

OIO No:32/ADC/SRV/O&A/2025-26  
F. No: VIII/10-241/SVPIA-D/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद  
“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.  
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**DIN: 20250571MN0000222022**

**PREAMBLE**

A	फ़ाइलसंख्या/ File No.	:	VIII/10-241/SVPIA-D/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-241/SVPIA-D/O&A/HQ/2024-25 dated 26.12.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	<b>32/ADC/SRV/O&amp;A/2025-26</b>
D	आदेशतिथि/ Date of Order-In-Original	:	<b>16.05.2025</b>
E	जारीकरनेकीतारीख/ Date of Issue	:	<b>16.05.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<b>Ms. Rukshana Imran Hotelwala,</b> Wife of Mr. Imran Haji Mohammed Hotelwala 6/A, Kismat Apartment, Karimi Flat No Khancho, Vaishyasabha, Jamalpur, Ahmedabad, Gujarat - 380001
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी 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 इयूटी 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।		

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**Brief facts of the case:**

On the basis of passenger profiling and suspicious movements of passengers by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a Female passenger **Ms. Rukshana Imran Hotelwala, aged 28 years, Wife of Mr. Imran Haji Mohammed Hotelwala holding an Indian Passport Number No. X8086017, residing at:- 6/A, Kismat Apartment, Karimi Flat No Khancha, Vaishyasabha, Jamalpur, Ahmedabad, Gujarat - 380001**, arriving from Jeddah (Saudi Arabia) to SVPI Airport, Ahmedabad by Indigo Flight No. 6E76 on 26.07.2024 (**Seat No. 17B**) at the arrival Hall of the SVPIA, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of her baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said **Panchnama dated 26.07.2024**.

2. And, whereas, the officers of Customs, Air Intelligence Unit (AIU), SVPIA, Ahmedabad had identified the said passenger from her passport and intercepted her alongwith her checked-in baggage when she was about to exit through the green channel for personal search and examination of her baggage under Panchnama proceedings dated 26.07.2024 in presence of two independent Panch witnesses. Ms. Rukshana Imran Hotelwala was carrying one black colour trolley bag and a hand bag and a lady purse. The passenger was asked as to whether she was carrying any dutiable/ restricted/ prohibited goods and whether he wished to declare before Customs Authorities, in reply the passenger Ms. Rukshana Imran Hotelwala denied. The officers also offered their search to the passenger, but the passenger denied, having full trust in AIU Officers. She was subject to be checked in the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, She was asked as to whether She wanted to be checked in front of executive magistrate or Superintendent of Customs, in reply the said passenger gave her consent to be searched in front of the Superintendent of Customs. Thereafter, the passenger Ms. Rukshana Imran Hotelwala was asked to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building of Airport, after removing all metallic objects from her body/clothes. The passenger readily removed all the metallic substances from her body such as mobile, purse etc. and kept in a tray

