



### 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 No. 20250471MN000000E4DD**

#### PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-203/SVPIA-B/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-203/SVPIA-B/O&A/HQ/2024-25 dated 17.12.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>20/ADC/SRV/O&amp;A/2025-26</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>28.04.2025</b>
E	जारी करनेकी तारीख/ Date of Issue	:	<b>28.04.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	“Whom so ever it may concern” (1) To be pasted on the Notice Board of Custom House, Navrangpura, Ahmedabad – 380 009. (2) To be pasted on the Notice Board of Customs, SVPI Airport, Ahmedabad.
(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 मंजिल, हुड़को 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।		

#### **Brief facts of the case :**

As informed by the Station In-charge, Kuwait Airways, Ahmedabad, that the Captain of KU-301 (Kuwait to Mumbai Flight which has been

diverted to Ahmedabad due to bad weather) has informed that something suspicious was seen in the lavatory of the Kuwait Flight No. KU-301 (Kuwait City to Mumbai), which has been diverted to Terminal-2, SVPI Airport Ahmedabad due to bad weather at Mumbai Airport. The said flight has arrived at Ahmedabad at approx. 04:15 Hours of 08.07.2024.

**2.** Acting on the said information, Inspector, AIU, SVPI Airport called for two independent panchas at 04:30 Hours on 08.07.2024. The AIU officers then informed the panchas about the suspicious thing seen in the lavatory of the Kuwait flight No. KU-301 as informed by the Station In-charge, Kuwait Airways and rummaging of said flight needs to done in their presence of the panchas. Then in presence of the panchas, during the rummaging of the said flight, two unclaimed pouches wrapped in Black tape were found concealed beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301. Due to the unusual heavy weight of the pouches, prima facie the two pouches were suspected to be Gold paste and brought to the Office of Air Intelligence Unit located at the Arrival Hall, Opposite of Belt No. 2 of Terminal-2, SVPI Airport, Ahmedabad. Entire proceedings were recorded under Panchnama dated 08.07.2024.

**3.** Thereafter, the AIU officers called the Government approved valuer and inform him that two unclaimed pouches wrapped in Black tape recovered during the rummaging of the aircraft KU-301 and it appears to be Semi solid gold in paste form and hence, he needs to come to the Airport for testing and valuation of the said material. In reply the Government approved valuer informs the AIU officer that the testing of the said material is only possible at his workshop as gold has to be extracted from such semi solid paste form by melting it and also informs the address of his workshop.

Thereafter, at around 06:30 hrs, the AIU officers alongwith the panchas leave the Airport premises in a Government Vehicle and reach the premises of the Government Approved Valuer located at 301, Golden Signature, behind Ratnam Complex, C.G. Road, Ahmedabad-380006. On arrival, one person came out and introduced himself to the panchas as Shri Kartikey Soni, Government Approved Valuer. Here, Mr. Kartikey Vasantrai Soni weigh the two pouches on weighing scale, then

Mr. Kartikey Vasantrai Soni informs that the said two packets containing semi solid paste is having total weight to the tune of 6794.580 Grams (Pouch-1: 3403.290 Grams + Pouch-2: 3391.290 Grams). The AIU officers take the photographs of the pouches and the same are as under:



Thereafter, he leads AIU officers and the panchas to the furnace which is nearby. Here Mr. Kartikey Soni, started the process of converting the said semi solid material into solid gold. The said substance is put into the furnace and upon heating the said semi solid substance, it turns into liquid material. The said substance in liquid state is taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it becomes yellow coloured solid metal in form of bar. Details of the bars are as below:

<b>SN</b>	<b>Pouches</b>	<b>Gross Weight (In Grams)</b>	<b>No. of Gold Bars derived</b>	<b>Net Weight (In Gram)</b>
1	Pouch-1	3403.290	2	3078.74
2	Pouch-2	3391.290	1	3044.25
	Total	6794.580	3	6122.990

After completion of the procedure, Government Approved Valuer informs that total 03 Gold bars weighing 6122.990 Grams derived from gross weight of 6794.580 Grams of Semi Solid Substance consisting of Gold and Chemical mix. The photographs of the same are as under:



4. Shri Kartikey V. Soni, Government Approved Valuer submitted Valuation Report (Annexure-B) Certification no. 374/2024-25 dated 08.07.2024. The details of which are as under:-

SN	Details of Items	Pieces	Net Weight (Gram)	Purity 999.0 24K	Market value (In Rs.)	Tariff value (In Rs.)
1	Gold Bars	03	6122.990	999.04 /24K	4,61,67,345	3,86,09,371

