



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन , "पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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PREAMBLE

A	फाइलसंख्या/ File No.	: VIII/10-230/SVPIA-C/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या -तारीख / Show Cause Notice No. and Date	: 56/C/ADC/2023-24 issued from F. No. VIII/10-64/AIU/C/2019-20 Dated 19.01.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 49/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 28.05.2024
I	जारीकरनेकीतारीख/ Date of Issue	: 28.05.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Noticee	To, 1. Shri Robin S/o Baljit Singh House No. 205, First Floor, Rishal Garden, Nangloi, Delhi- 110041 2. Shri Sonu Dabas S/o Shri Ved Prakash, H. No. 1020, Sector- 4, Rohtak, Haryana, And H.No. 64, Krishan Vihar-Roop Vihar, Mubarakpur, New Delhi. 3. Shri Monu Dabas S/o Shri Ved Prakash, H.No. 1020, Sector- 4, Rohtak, Haryana, And H.No. 64, Krishan Vihar-Roop Vihar, Mubarakpur, New Delhi. 4. Shri Suman Kumar S/o Shri BachuLal B-731, Camp No. 4, Jwalapuri, Sunder Vihar Delhi-110087. 5. Shri Rakesh Kumar S/o Shri Babulal House No. S 2/20, Swan Park, Village Mundka, West Delhi, Delhi- 110041. 6. Shri Arvind Kumar S/o Shri Amrutpal 188, T-huts, Camp No. 3, Bhim Nagar, Delhi West, Delhi -110087.

		<p>7. Shri Rahul Jain S/o Shri Murari Chand, B-298, Block-B, Chandan Vihar, Nihal Vihar, Phase-2, Nangloi Jat, West Delhi, Delhi- 110041.</p> <p>8. Shri Sachin S/o Shri Anil Kumar A-708, Jwalapuri, Sunder Vihar S.O. Delhi West, Delhi -110087.</p> <p>9. Shri Ashok Pathak S/o Shri Suresh Pathak, Lila Babhani, Vishnupura Bairia, Bishunpur Balria, Colonelganj, Gonda, U.P. - 271601.</p> <p>10. Shri Rajeev S/o Shri Hawa Singh 535, T-huts, H.M.B., Jwalapuri, Delhi West, Delhi -110087.</p>
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता 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 का कार्यालय, सीमा शुल्क (अपील), 4वीं मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद -380014 में कर सकता है।	
(3)	अपील के साथ केवल पाँच रुपये (5.00 रुपये) के न्यायालय शुल्क टिकट लगा होना चाहिए, और इसके साथ होना चाहिए :	
(i)	अपील की एक प्रति और	
(ii)	इस प्रति या इस आदेशकी कोई प्रति के साथ केवल पाँच रुपये (5.00 रुपये) के न्यायालय शुल्क टिकट लगाहोना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने के इच्छुक व्यक्तिको 7.5% (अधिकतम 10 करोड़ रुपये) शुल्क जमा करना होगा, जहां शुल्क या इयूटी और जुर्माना विवाद में हैं, याजुर्माना, जहां इस तरहकी दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेशकरने में असफल रहने पर, सीमाशुल्क अधिनियम, 1962 के धारा 129 के प्रावधानों का अनुपालन न करने के लिए अपीलको खारिज कर दिया जाएगा ।	

Brief facts of the case :

An investigation carried out revealed that on the basis of specific intelligence, on 09.11.2019, the pax Shri Robin came from Bangkok to Ahmedabad by Spice Jet Flight No. SG-86, seated at Seat No. 27F. After landing, other passengers alighted from the flight, he was stopped by the Customs officers and asked him to join the search in presence of two witnesses. After the other passengers left the flight, the flight was rummaged by the Customs AIU officers. During the rummaging of the flight seats under Panchnama proceedings dated 09.11.2019, two solid metal bars covered with black coloured plastic tape stick with double side gum tape was found concealed from the front side of the back rest of Seat No. 27F where pax Shri Robin was seated. In order to confirm that the said metal bars are actually

made of Gold and to ascertain the value of the same, the Customs officer called the Government Approved Valuer, who opened the adhesive tape and recovered two 1 Kg gold bars and two cut bars jointly weighing 3 Kgs. Thereafter, he tested the said bars and confirmed that the same are made up of pure 24 Kt. Gold having purity of 999.9 and certified that total 4 gold bars totally weighed 3000 grams were valued at Rs.1,17,53,400/- (Rupees One Crore Seventeen Lakhs Fifty-Three Thousand Four Hundred Only) (Market value) and Rs.1,03,68,000/- (Rupees One Crore Three Lakhs Sixty-Eight Thousand Only) (Tariff Value). In his statements, the pax stated that 3 Kg gold bars recovered from his seat, were delivered to him by some person working for Shri Sonu Dabas and Shri Monu Dabas in Bangkok and he was directed to smuggle the said gold into India hiding under his seat cover. For the said activity, he would get ticket fares to Thailand and back and additional Rs.20,000/- for each trip. In each trip he (Shri Robin) was supposed to bring the Gold Bars which he (Robin) has to hide behind his (Robin) seat of the Aircraft of Spice Jet Flight SG 86 and they would deposit money by cash in his Axis Bank Account No. 911010048486059. He further stated that as per their direction, he (Robin) used to book the tickets directly, book the seat number and convey the seat to them on WhatsApp and used to delete the message as they had directed Robin to do so. He further stated that previously he had come from Bangkok after short stay of 2-3 days on 11.02.2019, 01.03.2019, 26.03.2019, 28.05.2019, 09.07.2019, 10.08.2019 and 14.09.2019 and all these occasions he came by Spice Jet Flight SG-86 and hid the gold bar of 3 kg behind his seat during the flight following the same modus operandi.

2. From the above discussions and the facts of the statements of Shri Robin, it transpires that since February 2019 to October 2019, the pax Shri Robin had visited seven times (11.02.2019, 01.03.2019, 26.03.2019, 28.05.2019, 09.07.2019, 10.08.2019 and 14.09.2019) from Bangkok to India and in each of his trip he came by Spice Jet Flight SG-86 and hid the gold bar of 3 kg behind his seat during the flight. It appears from the statement of Shri Robin that in all, he had made 07 such trips before 09.11.2019 (date on which he was caught) carrying 03 Kg gold bars hiding behind his seat during flight. The fact of his trips was also corroborated from the manifests submitted by the Spice Jet airlines.

