

OIO No. : 02/ADC/SRV/SRT-AIRPT/2025-26
F. No: VIII/26-12/AIU/CUS/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
सीमा शुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
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DIN: 20250671MN000083478B

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/26-12/AIU/CUS/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/26-12/AIU/CUS/2024-25 dated 15.11.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	02/ADC/SRV/SRT-AIRPT/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	20.06.2025
E	जारी करने की तारीख/ Date of Issue	:	20.06.2025
F	द्वारा पारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	“Any person claiming the ownership of the seized gold” 1. To be pasted on the Notice board of Customs House, Surat. 2. To be pasted on the Notice board of Customs, Surat International Airport.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय,सीमा शुल्क अपील चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

On the basis of information received, the officers of Customs, Surat International Airport, Surat along with the two independent *panchas* at around 04:45 Hrs on 01.06.2024 recovered some suspected goods, which appears to be gold. The customs officers informed the *panchas* that the suspected goods, which appears to be gold, concealed inside a plastic pouch covered with a black colour cello tape from all sides, was recovered by the CISF team from the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport, during the course of anti-sabotage operation and all the proceedings regarding the recovery and examination of the suspected goods was recorded under the Panchnama proceedings dated 01.06.2024.

2. Further, during the anti-sabotage operation conducted by the CISF shift team, after International passengers had arrived at Surat International Airport by Air India Express Flight No. IX-172 dated 31.05.2024, on 01.06.2024, had been cleared from the Customs Area, one of the CISF anti-sabotage team member tried to press the flush button of the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport, but it was not functioning and they noticed that the cover of the said flush tank appeared to be loose. Whereas, when the cover was removed, the CISF member found a plastic pouch covered with a black colour cello tape from all sides inside the same. Accordingly, the CISF team informed the same to the Customs and handed over the plastic pouch, covered with a black colour cello tape from all sides, totally weighing 696.89 gms, to the AIU, Customs, Surat International Airport under the *Panchnama* proceedings dated 01.06.2024. Thereafter, the Customs officer, in presence of the *panchas*, cut and opened the plastic pouch with a scissor, and found that it contains 06 (six) numbers of yellow colour metal bars, which appears to be gold. The metal bars were hallmarked as “HWG UAE”, “10 TOLAS”, “999.0”.

2.1 Further, the Customs officer called the Government approved Valuer, Shri Vikasraj Juneja and requested him to come to the Surat international Airport to perform the examination, purity certification and valuation of the metal bars which appeared to be gold. Subsequently, Shri Vikasraj Juneja arrived at Surat International Airport around 08:15 AM of 01.06.2024. After examination, weighment and valuation of the said metal bars, Shri Vikasraj Juneja certified the 6(six) metal bars to be gold biscuit of 24 carat weighing 678.400 grams,

having Market value of Rs. 50,37,120/- and Tariff Value of Rs. 43,26,062/- as per Notification No. 36/2024-Customs (NT) dated 16.05.2024 and Notification No. 38/2024- Customs (NT) dated 31.05.2024. Thereafter, Shri Vikasraj Juneja, Government Approved Valuer issued a valuation certificate dated 01.06.2024 to this effect. The Customs officers then took the custody of the said gold weighing 678.400 grams.

2.2 Further, as the said gold biscuits were found by the CISF, ASG, Surat in the male washroom located in the Immigration area of Surat International Airport, hence it was not possible to identify as to who was the owner of the said gold and therefore as there was no claimant for the said gold and it was not possible to identify any proper and legitimate claimant of the same and therefore the recovered gold was termed as **“Unclaimed”**. However, the recovered gold totally weighing 678.400 grams was termed as “unclaimed” and thus falls under the category of “smuggled goods” and, therefore, has reasonable belief that the said gold, as recovered, which appears to have been attempted to be smuggled, was liable for confiscation as per the provisions of Customs Act, 1962. Accordingly, the recovered gold biscuit totally weighing 678.400 grams having Market value of Rs. 50,37,120/- and Tariff Value of Rs. 43,26,062/- as per Notification No. 36/2024 Customs (NT) dated 16.05.2024 and Notification No. 38/2024-Customs (NT) dated 31.05.2024 was placed under seizure vide Seizure Order dated 01.06.2024 and handed over to the Warehouse In-charge, International Airport, Surat vide Warehouse Entry No. 292 dated 01.06.2024.

