

OIO No:33/ADC/SRV/O&A/2025-26
F. No: VIII/10-222/SVPIA/DRI/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहलीमंजिल, पुरानेहाईकोटकेसामने, नवरंगपुरा, अहमदाबाद – 380009.

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DIN: 20250571MN0000919701

PREAMBLE

A	फाइलसंख्या / File No.	:	VIII/10-222/SVPIA/DRI/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या—तारीख / Show Cause Notice No. and Date	:	DRI/AZUIGI-02/ENQ-17/2024 dated 30.09.2024
C	मूलआदेशसंख्या / Order-In-Original No.	:	33/ADC/SRV/O&A/2025-26
D	आदेशतिथि / Date of Order-In-Original	:	20.05.2025
E	जारीकरनेकीतारीख / Date of Issue	:	20.05.2025
F	द्वारापारित / Passed By	:	Shree Ram Vishnoi , Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<p>1. Shri Tirth Vipulbhai Badhiwala, residing at 22, D.M. Park, Katargam, Singanpore Road, Surat City-395004, Gujarat</p> <p>2. Shri Vijaykumar Karmashibhai Langadiya, currently residing at 43, Um iya Bungalows 2, Opposite DGVCL office, Vesu, Surat, Gujarat – 395007</p> <p>3. Shri Jemis at Dubai (jemishsavani982@gmail.com) & (To be served Through Notice Board)</p> <p>4. Shri DJ Bravo alias Lucky @ Dubai (To be served Through Notice Board)</p> <p>5. Shri Mark shadow alias Arbaaz at Ahmedabad (To be served Through Notice Board)</p>
(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, हुड्को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		

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(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 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:

An intelligence was received by Directorate of Revenue Intelligence, Zonal Unit Ahmedabad, (hereinafter also referred to as DRI) that a person has arrived at SVP International Airport along with vehicle 'Hyundai Aura' of Aqua-marine color bearing no. GJ05 RT 1101 to receive a passenger arriving by Flight No. 6E-1478 from Dubai to Ahmedabad scheduled at 09:35 Hrs and suspected to be carrying Gold either in person or in baggage.

2. Acting on the said intelligence, a team of officers from DRI, AZU discreetly kept a watch over a vehicle 'Hyundai Aura' of Aqua-marine color bearing no. GJ05 RT 1101 which was lying at the car parking inside the SVP International Airport, Ahmedabad and it was observed that the said vehicle is unoccupied and locked. After some time, it was noticed that 3 persons, along with baggage arrive near the vehicle bearing no. GJ05 RT 1101. The officers quickly approached and stopped the vehicle bearing no. GJ05 RT 1101, which was about to exit the parking area and intercepted 3 persons namely (1) Shri Dhruvalbhai Rajeshbhai Nayak, the driver of the car, (2) Shri Tirth Vipulbhai Badhiwala, the passenger who had arrived on 04.04.2024 by Flight No. 6E-1478 from Dubai to Ahmedabad and (3) Shri Vijaykumar Karmashibhai Langadiya, the person who came to receive the said passenger, who are sitting inside the car by verifying their Identity Card and the proceedings thereof were recorded under panchnama of dated 04.04.2024.

2.1 The DRI officers interrogated Shri Tirth Vipulbhai Badhiwala, the passenger and after sustained interrogation, Shri Tirth Vipulbhai Badhiwala accepted that he was carrying Gold paste in his underwear that was handed over by one person, named, Shri Jemis Bhado in Dubai and that on reaching Ahmedabad airport, the said gold paste is to be

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handed over to a person who would identify him after exiting the SVP International Airport terminal. The officers, then asked Shri Tirth Vipulbhai Badhiwala whether he was aware as to whom the gold paste was to be handed over after exiting the Airport terminal, to which Shri Tirth Vipulbhai Badhiwala replied that he was not informed of the identity of the receiver at the airport. The officers then asked Shri Tirth Vipulbhai Badhiwala, who had approached to receive him after exiting the Airport Terminal on 04.04.2024, to which Shri Tirth Vipulbhai Badhiwala informed that he was approached by Shri Vijaykumar Karmashibhai Langadiya, directly after his exit from the arrival gate of SVP International Airport, Ahmedabad.

2.2 Further, Shri Vijaykumar Karmashibhai Langadiya informed that he had come to receive Shri Tirth Vipulbhai Badhiwala to take the custody of gold paste and informed that the photo of Shri Tirth Vipulbhai Badhiwala was shared to him on WhatsApp messaging app, by one person named as "D. J. Bravo". Shri Vijaykumar Karmashibhai Langadiya, informed that the gold paste would be cleared from the airport with the help of some airport staff whom he has met on 03.04.2024 at Memco Circle, Ahmedabad at around 1630 to 1700 hours of 03.04.2024 on the direction of Shri D. J. Bravo. Shri Vijaykumar Karmashibhai Langadiya informed that he was receiver of the gold on behalf of one, Shri D. J. Bravo and the gold paste is further to be handed over to person named as Shri Arbaaz at Astodia Circle, Ahmedabad.

2.3 Then to identify the particular airport staff that had helped to smuggle the gold paste from the airport, the officers took all the 3 persons i.e Shri Dhruvalbhai Rajeshbhai Nayak, Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya inside the SVPI Airport. The Officers asked Shri Vijaykumar Karmashibhai Langadiya to look out for the particular airport staff inside the full area of arrival hall of Airport and after taking a round of the entire arrival area Shri Vijaykumar Karmashibhai Langadiya informed that the person whom he has met him on 03.04.2024 at Memco Circle, Ahmedabad was not seen at the arrival hall.

2.4 Thereafter the officers asked Shri Tirth Vipulbhai Badhiwala whether he wish to be searched before a Gazetted officer or Magistrate, to which he agreed to be searched in front of a Gazetted officer of Customs.

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Before starting the personal search, Shri Tirth Vipulbhai Badhiwala informed the officers that he has worn an extra underwear which has gold paste concealed in it and then voluntarily Shri Tirth Vipulbhai Badhiwala removed the blue colored underwear of brand 'Lux Maestro M' and handed over to DRI officers. The officers then took the blue colored underwear of brand 'Lux Maestro M' worn by Shri Tirth Vipulbhai Badhiwala into custody.

2.5 Shri Tirth Vipulbhai Badhiwala was then asked to pass through Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival hall of Terminal 2, SVPI Airport Ahmedabad after removing all metallic objects from their body/clothes. When Shri Tirth Vipulbhai Badhiwala passes through DFMD, no beep sound is heard indicating that there is no metallic substance on the body / clothes of Shri Tirth Vipulbhai Badhiwala. Then, the Baggages i.e. One Red coloured trolley bag of make 'Skybag' and one black coloured shoulder bag of Shri Tirth Vipulbhai Badhiwala was checked in Baggage Screening Machine and nothing objectionable was found.

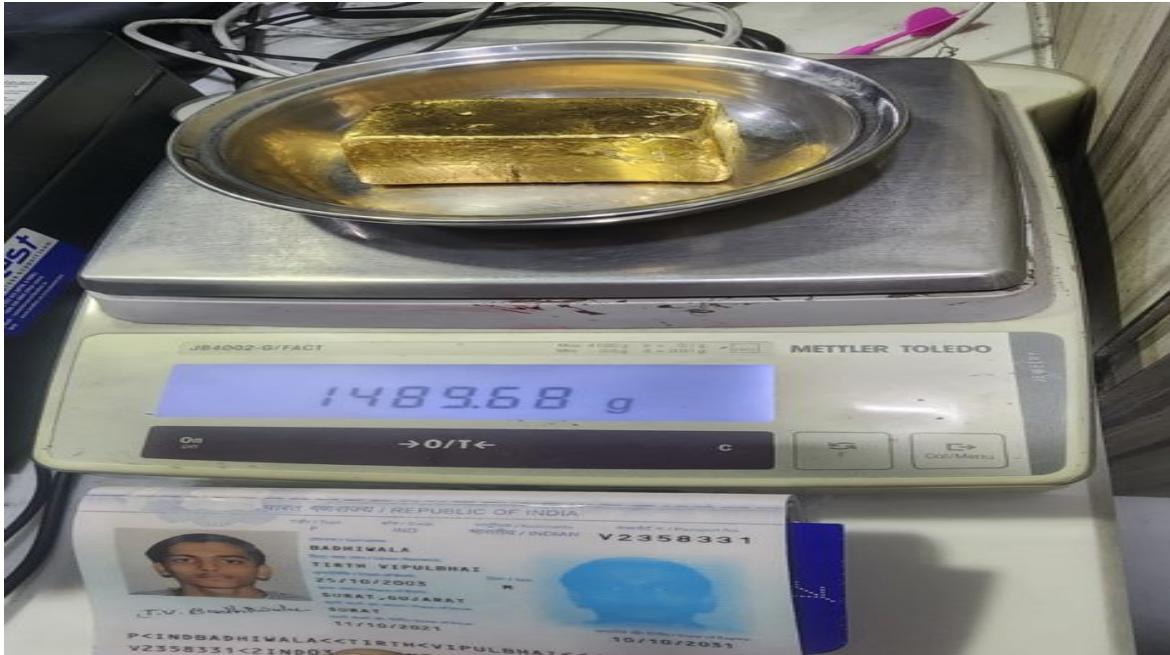
2.6 The aforementioned mentioned substance concealed in the underwear appeared to be gold and gold paste, hence, it was required to be tested and valued by a Government Approved Valuer. Thereafter, the officer contacted Government Approved Valuer Shri Kartikey Vasantrai Soni and informed that some substance has been recovered from a passenger, which needed to be tested for the presence of Gold also informed Shri Kartikey Vasantrai Soni to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer Shri Kartikey Vasantrai Soni informed that the testing of the said material is only possible at his workshop as gold has to be extracted from such solid or semisolid paste material form by melting it and also informs the address of his workshop. On reaching the workshop, the officers removed the substance stitched inside the underwear and found that it had 2 packets containing semi solid substance wrapped in white paper adhesive tape. Thereafter, Shri Kartikey Vasantrai Soni, weighs the said semi-solid/paste/dust substances recovered from underwear of Shri Tirth Vipulbhai Badhiwala and informs that the gross weight of said substance is 1753.600 grams and to recover gold, the said substance needed to be melted. The photograph of the weight is as under:

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2.7 Thereafter, the officer requested Shri Kartikey Vasantrai Soni to carry out the testing, purity and valuation of the said material. Shri Kartikey Vasantrai Soni, then after completion of entire procedure of weighment and purity check, submitted his valuation reports (Annexure - A&B) vide Certificate No: 017/2024-25 dated 04.04.2024 in terms of the Notification No. 25/2024-Customs (N.T.) dated 28.03.2024 (gold) and Notification No. 24/2024-Customs (N.T.) dated 26.03.2024 (exchange rate). The details and picture of which are as under:-

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S.No	Details of Items	PC S	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bar	1	1489.680	999.0 24Kt	10742082	8834398
	Total	1	1489.680		10742082	8834398

Seizure of smuggled gold

2.8 Since, Shri Tirth Vipulbhai Badhiwala did not declare the said gold bars to the Customs Authorities and thereby have smuggled gold in the conceal manner with an intention to evade payment of Customs duty in violation of the provisions of Customs Act, 1962, total 1489.680 Grams Gold of 24Kt. with purity 999.0, having total Market Value of Rs. 1,07,42,082/- (Rupees One Crore Seven Lakhs Forty-Two Thousand and eighty-two only) and total tariff value at Rs. 88,34,398/- (Rupees Eighty-Eight lakhs thirty-four thousand three hundred and ninety-eight only) along with packing material (underwear and white paper adhesive tape, which were used to cover/conceal the said gold paste were placed under seizure under section 110 of the Customs Act, 1962 vide seizure memo dated 04.04.2024 as the same were liable to confiscation under Section 111 & Section 119 of the Customs Act, 1962 respectively.

2.9 The seized gold bar along with packing material used for concealment were handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide ware House 6151 and 6152 both dated 04.04.2024 respectively for safe custody.

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3. STATEMENTS OF KEY PERSONS:

Upon completion of the panchnama proceedings at SVPI Airport, summons were issued to (i) Shri Tirth Vipulbhai Badhiwala (ii) Shri Vijakumar Karmashibhai Langadiya and (iii) Shri Dhruval Nayak for recording their statement.

3.1 Statement of Shri Tirth Vipulbhai Badhiwala was recorded under Section 108 of the Customs Act, 1962 on 04.04.2024 and 05.04.2024, wherein he inter-alia stated that:

3.1.1 he went to Dubai on 29.03.2024 for the first time and his trip along with visa was sponsored by his cousin Shri Divyank Patel, (Mobile No. +917698236481, +6591606701)

3.1.2 he stayed at Hotel Concord, Bur Dubai for 30.03.2023, 31.03.2023 and 01.04.2024 and later shifted to a hotel in Downtown area, Dubai for 02.04.2024 and 03.04.2024.

3.1.3 1753.660 grams of gold in semi-solid substance in paste form was concealed in the blue-coloured underwear that was handed over to him by Jemis@Dubai and was worn by him during his return journey from Dubai to Ahmedabad, which was recovered by the officers from his possession. The said 1753.660 grams which subsequently upon extraction was converted into 1489.680 grams of solid Pure Gold Bar having purity 9990/24Kt were recovered and seized vide panchnama dated 04.04.2024.

3.1.4 the said gold was concealed in such a manner that the said gold paste could be fully covered/concealed and remain hidden so that the same was cleared from the Airport without the knowledge of Customs or any other Authority at SVPI Airport Customs, Ahmedabad.

3.1.5 the said gold was not purchased by him but a person namely Jemis@Dubai (0545427010) had handed over one blue coloured underwear with an instruction to wear the same over my navy blue coloured underwear worn by him during his return journey from Dubai to Ahmedabad.

3.1.6 Shri Jemis@Dubai informed him that Gold in paste form was concealed in the blue coloured underwear and further instructed him to hand over the said blue coloured underwear containing Gold(in paste form) to one of his persons on reaching at Ahmedabad.

3.1.7 he received a phone call from a phone no. 917999979996, who introduced himself as Vicky and informed him that he had come to pick him from Airport. Upon his arrival at SVPI airport and after coming out of the SVPI Airport, Vicky identified him and approached him outside the SVPI Airport.

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3.1.8 Shri Jemish@Dubai offered him commission of Rs. 10,000/- for successfully carrying out the task of carrying the said gold from Dubai to India and delivering the same to his person after arriving at SVPI Airport, Ahmedabad

3.1.9 he did not know any person namely Shri Dhruval Rajeshbhai Nayak and he had never met him before.

3.1.10 he agreed with the fact that it is illegal to smuggle gold without declaring the same before the Customs authorities and payment of duty, which is against the law and accepted his offence.

3.1.11 he understood and agreed that the said gold smuggled by him was liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and his liable for penalty under the provision of Section 112, 135 of the Customs Act, 1962

3.2 Statement of Shri Vijaykumar Karmashibhai Langadiya was recorded under Section 108 of the Customs Act, 1962 on 04.04.2024, wherein, he inter-alia stated that:

3.2.1 the contents mentioned in the panchnama dated 4.4.2024 are correct and drawn based on the facts.

3.2.2 Vehicle bearing no. GJ05 RT 1101 was owned by him and two other persons sitting in the said vehicle were Shri Dhruvalbhai Rajeshbhai Nayak and Shri Tirth Vipulbhai Badhiwala;

3.2.3 Shri Dhruvalbhai Rajeshbhai Nayak was his driver and Shri Tirth Vipulbhai Badhiwala was a carrier, who came from Dubai to Ahmedabad and he was carrying smuggled gold in paste form.

3.2.4 he had come to SVPI Airport Ahmedabad to receive the said smuggled gold in paste form, which was being carried by Shri Tirth Vipulbhai Badhiwala.

3.2.5 one person namely DJ Bravo alias Lucky@ Dubai had sent him flight ticket for journey from Dubai to Ahmedabad alongwith image of Shri Tirth Vipulbhai Badhiwala, on 04.04.2024 and on Botim app informed him about the arrival of Shri Tirth Vipulbhai Badhiwala to Ahmedabad by Flight No. 6E-1478 and about carrying of gold in paste form in his garment and asked him to receive the said gold paste from Shri Tirth Vipulbhai Badhiwala to which he agreed and consequently went to SVPI Airport at around 9 AM today on 04.04.2024 for the said purpose. Since, he had his image, he identified him and approached him to take to his vehicle bearing no. GJ05 RT 1101.

3.2.6 Shri DJ Bravo alias Lucky was Indian national, who resides at Dubai and he was the owner of the gold paste recovered from Shri Tirth Vipulbhai Badhiwala. Shri DJ Bravo alias Lucky @ Dubai makes all arrangements for smuggling of gold from Dubai to Ahmedabad. During his stay at Dubai, he came in contact with Shri DJ Bravo alias Lucky, who offered him to do the job of receiving of smuggled gold at Ahmedabad. Shri DJ Bravo alias Lucky @ Dubai informed that when

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any carrier would be flying from Dubai to Ahmedabad with smuggled gold, he had to receive such gold from such carrier outside the SVPI Airport and further to hand over the same to a person namely Shri Mark Shadow alias Arbaaz at Ahmedabad. He also offered him commission of Rs. 15000 for each turn of receiving such smuggled gold and successfully handing over to Shri Mark Shadow alias Arbaaz.

3.2.7 he agreed to the offer made by Shri DJ Bravo alias Lucky @ Dubai in lieu of commission of Rs. 15000 for each such turn. Shri DJ Bravo had also shared mobile number of Shri Mark Shadow alias Arbaaz for delivery of such smuggled gold to him after receiving from the carriers.

3.2.8 Apart from the present case, total five times he had received smuggled gold as per the direction of Shri DJ Bravo alias Lucky @ Dubai, wherein gold remained in paste/semi-solid form outside the SVPI Airport Ahmedabad and at one instance, he had received 3 gold bars at Surat Airport. In all above five instances, after receiving such gold items, on direction of Shri DJ Bravo alias Lucky @ Dubai, he had handed over the same to Shri Mark Shadow alias Arbaaz and on each occasion, Shri Mark shadow alias Arbaaz gave him Rs. 15000/- in cash.

3.3 Statement of Shri Vijaykumar Karmashibhai Langadiya was recorded under Section 108 of the Customs Act, 1962 on 05.04.2024, wherein, he inter-alia stated that:

3.3.1 he confirmed that total 1753.660 gram of gold in paste/semi solid form was recovered from Shri Tirth Vipulbhai Badhiwala in his presence.

3.3.2 the said gold paste was to be received by him as per the direction of Shri DJ Bravo alias Lucky @ Dubai and was handed over to Shri Mark Shadow alias Arbaaz at Ahmedabad.

3.3.3 he did not know any person namely Shri Divyank Patel, who sponsored ticket of Shri Tirth Vipulbhai Badhiwala

3.3.4 the owner of the said gold is Shri DJ Bravo alias Lucky @ Dubai. As per his belief, Shri Jemis @ Dubai, who gave gold to Shri Tirth Vipulbhai Badhiwala would be employee of Shri DJ Bravo alias Lucky @ Dubai.

3.3.6 Shri Dhruval Nayak did not know the purpose of his visit to SVPI Airport and did not have any idea about smuggled gold to be received by him.

3.3.7 he did not know address and/or email id of Shri DJ Bravo alias Lucky @ Dubai and Shri Mark Shadow alias Arbaaz and his phone is locked with password, which he has forgotten.