3. The smuggling of gold bars by adopting the modus decided upon in the conspiracy which had its origins in Bangkok and implemented at Ahmedabad Airport commenced from February, 2019 and was continuing without any hitch till intervention of DRI Ahmedabad and Customs AIU Ahmedabad on 09.11.2019 which resulted in the seizure of 04 gold bars weighing 3000 Gms.

The seizure of the smuggled gold bars on 09.11.2019 was the last consignment in the said conspiracy of smuggling. The conspiracy entered into by Shri Sonu Dabas, Monu Dabas, Robin, Suman and others succeeded in smuggling of gold bars weighing 21 kgs (7 trips and 3 kgs in each trip) before it could be busted with the above said seizure dated 09.11.2019.

4. The investigation carried out also revealed that for 3000 gms of gold bars seized on 09.11.2019, a Show Cause Notice (SCN) dated 22.06.2020 had been issued under F. No. VIII/10-21/O&A/HQ/SVPIA/2020-21, for confiscation of the seized goods i.e. 3000 gms of gold bars only and imposition of penalty on persons involved in the smuggling of said 3000 grams seized goods. Also, the above said SCN has been adjudicated vide Order-in-Original bearing No. 20/JC/SM/O&A/2021-22 dated 27.05.2021 wherein absolute confiscation of four gold bars totally weighing 3000 grams valued at Rs.1,17,53,400/- (Market Value) and Rs.1,03,68,000/- (Tariff Value) seized under Panchnama dated 09.11.2019 was ordered under Section 111 of the Customs Act, 1962 and Penalty under Section 112 of the Customs Act, 1962 were also imposed on Shri Robin, Shri Sonu Dabas and Shri Monu Dabas.

4 (a). Now, in continuation of the process of further inquiry for the past trips, efforts were made to locate and apprehend Shri Sonu Dabas, Shri Monu Dabas, Shri Suman and other associate of pax Shri Robin during his stay at different hotels at their known locations. However, the individuals were not available at the place and Summons issued at the available addresses were returned back undelivered from the Postal Authorities.

5. Tariff value and Market value of 21000 Grams of gold (7 trips and 3000 grams gold in each trip from Bangkok to Ahmedabad) smuggled is calculated in actual as per prevailing notifications/ rates, which is as under:

S. N o.	Date of visit by Shri Robin from Bangkok to Ahmedabad	Qty in grams	Custom Notification (N.T.) No./ date	Tariff rate per gram	Tariff value (Rs.)	Market rate per gram	Market value (Rs.)
1	11.02.2019	3000	07/2019, 31.01.2019, 09/2019 - 07.02.2019	3065.83	9197490	3400	10200000

2	01.03.2019	3000	13/2019 - 21.02.2019, 18/2019 - 28.02.2019	3067.2 0	9201600	3300	9900000
3	26.03.2019	3000	23/2019 - 15.03.2019, 24/2019 - 20.03.2019	2919.0 0	8757000	3300	9900000
4	28.05.2019	3000	36/2019- 15.05.2019, 37/2019 - 16.05.2019	2974.0 7	8922210	3295	9885000
5	09.07.2019	3000	47/2019- 28.06.2019, 48/2019 - 04.07.2019	3145.7 3	9437190	3560	1068000 0
6	10.08.2019	3000	55/2019 - 01.08.2019, 57/2019 - 08.08.2019	3395.0 0	1018500 0	3880	1164000 0
7	14.09.2019	3000	62/2019 - 30.08.2019, 63/2019 - 05.09.2019	3610.8 8	10832640	3860	1158000 0
Total		21000			6653313 0		7378500 0

6. Whereas, from the above acts of commission and omission committed by the pax Shri Robin discussed in the foregoing and supported with evidences, it appears that Shri Monu Dabas and Shri Sonu Dabas were the actual owner of 21 kgs of gold bars valued at Rs.6,65,33,130/- (Tariff Value) and Rs.7,37,85,000/- (Market Value) smuggled into India through SVPI Airport, Ahmedabad during the period from February, 2019 to September 2019. Therefore, the said 21 kgs of gold bars valued at Rs.6,65,33,130/- (Tariff Value) and Rs.7,37,85,000/- (Market Value), however, the above said gold is not physically available for seizure, is also liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962.

7. From the evidences as discussed hereinabove, it appears that Shri Sonu Dabas and Shri Monu Dabas had used Shri Robin for carrying gold bars from Bangkok to India and which were smuggled into India in collusion with Shri Suman, Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin. The investigation has also revealed that in addition to the 3000 gms of gold bars seized on 09.11.2019, a quantity of 21000 Kgs of gold bars valued at Rs.6,65,33,130/- (Tariff Value) and Rs.7,37,85,000/- (Market Value) were smuggled into India during the period from February, 2019 to September 2019.

8. DISCUSSION OF EVIDENCE AGAINST PAX ROBIN AND HIS ROLE PLAYED:

8.1. From the investigation carried out, it appears that the gold hidden in the aircraft by pax Shri Robbin was to be removed in the domestic run of the same aircraft as the alleged kingpin Shri Sonu Dabas and Shri Monu Dabas told pax Shri Robin to book the tickets directly and book the seat number and convey the seat number to them on WhatsApp. Whereas from the manifest of the domestic run, the same seats in which gold was hidden had not been pre booked by anyone. From the Hotel stay records in Ahmedabad of pax Shri Robin, it was found that he had an associate staying with him in the hotel. It is also found that Shri Robin had come to Ahmedabad and stayed in a Hotel with an associate even when he was not returning from Bangkok. On being asked pax Robin refused to state why he had come to Ahmedabad but it appeared that he might have come to board the domestic run of the aircraft. So, the modus operandi appears is that two people board the same flight from Bangkok and one who pre-books hides the gold behind his seat and next set of two passengers boarded the same flight from Ahmedabad during the further domestic run of the same aircraft and remove the gold hidden behind the seat. It also appears that the same aircraft of Spice Jet going on domestic run, after international run and that is the reason why they asked Shri Robin to book return ticket on Spice Jet and also pre book the seat number on the flight so that the smuggled gold can be retrieved in the domestic run of the flight.