3. Further, a statement of Shri Ganesh Mohan Arambhi, Head Constable GD, CISF Unit, ASG, Surat at Surat International Airport was recorded on 01.06.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

- “ he was working as Head Constable GD, CISF Unit, ASG, Surat at Surat International Airport; that he can read, write and understand English and Hindi Languages; that an anti-sabotage operation was conducted by the CISF shift team, after International passengers were cleared from the Customs area, who had arrived vide Air India Express Flight No. IX-172 dated 31.05.2024; that he had pressed the flush button in the third toilet cabin from the left of Gents washroom situated at immigration area of arrival hall of International terminal, but it was not functioning; that the cover of flush tank appeared to be loose; that he removed the cover and noticed one plastic pouch covered with a black tape inside the flush tank; that he took out the plastic pouch from flush tank and the same appeared

to be abnormally heavy; that he informed his shift in-charge regarding the above recovery; that his shift in-charge handed over the one plastic pouch covered with a black tape to the AIU, Customs, Surat International Airport vide Seizure memo dated 01.06.2024; that he did not find any suspicious movement of any persons or any other suspicious article.”

- “ he was shown and explained the *panchnama* dated 01.06.2024 drawn at International Airport, Surat by the officers of Customs AIU, International Airport, Surat, which was in English and after understanding the same he put his dated signature on the *panchnama* in token of acceptance of the facts stated therein.”

4. Further, from the above it appears that no conclusion as to who was the owner of the said gold was arrived at and therefore as there was no claimant for the said gold and it was not possible to identify any proper and legitimate claimant of the same and therefore the recovered gold was to be termed as “**Unclaimed**” and was required to be dealt with accordingly.

5. **LEGAL PROVISIONS RELEVANT TO THE CASE:**

a) As per **Para 2.27 of the Foreign Trade Policy 2023** –

“Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.”

b) As per **Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992** –

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

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

“All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the

provisions of that Act shall have effect accordingly.”

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

“no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”

e) As per Section 11(3) of the Customs Act, 1962-

“Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.”

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

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

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

h) As per Section 2(33) of Customs Act 1962-

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

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

*“**smuggling** in relation to any goods, means any act or omission, which*

will render such goods liable to confiscation under Section 111 or Section 113.”

j) As per **Section 77** of the Customs Act 1962-

*“the owner of any baggage shall, for the purpose of clearing it, **make a declaration** of its contents to the proper officer.”*

k) As per **Section 110** of Customs Act, 1962-

“if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.”

l) As per **Section 111 (d)** of the Customs Act 1962-

“Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation”.

m) As per **Section 111 (i)** of the Customs Act 1962-

“Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation”.

n) As per **Section 111 (j)** of the Customs Act 1962-

“Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation”.

o) As per **Section 112** of the Customs Act 1962-

“any person,

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or

purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.”

p) As per Section 119 of Customs Act 1962,

“ any goods used for concealing smuggled goods shall also be liable for confiscation.”

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

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

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

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

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

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

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

r) As per Customs Baggage Declaration Regulations, 2013-

“all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.”

s) As per DGFT Notification No. 36/2015-2020 dated 18.12.2019-

“Import policy of gold in any form, other than monetary gold and silver in any form, is amended from ‘Free’ to ‘Restricted’; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies)”.