3.3.8 Shri DJ Bravo alias Lucky is residing at Dubai and Shri Mark Shadow alias Arbaaz is residing at Ahmedabad.

3.4 Statement of Shri Dhruval Nayak was recorded under Section 108 of the Customs Act, 1962 on 04.04.2024, wherein, he inter-alia stated that:

3.4.1 he did not know the actual owner of car Hyundai Aura Registration No. GJ05RT1101, but on previous day he got a call

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from Shri Vijaykumar Karmashibhai Langadiya that he has to go to Ahmedabad from Surat and he needed a driver and asked him if he could drive a car for him and to which he agreed.

3.4.2 Shri Vijaykumar Karmashibhai Langadiya owns a car rental company namely "Your Car Pvt Ltd". In the past, he took a car on rent from Shri Vijaykumar Karmashibhai Langadiya for around 1.5 months in the month of January & February 2024, for taking his mother to the hospital for tests and regular check-up as she was suffering from a liver disease

3.4.3 he was working freelancer as graphics designer and did not have any work so he agreed to drive the car and in return Shri Vijaykumar Karmashibhai Langadiya had promised him a job in his company with 12000/- monthly salary.

3.4.4 he visited SVPI airport on 04.04.2024 along with Shri Vijaykumar Karmashibhai Langadiya. He did not know the purpose of his visit to SVPI Airport Ahmedabad.

3.4.5 he did not know Shri Tirth Vipulbhai Badhiwala and had never met him

3.4.6 he did not know persons namely Shri Divyang Patel and Shri Jemis and he had never met Shri Divyang Patel and Shri Jemis.

4. Arrest of (I) Shri Tirth Vipulbhai Badhiwala and (II) Shri Vijaykumar Karmashibhai Langadiya

Based on the evidences gathered in the form of panchnama, statements of the respective persons, it appears that the persons namely, Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya, had conspired to smuggle the above gold of net weight 1489.680 grams having purity 999.9/24Kt and having market value of Rs. 1,07,42,082/-. Further, the offence committed by them has also been admitted in their respective statements recorded under Section 108 of the Customs Act, 1962, which evidently established their key roles in such attempt of smuggling. The market value of above gold was Rs. 1,07,42,082/-, which was more than one crore smuggled goods. Further the said gold was to be treated as smuggled gold in terms of the provision of Section 2(39) and prohibited goods as defined under Section 2(33) of the Customs Act, 1962. Thereby they both have committed an offence under Section 135 (1)(a) & (b) of the Customs Act, 1962, which shall be punishable under Section 135(1)(i)(a) & (b). Thereby both of them were liable to be arrested under the provision of Section 104 of the Customs Act, 1962. Further, the offence committed by them was cognizable offence under Section 104(6)(a) & (c), which was non-bailable. Accordingly, Shri

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Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya were arrested on 05.04.2024 and were produced before the Hon'ble ACMM, who granted them judicial custody.

5. Further Investigation

5.1 Enquiry with the airlines regarding the booking details of return journey

Further, vide email dated 18.04.2024, Indigo Airlines was requested for booking details of the passengers namely Shri Tirth Vipulbhai Badhiwala who had travelled from Surat to Dubai on 30.03.2024 and from Dubai to Ahmedabad on 04.04.2024. Vide email dated 10.05.2024, Indigo Airlines reported that both the tickets of Mr. Tirth Vipulbhai Badhiwala were booked through a travel agency and it was further reported that email id was mentioned as jemishsavani982@gmail.com.

5.2 Summons issued to Mr. Jemis@Dubai

As deposed by Shri Tirth Vipulbhai Badhiwala during his statement that person namely Jemis @Dubai (0545427010) had handed over one blue coloured underwear with an instruction to wear the same over his navy blue coloured underwear worn by him during his return journey from Dubai to Ahmedabad. Further as evident from the communication received from the Indigo Airline both the tickets of Mr. Tirth Vipulbhai Badhiwala were booked through a travel agency and the email id mentioned as jemishsavani982@gmail.com. It is important to mention that the name "Jemis" is common in the both the aforesaid instance. Accordingly, summons of dated 21.05.2024 and 16.08.2024 were issued to Shri Jemis and forwarded at jemishsavani982@gmail.com. However, he did not come forward before the investigating agency and avoided his presence by responding vide his email dated 21.8.2024, He is not concerned with the said inquiry and requested to confirm whether he was the intended recipient of this summons. Vide email dated 22.8.2024, It was specifically communicated at the above email address that he was the intended recipient of the summons. However, neither any further response was received nor he presented himself before the investigation agency.

5.3 SDR/CDR details of contact no. belonging to Shri Divyank Patel:

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As per the deposition of Shri Tirth Vipulbhai Badhiwala during recording of his statement under section 108 of the Customs Act, 1962 on dated 5.4.2024 that his trip to Dubai was sponsored by his cousin namely Shri Divyank Patel and also shared his mobile no. as +917698263481, +6591606701. Hence, CDR and SDR of mobile number +917698263481 were called for and it was found that the said number was registered in the name of Ms. Shital Miyani. Accordingly, summon dated 21.05.2024 was issued to the address available in the SDR of the number but summon was returned undelivered with the postal remarks “the address is incomplete”. Upon further analysis of the CDR in respect to the contact no. +917698263481, it appears that Shri Divyank Patel was in constant touch with Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya.

5.4 Data Extracted from the Mobile Phone belonging to Shri Tirth Badhiwala.

During analyzing of the data extracted from the Mobile Phone belonging to Shri Tirth Vipulbhai Badhiwala, it appears that Shri Tirth Vipulbhai Badhiwala was in contact with Mobile No. 0545427010 during the period from 01.04.2024 to 04.04.2024, which was saved as “Jemis bhai Dubai”, “Jemis (bhado)” in his mobile phone. It was also observed that Mr. Tirth Vipulbhai Badhiwala was in contact with +91 7999979996 which belongs to Shri Vijaykumar Karmashibhai Langadiya. The Screen shot of the call logs are reproduced as below:

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Extraction Report - Apple iPhone

Call Log (5)

 * These details are cross-referenced from this device's contacts

#	Parties	Timestamp	Duration	Status	Country code	Network	Video call	Source Info	Deleted
1	From: f77a5ff1-711d-5c4b-b481-8da43342994e * Jemis (Bhado) Direction: Incoming	04-04-2024 05:03:42(UTC+0)	00:00:00	Not answered				Source: Snapchat Source file: Tirth's iphone/mobile/Library/CallHistoryDB /CallHistory.storedata : 0x1521F (Table: ZCALLRECORD; Size: 151552 bytes)	
2	From: f77a5ff1-711d-5c4b-b481-8da43342994e * Jemis (Bhado) Direction: Incoming	04-04-2024 04:23:35(UTC+0)	00:00:18	Answered				Source: Snapchat Source file: Tirth's iphone/mobile/Library/CallHistoryDB /CallHistory.storedata : 0x15885 (Table: ZCALLRECORD; Size: 151552 bytes)	
3	To: 0545427010 Jemis Bhai Dubai* Direction: Outgoing	02-04-2024 10:14:16(UTC+0)	00:00:20	Unknown	ae	Network Name: Unknown network (United Arab Emirates)*		Source: Snapchat Source file: Tirth's iphone/mobile/Library/CallHistoryDB /CallHistory.storedata : 0x15E69 (Table: ZCALLRECORD; Size: 151552 bytes)	
4	To: 0545427010 Jemis Bhai Dubai* Direction: Outgoing	02-04-2024 10:09:59(UTC+0)	00:01:06	Unknown	ae	Network Name: Unknown network (United Arab Emirates)*		Source: Snapchat Source file: Tirth's iphone/mobile/Library/CallHistoryDB /CallHistory.storedata : 0x15F00 (Table: ZCALLRECORD; Size: 151552 bytes)	
5	To: 0545427010 Jemis Bhai Dubai* Direction: Outgoing	01-04-2024 10:02:07(UTC+0)	00:01:10	Unknown	ae	Network Name: Unknown network (United Arab Emirates)*		Source: Snapchat Source file: Tirth's iphone/mobile/Library/CallHistoryDB /CallHistory.storedata : 0x142A3 (Table: ZCALLRECORD; Size: 151552 bytes)	

Call log of 9904473738 of Tirth Vipulbhai badhiwala with 0545427010 of Jemis @Dubai



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Extraction Report - Apple iPhone

Call Log (1)

 * These details are cross-referenced from this device's contacts

#	Parties	Timestamp	Duration	Status	Country code	Network	Video call	Source Info	Deleted
1	From: +917999979996 +91 79999 79996* Direction: Incoming	30-03-2024 09:30:32(UTC+0)	00:00:24	Answered	ae	Network Name: Unknown network (United Arab Emirates)*		Source: Snapchat Source file: Tirth's iphone/mobile/Library/CallHistoryDB /CallHistory.storedata : 0x1306E (Table: ZCALLRECORD; Size: 151552 bytes)	

Call log of 9904473738 of Tirth Vipulbhai badhiwala with 7999979996 of Vijaykumar Karmashibhai Langadiya

No further details and whereabouts of DJ Bravo alias Lucky @ Dubai, Shri Mark Shadow alias Arbaaz and Jemis @ Dubai were revealed.

6. Relevant Legal Provisions:

6.1 According to the Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification 31/2016 (NT) dated 01.03.2016, all passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage under Section 77 of the Customs Act, 1962.

6.2 All the dutiable articles imported into India by a passenger in his baggage are classified under CTH 9803. As per Section 77 of the Customs

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Act, 1962, the owner of any baggage shall for the purpose of clearing it, make a declaration of its contents to the proper officer. 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 Foreign Trade (Development and Regulation) Act, 1992, the Rules and Orders made there under and the Foreign Trade Policy for the time being in force.