8.2. Shri Robin has also given the details of total payment of Rs.3,87,800/- received for smuggling of gold and his expenses which has been deposited in his bank account by cash and details of the bank statement and hotel details has also been submitted in his statement dated 10.11.2019. It is also seen from the manifest that Shri Robin had also previously travelled on the same dates given in his statement dated 09.11.2019 in which he stated that he had brought 3 kg gold which he had hidden behind his seat which is also corroborating with his statement. Hence, he has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act 1962.

9. DISCUSSION OF EVIDENCE AGAINST SHRI SONU DABAS AND SHRI MONU DABAS AND ROLE PLAYED BY THEM:

9.1. The pax Shri Robin in his statement dated 09.11.2019 on being asked about 3Kg gold bars recovered from his seat, stated that these gold bars were delivered to him by some person working for Shri Sonu Dabas in Bangkok and he hid these gold bars on the front side of the back rest of his Seat No. 27 F during the flight from Bangkok to Ahmedabad. He further stated in his statement dated 09.11.2019 that in February, 2019, he received a call from a person who was working for Shri Sonu Dabas and Shri Monu Dabas. The said person offered him (Robin) to smuggle 3 kg gold from Bangkok to Ahmedabad hiding under his seat and for the same, Shri Sonu Dabas and Shri Monu Dabas would pay him (Robin) ticket fares to Thailand and back and additional Rs.20,000/- for each trip. As per their (Shri Sonu Dabas and Shri Monu Dabas) directions, he (Shri Robin) used to book the tickets from Bangkok in Spice Jet Flight SG 86 and convey seat number to them on WhatsApp and used to delete the message as they had directed him to do so. For each trip, ticket fare and other expenses was deposited by cash in his (Shri Robin) Axis Bank Account No. 911010048486059. The same has also been corroborated from the bank statement of pax Robin.

9.2. The Pax Shri Robin in his statement dated 09.11.2019 further stated that following the said modus, previously he had come from Bangkok after short stay of 2-3 days on 11.02.2019, 01.03.2019, 26.03.2019, 28.05.2019, 09.07.2019, 10.08.2019 and 14.09.2019 and all these times he came by Spice Jet Flight SG-86 and hid the gold bar of 3 kg behind his seat during the flight every time. This has also been corroborated from the flight manifest of Spice Jet on the above dates.

9.3. The pax Shri Robin in his statement dated 09.11.2019 further stated that in respect of gold concealed in flight by him was intentionally concealed so as to evade payment of Customs duty and he engaged in smuggling of gold bars as per directions of Shri Sonu and Shri Monu Dabas. During the search conducted on 19.12.2019 by Customs Preventive Commissionerate, Delhi at the residence of Shri

Sonu and Shri Monu Dabas; Shri Monu Dabas was found available there and his statement was recorded under Section 108 of the Customs Act, 1962. Shri Monu Dabas, in his statement *inter alia* stated that he does not know Shri Suman Kumar or Shri Robin and has no knowledge of the case of smuggling of 3 kg. Gold recovered from Shri Robin on 09.11.2019. In the documents resumed from their house during the search on 19.12.2019, include a handwritten letter having details of flight number, destinations, dates, and timings of flights. In spite of various summons served by post/ hand delivery to Shri Sonu Dabas and Shri Monu Dabas, they have not co-operated in the investigation and not appeared for recording of their statements. From the statement of pax Shri Robin clearly shows that they (Shri Sonu and Shri Monu) are the kingpins of this gold smuggling racket. Hence, they have rendered themselves also liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act 1962.

10. DISCUSSION OF EVIDENCE AGAINST SHRI SUMAN KUMAR, SHRI ASHOK PATHAK, SHRI RAJEEV, SHRI RAKESH KUMAR, SHRI RAHUL JAIN, SHRI ARVIND KUMAR AND SHRI SACHIN AND ROLE PLAYED BY THEM:

10.1. From the statements of pax Shri Robin, it appears that Shri Suman Kumar also worked for Shri Monu Dabas and Shri Sonu Dabas and travelled from Bangkok to Ahmedabad by Spice jet flight SG-86 on 02.04.2019, 14.05.2019, 11.06.2019, 16.07.2019, 06.08.2019, 07.09.2019, 14.10.2019 and 31.10.2019 and brought gold from Bangkok to India. His travel history was confirmed from the manifests submitted by the Spice jet airlines. It is also evident from the statements of pax Shri Robin that Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin are used to stay with pax Shri Robin in the hotels on the directions of Shri Sonu and Shri Monu Dabas. The entries shown in the hotel registers along with pax Shri Robin shows their connivance in the said smuggling of gold into India.

10.2. Various summons was issued to the above-named person but no one had turned up. From the above acts of commission and omission committed by Shri Suman Kumar, Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin, it

appears that they all are directly associated with this racket of smuggling of gold run by Shri Sonu Dabas and Shri Monu Dabas. Hence, they have rendered themselves also liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act 1962.

11. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

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

(22) "goods" includes—

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

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

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

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

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

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

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

IV) Section 79- Bona fide baggage exempted from duty.—

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

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

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

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

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

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

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

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

VIII) Section 119 in the Customs Act, 1962:

119. Confiscation of goods used for concealing smuggled goods. —Any goods used for concealing smuggled goods shall also be liable to confiscation.

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

I) “Section 3(2) – *The Central Government may also, by*

Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."

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

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

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

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

12. It therefore appears that -

- (a). the Pax Shri Robin was involved in smuggling of 21 kg gold bar by hiding it behind his seat in the Spice jet aircraft, as per Section 123 of Customs Act, 1962, gold is a notified item. Hence, the same is liable for confiscation under the Customs Act, 1962, on the reasonable belief that these are smuggled goods, and the burden to prove that these are not smuggled, would be on the person from whose possession and/ or who claimed ownership of the goods. Since, the pax could not produce any documents showing the legitimate import of the said 21 kg gold bars into India on payment of duty and regarding its lawful possession, it appears that the said 21 kg. gold bars of foreign origin were imported in contravention of the provisions of the Customs Act, 1962 and the same is, therefore, liable for confiscation under Section 111(d), 111(i), 111(l), and 111(m) of the Customs Act, 1962. From the statement dated 09.11.2019 of the said passenger, it also appears that he was actively involved in the smuggling of the said 21 Kg gold bars. Hence Shri Robin has

rendered himself also liable for penal action under the provisions of section 112(a) and 112(b) of the Customs Act, 1962. Since the pax Shri Robin has stated that he was involved in smuggling the 21 kg gold bar on behalf of Shri Sonu Dabas and Shri Monu Dabas for some monetary benefits which is evident from the bank statements submitted by pax Shri Robin. Hence, Shri Sonu Dabas and Shri Monu Dabas have also rendered themselves liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act 1962.