6. CONTRAVENTION AND VIOLATION OF LAWS

Therefore, from the above, it appeared that:

- (i)** Gold biscuits were discovered by the CISF team in a plastic pouch covered with a black tape of the third toilet cabin from the left in the men's washroom located in the Immigration area of the International terminal. Upon extraction gold biscuits (24 carat) weighing 678.400 grams were recovered. No documents whatsoever in support of the ownership or importation of the recovered goods was found from the said plastic bag. Thereafter, the goods were seized. No body till date has claimed ownership of the said gold.
- (ii)** That in terms of Section 123 of the Customs Act, 1962, gold is notified goods under the Act *ibid* and the onus of proof that the goods were not prohibited/smuggled goods was upon the person(s) who is/are claiming the ownership of the said gold, but nobody has come to do so.
- (iii)** That the gold biscuits were found concealed in the plastic pouch covered with a black tape from the third toilet located in the Immigration area of the International terminal, hence it appears that the said biscuits were brought by some passenger(s) with an ulterior motive to smuggle the same without payment of duty in contravention of the provisions of the Customs Act, 1962. The said unknown passenger(s) left the said gold inside the toilet flush tank, for lifting by some other person later on, to avoid interception by the Customs authority. Therefore, it appears that the said 6 gold biscuits which weighing 678.400 grams of 24K gold were not declared to the Customs authority in contravention to provision of Section 77 of the Customs Act, 1962. Import of gold in biscuits form and in such huge quantity was not allowed as per provisions of Section 79 read with Baggage rules, 2016. The manner in which the gold was attempted to bring into India in biscuits form and in deep concealment appears to be an organized smuggling. Therefore, the seized gold appears to be prohibited goods within the meaning of Section 2(33) of the Customs Act, 1962 as it could be brought into India only on fulfilment of certain conditions and is liable for seizure under the provision of Section 111 of the Customs Act, 1962. For the same reason it appears to be a case of smuggling within the

meaning of Section 2(39) of the Customs Act, 1962.

7. Further, the passenger had also contravened the provisions of:

- **Section 7** of the Foreign Trade (Development & Regulations) Act, 1992, as he/she imported the Gold for commercial purposes.
- **Section 11** of the Foreign Trade (Regulation) Rules, 1993, as he/she failed to declare the value, quantity and description of the Gold imported by him
- **Para 2.27** of the Foreign Trade Policy 2023, as he/she acted against the imposed restrictions and imported non-bona fide baggage
- **Customs Baggage Declaration Regulations, 2013**, as he/she did not declare before the Customs authority that he was carrying dutiable or prohibited goods in his/her accompanied baggage in the prescribed form

8. The unknown passenger(s)/person(s), by the above-described acts of omission and commission on his/her part, had rendered themselves liable to penalty under Section 112 of the Customs Act, 1962.

9. As **‘any person claiming the ownership of the seized gold’**, appeared to have violated the provisions of the Customs Act, 1962 by trying to smuggle the goods by concealment and non-declaration, he/she was called upon to Show Cause in writing to the Additional Commissioner of Customs, In-charge of Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat-395007 within thirty days from the receipt of notice as to why:-

(i) The impugned goods may not be declared as "prohibited goods" under Section 2(33) of the Customs Act, 1962;

(ii) The act of the passenger should not be construed as an act of "smuggling" of goods into India under Section 2(39) of the Customs Act, 1962;

(iii) The recovered Gold biscuits (24 Carat) weighing 678.400 grams, having Market value of Rs. 50,37,120/- and Tariff Value of Rs. 43,26,062/- as per Notification No. 36/2024-Customs (NT) dated 16.05.2024 and Notification

No. 38/2024-Customs(NT) dated 31.05.2024, should not be confiscated under Section 111 of the Customs Act,1962;

(iv) Penalty should not be imposed on any person claiming the ownership of the seized gold under Section 112 of the Customs Act, 1962 for the act of omission and commission on his part, if any

10. DEFENCE REPLY

In the Show Cause Notice dated 15.11.2024 issued to the notice i.e. unknown person(s)/ passenger(s)/ original importer or any other claimant, it was asked to submit the written reply/defence submission within the stipulated time. However, no reply or defence submission to the Show Cause Notice was received from the noticee within the stipulated time or thereafter.