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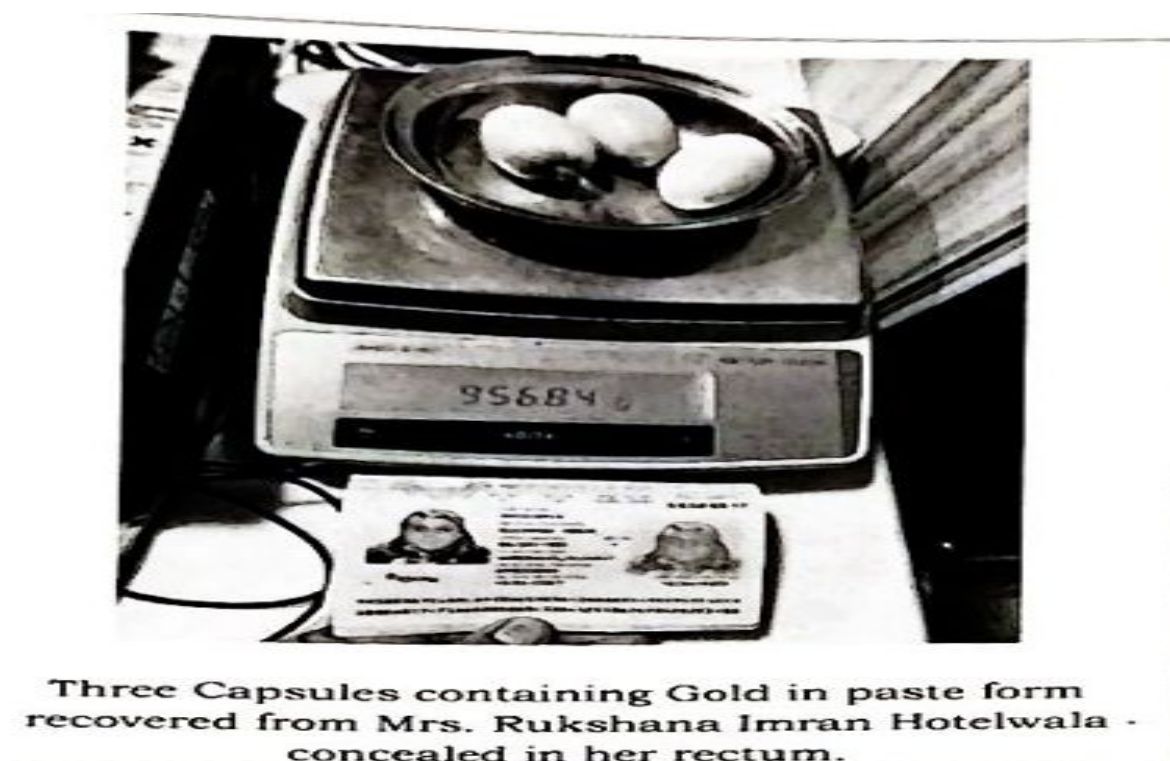
and placed it on the table. Thereafter, Ms. Rukshana Imran Hotelwala was asked to pass through the Door Frame Metal Detector (DFMD). However, no beep sound was generated by the DFMD machine indicating nothing objectionable/metallic substance present on her body/cloths. Thereafter, the AIU officers instructed the passenger to put her entire luggage on the X-Ray Bag Scanning Machine for scanning in presence of the panch witnesses. On examination of baggage, the AIU officers did not notice any unusual image indicating nothing objectionable was present in the baggage. Thereafter, the AIU officers once again asked the passenger if she is carrying any contravened/ Restricted/dutiable goods which she wanted to declare to the customs, but the passenger again replied in negative. Thereafter, on thorough and repeated questioning by the AIU officers and on being asked for personal search, the passenger, Ms. Rukshana Imran Hotelwala admitted that she is carrying gold in paste form wrapped in white colour tape concealed in three capsules in her rectum. Thereafter, Ms. Rukshana Imran Hotelwala removed three capsules with white colour rubber packing (to give the shape of Capsules) from her rectum and shows it to the AIU officers. The AIU officers found the gold paste wrapped precisely with white tape very cleverly by paste 03 capsules in her rectum. The packet/parcel wrapped with white colour tape containing semi solid paste has been handed over to the AIU officers by the passenger. The passenger Ms. Rukshana Imran Hotelwala accepted that she carrying gold in paste form wrapped in white colour tape concealed in her rectum, as she wanted to clear it illicitly without declare it to the Customs for the evasion of Customs Duty.

**2.1.** Thereafter, the Customs officers called the Government Approved Valuer and informed him that 03 capsules covered with white rubber have been recovered from one passenger and the passenger **Ms. Rukshana Imran Hotelwala** had informed that it was gold in paste form and hence, he is required to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informed the officers that the testing of the material is possible only at his workshop as gold has to be extracted from semi-solid paste form by melting it and also informs the address of his workshop.