- (b.) Whereas, in the absence of any import documents evidencing legitimate import of 21 kg gold bars, the same appears to be smuggled in terms of the provisions of Section 2(39) of the Customs Act, 1962. 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 for confiscation under Section 111 or section 113." From the manner of concealment of the said 21 kg gold bars by the said pax Shri Robin, it appears that he was fully aware that the said 21 kg gold bars were of foreign origin and import of the same is prohibited/restricted under the Customs Act and other allied Foreign Trade Regulations. Further, the pax Shri Robin, in his statement dated 09.11.2019 has admitted that said 21 Kg gold bars concealed under his seat were delivered to him by Shri Sonu and Shri Monu Dabas in Bangkok, which he hid on the front side of the back rest of his Seat during the flight from Bangkok to Ahmedabad. The pax further stated that in respect of gold concealed in flight by him was intentional so as to evade payment of Customs duty and he engaged in smuggling of gold bars as per directions of Shri Sonu Dabas and Shri Monu Dabas. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, it appears that Shri Robin has knowingly dealt with the said goods i.e. carrying, keeping, concealing or in any other manner dealing with the goods which he knew or had reason to believe that the same were liable for confiscation under the Customs Act, 1962. The acts of omission and commission on the part of Shri Robin appears to have rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

- (c). It appears from the above paras that Shri Robin, on the directions of Shri Sonu Dabas and Shri Monu Dabas, has smuggled the gold bars totally weighed **21000** grams made up of 24 Kt gold having 999.0 purity valued at **Rs.6,65,33,130/-** (Tariff Value) and **Rs.7,37,85,000/-** (Market Value) concealed behind his seat of the aircraft and has not declared the said gold bars to the Customs with an intention to evade payment of Customs duty and thereby he has violated the provisions contained in the Customs Act, 1962, the Foreign Trade (Development & Regulations) Act 1992, the Foreign Trade policy 2015-2020.
- (d). From the facts and circumstances discussed above, it appears that the gold bars of 24 Kt, 999.0 purity, cannot be construed as bonafide baggage within the meaning of Section 79 of the Act read with Para 2.26 of the Foreign Trade Policy 2015-2020. As per Para 2.26 of the Foreign Trade Policy, a passenger is allowed to import bonafide household and personal effect only as his bonafide baggage. It also appears that the passenger attempted to smuggle the gold bars without filing the customs declaration form which appears to be contravention of Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of the Customs Baggage Declaration Regulations, 2016 read with Section 81 of the Customs Act, 1962. The above act on the part of the pax Shri Robin appears to be amounting to smuggling within the meaning of section 2(39) of the Act. It also appears that the smuggled gold is to be construed as prohibited in terms of the provisions of Section 2(33) of the Act.
- (e). From the statements of pax Shri Robin, it appears that Shri Suman Kumar also worked for Shri Monu Dabas and Sri Sonu Dabas and travelled from Bangkok to Ahmedabad by Spice jet flight SG-86 and used to bring gold from Bangkok to India. His travel history is confirmed from the manifests submitted by the Spice jet airline. It is also evident from the statements of pax Shri Robin that Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin are used to stay with pax Shri Robin in the hotels on the directions of Shri Sonu and Shri Monu Dabas. They are directly associated with the smuggling of gold carried by pax Shri Robin. The entries

shown in the hotel registers along with pax Shri Robin shows their connivance in the said smuggling of gold into India. By their above-described acts of omission and commission on their part has rendered themselves liable to penal action under Section 112 of the Customs Act, 1962.

- (f). The improperly imported gold by the passenger concealed in his seat cover of the airline in the form of gold bars, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

13. Now, therefore, Shri Robin, Shri Sonu Dabas and Shri Monu Dabas are hereby called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2nd Floor, Customs House, Navrangpura Ahmedabad, as to why:

- (i) Gold Bars weighing **21000** grams having purity 999.0/24 Kt., having Tariff value of **Rs.6,65,33,130/-** (Rupees Six Crore Sixty Five Lakhs Thirty Three Thousand One Hundred Thirty Only) and Market Value of **Rs.7,37,85,000/-** (Rupees Seven Crore Thirty Seven Lakhs Eighty Five Thousand only) smuggled into India and cleared through SVP International Airport, Ahmedabad, however the above said gold is not available physically for seizure, should not be held for 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;
- (ii) Penalty should not be imposed upon Shri Robin, Shri Sonu Dabas and Shri Monu Dabas under Section 112(a) and 112(b) of the Customs Act, 1962;

14. Now, therefore Shri Suman Kumar, Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin are hereby called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2nd Floor, Customs House, Navrangpura Ahmedabad, as to why ;

- (i) Penalty should not be imposed upon them under Section 112(a) and 112(b) of the Customs Act, 1962.

Defence Reply and Personal Hearing:

15. All the Noticees have not submitted written reply to the Show Cause Notice.

15.1. All the Noticees were given opportunity to appear for personal hearing on 02.05.2024; 05.05.2024 and 10.05.2024 but they did not appear for personal hearing on the given dates.

Discussion and Findings:

16. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticees have not come forward to file their reply/submissions or to appear for the personal hearing opportunities offered to them. The adjudication proceedings cannot wait until the Noticees make it convenient to file their 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.

17. In the instant case, I find that the main issue to be decided is whether the 21000 grams of gold bars, having purity 999.0/24 Kt., having Tariff value of **Rs.6,65,33,130/-** (Rupees Six Crore Sixty Five Lakhs Thirty Three Thousand One Hundred Thirty Only) and Market Value of **Rs.7,37,85,000/-** (Rupees Seven Crore Thirty Seven Lakhs Eighty Five Thousand only) smuggled into India and cleared through SVP International Airport, Ahmedabad, should not be held 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; and whether all the Noticees are liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

18. I find that based on the investigation carried out earlier, for 3000 grams of gold bars seized on 09.11.2019, a Show Cause Notice (SCN) dated 22.06.2020 had been issued under F. No. VIII/10-21/O&A/HQ/SVPIA/2020-21, for confiscation of the seized goods i.e. 3000 gms of gold bars only and imposition of penalty on persons involved in the smuggling of said 3000 grams seized goods. Also, the above said SCN has been adjudicated vide Order-in-Original bearing No. 20/JC/SM/O&A/2021-22 dated 27.05.2021, wherein absolute confiscation of four gold bars totally weighing 3000 grams valued at Rs.1,17,53,400/- (Market Value) and Rs.1,03,68,000/- (Tariff Value) seized under panchnama dated 09.11.2019 was ordered under Section 111 of the Customs Act, 1962 and penalty under Section 112 of the Customs Act, 1962 were also imposed on Shri Robin, Shri Sonu Dabas and Shri Monu Dabas.