11. RECORD OF PERSONAL HEARING

“Audi alteram partem” is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, the opportunity to be heard in person was granted to the noticee to appear for a personal hearing on 11.03.2025, 15.05.2025 and 13.06.2025. The letters for personal hearing were served by way of placing them on the Notice Board of Customs House, Surat and Surat International Airport. However, no one turned up for the personal hearing on any of the scheduled dates. In light of the foregoing, it is evident that the noticee has exhibited a clear disregard for the ongoing adjudication proceedings and has failed to submit any representation or defence in response thereto. I am of the considered view that adequate and reasonable opportunities have been afforded to the Noticee in accordance with the principles of natural justice. Therefore, it would not be judicious or warranted to keep the matter pending indefinitely and therefore, I proceed to adjudicate this case *ex-parte* based on the merits of the available records.

11.1 Before proceeding further, it should be brought to attention that the Hon’ble Supreme Court, High Courts and Tribunals have held, in several judgments/decisions, that an *ex-parte* decision will not amount to a violation of the principles of Natural Justice. To fortify my stand, I rely upon the following case laws/observations made by the Hon’ble Courts and other legal fora:

a) The Hon’ble Supreme Court in the matter of ***Jethmal Versus Union Of India Reported In 1999 (110) E.L.T. 379 (S.C.)***, the Hon’ble Court has observed as under;

“ Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

b) Hon’ble High Court of Kerala in the case of **United Oil Mills Vs. Collector Of Customs & C. Ex., Cochin Reported In 2000 (124) E.L.T. 53 (Ker.)**, the Hon’ble Court has observed that:

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

c) Hon’ble High Court of Calcutta in the case of **Kumar Jagdish Ch. Sinha Vs. Collector Of Central Excise, Calcutta Reported In 2000 (124) E.L.T. 118 (Cal.) In Civil Rule No. 128 (W) Of 1961**, decided on 13-9-1963, the Hon’ble Court has observed that:

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

the opportunity of adequately presenting the case” [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]”

d) Hon’ble High Court of Delhi in the case of **Saketh India Limited Vs. Union Of India Reported In 2002 (143) E.L.T. 274 (Del.)**. The Hon’ble Court has observed that:

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

e) The Hon’ble CESTAT, Mumbai in the case of **Gopinath Chem Tech. Ltd Vs. Commissioner Of Central Excise, Ahmedabad-II Reported In 2004 (171) E.L.T. 412 (Tri. - Mumbai)**, the Hon’ble CESTAT has observed that;

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

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

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

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

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

12. DISCUSSION AND FINDINGS

I have carefully examined the facts and circumstances of the case. Despite being afforded sufficient opportunities to submit a written reply and to appear

for a personal hearing, the Noticee/unknown person/claimant has failed to avail of the same and has neither filed any written submissions nor appeared for the personal hearing. It is not permissible for the adjudication proceedings to remain in abeyance indefinitely, awaiting the convenience of the claimant or unknown person(s) to participate. Accordingly, I proceed to adjudicate the matter ***ex parte***, based on the evidence and material available on record.

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

- (i) The recovered gold biscuits (24 Carat) weighing 678.400 grams, having Market value of Rs. 50,37,120/- (Fifty Lakh Thirty-Seven Thousand One Hundred Twenty Only) and Tariff Value of Rs. 43,26,062/- (Forty-Three Lakh Twenty-Six Thousand Sixty-Two Only) as per Notification No. 36/2024-Customs (NT) dated 16.05.2024 and Notification No. 38/2024-Customs (NT) dated 31.05.2024, should be confiscated under Section 111 of the Customs Act, 1962 or otherwise;
- (ii) A penalty should be imposed upon the unknown person(s)/passenger(s) under the Customs Act *ibid* or otherwise.