As per the said Valuation Report, the total Local Market Value of the said recovered **03 gold bars having Net weight of 6122.990**

**Grams** derived from semi solid substance material consisting of Gold and Chemical mix having gross weight 6794.580 grams, having purity of 999.00/24 Kt is having market value of **Rs. 4,61,67,345/- (Rupees Four Crore Sixty-One Lakhs Sixty-seven Thousand Three hundred and Forty-Five Only)** and total Tariff Value of **Rs. 3,86,09,371/- (Rupees Three Crore Eighty-Six Lakhs Nine Thousand Three hundred and Seventy-One Only)**, which has been calculated per the Notification No. 46/2024-Customs (N.T.) dated 28.06.2024 (Gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (Exchange rate).

**5.** The method of melting, testing and the valuation used by Mr. Kartikey Vasantrai Soni has been done in a perfect manner in the presence of Panchas and Panchas were satisfied and agreed with the detailed primary verification report dated 08.07.2024 (Annexure-A) and the Valuation Report No. 374/2024-25 dated 08.07.2024 (Annexure-B) given by Mr. Kartikey Vasantrai Soni, and in token of the same, the independent Panchas put their dated signature on the said valuation report and the detailed primary verification report. Panchas confirm that the entire semi-solid substance recovered during rummaging of aircraft, having gross weight of 6794.580 grams is melted and Panchas confirmed that totally net quantity of 6122.99 grams Gold has been derived/recovered after completion of the melting process, and the panchas were totally satisfied with the entire process of melting of the semi-solid substance and recovery of the gold therein. As the said gold in the form of semi-solid paste was found concealed beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301 arrived from Kuwait to Mumbai diverted to Ahmedabad at Terminal -2, SVPIA Ahmedabad due to bad weather, it has not been possible to identify as to who was the owner of the said gold therefore as there was no claimant for the said Gold as unable to identify any proper and legitimate claimant of the same and therefore the recovered **Gold is termed as 'Unclaimed'**.

**6.** Whereas, the recovered 03 gold Bars totally weighing **6122.990** Grams were found to be Unclaimed and recovered without any legitimate Import documents inside the Customs Area, the same falls under the category of Smuggled Goods and stands liable for confiscation under the Customs Act, 1962. Therefore, Market value of

the said gold Bars weighing **6122.990** grams having purity 999 is having market value is **Rs.4,61,67,345/-** (Rupees Four Crore, Sixty-one lakhs, Sixty-seven Thousand Three hundred and Forty-five Only) and total Tariff Value is **Rs.3,86,09,371/-** (Rupees Three Crore Eighty-six lakhs Nine Thousand Three hundred and Seventy-One Only), were placed under seizure by the Officers of Customs under the reasonable belief that the subject Unclaimed Gold was liable for confiscation, under Panchnama dated 08.07.2024 drawn at the premises of the SVPI Airport, Ahmedabad and Seizure Memo Order dated 08.07.2024. The said Unclaimed gold bar was then packed in a transparent plastic box. Then the said plastic transparent box was sealed with the Customs lac Seal in presence of the independent panchas. A Packing list marked as Annexure-C was duly pasted on the above said plastic transparent box in such a way that the same cannot be removed without tampering the seal and signature of the panchas. The panchas were satisfied with the sealing of the said Plastic Box containing the said 03 gold bars. The said Plastic Box containing the 03 gold bars was submitted in the Ware House having Entry No. 6591 dated 08.07.2024.

## **7. Legal provisions relevant to the case:**

- (a)** As per para 2.26 of Foreign Trade Policy 2015-20 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 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.
- (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) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- (g) 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;
- (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.
- (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 of the Customs Act 1962.
- (j) 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.
- (k) 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.
- (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 conveyance is liable for confiscation under Section 111(e) of the Customs Act, 1962.
- (n)** 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.
- (o)** 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.
- (p)** 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 are liable to confiscation under Section 111(l) of the Customs Act 1962.
- (q)** 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 are liable to confiscation under Section 111(m) of the Customs Act 1962.
- (r)** 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, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.
- (s)** As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- (t)** 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.