19. Now, in continuation of the process of further inquiry for the past trips, efforts were made to locate and apprehend Shri Sonu Dabas, Shri Monu Dabas, Shri Suman and other associate of pax Shri Robin during his stay at different hotels at their known locations. However, the individuals were not available at the place and Summons issued at the available addresses were returned back undelivered from the Postal Authorities.

20. Therefore, as per the available records, Tariff value and Market value of 21000 Grams of gold for the past period, i.e. 7 trips and 3000 grams gold in each trip from Bangkok to Ahmedabad, smuggled by the Noticees, Shri Sonu Dabas, Shri Monu Dabas, Shri Suman and other associate of pax Shri Robin, is calculated in actual as per prevailing notifications/ rates, which is as under:

S. No.	Date of visit by Shri Robin from Bangkok to Ahmedabad	Qty in grams	Custom Notification (N.T.) No./ date	Tariff rate per gram	Tariff value (Rs.)	Market rate per gram	Market value (Rs.)
1	11.02.2019	3000	07/2019, 31.01.2019, 09/2019 - 07.02.2019	3065.83	9197490	3400	10200000
2	01.03.2019	3000	13/2019 - 21.02.2019, 18/2019 - 28.02.2019	3067.20	9201600	3300	9900000

3	26.03.2019	3000	23/2019 - 15.03.2019, 24/2019 - 20.03.2019	2919.00	8757000	3300	9900000
4	28.05.2019	3000	36/2019- 15.05.2019, 37/2019 - 16.05.2019	2974.07	8922210	3295	9885000
5	09.07.2019	3000	47/2019- 28.06.2019, 48/2019 - 04.07.2019	3145.73	9437190	3560	10680000
6	10.08.2019	3000	55/2019 - 01.08.2019, 57/2019 - 08.08.2019	3395.00	10185000	3880	11640000
7	14.09.2019	3000	62/2019 - 30.08.2019, 63/2019 - 05.09.2019	3610.88	10832640	3860	11580000
	Total	21000			66533130		73785000

21. I find that from the above acts of commission and omission committed by the pax Shri Robin as discussed in the foregoing paras and supported with evidences, it revealed that Shri Monu Dabas and Shri Sonu Dabas were the actual owner of 21 kgs of gold bars valued at Rs.6,65,33,130/- (Tariff Value) and Rs.7,37,85,000/- (Market Value) smuggled into India through SVPI Airport, Ahmedabad during the period from February, 2019 to September 2019. Therefore, the said 21 kgs of gold bars valued at Rs.6,65,33,130/- (Tariff Value) and Rs.7,37,85,000/- (Market Value), is also liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. The above said gold of 21 Kg. is not physically available for seizure. From the evidences as discussed hereinabove, I find that Shri Sonu Dabas and Shri Monu Dabas had used Shri Robin for carrying gold bars from Bangkok to India and which were smuggled into India in collusion with Shri Suman, Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin. The investigation has also revealed that in addition to the 3000 gms of gold bars seized on 09.11.2019, a quantity of 21000 Kgs of gold bars valued at Rs.6,65,33,130/- (Tariff Value) and Rs.7,37,85,000/- (Market Value) were smuggled into India during the period from February, 2019 to September 2019.

22. From the investigation carried out, I find that the gold hidden in the Aircraft by pax Shri Robbin was to be removed in the domestic run of the same aircraft as the kingpin Shri Sonu Dabas and Shri Monu Dabas told pax Shri Robin, to book the tickets directly and convey the seat number to them on WhatsApp. From the manifest of the domestic

run, it was found that the same seats in which gold was hidden had not been pre booked by anyone. From the Hotel stay records in Ahmedabad of pax Shri Robin, it was found that he had an associate staying with him in the hotel. It was also found that Shri Robin had come to Ahmedabad and stayed in a hotel with an associate even when he was not returning from Bangkok. On being asked pax Robin refused to state why he had come to Ahmedabad but it appeared that he might have come to board the domestic run of the aircraft. So, the modus operandi appears is that two people board the same flight from Bangkok and one who pre-books, hides the gold behind his seat and next set of two passengers boarded the same flight from Ahmedabad during the further domestic run of the same aircraft and remove the gold hidden behind the seat. It also revealed that the same aircraft of Spice Jet going on domestic run, after international run and that is the reason why they asked Shri Robin to book return ticket on Spice Jet and also pre book the seat number on the flight so that the smuggled gold can be retrieved in the domestic run of the flight.

23. I also find that Shri Robin has also given the details of total payment of Rs.3,87,800/- received for smuggling of gold and his expenses which has been deposited in his bank account by cash and details of the bank statement and hotel details has also been submitted in his statement dated 10.11.2019. It is also seen from the manifest that Shri Robin had also previously travelled on the same dates given in his statement dated 09.11.2019 in which he stated that he had brought 3 kg gold which he had hidden behind his seat, which is also corroborating with his statement. Hence, he has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act 1962.

24. I find that the pax Shri Robin in his statement dated 09.11.2019, admitted that these gold bars were delivered to him by some person working for Shri Sonu Dabas in Bangkok and he hid these gold bars on the front side of the back rest of his Seat No. 27 F during the flight from Bangkok to Ahmedabad. He further stated in his statement dated 09.11.2019 that in February, 2019, he received a call from a person who was working for Shri Sonu Dabas and Shri Monu Dabas. The said person offered him (Robin) to smuggle 3 kg gold from Bangkok to Ahmedabad hiding under his seat and for the same, Shri Sonu Dabas

and Shri Monu Dabas would pay him (Robin) ticket fares to Thailand and back and additional Rs.20,000/- for each trip. As per their (Shri Sonu Dabas and Shri Monu Dabas) directions, he (Shri Robin) used to book the tickets from Bangkok in Spice Jet Flight SG 86 and convey seat number to them on WhatsApp and used to delete the message as they had directed him to do so. For each trip, ticket fare and other expenses was deposited by cash in his (Shri Robin) Axis Bank Account No. 911010048486059. The same has also been corroborated from the bank statement of pax Robin.