14.1 I find that the *Panchnama* has clearly drawn out the fact that during the anti-sabotage operation conducted by the CISF shift team, after International passengers had arrived at Surat International Airport by Air India Express Flight No. IX-172 dated 31.05.2024, on 01.06.2024 and had been cleared from the Customs Area, one of the CISF anti-sabotage team member tried to press the flush button of the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport, but it was not functioning and they noticed that the cover of the said flush tank appeared to be loose. Whereas, when the cover was removed, the CISF member found a plastic pouch covered with a black colour cello tape from all sides inside the same. Accordingly, CISF informed the same to the Customs officers and handed over the plastic pouch, covered with a black colour cello tape from all sides, totally weighing 696.89 grams, to the AIU, Customs, Surat International Airport under the *Panchnama* proceedings dated 01.06.2024. Thereafter, the Customs officer, in presence of the *panchas*, cut and opened the plastic pouch with a scissor, and find that it contains 06 (six) numbers of yellow colour metal bars, which appears to be gold. The metal bars were hallmarked as “HWG UAE”, “10 TOLAS”, “999.0”.

14.2 Subsequently, in pursuance of the *Panchnama* proceedings dated 01.06.2024, the Customs officers called the Government approved Valuer, Shri Vikasraj Juneja and requested him to come to the Surat international Airport for examination, purity certification and valuation of the metal bars appears to be gold. Shri Vikasraj Juneja arrives at Surat International Airport around 08:15 AM on 01.06.2024. After examination, weighment and valuation of the said metal bars, Shri Vikasraj Juneja certified the 6(six) metal bars to be gold biscuit of 24 carat weighing 678.400 grams, having Market value of Rs. 50,37,120/- and Tariff Value of Rs. 43,26,062/- as per Notification No. 36/2024-Customs (NT) dated 16.05.2024 and Notification No. 38/2024-Customs (NT) dated 31.05.2024. Thereafter, Shri Vikasraj Juneja, Government Approved Valuer issues valuation certificate dated 01.06.2024. The Customs officers took the custody of the said gold weighing 678.400 grams.

14.3 Further, upon going through the SCN, I find that as the said gold biscuits were found by the CISF, ASG, Surat in the male washroom located in the Immigration area of Surat International Airport, hence it was not possible to identify as to who was the owner of the said gold and therefore as there was no claimant for the said gold and it was not possible to identify any proper and legitimate claimant of the same and therefore the recovered gold was termed as **“Unclaimed”**.

15. Further, I find that the unknown passenger(s)/ importer has neither questioned the manner of the *Panchnama* proceedings nor controverted the facts detailed in the *Panchnama*. Every procedure conducted during the *Panchnama* by the Officers was well-documented and was performed in the presence of the *Panchas*. It has been ascertained that the unknown passenger had concealed the gold bars in a plastic pouch covered with a black colour cello tape from all sides and had placed it in the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport. It is reasonable to infer that the recovered gold bars totally weighing 678.400 grams which had been hidden inside a flush in the Men's washroom located in the Immigration area were meant to be smuggled into India illicitly by evading the payment of applicable Customs duty, thereby contravening the provisions of the Customs Act, 1962, and the Rules and Regulations framed thereunder. Further, it is evident to me that the proceedings conducted under the *Panchnama* were duly documented and carried out in accordance with the extant legal provisions and prescribed procedures.

Further, upon going through the SCN, I find that the said gold bars were 'unclaimed'. Therefore, the same appear to be imported illegally by any international passenger and was hidden inside the flush tank of the toilet cabin in the Men's washroom.