**2.2** Thereafter, AIU officers along with the passenger leave the Airport premises in a government vehicle at around 17:30 PM and reach at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G.Road, Ahmedabad-380006. On

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reaching the above referred premises, the officer introduces the panchas, as well as the passenger to one person namely Mr. Kartikey Vasantrai Soni, Government Approved Valuer. Mr. Kartikey Vasantrai Soni, Government Approved Valuer in our presence, starts the detailed examination of the paste recovered from the said passenger. After examining and weighing the said paste on his weighing scale, Mr. Kartikey Vasantrai Soni provides preliminary verification report of semi solid substance in the form of Annexure-A. After examining and weighing the said paste on his weighing scale, Mr. Kartikey Vasantrai Soni informs that the paste wrapped with white Tape contain semi solid substance consisting of Gold & chemical mix having Gross weight **956.840 grams**. The Photograph of the same is as:-



**2.3** Thereafter, the Government approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Mr. Kartikey Vasantrai Soni started the process of converting the semi solid material concealed in the rectum of the passenger into solid gold. The semi solid substance consisting of Gold and Chemical mix put into the furnace and upon heating, the semi solid substance turned into mixture of gold like material weighing 892.070 grams. The said substance consisting of gold was tested by the valuer for the gold component by putting in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of

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the procedure, Government Approved Valuer informed that 01 Gold bar weighing 892.070 grams having purity 999.0/24 Kt. was derived from 956.840 grams paste concealed in the rectum of the passenger. The photograph of the same is as:-



**2.4.** The said substance consisting of gold was tested by the valuer for the gold component by putting in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that 01 Gold bar weighing 892.07 grams having purity 999.0/24 Kt. was derived from 956.84 grams paste concealed in the rectum. After testing the said derived bar, the Government Approved Valuer confirmed that it is pure gold and Shri Kartikey Vasantrai Soni issued a Certificate, vide Certificate No. 463/2024-25 dated 26.07.2024, wherein it is certified that the gold bar is having purity 999.0/24kt, weighing 892.07 grams. The valuation provided by the said Govt. Approved Valuer is summarized as under:

Sr. No.	Item particulars	PCS	Net Weight (in grams)	Market Value (In Rs.)	Tariff Value (In Rs.)
1.	Gold bar - 999.0 purity	1	892.0700	62,87,309/-	58,28,116/-
	<b>Total</b>	1	892.0700	62,87,309/-	58,28,116/-

**2.5** Further, the Govt. Approved Valuer informs that the total Market Value of the said gold bar having purity 999.00 24 Kt is Rs. 62,87,309/- (Rupees Sixty Two Lakh Eighty Seven Thousand Three Hundred Nine only)

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and Tariff Value as Rs. 58,28,116/- (Rupees Fifty Eight Lakh Twenty Eight Thousand One Hundred Sixteen Only), which has been calculated as per the Notification No. 49/2024-Customs (N.T.) dated 15/07/2024 (Gold Tariff) and Notification No. 45/2024-Customs (N.T.) dated 20/06/2024 (Exchange Rate). He submits his valuation report to the AIU Officers. The details of quantity, purity, Tariff Value and Market Value are as detailed in below table.

Valuation Certificate No. and date	Details of items	Total Weight of paste recovered from pax (In Grams)	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
463/2024-25 dated 26.07.2024	Gold Bar	956.840	892.070	999.00/ 24 KT	62,87,309/-	58,28,116/-

**Seizure of the above gold bar:**

3. The said01 gold bar totally weighing 892.0700 grams was attempted to be smuggled into India without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said gold Bar totally weighing 892.0700 grams having purity 999 & having market value of Rs.62,87,309/- (Rupees Sixty-Two Lakh Eighty-Seven Thousand Three Hundred Nine only) and Tariff Value is Rs. 58,28,116/- (Rupees Fifty-Eight Lakh Twenty-Eight Thousand One Hundred Sixteen only), were placed under seizure vide order dated 26.07.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject gold bar is liable for confiscation under Section 111 of the Customs Act, 1962.

**4. Statement of Ms. Rukshana Imran Hotelwala :**

Statement of Ms. Rukshana Imran Hotelwala was recorded on 26.07.2024 wherein she inter alia stated as under:

4.1 She gave her personal details like name, address, profession, family details and education etc. Her date of birth is 06/05/1982. She studied upto Eighth standard, she can read, write and understand English and Hindi languages and she has no Email ID.