25. I also find that the Pax Shri Robin in his statement dated 09.11.2019 further admitted that following the said modus, previously he had come from Bangkok after short stay of 2-3 days on 11.02.2019, 01.03.2019, 26.03.2019, 28.05.2019, 09.07.2019, 10.08.2019 and 14.09.2019 and all these times he came by Spice Jet Flight SG-86 and hid the gold bar of 3 kg behind his seat during the flight every time. This has also been corroborated from the flight manifest of Spice Jet on the above dates.

I also find that the said gold carried by the above-named persons by concealing and without making any declaration before the Customs appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962.

26. I also find that he further admitted that the gold concealed in flight by him was intentionally concealed, so as to evade payment of Customs duty and he is engaged in smuggling of gold bars as per directions of Shri Sonu and Shri Monu Dabas.

I find that Shri Monu Dabas, in his statement dated 19.12.2019 *inter alia* stated that he does not know Shri Suman Kumar or Shri Robin and has no knowledge of the case of smuggling of 3 kg. Gold recovered from Shri Robin on 09.11.2019. However, from the documents resumed from their house during the search on 19.12.2019, include a handwritten letter having details of flight number, destinations, dates and timings of flights. In spite of various summons served by post/hand delivery to Shri Sonu Dabas and Shri Monu Dabas, they have not co-operated in the investigation and not appeared for recording of their

statements. From the statement of pax Shri Robin I find that they (Shri Sonu and Shri Monu) are the kingpins of this gold smuggling racket. Hence, they have rendered themselves also liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

I also find that the said gold carried by the above named persons by concealing and without making any declaration before the Customs appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962.

27. From the statements of pax Shri Robin, I find that Shri Suman Kumar also worked for Shri Monu Dabas and Shri Sonu Dabas and he travelled from Bangkok to Ahmedabad by Spice Jet flight SG-86 on 02.04.2019, 14.05.2019, 11.06.2019, 16.07.2019, 06.08.2019, 07.09.2019, 14.10.2019 and 31.10.2019 and brought gold from Bangkok to India. His travel history was confirmed from the manifests submitted by the Spice jet airlines. It is also evident from the statements of pax Shri Robin that Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin were used to stay with pax Shri Robin in the hotels on the directions of Shri Sonu and Shri Monu Dabas. The entries made in the hotel registers along with pax Shri Robin shows their connivance in the said smuggling of gold into India.

I also find that the said gold carried by the above-named persons by concealing and without making any declaration before the Customs appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962.

28. It is on record that various summonses were issued to the above-named persons but no one had turned up. From the above acts of commission and omission committed by Shri Suman Kumar, Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin, I find that they all are directly associated with this racket of smuggling of gold run by Shri Sonu Dabas and Shri Monu Dabas. Hence, they have rendered themselves also liable for penal

action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

I also find that the said gold carried by the above named persons by concealing and without making any declaration before the Customs appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962.

29. I also find that all the above persons, supra had in their statements, they have clearly admitted that as to earn money they took up the work of smuggling of gold into India by concealing with an intention to clear the gold illicitly to evade Customs duty and thereby violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020. It is a clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the above named persons had kept the said gold which was in their possession and intended to clear the same without declaring the same.

30. The case of smuggling of gold which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the Noticees 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. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Customs Act, 1962.

31. It is, therefore, proved that by the above acts of contravention, the Noticees have rendered the said Gold, totally weighing 21000 grams liable to confiscation under the provisions of Sections 111 (d) of the Customs Act, 1962. By using the modus of concealing the

impugned gold, it is observed that the Noticees were fully aware that the import of said goods is offending in nature. It is, therefore, very clear that they have knowingly carried the gold and failed to declare the same. It is seen that they have involved themselves in carrying, keeping, concealing and dealing with the impugned gold in a manner which they knew or had reasons to believe that the same is liable to confiscation under the Act. It, is therefore, proved beyond doubt that the Noticees have committed an offence of the nature described in Section 112 of Customs Act, 1962 making them liable for penalty under Section 112 of the Customs Act, 1962.

32. I find that 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 Noticees, 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 Customs Act, 1962.

33. On carefully going through the evidences available on record, I find that the Pax Shri Robin was involved in smuggling of 21 kg gold bar by hiding it behind his seat in the Spice jet aircraft. As per Section 123 of Customs Act, 1962, gold is a notified item and hence, the same is liable for confiscation under the Customs Act, 1962, on the reasonable belief that these are smuggled goods, and the burden to prove that these are not smuggled, would be on the person from whose possession and/ or who claimed ownership of the goods. Since, the pax could not produce any documents showing the legitimate import of the said 21 kg gold bars into India on payment of duty and regarding its lawful possession, I find that the said 21 kg. gold bars of foreign origin were imported in contravention of the provisions of the Customs Act, 1962 and the same is, therefore, liable for confiscation under Section 111(d), 111(i), 111(l), and 111(m) of the Customs Act, 1962. From the statement dated 09.11.2019 of the said passenger, it also revealed that he was actively involved in the smuggling of the said 21 Kg gold bars. Hence, Shri Robin has rendered himself also liable for penal action under the provisions of section 112(a) and 112(b) of the

Customs Act, 1962. I find that the pax Shri Robin has admitted that he was involved in smuggling the 21 kg gold bar on behalf of Shri Sonu Dabas and Shri Monu Dabas for some monetary benefits which is evident from the bank statements submitted by pax Shri Robin. Hence, Shri Sonu Dabas and Shri Monu Dabas have also rendered themselves liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act 1962.

