.

(vii) I impose a **penalty** of **Rs. 15,00,000/- (Rupees Fifteen Lakh Only)** upon **Mr. Viral H. Degarwala** under Section 114AA of the Customs Act, 1962.

47. Accordingly, the Show Cause Notice F. No. VIII/26-18/AIU/CUS/2024-25 dated 07.03.2025 stands disposed of.

Digitally signed by
SHREE RAM VISHNOI
Date: 28-08-2025
18:14:42

(Shree Ram Vishnoi)
Additional Commissioner,
Customs, Ahmedabad

BY SPEED POST A.D./EMAIL

F. No. VIII/26-18/AIU/CUS/2024-25 Date: 28.08.2025

DIN: 20250871MN0000555CBA

To,

1. Ms. Safa Abadur Rehman Sayed
W/o Mr. Abadur Rehman Sayed,
1007, 10th Floor, A Wing, Habib Palace,
2nd Sankli Street, Byculla,
Mumbai-400008, Maharashtra

2. Mrs. Priti Yogesh Arya,
A/303, Summeru Silver Leaf Apt.,
Near Pal Lake, Pal, Surat, Gujarat

3. Mr. Viral H. Degarwala
S/o Shri Harishkumar Degarwala
Socorro Gardens, Brunia B-402,
Ambrina, Near Datta Mandir Succor,
Porvorim, Goa-403501

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: RRA Section)
2. The Superintendent (Recovery), Customs, Surat International Airport
3. The Superintendent (Warehouse), Customs, Surat International Airport
4. The System In-Charge, Customs, H.Q., Ahmedabad, for uploading on the official website (via email)
5. Guard File