



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380 009.

दूरभाष : (079) 2754 4630 **E-mail:** [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in) फैक्स : (079) 2754 2343

**DIN No. 20250671MN000000A845**

### PREAMBLE

A	फाइलसंख्या/ File No.	:	VIII/10-05/SVPIA-A/O&A/HQ/2025-26
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by Pax.
C	मूलआदेशसंख्या/ Order-In-Original No.	:	<b>74/ADC/SRV/O&amp;A/2025-26</b>
D	आदेशतिथि/ Date of Order-In-Original	:	<b>30.06.2025</b>
E	जारीकरनेकीतारीख/ Date of Issue	:	<b>30.06.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<b>Smt. Mumtaz Salimbhai Kandawala,</b> W/o Salimbhai Mahammadhusen Kandawala, 2666, Khajuri Pole, Jamalpur, Ahmedabad-380001.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील) चौथी मंजिल, 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 passenger profiling and suspicious movement of passengers, Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a female passenger namely Smt. Mumtaz Salimbhai Kandawala , (D.O.B. 24/06/1966) (Passport No. X4885737), W/o Salimbhai Mahammadhusen Kandawala, residing at 2666, Khajuri Pole, Jamalpur, Ahmedabad-380001, Gujarat, India who was arrived by Indigo Airlines Flight No. 6E-076 from Jeddah to Ahmedabad at Terminal – 2 of the SVP International Airport, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. The passenger was asked by the AIU Officers whether she had made any declarations to customs authorities for dutiable goods/items or wanted to declare any dutiable goods/items before customs authorities to which she replied in negative and informed that she was not carrying any dutiable items with her. Thereafter, Passenger's personal search and examination of her baggage was conducted in presence of two independent panch witnesses and the proceedings was recorded under **Panchnama proceeding dated 10.02.2025.**

**2.** The passenger was questioned by the AIU officers as to whether she was carrying any dutiable/ contraband goods in person or in her baggage, to which she denied. The officers asked/informed the passenger that a search of her baggage as well as her personal search was to be carried out and gave her an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the passenger desired to be searched in presence of a gazetted custom officer. Before commencing the search, the officers offered themselves to the said passenger for conducting her personal search, which was declined by the said passenger imposing faith in the officers.

**2.1** Thereafter, the AIU officer thoroughly examined and searched the passenger and during the search, it was observed that the passenger was wearing an underwear with unusually thick waist belt. On being asked the said passenger informed that she was given this unusual underwear by some unknown person in Jeddah and asked her to carry this to Ahmedabad and handover the same to a person who would contact her once she reached Ahmedabad. Thereafter the AIU officers asked the passenger to change her undergarment and handed over the

aforesaid undergarment to the said officer. Thereafter, the passenger was brought to the AIU office, situated at arrival hall of the terminal-2 of SVPIA Ahmedabad where she changed her undergarment in private and thereafter handed over the aforesaid undergarment to the said officer.

2.2 Thereafter, the AIU officer thoroughly examined the said undergarment and found that the weight of the said undergarment was heavier than usual and the waist belt of the same was thick and very heavy. On being asked by the officers, Smt. Mumtaz Salimbhai Kandawala informed that this said undergarment was given to her on 09.02.2025 before her flight to Ahmedabad by an unknown person and asked her to carry the said undergarment to Ahmedabad. Smt. Mumtaz Salimbhai Kandawala stated that she found the undergarment was very heavy and unusual, but she decided to carry the same to Ahmedabad as the said person had assured her that she would receive Rs.20,000/- for carrying the same. The AIU officer suspected that the said undergarment contained some substance concealed in the waist belt of the said undergarment.

**3.** Thereafter, the AIU officers, called the Government Approved Valuer Shri Soni Kartikey Vasantrai and informed him that an undergarment with unusually heavy waist belt had been recovered from a passenger and was suspected that the same contained gold in paste form concealed between two layers of waist belt of the said undergarment and requested him to come to AIU office to conduct examination of the same. Shri Soni Kartikey Vasantrai in reply, informed the officers that the testing of the said material could only be possible at his workshop as gold had to be extracted from such semi solid/paste form by melting. The AIU officer along with the panchas and passenger, in a Government Vehicle, left the airport and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G.Road, Ahmedabad-380006. Shri Soni Kartikey Vasantrai, Government Approved Valuer cut the thick visible edge of the said underwear and 02 strips containing semi solid gold and chemical mix paste covered with white tape were extracted from the underwear. The valuer assessed the said 02 strips on his weighing scale and found that the gross weight of the said paste is 779.08 grams. The photograph of the same is appended below:



3.1 Thereafter, Shri Soni Kartikey Vasantrai inside his workshop melted the above-mentioned strips in the hot furnace and informed the officers as well as the said passenger in presence of panchas that the 02 metal bars, weighing 674.140 grams in total, obtained after the melting of above said strips and same were having purity of 999.0/24kt. The photograph of the said gold bars at the weighing scale has also been taken which is as under:



3.2 Thereafter, the Government Approved Valuer submitted Valuation Report, (Annexure-A) and (Annexure-B) certification no. 1563/2024-25 dated 10.02.2025 and confirmed that it was pure gold. Further, he

informed that the said recovered gold bars were having net Weight of 674.140 Grams. The gold bars were having purity 999.0/24kt and market value was Rs. 59,04,118/-and tariff value was Rs. 53,45,580/-. Shri Soni Kartikey Vasantrai had given her valuation report of the gold bars as per the Notification No. 06/2025-Customs (N.T.) dated 31.01.2025 (gold) and Notification No. 18/2024-Customs (N.T.) dated 06.02.2025 (exchange rate). The details of which are as under: -

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	GOLD BAR	2	674.140	999.0 24Kt	59,04,118/-	53,45,580/-

**4.** The aforementioned gold bars totally weighing 674.140 grams having purity 999.0/24kt recovered from the aforesaid passenger had been carried and attempted to be cleared through Customs without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Accordingly, the said gold bars along with the remnant packing materials i.e. white tape and underwear were placed under seizure and handed over to the Warehouse In-charge, Customs, SVPI Airport, Ahmedabad vide Ware House Entry Nos. 7218 dated 10.02.2025.

**5.** Statement of Smt. Mumtaz Salimbhai Kandawala was recorded under Section 108 of the Customs Act, 1962 on 10.02.2025, wherein she inter alia stated as under: -

**5.1.** She gave her personal details like name, age, address, education, profession and family details and informed that she was a housewife and living with her husband and 02 sons and studied upto 2<sup>nd</sup> Class only.

**5.2.** that she had gone to Jeddah on 04.02.2025 from SVPI Airport, Ahmedabad to perform Umrah (Religious activity). Her tickets (to & fro) was booked by her neighbour Sh. Mukhtyar Bankawala who run tour & travel agency. She further stated that the gold paste was not belong to her as same was given to her by an unknown person at Jeddah airport, while she had return flight to India and he had promised to pay Rs. 20,000/- if she carried the gold paste to India and handover the same

to the person who was supposed to identify her once she reached at Ahmedabad.

**5.3.** that she was present during the entire panchnama proceedings dated 10.02.2025 and the fact narrated therein was true and correct.

**5.4** that she was aware that smuggling of gold without payment of Customs duty was an offence and she was aware of the concealed gold in the form of 02 Gold bars weighing 674.140 Grams having purity 999.0/24kt derived/recovered from gold paste concealed inside waist belt of the undergarment of passenger but she did not make any declarations in this regard to evade payment of Customs duty.

**6.** From the investigation conducted in the case, it appears Smt. Mumtaz Salimbhai Kandawala had attempted to smuggle total 674.140 Grams of 999.0/24 kt. Pure gold bars totally having total market value of Rs. 59,04,118/- Since these gold bars were clearly meant for commercial purpose and hence did not constitute Bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Accordingly, the aforesaid 24 Kt. Pure gold bars having total weight of 674.140 grams and having total market value of Rs. 59,04,118/- was seized under the provisions of Section 110 of the Customs Act, 1962 on the reasonable belief that the same was liable to be confiscated in terms the provisions of Section 111 of the Customs Act, 1962.

6.1 The passenger, therefore, committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962 and therefore, she was arrested under Section 104 of the Customs Act, 1962. Thereafter, **Smt. Mumtaz Salimbhai Kandawala** was released on bail on 10.02.2025 after paying a surety amount of Rs 60,000/- (RUPEES SIXTY THOUSAND ONLY).

## **7. LEGAL PROVISIONS RELEVANT TO THE CASE :-**

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

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20 as amended, 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.