34. I find that in the absence of any import documents evidencing legitimate import of 21 kg gold bars, the same appears to be smuggled in terms of the provisions of Section 2(39) of the Customs Act, 1962. 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 for confiscation under Section 111 or section 113." From the manner of concealment of the said 21 kg gold bars by the said pax Shri Robin, I find that he was fully aware that the said 21 kg gold bars were of foreign origin and import of the same is prohibited/ restricted under the Customs Act and other allied Foreign Trade Regulations. Further, the pax Shri Robin, in his statement dated 09.11.2019 has admitted that said 21 Kg gold bars concealed under his seat were delivered to him by Shri Sonu and Shri Monu Dabas in Bangkok, which he hid on the front side of the back rest of his Seat during the flight from Bangkok to Ahmedabad. The pax further stated that in respect of gold concealed in flight by him was intentional so as to evade payment of Customs duty and he engaged in smuggling of gold bars as per directions of Shri Sonu Dabas and Shri Monu Dabas. Therefore, Shri Robin has knowingly dealt with the said goods i.e. carrying, keeping, concealing or in any other manner dealing with the goods which he knew or had reason to believe that the same were liable for confiscation under the Customs Act, 1962. The acts of omission and commission on the part of Shri Robin appears to have rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

35. From the discussion above, I find that Shri Robin, on the directions of Shri Sonu Dabas and Shri Monu Dabas, has smuggled the gold bars totally weighed **21000** grams made up of 24 Kt gold having 999.0 purity valued at **Rs.6,65,33,130/-** (Tariff Value) and **Rs.7,37,85,000/-** (Market Value) concealed behind his seat of the aircraft and has not declared the said gold bars to the Customs with

an intention to evade payment of Customs duty and thereby he has violated the provisions contained in the Customs Act, 1962, the Foreign Trade (Development & Regulations) Act 1992, the Foreign Trade policy 2015-2020.

36. From the facts and circumstances discussed above, I find that the gold bars of 24 Kt, 999.0 purity, cannot be construed as bonafide baggage within the meaning of Section 79 of the Act read with Para 2.26 of the Foreign Trade Policy 2015-2020. As per Para 2.26 of the Foreign Trade Policy, a passenger is allowed to import bonafide household and personal effect only as his bonafide baggage. It also seen that the passenger attempted to smuggle the gold bars without declaring which appears to be contravention of Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of the Customs Baggage Declaration Regulations, 2016 read with Section 81 of the Customs Act, 1962. The above act on the part of the pax Shri Robin appears to be amounting to smuggling within the meaning of section 2(39) of the Act. It also found that the smuggled gold is to be construed as prohibited in terms of the provisions of Section 2(33) of the Act.

37. From the statements of pax Shri Robin, I find that Shri Suman Kumar also worked for Shri Monu Dabas & Shri Sonu Dabas and travelled from Bangkok to Ahmedabad by Spice jet flight SG-86 and used to bring gold from Bangkok to India. His travel history is confirmed from the manifests submitted by the Spice jet airlines. It is also evident from the statements of pax Shri Robin that Shri Ashok Pathak, Shri Rajeev, Shri Rakesh Kumar, Shri Rahul Jain, Shri Arvind Kumar and Shri Sachin were used to stay with pax Shri Robin in the hotels on the directions of Shri Sonu and Shri Monu Dabas. They were directly associated with the smuggling of gold carried by pax Shri Robin. The entries shown in the hotel registers along with pax Shri Robin shows their connivance in the said smuggling of gold into India. By their above-described acts of omission and commission on their part has rendered themselves liable to penal action under Section 112 of the Customs Act, 1962.

38. The improperly imported gold by the passenger concealed in his seat cover of the airline in the form of gold bars, without declaring it to the Customs is thus liable for confiscation under Section 111(d),

111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962. The commission of said acts on the part of the Noticees, have rendered themselves liable for penalty under Section 112(a) & 112(b) of the Customs Act, 1962.

39. I also find that despite having knowledge that the goods had to be declared and such import is an offence under the Customs Act, 1962 and Rules and Regulations made under it, the Noticees had attempted to remove the said gold, by deliberately not declaring the same by them with the willful intention to smuggle the impugned gold into India. Further, I find that the passengers are carriers only and regularly involved in smuggling work for monetary benefits. I therefore, find that the passengers have committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making them liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

40. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia, however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfillment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold in the present case "prohibited goods" as the passengers, trying to smuggle it, were not eligible to bring it in India or import gold into India in baggage. 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 passengers. In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Customs Act, 1962.

41. Further, in terms of the provisions under Section 123 of the Customs Act, 1962, it is the responsibility of the person who is in possession of the said gold/ silver or the person claiming ownership of the same, to prove that the same were not smuggled gold. Here, the passengers had failed to produce documents evidencing legitimate purchase/ import of 21000 grams of gold having total Tariff Value of Rs.6,65,33,130/- and Market Value of

Rs.7,37,85,000/-. Therefore, all the aforesaid acts of commission on the part of Noticees have rendered the goods, i.e. 21000 Grams 24Kt gold of purity 999.0, liable for confiscation under Section 111(d) of the Customs Act, 1962 and further they have rendered themselves liable for penalties under Section 112(a) and 112(b) of the Customs Act, 1962.

42. I also find that there is a plethora of judgments in favour of release as well as against release of goods on payment of duty, redemption fine and penalty, once it is established that the goods in question comes under the ambit of "prohibited goods" as defined under Section 2(33) of Customs Act, 1962 and the act of malafide intention in relation to subject items falling within the meaning of "smuggling", as defined under Section 2(39) of Customs Act, 1962. I find that it is a settled legal position that ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Products [2004 (170) ELT 135 (SC)] has stressed the need to discuss the facts of decision relied upon first factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated in the judgment in the case of Escort Ltd. Vs. CCE, Delhi [2004 (173) ELT 113 (SC)] and in case of CC (Port), Chennai Vs Toyota Kirloskar [2007 (213) ELT 4 (SC)]. In the instant case, it has been established beyond doubt that the gold kept undeclared and concealed/ hidden, falls within the meaning of "prohibited goods" and the act of malafide intention and not declared before the Customs, falls within the meaning of "smuggling". Hon'ble Supreme Court in case of Dropti Devi & Anr reported in [(2012) 6 S.C.R. 307] has observed and taken a serious view of smuggling activities. The smugglers by flouting the regulations and restrictions by their misdeeds directly affect the national economy and thereby endanger the security of the country.

43. Further, I find that in the case of *Samynathan Murugesan* [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority and thereby allowed the departmental appeal. While upholding absolute confiscation, it was observed by the Hon'ble High Court as under:

"...From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the

time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in Sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods...."

In the case before me, the import of gold is conditional, and applying the ratio of the decisions cited above, I hold that non-compliance of such conditions makes gold, prohibited for the purpose of import. I am therefore of the view that the said Gold, totally weighing 946.900 grams in the present case is liable for absolute confiscation. However, the goods are not physically available, the same can be redeemed on redemption fine.