4.2 She was residing with her husband Mr. Imran Haji Mohammed Hotelwala and her 10 year old son at above stated address. Her husband



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is an auto rickshaw driver and she was a housewife. She does not have any monthly income and accordingly not assessed to income tax and do not have PAN card.

4.3 She has travelled to Macca (Saudi Arabia) in the past one time for umra. The trips were sponsored by her husband. In the present case she had travelled to Jeddah (Saudi Arabia) on 10/07/2024 for Umra again (religious visit) and returned to India on 26/07/2024 through Ahmedabad Airport on Indigo Flight No. 6E76. The ticket for the present trip from Ahmedabad to Jeddah (Saudi Arabia) was purchased by her husband through the travel agent.

4.4 She stated that she had visited Jeddah (Saudi Arabia) specifically for Umra (religious tour). In Jeddah (Saudi Arabia), she came in contact with one unknown person through other pilgrims, who offered her to carry the Gold in form of Paste and deliver the same to one person at Ahmedabad as directed by that unknown person. Further, that unknown person offered her handsome amount of Rs. 20,000/- for the said work alongwith return ticket from Jeddah to Ahmedabad. That unknown person provided her 03 Capsules of Gold Paste totally weighing approximately 800 to 900 Grams. That unknown person had promised her to pay Rs. 20,000/- after delivery of the Gold capsules to the concerned person in Ahmedabad. That unknown person also told her to carry the said 03 Capsules by concealing in her rectum to evade normal detection in Door Frame Metal Detector (DFMD) scanner before the Indian Customs. She was agreed to the offer given by that unknown person in Jeddah. As per direction of that unknown person, she carried the 03 capsule of Gold Paste by concealing the same in her rectum. That unknown person booked ticket for Indigo Flight No. 6E76 from Jeddah (Saudi Arabia) to Ahmedabad. That unknown person at Jeddah (Saudi Arabia) informed her that one person at Ahmedabad Airport will receive her as that unknown person at Jeddah has already provided him (person at Ahmedabad) her photograph and after contacting her, the said person at Ahmedabad will call that unknown person at Jeddah and will arrange for her conversation with that unknown person in Jeddah. After his confirmation on mobile, she was supposed to deliver the said 03 capsule to the said person in Ahmedabad at some suitable place (any Hotel). On direction of that unknown person, she was supposed to get payment of Rs. 20,000/- at Ahmedabad from that receiver after delivery of the said 03 Gold paste

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capsules. She specifically stated that the unknown person in Jeddah has neither informed his name nor receiver's name (Ahmedabad based person) nor any contact details to her. As she was detained at SVPI Airport by the Customs officers, no one has contacted her by any mode.

4.5 She further stated that she has never indulged in any smuggling activity in the past. This is the first time she had carried gold weighing 892.0700 grams derived from gold and chemical mix paste in capsule form weighing (gross) 956.840 grams.

4.6 She also confirmed that the facts narrated in the Panchnama dated 26.07.2024 were true and correct.

From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of The Baggage Rules, 1998, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 03 gold capsules (one Gold bar) totally weighing 892.0700 Grams having purity of 24 KT/999.0 were recovered from the rectum of Ms. Rukshana Imran Hotelwala who had arrived from Jeddah (Saudi Arabia) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E 76 on 26.07.2024 (Seat No. 17B) at T-2 of SVPIA Ahmedabad on 26.07.2024. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules, and for these reasons alone it cannot be considered as a bonafide baggage under the Customs Baggage Rules 1998. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold items totally weighing 892.0700Grams having purity of 24 KT/999.0 because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 892.0700Grams having purity of 24 KT/999.0 recovered from Ms. Rukshana Imran Hotelwala, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 892.0700Grams having purity of 24 KT/999.0 is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 892.0700 Grams recovered from the rectum of Ms. Rukshana Imran Hotelwala who had