**(u)** As per Customs Baggage Declaration Regulations, 2013 as amended, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

**Contravention and violation of laws:**

**8.** It therefore appears that:

(i) An unknown passenger(s)/person(s) had attempted to smuggle/improperly import 03 gold bars totally weighing **6122.990 Grams** having purity 999.0(24Kt) and having **Market value of Rs.4,61,67,345/- (Rupees Four Crore, Sixty-one lakhs, Sixty-seven Thousand Three hundred and Forty-five Only) and total Tariff Value of Rs. 3,86,09,371/- (Rupees Three Crore Eighty-six lakhs Nine Thousand Three hundred and Seventy-one Only)** derived from two unclaimed pouches having gross weight of **6794.580 grams wrapped in black tape found concealed beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301**, 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 bar to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by the unknown passenger(s)/person(s) by way of concealment without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The unknown

passenger(s)/person(s) has/have 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) The unknown passenger(s)/person(s) who is/are claiming the ownership, by not declaring the contents of the baggage 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 as amended and Customs Baggage Rules, 2016.
- (iii) The improperly imported/smuggled gold by unknown passenger(s)/person(s) who is/are claiming the ownership, concealed two packets wrapped with black adhesive tape beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301 at SVPIA, Ahmedabad for the purpose of the smuggling without declaring it to the Customs is/are thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (iv) The unknown passenger(s)/person(s) who is/are claiming the ownership, 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 03 gold bars weighing **6122.990** Grams having purity 999.0(24Kt) and Market value of **Rs. 4,61,67,345/- (Rupees Four Crore, Sixty-One lakhs, Sixty-seven Thousand Three hundred and Forty-five Only)** and Total Tariff Value of **Rs. 3,86,09,371/- (Rupees Three Crore Eighty-six Lakhs Nine Thousand Three hundred and Seventy-one Only)**, derived from two unclaimed pouches having gross weight of **6794.580 grams wrapped in black**

**tape found concealed beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301** at SVPI Airport, Ahmedabad are not smuggled goods, is upon the said unknown passenger(s)/person(s) who is/are claiming the ownership of the said gold, who are the Noticee(s) in this case.

**9.** Accordingly, a Show Cause Notice was issued to **the unknown passenger/ original importer** of the aforesaid 6122.990 grams of the gold and whoever claiming the ownership of the said gold, as to why:

- (i) 03 gold bars weighing **6122.990 Grams having purity 999.0(24Kt) and Market value of Rs. 4,61,67,345/- (Rupees Four Crore, Sixty-One lakhs, Sixty-seven Thousand Three hundred and Forty-five Only) and Total Tariff Value of Rs. 3,86,09,371/- (Rupees Three Crore Eighty-six Lakhs Nine Thousand Three hundred and Seventy-one Only)**, derived from two unclaimed pouches having gross weight of **6794.580 Grams wrapped in black tape found concealed beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301** at SVPI Airport, Ahmedabad and placed under seizure under Panchnama proceedings dated 08.07.2024 and Seizure Memo Order dated 08.07.2024, 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;
- (ii) The packing material i.e. Black coloured tape used for concealment of the said gold and kept beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301, seized under Panchnama dated 08.07.2024 and Seizure memo order dated 08.07.2024, should not be confiscated under Section 119 of the Customs Act, 1962.
- (iii) Penalty should not be imposed upon the unknown passenger(s)/person(s) who is/are claiming the ownership of the said gold, 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 i.e. unknown person(s)/ passenger(s)/ original importer or any other claimant has not submitted any written submission to the Show Cause Notice issued.

**11.** The noticee i.e. unknown person(s)/ passenger(s) / original importer or any other claimant has not appeared for personal hearing granted to them on 17.03.2025, 04.04.2025 and 21.04.2025. The letter for personal hearing were served by way of placing on the Notice Board of Customs House Building and SVPI Airport. 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 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]*

**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.”*

### **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/Unknown Person/claimant has not come forward to file his/her reply/ submissions or to appear for the personal hearing opportunities offered to him/her. The adjudication proceedings cannot wait until the claimant/unknown person/s makes it convenient to file their submission 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 issues that are to be decided is whether the Gold totally weighing 6122.990 grams, having Tariff Value of Rs.3,86,09,371/- (Rupees Three Crore Eighty-six Lakhs Nine Thousand Three hundred and Seventy-one Only) and Market Value of Rs.4,61,67,345/- (Rupees Four Crore, Sixty-One lakhs, Sixty-seven Thousand Three hundred and Forty-five Only) derived from gold paste weighing 6794.580 grams recovered from unknown person(s)/passenger(s), which were seized vide Seizure Order/Memo under Panchnama proceedings both dated 08.07.2024 on the reasonable belief that the said goods were smuggled into India, are liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; packing materials used for packing and concealment of seized goods is liable for confiscation under the Act and whether the unknown person(s)/passenger(s) is liable for penalty under the provisions of Section 112 of the Act.