44. Hon'ble Supreme Court in the case of *Om Prakash Bhatia* reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the gold which was kept undeclared, concealed/ hidden and was being carried by the passengers/ Noticees, are to be treated as "goods" prohibited in nature.

45. In the present case, it is seen that the passengers and Noticees have attempted to smuggle the Gold, by concealing/ hiding in the Aircraft. Further, I find that the said gold was acquired illegally/ illicitly and smuggled it into India. Thus, I find that Noticees have abetted the commission of attempted improper import of the impugned gold, which was seized and found liable for confiscation under Section 111 (d) of the Customs Act, 1962.

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

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

47. Further, I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar

Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order it was recorded as under ;

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

48. The Hon'ble High Court of Madras in the matter of COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

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

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

49. 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 the case of 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".

50. Given the facts of the present case before me and the judgements and rulings cited above, the said Gold, totally weighing 21000 grams of 24Kt/999.0 purity, is therefore liable to be confiscated. I therefore hold in unequivocal terms that gold totally weighing 21000 grams would be liable to confiscation under Section 111(d) of the Customs Act, 1962.

51. I further find that the Noticees had involved themselves and abetted the act of smuggling of gold weighing 21000 grams. They have agreed and admitted in their statements that despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, they have attempted to smuggle the said gold. Thus, it is clear that they have concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold which they knew very well and had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the Noticees are liable for penal action under Sections 112(a) & 112(b) and 117 of the Customs Act, 1962 and I hold accordingly.

52. Accordingly, I pass the following Order:

ORDER

- i) I order confiscation of the Gold, totally weighing 21000 grams of 24Kt/999 purity, having tariff value of **Rs.6,65,33,130/-** (Rupees Six Crore Sixty-Five Lakhs Thirty-Three Thousand One Hundred Thirty only) and market value of **Rs.7,37,85,000/-** (Rupees Seven Crore Thirty-Seven Lakhs Eighty-Five Thousand only), under the provisions of Sections 111(d), 111(f), 111(i), 111 (j), 111(l) and 111(m) of the Customs Act, 1962.
- ii) Since the goods are not physically available for confiscation, I give an option to redeem the said goods on payment of redemption fine of **Rs.66,50,000/-** (Rupees Six Lakhs Fifty Thousand Only) under the provisions of **Section 125** of the Customs Act, 1962. Apart from redemption fine, they are liable to pay applicable Customs duty and other levies, as applicable.
- iii) I impose a penalty of **Rs.2,00,00,000/-** (Rupees Two Crore Only) on **Shri Robin**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.
- iv) I impose a penalty of **Rs.2,00,00,000/-** (Rupees Two Crore Only) on **Shri Sonu Dabas**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.
- v) I impose a penalty of **Rs.2,00,00,000/-** (Rupees Two Crore Only) on **Shri Monu Dabas**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.

- vi) I impose a penalty of **Rs.1,00,00,000/-** (Rupees One Crore Only) on **Shri Suman Kumar**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.
- vii) I impose a penalty of **Rs.50,00,000/-** (Rupees Fifty Lakhs Only) on **Shri Ashok Pathak**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962
- viii) I impose a penalty of **Rs.50,00,000/-** (Rupees Fifty Lakhs Only) on **Shri Rajeev**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.
- ix) I impose a penalty of **Rs.50,00,000/-** (Rupees Fifty Lakhs Only) on **Shri Rakesh Kumar**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.
- x) I impose a penalty of **Rs.50,00,000/-** (Rupees Fifty Lakhs Only) on **Shri Rahul Jain**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.
- xi) I impose a penalty of **Rs.50,00,000/-** (Rupees Fifty Lakhs Only) on **Shri Arvind Kumar**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.
- xii) I impose a penalty of **Rs.50,00,000/-** (Rupees Fifty Lakhs Only) on **Shri Sachin**, under the provisions of **Section 112(a) and 112(b)(i)** of the Customs Act, 1962.

47. Accordingly, the Show Cause Notice No. 56/C/ADC/2023-24, issued from F. No. VIII/10-64/AIU/C/HQ/2019-20 dated 19.01.2024 stands disposed of.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-230/SVPIA-C/O&A/HQ/2021-22
DIN: 20240571MN0000139616

Date: 28.05.2024

BY SPEED POST AD/ANY PERMISSIBLE MODE OF COMMUNICATION

To,

1. **Shri Robin S/o Baljit Singh**
House No. 205, First Floor, Rishal Garden,
Nangloi, Delhi- 110041

2. **Shri Sonu Dabas S/o Shri Ved Prakash**,
H. No. 1020, Sector- 4, Rohtak, Haryana,
And H.No. 64, Krishan Vihar-Roop Vihar,
Mubarakpur, New Delhi.

3. **Shri Monu Dabas S/o Shri Ved Prakash,**
H.No. 1020, Sector- 4, Rohtak, Haryana
And H.No. 64, Krishan Vihar-Roop Vihar,
Mubarakpur, New Delhi.

4. **Shri Suman Kumar S/o Shri BachuLal**
B-731, Camp No. 4, Jwalapuri, Sunder Vihar
Delhi-110087.

5. **Shri Rakesh Kumar S/o Shri Babulal**
House No. S 2/20, Swan Park, Village Mundka
West Delhi, Delhi- 110041.

6. **Shri Arvind Kumar S/o Shri Amrutpal**
188, T-huts, Camp No. 3, Bhim Nagar,
Delhi West, Delhi -110087.

7. **Shri Rahul Jain S/o Shri Murari Chand,**
B-298, Block-B, Chandan Vihar, Nihal Vihar,
Phase-2, Nangloi Jat, West Delhi, Delhi- 110041.

8. **Shri Sachin S/o Shri Anil Kumar**
A-708, Jwalapuri, Sunder Vihar
S.O. Delhi West, Delhi -110087.

9. **Shri Ashok Pathak S/o Shri Suresh Pathak**
Lila Babhani, Vishnupura Bairia, Bishunpur Balria
Colonelganj, Gonda, U.P. – 271601.

10. **Shri Rajeev S/o Shri Hawa Singh**
535, T-huts, H.M.B., Jwalapuri,
Delhi West, Delhi -110087.

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 (TRC), Ahmedabad.
- IV. The Deputy Commissioner of Customs (Prosecution), Ahmedabad.
- V. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the web-site.
- VI. Guard File.