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arrived from Jeddah (Saudi Arabia) to SVPI Airport, Ahmedabad, Indigo Flight No. 6E76 on 26.07.2024 (Seat No. 17B) at T-2 of SVPIA Ahmedabad on 26.07.2024 were placed under seizure vide Panchnama dated 26.07.2024 and Seizure order dated 26.07.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

5. It appeared that Ms. Rukshana Imran Hotelwala had brought gold in form of Semi solid paste in 3 capsules concealed in her rectum from which a gold bar weighing 892.07 grams of purity 999.0 (24 Karat) valued at Rs. 62,87,309/- [Market Value] and Rs. 58,28,116/- [Tariff Value]. The above said gold bar derived from the semi solid paste in 03 capsules concealed in rectum and recovered from the said passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty, which was a clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the said gold bar weighing 892.07 Grams recovered from Ms. Rukshana Imran Hotelwala, having purity 999.0 (24 KT) and valued at Rs. 62,87,309/- [Market Value] and Rs. 58,28,116/- [Tariff Value], which was an attempt to smuggle by Ms. Rukshana Imran Hotelwala, liable for confiscation as per the provisions of Customs Act, 1962; hence, the said gold bar was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memos/Order dated 26.07.2024.

5.1 In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold in this case is more than Rs.50/- Lakhs, hence this case is fit for arrest in terms of Section 104 of the Customs Act, 1962. The relevant pars of Section 104 of Customs Act, 1962 is as:-

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

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

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- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or*
- (b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or*
- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or*
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.*
- (7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.]*

Hence, the said passenger was arrested on 27.07.2024 under Section 104 of the Customs Act, 1962.

## **6. Summation:**

The aforementioned proceedings indicates that **Ms. Rukshana Imran Hotelwala** had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having Market value of Rs. 62,87,309/- (Rupees Sixty-Two Lakh Eighty-Seven Thousand Three Hundred Nine only) and Tariff Value Rs. 58,28,116/- (Rupees Fifty-Eight Lakh Twenty-Eight Thousand One Hundred Sixteen only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure.

## **7. RELEVANT LEGAL PROVISIONS:**

### **Foreign Trade Policy 2015-20 and Foreign Trade (Development and Regulation) Act, 1992**

- 7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger

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holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

- 7.2 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.
- 7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4 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.

**The Customs Act, 1962:**

- 7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 As per Section 2(22), of Customs Act, 1962 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;
- 7.7 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.
- 7.8 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

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Section 113 of the Customs Act 1962.

- 7.9 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.
- 7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- 7.11 As per Section 110 of 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.
- 7.12 Section 111. Confiscation of improperly imported goods, etc.:

*The following goods brought from a place outside India shall be liable to confiscation:-*

*[\(a\)](#) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*

*[\(b\)](#) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*

*[\(c\)](#) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*

*[\(d\)](#) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*[\(e\)](#) any dutiable or prohibited goods found concealed in any manner in any conveyance;*

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*(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*

*(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*

*(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*

*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

*(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*

*(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;*

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*

*(n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of*

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*which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*(p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.*

7.13 Section 112. Penalty for improper importation of goods etc.:  
any person,

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

7.14 As per Section 123 of Customs Act 1962,

*(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.*

7.15 All dutiable goods imported into India by a passenger in the baggage are classified under CTH 9803.

### **Customs Baggage Rules and Regulations:**

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- 7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passenger who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare her accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.
- 7.17 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.

**Notifications under Foreign Trade Policy and The Customs Act, 1962:**

- 7.18 As per Notification no. 49/2015-2020 dated 05.01.2022, 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.
- 7.19 Notification No. 50 /2017 -Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First



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Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or Heading or sub- heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	(i) 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  (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

**Condition no. 41 of the Notification:**

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not

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exceed ten kilograms per eligible passenger; and (c ) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, “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 and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

7.20 From the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22 kt.) was restricted as per DGFT notification and import was permitted only by nominated agencies. Further, it appears that import of goods whereas it is allowed subject to certain conditions are to be treated as prohibited goods under section 2(33) of the Customs Act, 1962 in case such conditions are not fulfilled. As such import of gold is not permitted under Baggage and therefore the same is liable to be held as prohibited goods.