16. Additionally, it is crucial to emphasize that the six gold bars totally weighing 678.400 grams were found concealed inside the flush in the toilet cabin of the Men's washroom located in the Immigration area of the Surat International Airport. By such an act of improperly importation/smuggling of gold, the unknown passenger has contravened the provisions of Para 2.27 of the Foreign Trade Policy 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read in conjunction with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of the Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

17. Further, I find that gold is not on the list of prohibited items, but the import of the same is controlled. I would like to invite attention to the decision of the Hon'ble Apex Court in case of **M/s. Om Prakash Bhatia Vs. Commissioner of Customs** wherein the Apex court has made the following observation:

"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 is evident that: (a) any goods, the import or export of which is expressly prohibited under the Customs Act, 1962 or under any other law for the time being in force, shall be classified as '**prohibited goods**'; and (b) goods in respect of which the prescribed conditions for import or export have been duly complied with shall not fall within the ambit of 'prohibited goods'. Conversely, non-compliance with such prescribed conditions would render the goods prohibited for the purposes of the Act. This interpretation is further supported by the provisions of Section 11 of the Customs Act, 1962, which empowers the Central Government to prohibit, either absolutely or subject to such conditions—whether to be fulfilled before or after clearance as may be specified in the notification—the import or export of goods of any

specified description. Such notifications may be issued for the purposes enumerated under sub-section (2) of Section 11. Accordingly, a prohibition on import or export may be conditional in nature, and failure to fulfill the stipulated conditions, whether pre- or post-clearance, may render the goods 'prohibited' within the meaning of the Act. This position has been further clarified by the Hon'ble Supreme Court in ***Sheikh Mohd. Omer v. Collector of Customs, Calcutta & Others, [(1970) 2 SCC 728]***, wherein it was contended that the term 'prohibited' as used in Section 111(d) of the Customs Act, 1962 should be interpreted to mean only an absolute prohibition, and that it would not encompass restrictions imposed under Clause (3) of the Import Control Order, 1955. The Hon'ble Court rejected this contention and held that Clause (d) of Section 111 applies to any goods that are imported or attempted to be imported in contravention of any prohibition imposed under any law for the time being in force. **The Court further clarified that the term 'any prohibition' in Section 111(d) includes both absolute and conditional or partial prohibitions. It was observed that any restriction on import or export amounts to a form of prohibition, and that the phrase 'any prohibition' under Section 111(d) is of wide amplitude and includes all types of prohibitions, including those arising from import restrictions.** The Court categorically held that the use of distinct expressions such as 'prohibiting', 'restricting', or 'otherwise controlling' in Section 3 of the Import and Export (Control) Act, 1947 does not dilute the comprehensive scope of the term 'any prohibition' under Section 111(d) of the Customs Act, 1962.

Applying the ratio of the above judgment to the present case, it is evident to me that the gold brought in by the unknown person(s) was subject to import restrictions and it is reasonable to infer that the same falls squarely within the ambit of 'prohibited goods' as defined under Section 2(33) of the Customs Act, 1962.

18. From the facts discussed above, it is proved beyond doubt that all the above acts of contravention on the part of the said unknown passenger (s)/original importer have rendered the said gold weighing 678.400 grams of 24 Kt/999.00 purity having tariff value of **Rs. 43,26,062/-** and market Value of **Rs. 50,37,120/-** placed under seizure under *Panchnama* dated 01.06.2024, liable for confiscation under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. It is essential to note that the manner of concealment adopted for the smuggling of the said gold clearly indicates that the unknown passenger(s)/importer(s) was fully aware of the offending nature of the goods at the time of import. It is evident that the said individual(s) was actively involved in the carrying, concealment, storage, and

handling of the impugned gold, in a manner that demonstrates knowledge of the fact that the goods were liable to confiscation under the provisions of the Customs Act, 1962

19. It is pertinent to note that, for the purpose of Customs clearance of arriving international passengers, a two-channel system is in place—namely, the Green Channel for passengers not carrying dutiable or prohibited goods, and the Red Channel for those carrying such goods. All arriving passengers are mandatorily required to make a truthful and accurate declaration of the contents of their baggage in accordance with the applicable Customs regulations. It is important to highlight that the definition of “**eligible passenger**” is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. It is appropriate to point out that in the instant case that the import was for non-bona fide purposes. Therefore, the said improperly imported gold bars totally weighing 678.400 grams, cannot be treated as bonafide household goods or personal effects. The noticee(s)/passenger(s)/Unknown Person(s) has thus contravened the Section 2.27 of Foreign Trade Policy-2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