6.3 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-2020, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. The gold can be imported by the banks (authorized by RBI) and the agencies nominated for the said purpose under Para 4.41 of Chapter-4 of Foreign Trade Policy or by "Eligible Passenger" as per the provision of Notification No. 50/2017-Customs dated 30.06.2017 (Sr.No. 356). As per Notification No. 50/2017-Customs dated 30.06.2017, the 'eligible passenger' means passenger of Indian origin or a passenger holding valid passport issued under the Passport Act, 1967 who is coming to India after a period of not less than 6 months of stay abroad.

The above said legal provisions are reproduced below:

Para 2.26 (a) of the Foreign Trade Policy 2015-2020:

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 the Ministry of Finance.

Para 4.41 of the Foreign Trade Policy 2015-2020:

Nominated Agencies: -

(i) Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.

(ii) Nominated Agencies are MMTC Ltd, The Handicraft and Handlooms Exports Corporation of India Ltd, The State Trading Corporation of India Ltd, PEC Ltd, STCL Ltd, MSTC Ltd, and Diamond India Limited.

(iii) Notwithstanding any provision relating to import of gold by Nominated Agencies under Foreign Trade Policy (2015-2020), the import of gold by Four Star and Five Star Houses with Nominated Agency Certificate is subjected to actual user condition and are

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permitted to import gold as input only for the purpose of manufacture and export by themselves during the remaining validity period of the Nominated Agency certificate.

(iv) Reserve Bank of India can authorize any bank as Nominated Agency.

(v) Procedure for import of precious metal by Nominated Agency (other than those authorized by Reserve Bank of India and the Gems & Jewellery units operating under EOU and SEZ schemes) and the monitoring mechanism thereof shall be as per the provisions laid down in Hand Book of Procedures.

(vi) A bank authorized by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

6.4 CBIC Customs Notification No. 50/2017 dated 30.06.2017 where the condition regarding import of gold by passenger in the following manner:

If,

1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,-
 - (a) carried by the eligible passenger at the time of his arrival in India, or
 - (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and
 - (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not

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availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

Baggage Rule, 2016 –

6.5 As per Rule 5 of the Baggage Rules, 2016, “a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewelry up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees, if brought by a lady passenger”.

6.6 A combined reading of the above-mentioned legal provisions under Foreign Trade Regulations, the Customs Act, 1962 and the notifications issued therein - clearly indicate that import of gold including gold jewellery through Baggage is Restricted and conditions have been imposed on the said imports by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. Only passengers who satisfy those mandatory conditions can import gold as a part of their bona fide personal baggage and the same has to be declared to the Customs at the time of their arrival and applicable duty paid. These conditions are nothing but restrictions imposed on the import of gold through passenger baggage. Further, from the foregoing legal provisions of Foreign Trade Policy, 2015-2020 read with Reserve Bank of India circulars issued under Foreign Exchange Management Act (FEMA), Notifications issued by the Government of India and Circular issued by CBIC, it is evident that no one can import gold in any other manner as not explicitly stated/permited above. The impugned gold bars of 999/24K purity extracted from the semi-solid substance in paste form concealed in the clothes of the above 3 passengers smuggled into India in the instant case are not covered by any of the above circulars/notifications.

6.7 Further, as per Section 2(33) of the Customs Act, 1962, ‘prohibited goods’ means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with, implying that any goods imported in violation of the conditions subject to which the goods are permitted to be imported are nothing but prohibited goods. Hence, the smuggling of gold in the

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paste/semi-solid form in capsules, in contravention of the Foreign Trade Policy 2015-20 read with the relevant notification issued under the Customs Act, 1962, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in the said Regulations. It is pertinent to note that any prohibition applies to every type of prohibition which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence the restrictions imposed on the said imports are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable for confiscation under Section 111 of Customs Act, 1962.

6.8 Therefore, it appears that import of gold in contravention of the Foreign Trade Policy 2015-20 read with the Customs Act, 1962 and RBI circulars, as well as the Rules and regulations mentioned supra, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in said Regulations.

Section 2(33) of the Customs Act, 1962 - "Prohibited Goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include 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.

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.

6.9 Further, in terms of 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. Relevant provisions of Section 123 of the Customs Act, 1962 are as under:

Section 123: Burden of proof in certain cases. –

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.

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

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.

6.10 Further, Section 111 of the Customs Act, 1962 provides for the confiscation of the goods which are imported improperly.

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;

(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;]

6.11 Further, Section 112 of the Customs Act, 1962 provides the penalty on the persons for the improper import of the goods.

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, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

6.12 Section 119: Confiscation of goods used for concealing smuggled goods :

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Any goods used for concealing smuggled goods shall also be liable to confiscation.

7. Contraventions and Charges:

7.1 From the investigation conducted so far, it appears that Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya in connivance with DJ Bravo alias Lucky@Dubai, Shri Mark Shadow alias Arbaaz and Jemis@Dubai had knowingly concerned themselves in the said act of smuggling of 1489.680 grams of gold, having market value of Rs. 1,07,42,082/- which was recovered from the possession of Shri Tirth Vipulbhai Badhiwala on 04.04.2024 for their personal monetary consideration/benefit.

7.2 It appears that 1753.660 grams of gold in semi-solid substance in paste form was concealed in the blue-coloured underwear that was handed over to Shri Tirth Vipulbhai Badhiwala by Jemis@Dubai and was worn by Shri Tirth Vipulbhai Badhiwala during his return journey from Dubai to Ahmedabad, which was recovered by the officers from his possession. The said 1753.660 grams which subsequently upon extraction was converted into 1489.680 grams of solid Pure Gold Bar having purity 9990/24Kt were recovered and seized vide panchnama dated 04.04.2024. Jemis@Dubai instructed Shri Tirth Vipulbhai Badhiwala to hand over the said blue coloured underwear containing Gold (in paste form) to one of his persons on reaching at Ahmedabad. The said gold in the blue-coloured underwear was concealed in such a manner that the said gold was not detected during checking at Customs Airport with an intention to smuggle the same into India to evade payment of Customs duty. Shri Tirth Vipulbhai Badhiwala had chosen to move through Green Channel and did not declare having the said gold before the Customs Authorities at SVPI Airport, Ahmedabad which was concealed in his blue-coloured underwear for monetary consideration. Further, on the directions of DJ Bravo alias Lucky@ Dubai, Shri Vijaykumar Karmashibhai Langadiya came to receive and collect the said smuggled gold from Shri Tirth Vipulbhai Badhiwala at the SVPI Airport for the commissioner amount. As per his own deposition during recording of his statement under section 108 of the Customs Act, 1962, he was to get Rs. 15000/- upon execution of the assigned task i.e. Collection from Shri Tirth Vipulbhai Badhiwala and to be delivered to Shri Mark Shadow alias Arbaaz at Ahmedabad. The act of concealing the gold and intentional non-declaration of the said gold before the Customs

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authority shows the mens-reas on the part of Shri Vijaykumar Karmashibhai Langadiya and Shri Tirth Vipulbhai Badhiwala, with a view to avoid payment of Customs duty. Further, it appears that Shri Tirth Vipulbhai Badhiwala was not inclined to declare the goods viz. gold that he was carrying before the Customs Authorities. Thus, Shri Tirth Vipulbhai Badhiwala contravened the provisions of Section 77 of the Customs Act, 1962 in as much as he failed to declare the said smuggled seized gold before the Customs. Further, Shri Tirth Vipulbhai Badhiwala also does not fall under the category of Eligible passenger in terms of Notification No. 50/2017- Customs dated 30.06.2017.

7.3 Further, Shri Vijaykumar Karmashibhai Langadiya and Shri Tirth Vipulbhai Badhiwala were unable to produce documents evidencing legitimate import of the said Gold seized from the possession of Shri Tirth Vipulbhai Badhiwala. In terms of the provisions of Section 123 of the Customs Act, 1962 burden of proving that these are not smuggled goods is on the person from whose possession the goods were seized. Whereas it further appears that they were aware that bringing gold in the above manner was contrary to the provisions of the Customs Act, 1962 with an intention to carry gold without the knowledge of the Customs Authorities, without declaration and payment of appropriate Customs duties which rendered the above said quantity of 1489.680 grams of gold liable to confiscation under the provisions of Section 111(d), (l) and (m) of the Customs Act, 1962.

7.4. Therefore, Shri Vijaykumar Karmashibhai Langadiya and Shri Tirth Vipulbhai Badhiwala have concerned themselves in the act of smuggling of foreign origin Gold and have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules 2016, Customs Notifications, etc. Thus, the said gold is to be treated as Prohibited goods in terms of Section 2(33) of the Customs Act, 1962. The restrictions imposed on the said import are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable to confiscation under Section 111 of the Customs Act, 1962 and rendered themselves liable for penalty under Section 112(a) & (b) and 117 of Customs Act, 1962 and the said activity is smuggling in terms of Section 2(39) of the Customs Act, 1962.

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7.5 Further, it appears from the deposition of Shri Tirth Vipulbhai Badhiwala, Shri Jemis @Dubai had handed over to him blue coloured underwear, where in gold in paste form were concealed and also gave an instruction to be worn during his return journey. Thereby Shri Jemis@Dubai has concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad which has rendered the said gold liable to confiscation and made himself liable for penalty under Section 112(a), 112(b) and 117 of Customs Act, 1962.

7.6 Further, it appears that on the directions of DJ Bravo alias Lucky@ Dubai Shri Vijaykumar Karmashibhai Langadiya after receiving blue coloured underwear consisting gold paste from Shri Tirth Vipulbhai Badhiwala was to be further hand over to a person namely Shri Mark Shadow alias Arbaaz at Ahmedabad. Earlier in the past also Shri Vijaykumar Karmashibhai Langadiya had performed the above said assigned work and received 15000/- on each occasion from Shri Mark Shadow alias Arbaaz. Thus, DJ Bravo alias Lucky@ Dubai and Shri Mark Shadow alias Arbaaz appears to be the mastermind/beneficially owner and have concerned themselves in the said illegal activity of gold smuggling through SVPI airport, Ahmedabad which has rendered the said gold liable to confiscation and made themselves liable for penalty under Section 112(a) and 117 of Customs Act, 1962.