### **Contravention and violation of law:**

**8.** It therefore appears that:

- (i) Ms. Rukshana Imran Hotelwala had attempted to smuggle/improperly import 03 Gold capsules (1 gold bar) totally weighing 892.0700Grams having purity 24KT /999.0 and having Market value of Rs. 62,87,309/- (Rupees Sixty Two

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Lakh Eighty Seven Thousand Three Hundred Nine only) and Tariff Value is Rs. 58,28,116/- (Rupees Fifty Eight Lakh Twenty Eight Thousand One Hundred Sixteen only), derived from his rectum in form of 03 gold capsules, with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. The unknown passenger(s)/person(s) had knowingly and intentionally smuggled the said gold in his rectum on her arrival from Jeddah (Saudi Arabia) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E76 dated 26.07.2024 Seat No. 17 Bat Terminal-2, SVPIA Ahmedabad on 26.07.2024 with an intent to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by Ms. Rukshana Imran Hotelwala, by way of concealment in her rectum and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Ms. Rukshana Imran Hotelwala has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as amended.

- (ii) Ms. Rukshana Imran Hotelwala, by not declaring the gold concealed in her rectum, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (iii) The improperly imported/smuggled gold by Ms. Rukshana Imran Hotelwala, concealed gold in her rectum before arriving from Jeddah (Saudi Arabia) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E76 dated 26.07.2024 Seat No. 17 Bat Terminal -2, SVPIA Ahmedabad on 26.07.2024, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with

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Section 11(3) of Customs Act, 1962.

- (iv) Ms. Rukshana Imran Hotelwala, by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.
- (v) As per Section 123 of Customs Act 1962, the burden of proving that the said Gold items totally weighing 892.07 grams which was recovered from the rectum of Ms. Rukshana Imran Hotelwala who arrived from Jeddah (Saudi Arabia) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E76 dated 26.07.2024 Seat No. 17B at Terminal -2, SVPIA Ahmedabad on 26.07.2024 are not smuggled goods, is upon Ms. Rukshana Imran Hotelwala, who is the Noticee in this case.

**9.** Accordingly, a Show Cause Notice No. VIII/10-241/SVPIA-D/O&A/HQ/2024-25 dated 26.12.2024 was issued to **Ms. Rukshana Imran Hotelwala, aged 28 years, Wife of Mr. Imran Haji Mohammed Hotelwala holding an Indian Passport Number No. X8086017, residing at:- 6/A, Kismat Apartment, Karimi Flat No Khancho, Vaishyasabha, Jamalpur, Ahmedabad, Gujarat - 380001**, as to why:

- (i) The 01 Gold Bar weighing **892.07 Grams** having purity 24KT /999.0 and having Market value of **Rs. 62,87,309/-** (Rupees Sixty-Two Lakh Eighty-Seven Thousand Three Hundred Nine only) and Tariff Value is **Rs. 58,28,116/-** (Rupees Fifty Eight Lakh Twenty Eight Thousand One Hundred Sixteen only) recovered/derived from semi solid paste containing gold and chemical mix in 03 capsules concealed in rectum of **Ms. Rukshana Imran Hotelwala**, who arrived from Jeddah (Saudi Arabia) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E76 **Seat No. 17B** at Terminal-2, SVPIA Ahmedabad on 26.07.2024, placed under seizure under panchnama proceedings dated 26.07.2024 and Seizure Memo Order dated 26.07.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

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- (ii) Penalty should not be imposed upon the **Ms. Rukshana Imran Hotelwala**, under Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

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

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

**11.** The noticee was given opportunity for personal hearing on 21.03.2025, 09.04.2025 & 21.04.2024 but she failed to appear and represent her case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but she failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and she do not have anything to say in her defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

**11.1** Before, proceeding further, I would like to mention that Hon'ble Supreme Court, High Courts and Tribunals have held, in several judgments/decision, that ex-parte decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon some the relevant judgments/orders which are as under-

**a)** The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

*“7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was*

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*desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”*