20. Further, I find that the said gold bars of 24 Kt. , weighing 678.400 grams found concealed in the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport, as discussed above, were meant to be smuggled without declaration before the Customs authorities and by this act, the unknown passenger(s)/importer(s) or any other claimant has held the said goods liable for confiscation. **I, therefore, refrain from using my discretion to give an option to redeem the gold on payment of the redemption fine, as envisaged under Section 125 of the Customs Act, 1962.**

21. To further reinforce my position in the said matter, I place reliance on the judgment the Hon’ble High Court in the case of **Samynathan Murugesan [2009 (247) ELT 21 (Mad)]**, wherein the Hon’ble High Court has upheld the

absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

22. Further, I seek to strengthen my position in this regard by relying on the pronouncement made by the Hon'ble High Court in the case ***Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd***, wherein 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 that:

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

23. To further fortify my position, I place my reliance on the views expressed by the ***Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)]*** has held-

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

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority

to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.”

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

25. Furthermore, my views find further reinforcement in the judgment of the Hon’ble High Court of Delhi in the matter of ***Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.)*** held that –

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

24.....

25.....

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

26. After a careful evaluation of the materials on record and the judgements and rulings cited above, I find it affirmatively established beyond doubt that the manner of concealment in this case clearly shows that the unknown passenger (s) had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Furthermore, it has been observed that, to date, no individual has come forward to claim ownership of the seized goods, nor has any person

submitted documentary evidence in support of the lawful acquisition and/or legitimate importation of the said gold. Accordingly, it stands established that the burden of proof, as envisaged under Section 123 of the Customs Act, 1962, has not been discharged by the unidentified passenger(s). Furthermore, upon a careful examination of the contents of the Show Cause Notice and the *Panchnama*, it is evident that the method adopted for the concealment of the gold was highly ingenious. The gold was found in a plastic pouch covered with a black colour cello tape from all sides and the same was placed inside the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport. The mode and manner of concealment clearly indicate a deliberate attempt to smuggle the said gold into India with the intent to evade payment of applicable Customs duty. After an exhaustive evaluation of the aforementioned, I am conclusively driven to the determination that the gold weighing 678.400 grams of 24Kt. purity, recovered from inside the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport, is liable to be **confiscated absolutely. I, therefore, hold in unequivocal terms that the recovered gold biscuits weighing 678.400 grams of 24Kt. purity, placed under seizure, would be liable for absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962.**

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

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

ORDER

- (i) I order the **absolute confiscation** of gold biscuits of 24 Kt purity, totally weighing **678.400 grams**, having Market Value of **Rs. 50,37,120/-** (Rupees Fifty Lakh Thirty-Seven Thousand One Hundred Twenty Only) and **Tariff Value of Rs. 43,26,062/-** (Rupees Forty-

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Three Lakh Twenty-Six Thousand Sixty-Two Only), recovered from inside the flush tank of the third toilet cabin from the left of Gents washroom situated at Immigration area of arrival hall of International terminal, Surat International Airport, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) I refrain from imposing penalty on the unknown person(s)/passenger(s)/or other claimant under Section 112 of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/26-12/AIU/CUS/2024-25 dated 15.11.2024 stands disposed of.

(Shree Ram Vishnoi)

Additional Commissioner,
Customs

DIN : 20250671MN000083478B

F. No. VIII/26-12/AIU/CUS/2024-25

Date: 20.06.2025

To,

“Any person claiming the ownership of the seized gold”

1. To be pasted on the Notice board of Customs House, Surat.
2. To be pasted on the Notice board of Customs, Surat International Airport.

Copy to:

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