**14.** I find that the panchnama clearly draws out the fact that the gold paste was recovered and found concealed beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301, on 08.07.2024. As a part of vigilant measures, the officers of Air Intelligence Unit, SVPI Airport, Ahmedabad conducted a rummaging of the flight on the basis of information passed by Station In charge, Kuwait Airways, that something suspicious object was seen in the lavatory of the Kuwait Flight No. KU-301 (Kuwait City to Mumbai diverted to Ahmedabad due to bad weather). While rummaging, two unclaimed pouches wrapped in black tape were found concealed beneath the washbasin cabinet in the rear right lavatory of the said flight. Due to the unusual heavy weight of the pouches, prima facie the two pouches were suspected to be Gold

paste and brought to the Office of Air Intelligence Unit located at the Arrival Hall, Opposite of Belt No. 2 of Terminal-2, SVPI Airport, Ahmedabad. It is also on the record that the Govt. Approved Valuer Shri Kartikey Vasantrai Soni weighs the two pouches on his weighing scale, then Shri Kartikey Vasantrai Soni informs that the said two packets containing semi solid paste is having total weight to the tune of 6794.580 Grams (Pouch-1: 3403.290 Grams + Pouch-2: 3391.290 Grams). After completion the process of extraction, the Govt. Approved Valuer informed that 03 gold bars weighing 6122.990 grams of purity 999.0/24kt extracted from the said gold paste and submit his valuation certificate which is as:-

SN	Details of Items	Pieces	Net Weight (Gram)	Purity 999.0 24K	Market value (In Rs.)	Tariff value (In Rs.)
1	Gold Bars	03	6122.990	999.04 /24K	4,61,67,345	3,86,09,371

Entire proceedings were recorded under Panchnama dated 08.07.2024. As per the said Valuation Report, the total Market Value of the said recovered **03 gold bars having Net weight of 6122.990 Grams** derived from semi solid substance material consisting of Gold and Chemical mix having gross weight 6794.580 grams, having purity of 999.00/24 Kt is having market value of **Rs. 4,61,67,345/- (Rupees Four Crore Sixty-One Lakhs Sixty-seven Thousand Three hundred and Forty-Five Only)** and total Tariff Value of **Rs. 3,86,09,371/- (Rupees Three Crore Eighty-Six Lakhs Nine Thousand Three hundred and Seventy-One Only)**, which has been calculated per the Notification No. 46/2024-Customs (N.T.) dated 28.06.2024 (Gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (Exchange rate).

**15.** I also find that unknown passenger(s)/ importer, has neither questioned the manner of the Panchnama proceedings nor controverted the facts detailed in the Panchnama. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas. It is found that the unknown passenger had concealed the semi-solid substance in two pouches beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301, from which 6122.990 Grams of gold bars were extracted. The gold bars were recovered from a semi solid paste in two pouches concealed beneath

washbasin of flight arrived from Kuwait to Ahmedabad with an intent to clear it illicitly and evade payment of Customs duty and thereby, contravening the provisions of the Customs Act, 1962 and the Rules and Regulations made under it. It is evident that the proceeding under panchnama was well documented and as per the rules and regulation.

I find that the said gold bars retrieved/derived from the semi solid paste substance recovered from Flight No. KU-301 (Kuwait City to Mumbai diverted to Ahmedabad) was unclaimed and therefore, the same appeared to be imported illegally by any international passenger and hide beneath the washbasin cabinet of the lavatory.

**16.** I find that, 03 gold bars weighing 6122.990 were recovered after purifying the said semi solid substance weighing 6794.580 grams consisting of Gold & Chemical mix. Further, I find that the unknown passenger has improperly imported the said gold, by concealing/ hiding it in two pouches placed beneath washbasin cabinet of the lavatory of Flight arrived from Kuwait to Ahmedabad. By such an act of improperly importation/ smuggling of gold, the unknown passenger has contravened the provisions of Para 2.26 of the Foreign Trade Policy 2015-20 and section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of the Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

**17.** With respect to the prohibition of the goods, it is to submit that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following: -

“Further, Section 2(33) of the Act defines “Prohibited Goods” as under: - Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with.” 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 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 the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 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 purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of 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 restriction. Merely because section 3 of import or export (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 Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition. Relying on the ratio of the judgment stated above, I find that the goods brought by the unknown person(s), are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.