**b).** Hon’ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), the Hon’ble Court has observed that;

*Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.*

**c)** Hon’ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon’ble court has observed that;

*Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must ‘act in good faith and fairly listen to both sides’ [Board of Education v. Rice, (1911) A.C. 179] and, “deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case” [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]*

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**d)** Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.). The Hon'ble Court has observed that:

*Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.*

**e)** The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), the Hon'ble CESTAT has observed that;

*Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]*

**f).** The Hon'ble High Court of Jharkhand in W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that

*"Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.*

*8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.*

*9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed."*



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### Discussion and Findings:

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

**13.** In the instant case, I find that the main issue to be decided is whether the **892.07** grams of gold bar, derived from semi solid gold paste in form of 03 Capsules containing gold and chemical mix concealed in her rectum, having **tariff value of Rs.58,28,116/-** and market value is **Rs.62,87,309/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 26.07.2024, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee is liable for penal action under the provisions of Section 112 of the Act.

**14.** I find that the panchnama dated 26.07.2024 clearly draws out the fact that the noticee, who arrived from Jeddah in Indigo Airways Flight No. 6E 76 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on the basis of passenger profiling and suspicious movement, when she was trying to exit through green channel of the Arrival Hall of Terminal 2 of SVPI Airport, without making any declaration to the Customs. While the noticee passed through the Door Frame Metal Detector (DFMD) Machine no beep sound was heard which indicated there was no objectionable/dutiable substance on her body/clothes. Further, the AIU officers asked the passenger to keep her baggage into X-Ray Baggage Scanning Machine installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. The passenger kept her baggage into X-Ray Baggage Scanning Machine for scanning of her baggage. On scanning of her baggage, no suspicious image appeared on the screen of the X-Ray machine. The officers again asked the said passenger if she is having anything dutiable which is required to be declared to the Customs to which the noticee denied. After thorough interrogation by the officers, Ms. Rukshana Imran Hotelwala confessed

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that she was carrying 03 Capsules each covered with white tape containing gold paste and chemical mix in semi-solid paste form, inside her rectum. The noticee handed over the 03 Capsules containing gold paste covered with white tape after returned from washroom. It is on record that the noticee had admitted that she was carrying the capsules containing gold in paste form concealed in her rectum, with intent to smuggle into India without declaring before Customs Officers. It is also on record that Government approved Valuer had tested and converted said capsules in Gold Bar with certification that the gold was of 24 kt and 999.0 purity, weighing 892.07 Grams. The Tariff Value of said Gold bar weighing 892.07 grams having purity 999.0/24 Kt. derived from 956.840 grams of 03 Capsules containing semi solid paste consisting of gold and chemical mix concealed in rectum, having Tariff value of Rs. **58,28,116/-** and market Value of **Rs.62,87,309/-** which was placed under seizure under Panchnama dated 26.07.2024, in the presence of the noticee and independent panch witnesses.

**15.** I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. In fact, in her statement dated 26.07.2024, she has clearly admitted that she had travelled from Jeddah to Ahmedabad by Flight No. 6E 76 dated 26.07.2024 carrying gold in form of capsule concealed in her rectum; that she had intentionally not declared the substance containing foreign origin gold before the Customs authorities as she wanted to clear the same illicitly and evade payment of customs duty; that she was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. In her statement, she submitted that the gold in form of capsule was given by an unknown person at Jeddah to carry the same to India. She admitted that the gold in paste form was not purchased by her. She admitted that in greed of money, she brought the gold in form of capsules.