8. ROLE OF PERSONS.

From the investigation conducted, role of following persons were emerged.

8.1 Role of Tirth Vipulbhai Badhiwala

8.1.1 As evident from the evidences available on record in the form of Panchnama dated 04.04.2024, Statement dated 04.04.2024 as well as statement of his co-accused recorded under Section 108 of the Customs Act, 1962, it appears that Shri Tirth Vipulbhai Badhiwala had indulged in the act of smuggling of 1753.660 grams of gold in semi-solid substance in paste form(upon extraction it was converted into 1489.680 grams of solid Pure Gold Bar having purity 9990/24Kt) having total market value of Rs. 1,07,42,082/- which was found concealed in his blue-coloured underwear worn by him while travelling from Dubai to Ahmedabad on 04.04.2024. He received the said blue coloured underwear, wherein gold was concealed gold from a person namely Jemis@Dubai and also followed the instruction given by Shri Jemis and worn the same while his return journey from

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Dubai to Ahmedabad. Further, he was to get Rs. 10,000/- for successfully carrying out the task of carrying the said gold from Dubai to India and delivering the same to the respective person after arriving at SVPI Airport, Ahmedabad. He did not declare the same to the Customs Authority at SVPI airport. It appears that he was knowingly participated in all the activities related to smuggling of foreign origin gold in lure of money.

8.1.2 By the above act and omission, Shri Tirth Vipulbhai Badhiwala concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad and had knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc. which rendered the subject smuggled gold liable for confiscation under the provision of Section 111 of the Custom Act, 1962 and rendered himself liable for penalty under Section 112(a) & (b) and 117 of Customs Act, 1962.

8.2 Role of Shri Vijaykumar Karmashibhai Langadiya

8.2.1 As evident from the evidences available on record in the form of Panchnama dated 04.04.2024, his depositions during recording of statement on dated 04.04.2024 & 05.04.2024 as well as depositions made in the statement of other accused recorded under Section 108 of the Customs Act, 1962, it appears that Shri Vijaykumar Karmashibhai Langadiya indulged in act of smuggling of 1753.660 grams of gold in semi-solid substance in paste form(upon extraction it was converted into 1489.680 grams of solid Pure Gold Bar having purity 9990/24Kt) having total market value of Rs. 1,07,42,082/- which was found concealed in blue coloured underwear worn by the carrier passenger namely Tirth Vipulbhai Badhiwala, who landed at SVPI airport on dated. 04.04.2024. He had come to SVPI Airport Ahmedabad to receive the said smuggled gold in paste form, which was carried by Shri Tirth Vipulbhai Badhiwala as per the direction of Shri DJ Bravo alias Lucky@Dubai and was to be handed over to Shri Mark Shadow alias Arbaaz at Ahmedabad. He also received flight tickets alongwith image of Shri Tirth Vipulbhai Badhiwala, on 04.04.2024.

8.2.2 He knowingly participated in all the activities related to smuggling of foreign origin gold in lure of money. His extent of involvement in the said gold smuggling activity also reflects from his deposition that Shri DJ Bravo alias Lucky is Indian national, who resides at Dubai; Shri DJ Bravo alias

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Lucky@Dubai makes all arrangements for smuggling of gold from Dubai to Ahmedabad. Shri DJ Bravo alias Lucky@Dubai was the owner of the gold paste recovered from Shri Tirth Vipulbhai Badhiwala.

8.2.3 Further, his mens-rea also reflects from his own deposition that Shri DJ Bravo alias Lucky@Dubai had informed him that when any carrier would be flying from Dubai to Ahmedabad with smuggled gold, he was to receive such gold from such carrier outside the SVPI Airport and further to hand over the same to a person namely Shri Mark Shadow alias Arbaaz at Ahmedabad. He agreed to the offer made by Shri DJ Bravo alias Lucky@Dubai in lieu of commission of Rs. 15000 for each such turn. Apart from the present case, earlier also total five times he had received smuggled gold as per the direction of Shri DJ Bravo alias Lucky@Dubai and handed over to Shri Mark shadow alias Arbaaz, who have him Rs. 15000/- in cash on each instance. He voluntarily submitted his mobile phone to the investigating agency, however did not disclose the password to unlock. Further summons dated 16.08.2024 and 31.08.2024 were issued to Shri Vijaykumar Karmashibhai Langadiya on his declared address disclosed by him during recording of his statement on dated. 4-5.4.2024, however, same were return back undelivered from the postal authority and he failed to appear before the investigation agency. The above gesture clearly shows malafide intention on the part of Shri Vijaykumar Karmashibhai Langadiya.

8.2.4 By the above act and omission, Shri Vijaykumar Karmashibhai Langadiya has concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad which rendered the subject smuggled gold liable for confiscation under the provision of Section 111 of the Custom Act, 1962 has rendered himself liable for penalty under Section 112(a) & (b) and 117 of Customs Act, 1962.

8.3 Role of Shri DJ Bravo alias Lucky @ Dubai & Shri Mark shadow alias Arbaaz

8.3.1 On carefully going through the evidences available on record in the form of Panchnama dated 04.04.2024, depositions made by Shri Vijaykumar Karmashibhai Langadiya & Shri Tirth Vipulbhai Badhiwala during recording of statement under Section 108 of the Customs Act, 1962 on dated 04.04.2024 & 05.04.2024, it appears that Shri DJ Bravo alias Lucky @Dubai & Shri Mark shadow alias Arbaaz appears to be the mastermind/beneficiary owner of the syndicate indulged in act of smuggling of Gold through SVPI airport.

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8.3.2 As evident from the deposition of Shri Vijaykumar Karmashibhai Langadiya in his statement on dated. 5.4.2024, it appears that Shri DJ Bravo alias Lucky @Dubai had managed the said gold smuggling activity and accordingly devised a plan for the said conspiracy of gold smuggling as he had informed Shri Vijaykumar Karmashibhai Langadiya that when any carrier would be flying from Dubai to Ahmedabad with smuggled gold, Shri Vijaykumar Karmashibhai Langadiya was to receive such gold from such carrier outside the SVPI Airport and further to hand over the same to a person namely Shri Mark Shadow alias Arbaaz at Ahmedabad. Shri Vijaykumar Karmashibhai Langadiya was offered commission of Rs. 15000 for each such turn.

8.3.3 It is also evident from the deposition of Shri Vijaykumar Karmashibhai Langadiya in his statement on dated.4/5.4.2024 that Shri DJ Bravo alias Lucky@Dubai was the owner of the gold paste recovered from Shri Tirth Vipulbhai Badhiwala and after receiving the same was to be delivered to Shri Mark shadow alias Arbaaz.

8.3.4 They both appears to be the beneficiary to the whole smuggling racket and beneficial owner of the said quantity of smuggled gold i.e. 1753.660 grams of gold in semi-solid substance in paste form (upon extraction it was converted into 1489.680 grams of solid Pure Gold Bar having purity 9990/24Kt) and also for the quantity smuggled in the past.

8.3.5 It appears that Shri DJ Bravo alias Lucky@Dubai used to identify persons who were having passport; willing to travel from India to Dubai and ready to do smuggling of Gold as carrier while coming back from Dubai to India for some extra money/lure. The said carrier of smuggled gold knowingly indulged themselves in smuggling/carrying the said gold and acted as per the devised plan by Shri DJ Bravo alias Lucky@Dubai. Shri Mark shadow alias Arbaaz was to receive the said gold from Shri Vijaykumar Karmashibhai Langadiya.

8.3.6 By the above act and omission, Shri DJ Bravo alias Lucky @ Dubai & Shri Mark shadow alias Arbaaz mastermind/beneficial owner, has concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the subject smuggled gold liable for confiscation under

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the provision of Section 111 of the Custom Act, 1962 has rendered himself liable for penalty under Section 112(a) and 117 of Customs Act, 1962.

8.4 Role of Shri Jemis@Dubai

8.4.1 On carefully going through the evidences available on record in the form of Panchnama dated 04.04.2024, depositions made by Shri Vijaykumar Karmashibhai Langadiya & Shri Tirth Vipulbhai Badhiwala during recording of statement under Section 108 of the Customs Act, 1962 on dated 04.04.2024 & 05.04.2024, extracted data of the mobile phone of Mr. Tirth Vipulbhai Badhiwala recorded under Section 108 of the Customs Act, 1962 etc., it appears that the said blue coloured underwear concealed there in the gold paste in it was provided by Shri Jemis@Dubai to Shri Tirth Vipulbhai Badhiwala. As evident from the data extracted from the Mobile Phone belonging to Shri Tirth Vipulbhai Badhiwala, it appears that Shri Tirth Vipulbhai Badhiwala was in contact with Mobile No. 0545427010 during the period from 01.04.2024 to 04.04.2024, which was saved as "Jemis bhai Dubai", Jemis (bhado)" in his mobile phone. Further as evident from the communication received from the Indigo Airline both the tickets of Mr. Tirth Vipulbhai Badhiwala were booked through a travel agency and the email id mentioned as jemishsavani982@gmail.com. It is important to mention that the name "Jemis" is common in the both the aforesaid instance. In spite of issuance of summons on dated. 21.05.2024 and 16.08.2024 as well as specifically been communicated that he was the intended recipient of the said summons, he did not send neither any further response nor presented himself before the investigating agency.

8.4.2 By the above act and omission, Shri Jemis @Dubai has concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the subject smuggled gold liable for confiscation under the provision of Section 111 of the Custom Act, 1962 has rendered himself liable for penalty under Section 112(a) & (b) and 117 of Customs Act, 1962.