7.2 As per Section 3(2) of the Foreign Trade (Development and

Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

- 7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under subsection (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

**The Customs Act, 1962:**

- 7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
- (a) vessels, aircrafts and vehicles;
  - (b) stores;
  - (c) baggage;
  - (d) currency and negotiable instruments; and
  - (e) any other kind of movable property;
- 7.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- 7.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 7.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any

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

7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

7.11 As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, she may seize such goods.

7.12 Section 111. Confiscation of improperly imported goods, etc.:

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

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

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

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

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

*(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;*

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

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

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

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

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

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

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

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

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

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

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

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

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

*any person,*

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

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

7.14 As per Section 123 of Customs Act 1962,

*(1) where any goods to which this section applies are seized under this Act in the reasonable belief that he are smuggled goods, the burden of proving that he 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 was seized; and*

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

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

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

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

**Customs Baggage Rules and Regulations:**

- 7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passenger who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare his accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.
- 7.17 As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage of jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

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

- 7.18 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.
- 7.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

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

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

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

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i)

and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

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

### **CONTRAVENTION AND VIOLATION OF LAWS**

9. It therefore appears that:
  - (i) Smt. Mumtaz Salimbhai Kandawala had attempted to smuggle/improperly import 999.0/24 Kt. Pure gold bars as detailed hereunder, having total weight 674.140 grams and having total market value of Rs. 59,04,118/-with a deliberate intention to evade the payment of customs duty and fraudulently

circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Smt. Mumtaz Salimbhai Kandawala knowingly and intentionally smuggled the said gold bars upon her arrival from Jeddah to Ahmedabad by Indigo Airlines Flight No. 6E-076 on 10.02.2025 with an intent to clear these illicitly to evade payment of the Customs duty. Therefore, the aforesaid gold bars smuggled by Smt. Mumtaz Salimbhai Kandawala, cannot be treated as bonafide household goods or personal effects. Smt. Mumtaz Salimbhai Kandawala has, thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.

- (ii) Smt. Mumtaz Salimbhai Kandawala, by not declaring the said gold item before the proper officer of the Customs have contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (iii) The said gold bars smuggled by Smt. Mumtaz Salimbhai Kandawala, without declaring it to the Customs are liable for confiscation under Section 111(d), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962.
- (iv) Smt. Mumtaz Salimbhai Kandawala by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.
- (v) As per Section 123 of Customs Act 1962, the burden of proving that the concerned gold items are not smuggled goods, is upon Smt. Mumtaz Salimbhai Kandawala, who are the Noticee in this case.

**10.** The passenger Smt. Mumtaz Salimbhai Kandawala through her advocate and authorized representative vide letter dated 10.03.2025 submitted request for waiver of SCN. He submitted that his client went Jeddah and purchased gold there for her family from their personal savings and money borrowed from her friends. He submitted that copy

of bill was produced at the time of panchnama but same was not taken on record. He submitted that his client has declared the gold orally as per Circular No. 09/2001. He submitted that there are numbers of judgments wherein gold has been released or allowed for re-export on payment of redemption fine. He submitted that his client has been explained orally, the clauses and provisions of the Customs Act, 1962 which would be included in the SCN and they have understood them very well. After understanding the clauses and provisions of the Customs Act, 1962, they have requested for waiver of SCN and submitted that his client did not want any further investigation in the matter and requested to decide the matter on merits. He submitted that his client is ready to pay applicable duty, fine and penalty and opts for waiver of SCN. He requested for providing personal hearing in the matter. He further submitted that the goods were not in commercial quantity and was purchased for family members; due to ignorance law and this was the first time, she has brought the gold with her and therefore unable to declare the same.