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**16.** I find that the noticee has clearly accepted that she had not declared the gold in paste form concealed in her rectum, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the foreign origin gold before the Customs Authorities on her arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**17.** From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 892.07 grams, retrieved from the gold paste in form of capsules concealed by the noticee in her rectum, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 892.07 gms., seized under panchnama dated 26.07.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By secreting the gold in form of capsules having gold and chemical mix concealed in her rectum and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**18.** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct

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declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended and she was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 892.07 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee does not fall under the ambit of "eligible passenger". The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**19.** It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity weighing 892.07 gms., retrieved from gold paste concealed in rectum in form of capsules, having total Tariff Value of Rs.58,28,116/- and market Value of Rs.62,87,309/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 26.07.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in rectum and without declaring to the Customs on arrival in India, it is observed that the passenger/noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same to the Customs

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on his arrival at the Airport. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**20.** I find that the passenger/noticee has confessed of carrying gold of 24 kt having 999.0 purity, weighing 892.07 grams and attempted to remove the said gold by concealing the same in her rectum and attempted to remove the said gold from the Customs Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

**21.** It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. One Gold Bar weighing 892.07 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bar Rs.62,87,309/- and Tariff Value Rs.58,28,116/-, retrieved from the gold paste concealed in rectum, were placed under seizure vide panchnama dated 26.07.2024. The

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passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, she attempted to remove the gold by concealing in rectum and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. Further, I find from the voluntary statement tendered by the noticee that the gold was not purchased by her and she was merely carrying the same for an amount of Rs. 20,000/- as promised by an unknown person. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

**22.** I further find that gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfillment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger trying to smuggle the same and was not an eligible passenger to bring or import gold into India in baggage as per the terms and conditions prescribed under Notification No. 50/2017-Customs Dated 30.06.2017. The gold was concealed in rectum in form of capsules and kept undeclared with an intention to smuggle the same and evade payment of customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

**23.** In view of the above discussions, I hold that the derived gold bar weighing 892.07 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner for extraneous consideration. **In the instant case, I am therefore, not inclined to use**

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**my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.**

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

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

*"89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra)."*

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

*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 -*



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*Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –*

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

**27.** In [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No.375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

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

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

*24.....*

*25.....*

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

**29.** Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment i.e in her

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rectum, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bar. I find that the gold was not purchased by the noticee and same was admitted in her voluntary statement tendered to Customs Officers. Therefore, the noticee has failed to discharge the burden placed on her in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in her rectum with intention to smuggle the same into India and evade payment of customs duty and mens-rea in the instant case is established beyond doubt. Therefore, the gold weighing 892.07 grams of 24Kt./999.0 purity in form of gold bar, derived from the gold and chemical paste concealed in rectum in form of capsules is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 892.07 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.**

**30.** I further find that the passenger had involved herself in the act of smuggling of gold weighing 892.07 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules. Further, it is fact that the passenger/noticee has travelled with gold weighing 892.07 grams of 24Kt./999.0 purity, retrieved from paste concealed in her rectum, from Jeddah to Ahmedabad despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. Thus, it is clear that the passenger has concerned 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 hold that the passenger/noticee is liable for penal action under Sections 112 of the Customs Act, 1962 and I hold accordingly.

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

### **ORDER**

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- i.) I order **absolute confiscation** of the One Gold Bar weighing **892.07** grams having Market Value at **Rs.62,87,309/-** (Rupees Sixty-Two Lakh Eighty-Seven Thousand Three Hundred Nine only) and Tariff Value is **Rs.58,28,116/-** (Rupees Fifty Eight Lakh Twenty Eight Thousand One Hundred Sixteen only) derived from gold paste in form of 03 Capsules containing gold and chemical mix concealed in rectum by the passenger/noticee Ms. Rukshana Imran Hotelwala and placed under seizure under Panchnama dated 26.07.2024 and seizure memo order dated 26.07.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii.) I impose a penalty of **Rs. 15,00,000/-** (Rupees Fifteen Lakh Only) on Ms. Rukshana Imran Hotelwala under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

**32.** Accordingly, the Show Cause Notice No. VIII/10-241/SVPIA-D/O&A/HQ/2024-25 dated 26.12.2024 stands disposed of.

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

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DIN: 20250571MN0000222022

By SPEED POST A.D.

To,

**Ms. Rukshana Imran Hotelwala,**  
Wife of Mr. Imran Haji Mohammed Hotelwala  
6/A, Kismat Apartment, Karimi Flat No Khancho,  
Vaishyasabha, Jamalpur,  
Ahmedabad, Gujarat – 380001

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.

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5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
6. Guard File.