09. Accordingly, a Show Cause Notice was issued to Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya as to why:-

- i. 1489.680 grams of gold having purity 999.9/24Kt and having market value of Rs. 1,07,42,082/- recovered from the possession

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of Shri Tirth Vipulbhai Badhiwala should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.

- ii. the packing material (underwear and white paper adhesive tape) used to conceal the gold recovered from possession of Shri Tirth Vipulbhai Badhiwala having no value should not be confiscated under Section 119 of the Customs Act, 1962.
- iii. Penalties should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.
- iv. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

9.1 Further, Show Cause Notice was issued to Shri DJ Bravo *alias* Lucky@ Dubai and Shri Mark Shadow *alias* Arbaaz & Shri Jemis@Dubai, as to why:-

- i. Penalties should not be imposed upon them under Section 112(a) and 112(b) of the Customs Act, 1962.
- ii. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

10. Defense reply and record of personal hearing:

10.1 Defense Reply of Noticee No. 1 i.e Shri Tirth Vipulbhai Badhiwala:

- The noticee has not submitted any written defense reply against the allegation made against him in SCN.

10.2 Defense Reply of Noticee No. 2 i.e Shri Vijaykumar Karmashibhai Langadiya: - The noticee has not submitted any written defense reply against the allegation made against him in SCN.

10.3 Defense Reply of Noticee No. 3 i.e Shri DJ Bravo *alias* Lucky@ Dubai: - The noticee has not submitted any defense reply against the allegation made against him in SCN.

10.4 Defense Reply of Noticee No. 4 i.e Shri Mark Shadow *alias* Arbaaz:- The noticee has not submitted any defense reply.

10.5 Defense Reply of Noticee No. 5 i.e Shri Jemis@Dubai:- The noticee has not submitted any defense reply.

Personal Hearing:-

11. Adequate opportunities of personal hearing were given to all noticees in the Show Cause, which is summarized as under:-

Noticee No. 1: i.e Shri Tirth Vipulbhai Badhiwala

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The noticee was given opportunity for personal hearing on 10.02.2025, 21.02.2025 & 10.03.2025. Shri Tirth Vipulbhai Badhiwala himself appeared for the personal hearing on 10.03.2025 through video conferencing. He submitted that he went to Dubai for trip. The gold in form of paste was handed over to him by a person named Jemis for carrying the same in India. He hides the said gold in his underwear. He submitted that the gold was not purchased by him and not belong to him, therefore, did not have any copy of invoice/bill or any bank statement showing purchase the gold. He submitted that he is not claiming any ownership on gold. The ticket for Dubai was booked by his brother and return ticket was booked by the person named Jemis who handed over the gold to him in paste form. He submitted that this was his final submission and nothing more to add.

Noticee No. 2: Shri Vijaykumar Karmashibhai Langadiya: The noticee was given opportunity for personal hearing on 10.02.2025, 21.02.2025 & 10.03.2025, but did not appear on any of the occasion. However, Shri Rishikesh J Mehra, Advocate and authorized representative vide letter dated 02.04.2025 request for granting 15 day time for submission of their written submission and asked for another personal hearing. Therefore, another personal hearing opportunity was given to noticee for appearing on 21.04.2025, however, no one has attended the PH or submit any defense reply. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Noticee No. 3: Shri DJ Bravo alias Lucky@ Dubai:

The noticee was given opportunity for personal hearing on 10.02.2025, 21.02.2025 & 10.03.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Noticee No. 4: Shri Mark Shadow alias Arbaaz:

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The noticee was given opportunity for personal hearing on 10.02.2025, 21.02.2025 & 10.03.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Noticee No. 5: Shri Jemis @Dubai:

The noticee was given opportunity for personal hearing on 10.02.2025, 21.02.2025, 10.03.2025 & 21.04.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962 and the PH letter was also mailed to him as per provided mail id, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Discussion and Findings:

12. I have carefully gone through the case records, Show Cause Notice, relied upon documents to Show Cause Notice and Statements of the Noticee alongwith the submission made by the noticees or their representative at the time of personal hearing scheduled on various dates. Further, sufficient opportunities to be heard were extended to all the noticees of the SCN following the Principles of Natural Justice.

12.1. Before discussing the allegations levelled in the impugned SCN in light of submissions made by some of the noticees, it is imperative to mention that none of them have retracted from their voluntarily statements tendered by them before DRI officers under Section 108 of Customs Act, 1962. I find that the said noticees have admitted in their respective statements that they have given statements voluntarily and without any inducement, threat and coercion or by any improper means. I find that the statements recorded under Section 108 of the Customs Act, 1962 have evidentiary value under the provisions of law. The Judgment relied upon in this matter as follows:-

(i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that evidence-

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confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.

- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is valid evidence"
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that " It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- (iv) There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- (v) Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- (vi) The Hon'ble Supreme Court in another case of Gulam Hussain Shaik Chougule Vs. S.Reynolds, Supdt of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC) categorially held that "Statement recorded by the Customs officer under Section 108 of the Customs Act, is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."
- (vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court

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that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. It is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "

13. I perused the facts presented before me. The question that needs to be addressed in the instant case are within the jurisdiction of Customs Act, 1962 and allied laws as under: -

- i. Whether the goods seized are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;
- ii. Whether, seized Gold bar weighing 1489.680 Grams extracted from the gold paste found concealed in his underwear having a market value of Rs. 1,07,42,082/- recovered from the possession of Shri Tirth Vipulbhai Badhiwala(herein after mentioned as Noticee No. 1) is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iii. Whether, White tape and under garments i.e underwear used to conceal the gold paste recovered from Shri Tirth Vipulbhai Badhiwala, which was used for the concealment of gold having nil value seized under Section 110 of the Customs Act, 1962 is liable for confiscation under Section 119 of the Customs Act, 1962.
- iv. Whether the act of the Noticee No. 1 to Noticee No. 5 renders them to be penalized discretionarily under Section 112 & Section 117 of the Customs Act, 1962;

14. 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:-

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“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

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prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. In the instant case, I find that the recovered derived gold bar weighing 1489.680 grams made of 24 K Gold of foreign origin and were brought under restriction, and the same was not declared before the proper officer which makes the gold brought "Prohibited

Goods" under the definition of Section 2 (33) of the Customs Act, 1962.

Relying on the ratio of the judgment stated above, I find that the goods brought by the Noticee No. 1 named Shri Tirth Vipulbhai Badhiwala, is "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.

15. I will now examine the submission made by the noticees one by one as per the relevant law and as per the provisions: -

15.1 I find that based on specific intelligence that a passenger arriving by Flight No. 6E-1478 from Dubai to Ahmedabad scheduled at 0935 hrs and suspected to be carrying Gold either in person or in baggage, the officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as 'DRI') had intercepted a vehicle bearing no. GJ05 RT 1101 having total 03 persons in that namely Shri Dhruvalbhai Rajeshbhai Nayak , the driver of the car, Shri Tirth Vipulbhai Badhiwala, the passenger who had arrived on 04.04.2024 by Flight No. 6E-1478 from Dubai to Ahmedabad & Shri Vijaykumar Karmashibhai Langadiya, the person who came to receive the said passenger, who are sitting inside the car by verifying their Identity Card and the proceedings thereof were recorded under panchnama of dated 04.04.2024. Upon sustained interrogation by the DRI officers, the noticee Shri Tirth Vipulbhai Badhiwala confessed that he was carrying gold in paste form hidden inside his underwear. It is on the record that the gross weight of the said substance was 1753.600 grams which was concealed in form paste wrapped in white paper adhesive tape in underwear and upon extraction of the same by the Govt. Approved Valuer the Net weight of Gold bar comes to 1489.680 grams with 999.0/24kt purity and having market value of Rs. 1,07,42,082/-. It is uncontested fact that the gold in form of paste was not declared to the Customs Under Section 77 of the Customs Act, 1962 and noticee shri Tirth Vipulbhai Badhiwala was trying to pass through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely gold paste, which were found

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concealed and recovered in manner as described above, was made by Shri Tirth Vipulbhai Badhiwala in prescribed declaration form. The noticee was not eligible to import gold and that too undeclared in substantial quantity and hence the same cannot be treated as “bonafide baggage” in terms of section 79 of the Customs Act, 1962 and the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

15.2 I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. In fact, in his statement, he clearly admitted that the gold was not purchased by him and a person named Jemis @ Dubai had handed over one blue coloured underwear containing gold in paste form. During the personal hearing also which was attended the noticee himself through video conferencing, wherein he admitted that the gold was not purchased by him and same was handed over to him by a person named Jemis @ Dubai and also admitted that he did not claim any ownership on the gold. I find that the noticee Shri Tirth Vipulbhai Badhiwala was only carrying the gold for monetary benefit as he was going to receive Rs. 10,000/- for successfully delivery of the same in India. Further, the noticee Shri Tirth Vipulbhai Badhiwala have not submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Section 123 of the Customs Act, 1962 stipulates: -