**18.** From the facts discussed above, it is proved that all the above acts of contravention on the part of the said unknown passenger

(s)/original importer have rendered the said gold weighing 6122.990 grams of 24 Kt/999.00 purity having tariff value of Rs.3,86,09,371/- and market Value of Rs. 4,61,67,345/- placed under seizure under Panchnama dated 08.07.2024, liable for confiscation under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealment of the said gold, it is observed that the unknown passenger(s)/importer(s) was fully aware that the goods are offending in nature on its import. It is seen that the unknown passenger(s)/importer(s) has involved himself in carrying, keeping, concealing and has dealt with the impugned gold in a manner which he/they knew were liable to confiscation under the Act.

**19.** 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 declaration of their baggage. 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.. It is also observed in the instant case that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 6122.990 grams derived/retrieved from the semi-solid paste substance consisting of Gold & Chemical Mix, totally weighing 6794.580 grams concealed in two pouches wrapped in black tape recovered from washbasin cabinet of lavatory of aircraft, cannot be treated as bonafide household goods or personal effects. The noticee(s)/passenger(s)/Unknown Person(s) 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.

**20.** I find that the said 03 gold bars of 24 Kt., totally weighing 6122.990 grams derived from gold paste carried and concealed in two

pouches wrapped in black tape weighing 6794.580 grams recovered from the washbasin cabinet of lavatory of aircraft, as discussed above, was to smuggle without declaring it to Customs authorities and by this act, the unknown passenger(s)/importer(s) or any other claimant has held the said goods liable for confiscation. **I, therefore, refrain from using my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Customs Act, 1962.**

**21.** 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.

**22.** 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)."

**23.** 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 - 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.*

**24.** 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".

**25.** 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 White 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-reas."*

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."**

**26.** Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the unknown passenger (s) had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no one has come forward to claim the ownership of the seized goods and /or has submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Thus, the unknown passenger (s) has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN and content of Panchnama, I find that the manner of concealment of the gold is **ingenious** in nature, as the same was derived from semi solid paste in two pouches covered with black tape concealed in washbasin cabinet of lavatory of the aircraft with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 6122.990 grams of 24Kt./999.0 purity, derived from semi solid paste covered with black tape recovered from washbasin cabinet of lavatory of the flight, is therefore, liable to be **confiscated absolutely**. I therefore hold in unequivocal terms that the gold weighing **6122.990 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) and 111(m) of the Act.**

**27.** The act of concealing the gold, with intention to smuggle the same into India by evading Customs Duty has also rendered the unknown passenger(s)/ importer(s) or any other claimant liable for penalty under Section 112 of the Customs Act, 1962. However, since the passenger/ owner of the imported impugned gold is not known and nobody else has come forward to claim the impugned gold/ goods, therefore, I desist from imposing personal penalty under the provisions of Section 112 of the Act on unknown passenger/ person in this case.

**28.** Accordingly, I pass the following Order.

**ORDER**

- i. I order **absolute confiscation** of 03 Gold Bars of 24 Kt./999 purity gold, totally weighing **6122.990 grams**, having Market Value of **Rs.4,61,67,345/-** (Rupees Four Crore, Sixty-One lakhs, Sixty-Seven Thousand Three hundred and Forty-five Only) and Tariff Value of **Rs.3,86,09,371/-** (Rupees Three Crore Eighty-six Lakhs Nine Thousand Three hundred and Seventy-one Only), derived from semi

solid paste of gold and chemical mix found in two pouches wrapped in black tape recovered from washbasin cabinet of lavatory of the flight KU-301 arrived from Kuwait to Mumbai, diverted to Ahmedabad due to bad weather, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- ii. I order **absolute confiscation** of packing material i.e. Black coloured tape used for concealment of the said gold and kept beneath the washbasin cabinet in the rear right lavatory of the Flight KU-301, seized under Panchnama dated 08.07.2024 and Seizure memo order dated 08.07.2024, under Section 119 of the Customs Act, 1962.
- iii. I refrain from imposing the penalty on unknown person(s)/passenger(s)/or other claimant under Section 112 of Customs Act, 1962.

**29.** Accordingly, the Show Cause Notice No. VIII/10-203/SVPIA-B/O&A/HQ/2024-25 dated 17.12.2024 stands disposed of.

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

**DIN : 20250471MN000000E4DD**

F. No. VIII/10-203/SVPIA-B/O&A/HQ/2024-25 Date:28.04.2025

To,

“Whom so ever it may concern”

- 1) To be pasted on the Notice Board of Customs House, Navrangpura, Ahmedabad-380009;
- 2) To be pasted on the Notice Board of Customs, SVPI Airport, Ahmedabad.

Copy to:-

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Deputy Commissioner of Customs (Task Force), Ahmedabad.
- (iv) The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site.
- (v) Guard File.