Section 123. Burden of proof in certain cases. -

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

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

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

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

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

In the instant case, the burden of proving that the derived gold bar is not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bar (derived from paste) having net total weight 1489.680 grams of foreign origin are not smuggled in nature lie on Shri Tirth Vipulbhai Badhiwala from whose possession the gold was recovered or other noticees, if claims ownership of the impugned gold seized on 04.04.2024. The gold in form of paste recovered from Shri Tirth Vipulbhai Badhiwala and admitted to have smuggled it into India in his voluntarily statements recorded under Section 108 of Customs Act, 1962 as well as at the time of Personal hearing. The test report shows that the derived gold bar was of purity of 999.0/24Kt. I find that during the personal hearing Shri Tirth Vipulbhai Badhiwala he has clearly admitted that the gold was neither purchased by him nor he has any purchase invoices/bank statement regarding purchase or other legitimate documents, therefore, he was failed to discharge the 'burden of proof that the Gold was legally imported/possessed and also, he had not declared the same to the Customs in the prescribed Indian Customs Declaration Form. Applying the ratio of the judgments of the Hon'ble Supreme Court in the matter of Om Prakash Bhatia Vs Commissioner of Customs [2003 (6) SCC 161] and the Hon'ble High Court, Madras in the case of Samynathan Murugesan Vs. Commissioner of Customs 1201,0 (254) ELT A0151, I find that the said smuggled Gold Bar weighing 1489.680 grams of foreign origin are liable to absolute confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where Gold Bar weighing 1489.680 grams of foreign origin were seized under Section 110 of the Customs Act, 1962 on reasonable belief that the gold was smuggled in to India from Dubai. As per Sub-Section 2 of Section 123 of the Customs Act, 1962, onus for proving that the seized gold bar, having total net weight 1489.680 grams and valued at Rs. 1,07,42,082/- is not of

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smuggled in nature, shall be on Shri Tirth Vipulbhai Badhiwala, from whose possession the impugned good was seized. Shri Tirth Vipulbhai Badhiwala was, intercepted with the derived gold bar having total net weight 1489.680 grams, found in possession of Shri Tirth Vipulbhai Badhiwala. I find from the statement of Noticee Shri Tirth Vipulbhai Badhiwala recorded under Section 108 of Customs Act, 1962, that the said gold paste was given to him by a person named Shri Jemis @ Dubai for smuggling the said good in India. Further, from the statement of co-noticee Shri Vijaykumar Karmashibhai Langadiya, it is evidently proved that the noticee Shri Tirth Vipulbhai Badhiwala was found in possession of gold paste which was handed over to him by Shri Jemis @Dubai. I find that the noticee Shri Tirth Vipulbhai Badhiwala could not produce any valid legal documents for procuring or transporting or possessing such gold of foreign origin. In his statement recorded under Section 108 of Customs Act, 1962, he admitted that he was aware that the gold in form of paste, which he was carrying, had been smuggled into India from Dubai and he was knowingly carrying the smuggled gold from Dubai to Ahmedabad for monetary benefits. It shows that knowingly and consciously involved in carrying and handling the foreign origin gold which he has reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended.

15.3 Further, I find that test report of the gold indicates the purity of 999.0/24kt, which is not in conformity with locally available gold but similar to gold generally smuggled from foreign countries. So, it is a fact that the goods have been seized under the reasonable belief that the goods are smuggled goods as per Section 2(39) of the Customs Act, 1962. Further, Shri Tirth Vipulbhai Badhiwala has mentioned that he was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. By using the modus of concealing the gold in form of paste concealed in underwear without declaring to the Customs on arrival in India, it is observed that the noticee was fully aware that the import of said gold is offending in nature. It is therefore very clear that he has knowingly carried the gold and failed to declare the same to the

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

15.4 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 find that the noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was exited through Green Channel which shows that the noticee was trying to smuggle the good and trying to evade the payment of eligible customs duty and same is evident from his confessional statement under Section 108 of Customs Act, 1962. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticees have not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported derived gold bar total net weighing 1489.680 Grams extracted from the gold paste recovered from the possession of Shri Tirth Vipulbhai Badhiwala having market value of Rs. 1,07,42,082/-, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee has not fulfilled the conditions of eligible passenger to bring the gold. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade

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(Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

15.5 As per the provisions of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall 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;

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

If,-

1. *(a) the duty is paid in convertible foreign currency;*
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and

2. *the gold or silver is,-*

(a)carried by the eligible passenger at the time of his arrival in India, or

(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and

(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

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Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled. As per the statement of Shri Tirth Vipulbhai Badhiwala recorded under Section 108 of the Customs Act, 1962, he went to Dubai for trip on 29.03.2024 and returned on 04.04.2024 well before the stipulated time of stay. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods i.e derived gold bar in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

(II) In terms of Section 111 (1) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

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(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;

I find that the said gold paste was not declared by Shri Tirth Vipulbhai Badhiwala to the Customs under Section 77 of the Customs Act, 1962 and he passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely derived gold bar which were found concealed and recovered in manner as described above, was made by the Noticee Shri Tirth Vipulbhai Badhiwala, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

(III) in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

In this regard, I find that gold bar weighing 1489.680 Grams extracted from the gold paste recovered from the possession of Shri Tirth Vipulbhai Badhiwala having market value of Rs. 1,07,42,082/- and admittedly smuggled into India. On test, those gold were found to be of purity of 999.0/24kt. Further, I find that the noticee could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign found in person of Shri Tirth Vipulbhai Badhiwala, thus failing to discharge "burden of proof" that the gold was legally imported/possessed. He also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

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.*

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As per the facts of the case available on records, no such declaration of the impugned gold, which was found concealed in person of Shri Tirth Vipulbhai Badhiwala in prescribed declaration form. I also find that the noticee was not eligible to import the said gold bar derived from paste concealed in underwear and that too undeclared in terms of Section 77 of Customs Act, 1962 and hence the said gold bar is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

15.6 Further, I find that the allegation made against the noticee Shri Tirth Vipulbhai Badhiwala are just not based on the statements tendered by Noticee Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya, but based on documentary evidences as well as digital evidences gathered by the officers during the investigation. I find from details provided by the Indigo Airlines that the tickets of Shri Tirth Vipulbhai Badhiwala was booked through a travel agency, wherein mail was mentioned as “Jemishsavani982@gmail.com” and from the statement of Shri Tirth Vipulbhai Badhiwala, the gold was handed over to him by a person named Shri Jemis @ Dubai. Further, from the Call Detail Records of the Shri Tirth Vipulbhai Badhiwala, I find he was in constant touch of Shri Jemis @ Dubai and Shri Vijaykumar Karmashibhai Langadiya. Therefore, it is clearly established that Shri Tirth Vipulbhai Badhiwala was involved in a planned smuggling of the gold.

16. 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.”

The case has been maintained by the Hon’ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

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

18. 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).

19. 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.

20. 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 07.10.2019 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 10.05.1993 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”.

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

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

“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.***

22. On the basis of above discussion in light of the referred judgments and nature of concealment of the gold to smuggle the same, ***I am therefore, not inclined to use my discretion to give an option to the noticee i.e Shri Tirth Vipulbhai Badhiwala to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

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23. Given the facts of the present case before me and the judgements and rulings cited above, the said derived gold bar weighing 1489.680, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said derived gold bar weighing 1489.680, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. I also hold in unequivocal terms that White tape, underwear used to conceal the gold paste recovered from Shri Tirth Vipulbhai Badhiwala, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.**

24. As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Tirth Vipulbhai Badhiwala, *I find that in the instant case, the principle of mens-reas on behalf of noticees are established as both the noticees has failed to follow the procedure and intentionally involved in smuggling of the gold. The above concealment was elaborately planned to hoodwink the Customs Authorities and clearly establishes mens-reas. The noticee is not an eligible passenger to import gold. It is clear that the noticee had no intention of declaring the gold if he was not intercepted by the Customs officers, the gold would have escaped payment of customs duty.* On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that *"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute."* In the instant case, the noticee was attempting to smuggled the gold in form of paste and attempting to evade the Customs Duty by not declaring the derived gold bar net weighing 1489.680 grams having purity of 999.0 and 24K. Hence, the identity of the good is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved themselves and abetted the act of smuggling of the said gold bar weighing 1489.680 grams, carried by him. Despite his knowledge and belief that the gold carried by him is an

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offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 1489.680 grams, having purity 999.0/24Kt by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same is liable for confiscation under Section 111 of the Customs Act, 1962. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "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" clearly covered under Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. Accordingly, I find that the noticee named Shri Tirth Vipulbhai Badhiwala is liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

24.1 Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019. The detailed discussions in the preceding paragraphs clearly prove that the noticee not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, it is clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, the noticee accepted to carry the gold in form of paste for monetary benefit and involved himself in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticee named Shri Tirth Vipulbhai Badhiwala.

25. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Vijaykumar

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Karmashibhai Langadiya (Noticee No. 02) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

I find that Panchnama clearly drawn of the fact that Shri Vijaykumar Karmashibhai Langadiya was intercepted by the officers of DRI when he was came to receive the noticee Shri Tirth Vipulbhai Badhiwala. Further, in fact in his voluntary statements dated 04.04.2024 and 05.04.2024 he clearly admitted that on instruction of Shri DJ Bravo alias Lucky @ Dubai to receive the gold from Shri Tirth Vipulbhai Badhiwala. He admitted that apart from the instant case, he had received the smuggled gold for Shri DJ Bravo alias Lucky @ Dubai for five time earlier. He further admitted that whenever any carrier came from Dubai, he will get the details to receive the gold from the carrier and handed over the same to Shri Mark Shadow alias Arbaaz every time and for that he received a commission of Rs. 15,000/- for each delivery. He admitted that the owner of the gold was Shri DJ Bravo alias Lucky @ Dubai and stated that Shri Jemis @ Dubai who gave the gold paste to Shri Tirth Vipulbhai Badhiwala would be employee of Shri DJ Bravo alias Lucky @ Dubai. From the records available on file as documentary as well as digitally and voluntary statement tendered by Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya under Section 108 of Customs Act, 1962, I find that on direction of Shri DJ Bravo he was going to receive the gold from Shri Tirth Vipulbhai Badhiwala. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. He through his advocate asked for the time to submit his defense reply and asked for adjournment. After considering his request another personal hearing date was fixed, however he was failed to submit his defense or to present himself before adjudicating authority. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Further, Shri Vijaykumar Karmashibhai Langadiya never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in his voluntary statement tendered before DRI officers at any stage of investigation. From the details on records and from Statements of Shri Vijaykumar Karmashibhai Langadiya, I find that role of noticee was to receive the gold from Shri Tirth Vipulbhai Badhiwala on the direction of Shri DJ Bravo alias Lucky @ Dubai. I find from the statement that this is not his first instance where he was going to receive the gold from any carrier but on

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previous instance he had received the smuggled gold on direction of Shri DJ Bravo @ Dubai and handed over the same to Shri Mark Shadow alias Arbaaz. From the investigation, it clearly establishes that Shri Vijaykumar Karmashibhai Langadiya is actively participated the planned smuggling of gold and a part of syndicate. It is seen that the noticee Shri Vijaykumar Karmashibhai Langadiya has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee Shri Vijaykumar Karmashibhai Langadiya has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has failed to declare the goods found in his possession and also failed to produce the documentary evidences which proves that the gold was imported in legitimate way and as per the prescribed conditions and accordingly, makes him liable for penal action under Section 117 of Customs Act, 1962.

26. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri DJ Bravo alias Lucky@ Dubai (Noticee No. 03) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the records available on file as documentary as well as digitally and voluntary statement tendered by Noticee No. 1 and Noticee No. 2 namely Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya under Section 108 of Customs Act, 1962, I find that Shri DJ Bravo is main mastermind who involved in organized smuggling of the gold in India. From the statement of Shri Vijaykumar Karmashibhai Langadiya, Shri DJ Bravo has hired Shri Jemis @ Dubai who handed over the underwear in which gold in paste was concealed to Shri Tirth Vipulbhai Badhiwala and on direction of Shri DJ Bravo, Shri Vijaykumar Karmashibhai Langadiya was going to collect the said gold paste. Further, from the records, I also find that Shri Vijaykumar Karmashibhai Langadiya, on previous five occasions had received the gold from the carriers which was managed by Shri DJ Bravo alias Lucky @ Dubai and ultimately handed over to Shri Mark Shadow alias Arbaaz, from whom he used to get the commission in cash on direction of Shri DJ Bravo. Therefore, from the circumstances, I find that Shri DJ Bravo alias Lucky @ Dubai is the kingpin

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of the syndicate who hired the carries and manage and make all the arrangement for systematic smuggling of gold into India. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Further, Shri Tirth Vipulbhai Badhiwala also admitted in his statement as well as during the Personal Hearing that the gold was not belong to him and even not purchased by him rather, it was handed over to him by Shri Jemis @ Dubai who is an employee of Shri DJ Bravo @ Dubai as per the Statement of Shri Vijaykumar Karmashibhai Langadiya. Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in their voluntary statements tendered before DRI officers at any stage of investigation. It is seen that the noticee Shri DJ Bravo @ Dubai alias Lucky has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. I find from the investigation that he is the person who manages all the course viz. purchasing of Gold, hiring the people for handing over, for carrying the gold and for delivery of the smuggled gold into India. It, is therefore, proved beyond doubt that the noticee Shri DJ Bravo alias Lucky @ Dubai has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

27. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Mark Shadow alias Arbaaz (Noticee No. 04) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the available records on file as documentary as well as digitally and statement tendered by the noticee Shri Vijaykumar Karmashibhai Langadiya, I find that Shri Mark Shadow alias Arbaaz is the ultimate person who received the smuggled gold. I find from the statement of Shri Vijaykumar Karmashibhai Langadiya that on direction of Shri DJ Bravo

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@ Dubai, he used to collect the gold from carriers and further delivered to Shri Mark Shadow alias Arbaaz. I find that Shri DJ Bravo has shared the number of Shri Mark Shadow alias Arbaaz to Shri Vijaykumar Langadiya, which establishes that he was part of syndicate and used to work for Shri DJ Bravo, the mastermind of the smuggling. From the statement of Shri Vijaykumar Langadiya, I find that, Shri Mark Shadow alias Arbaaz was received the gold from Shri Vijaykumar Langadiya on five occasions earlier. The circumstantial evidences in the case supports the conclusion that Shri Mark Shadow alias Arbaaz played a key role in the smuggling of the gold. Further, the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. From the evidences available on record, it is evident that there is a direct involvement of Shri Mark Shadow alias Arbaaz in the organized smuggling as he was the ultimate person who received the smuggled gold in India. Therefore, the noticee Shri Mark Shadow alias Arbaaz has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. If the Noticee was a law-abiding citizen, he would have appeared before the DRI. Thus, I find that he deliberately did not appear to escape the clutches of law and knowingly/consciously, he is actively involved in carrying, handling and dealing with smuggled gold. It, is therefore, proved beyond doubt that the noticee Shri Mark Shadow alias Arbaaz has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

28. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Jemis@Dubai under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the available records on file as documentary as well as digitally and statement tendered by the noticees Shri Tirth Vipulbhai Badhiwala and Shri Vijaykumar Karmashibhai Langadiya, I find that Shri

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Jemis @ Dubai is the ultimate person who handed over the gold in paste form concealed in underwear to Shri Tirth Vipulbhai Badhiwala, who also admitted the same during his personal hearing. Further, I find from the statement of Shri Vijaykumar Langadiya that gold which found in possession of Shri Tirth Vipulbhai Badhiwala and handed over by Shri Jemis @ Dubai was purchased/belong to Shri DJ Bravo alias Lucky @ Dubai and Shri Jemis @Dubai was an employee of Shri DJ Bravo alias Lucky @ Dubai. Further, from the booking details received from Indigo Airlines, I find that the mail id used for booking the tickets for Shri Tirth Vipulbhai Badhiwala contains the name "jemis" which evidently proves that he was involved in organized smuggling and working for Shri DJ Bravo alias Lucky @ Dubai. From the call details records, Shri Jemis was in constant touch with Shri Tirth Vipulbhai Badhiwala during his stay at Dubai. From these documentary evidences, Digital evidences, it is conclusively proved that Shri Jemis @ Dubai is an active member of the syndicate who works on the direction of Shri DJ Bravo alias Lucky @ Dubai and manages the carriers in Dubai. Further, the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. From the evidences available on record, it is evident that there is a direct involvement of Shri Jemis @ Dubai in the organized smuggling as he was the person who handed over the gold in paste form which concealed in underwear for smuggling into India. Therefore, the noticee Shri Jemis @ Dubai has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. If the Noticee was a law-abiding citizen, he would have appeared before the DRI. Thus, I find that he deliberately did not appear to escape the clutches of law and knowingly/consciously, he is actively involved in carrying, handling and dealing with smuggled gold. It, is therefore, proved beyond doubt that the noticee Shri Jemis @ Dubai has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

29. Accordingly, I pass the following Order:

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O R D E R

- i. I order **absolute confiscation** of 01 Gold bar weighing 1489.680 Grams extracted from the gold paste found concealed in underwear having a market value of **Rs. 1,07,42,082/-** (Rupees One Crore Seven Lakhs Forty-Two Thousand and Eighty-Two only) and Tariff Value of **Rs. 88,34,398/-** (Rupees Eighty-Eight Lakhs Thirty-Four Thousand Three Hundred Ninety-Eight Only) recovered from the possession of Shri Tirth Vipulbhai Badhiwala and placed under seizure under panchnama dated 04.04.2024 and seizure memo order dated 04.04.2024 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;
- ii. I order absolute confiscation of White tape and underwear used to conceal the gold paste recovered from Shri Tirth Vipulbhai Badhiwala, which were used for the concealment of gold in paste/semi-solid form having no value, under Section 119 of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on **Shri Tirth Vipulbhai Badhiwala** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- iv. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Vijaykumar Karmashibhai Langadiya** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- v. I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) on **Shri DJ Bravo alias Lucky @ Dubai** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- vi. I impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh Only) on **Shri Mark Shadow alias Arbaaz** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- vii. I impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh Only) on **Shri Jemis @ Dubai** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- viii. I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on **Shri Tirth Vipulbhai Badhiwala** under the provisions of Section 117 of the Customs Act 1962.
- ix. I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on **Shri Vijaykumar Karmashibhai Langadiya** under the provisions of Section 117 of the Customs Act 1962.

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- x.** I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on **Shri DJ Bravo alias Lucky @ Dubai** under the provisions of Section 117 of the Customs Act 1962.
- xi.** I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on **Shri Mark Shadow alias Arbaaz** under the provisions of Section 117 of the Customs Act 1962.
- xii.** I impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on **Shri Jemis @ Dubai** under the provisions of Section 117 of the Customs Act 1962.

30. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-17/2024 dated 30.09.2024 stands disposed of.

(Shree Ram Vishnoi)
 Additional Commissioner
 Customs, Ahmedabad

F. No. VIII/10-222/SVPIA/DRI/O&A/HQ/2024-25 Date:20.05.2025

DIN: 20250571MN0000919701

By SPEED POST A.D.

To,

1. Shri Tirth Vipulbhai Badhiwala, Aged 20 years (D.O.B. 25.10.2003) residing at 22, D.M.Park, Katargam, Singapore Road, Surat City- 395004, Gujarat (**email id: tirthbadhiwala@gmail.com**)
2. Shri Vijaykumar Karmashibhai Langadiya, Aged 30 Years (D.O.B. 07.01.1994) currently residing at 43, Umiya Bunglows 2, Opposite DGVCL office, Vesu, Surat, Gujarat - 395007 (**email id: vijay3415@ymail.com, vicky_patel1999@icloud.com**)
3. Shri Jemis at Dubai (jemishsavani982@gmail.com) & (To be served Through Notice Board)
4. Shri DJ Bravo alias Lucky@Dubai (To be served Through Notice Board)
5. Shri Mark shadow alias Arbaaz at Ahmedabad (To be served Through Notice Board)

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Dy./Asstt. Director, DRI, AZU, Ahmedabad.
3. The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
4. The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
5. The Dy./Asstt. Commissioner of Customs (Prosecution), Ahmedabad.
6. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
7. Guard File.