## **11. PERSONAL HEARING:**

Personal hearing in this case was fixed on 30.05.2025, 13.06.2025 & 27.06.2025 (later fixed on 30.06.2025), but she failed to appear and represent her case. The letters for personal hearing were served to the noticee via speed post on the address provided by the noticee in her statement and passport. Further, it has been observed that no one has turned up for the personal hearing on any of the scheduled dates. In light of the above, 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 except their waiver request. 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.”*

### **DISCUSSION & FINDINGS:**

**12.** 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 has failed to avail of the same and has neither filed any written submissions nor appeared for the personal hearing. Accordingly, I proceed to adjudicate the matter ex-parte, based on the evidence and material available on record. I find that the noticee through her advocate submitted a waiver request vide letter dated 10.03.2025. Before proceeding further, I would like to go through the provisions for waiver of SCN as envisaged in Section 124 of Customs Act, 1962 as under:-

***“124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—***

*(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

*(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

*(c) is given a reasonable opportunity of being heard in the matter:*

*Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

*[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]”*

Perusal of Section 124 of the Act states that a Show Cause Notice may be issued in Oral on the request of noticee. If an oral SCN waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. I find that the noticee through her letter dated 10.03.2025 requested for waiver of SCN/Oral SCN after precisely go through the provisions for issuance of Show Cause Notice under Section 124 of Customs Act, 1962. Therefore, the Oral SCN/Waiver of SCN can be granted under Section 124 of Customs Act, 1962 on his/her written

request and after following the principle of natural justice. In the instant case, I find that the noticee has herself through her representative has submitted a request letter for waiver of SCN which was consciously signed by her authorized representative and noticee was offered personal hearing in the matter three times, however neither she herself nor any representative availed the opportunity of personal hearing. Accordingly, the request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

**13.** In the instant case, I find that the main issue that is to be decided is to whether the gold i.e. two gold bars of 24Kt/ 999.0 purity, totally weighing 674.140 grams and having tariff value of Rs.53,45,580/- and market value of Rs.59,04,118/- carried by the noticee, which were seized vide Seizure Order dated 10.02.2025 under the Panchnama proceedings dated 10.02.2025 on the reasonable belief that the said goods were smuggled into India, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not and whether the noticee is liable for penalty under the provisions of Section 112 of the Act.

**14.** I find that panchnama was clearly drawn out of the fact the noticee was intercepted on the basis of passenger profiling and suspicious movement while she was trying to exit through green channel. The baggage of Smt. Mumtaz Salimbhai Kandawala was passed through the X-Ray Baggage Scanning Machine and on detailed examination of her baggage, nothing objectionable substance was noticed. Thereafter, in the presence of the panchas, the AIU officers asked Smt. Mumtaz Salimbhai Kandawala to walk through the Door Frame Metal Detector (DFMD) machine; after removing metallic objects from her body/ clothes such as mobile, wallet etc., while passing through the DFMD, no beep sound was heard indicating that there was nothing objectionable/dutiable goods/items on her body/clothes.

Thereafter, on thorough examination of the noticee, it was observed that the said noticee was wearing an underwear with unusually thick waist belt and on being asked the same was handed over to the officer for examination. On being asked it was informed that

she was given this unusual underwear by some unknown person in Jeddah and asked her to carry this to Ahmedabad and handover the same to a person who would contact her once she reached Ahmedabad.

It is also on record that the Govt. approved valuer examined the recovered paste and after completion of extraction process, submits his report vide certificate no. 1563/2024-25 dated 10.02.2025, wherein he submitted that the recovered gold bars were of purity of 24kt/999.0 and having net weight of 674.140 grams. The details of same are as under:-

Sl. No.	Details of Items	PCS	Net Weight In Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold bars	2	674.140	999.0 24Kt	Rs.59,04,118/-	Rs.53,45,580/-
	<b>Total</b>	<b>2</b>	<b>674.140</b>		<b>Rs.59,04,118/-</b>	<b>Rs.53,45,580/-</b>

**15.** It is on the record the noticee had tendered her statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. For that, I relied upon the following judgments as under:-

- 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 a valid evidences”
- 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”
- 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.
- 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.”

**16.** I find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. In fact, in her statement dated 10.02.2025, she has clearly admitted that she had travelled from Jeddah to Ahmedabad by Flight No. 6E-76 dated 10.02.2025 carrying the gold in form of paste concealed in the waist of her underwear. She admitted that the said gold was not belong to her and also not purchased by her and same was given to her by an unknown person at Jeddah Airport and asked her to deliver the same at Ahmedabad and for that he would give her Rs.20,000/-. Further, she mentioned that she had intentionally not declared the said gold paste before the Customs authorities as she wanted to clear the same illicitly and evade payment of customs duty; that she was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act, 1962 and the Baggage Rules, 2016.

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

“Further, Section 2(33) of the Act defines “Prohibited Goods” as under:- Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with. “From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either ‘absolutely’ or ‘subject to such conditions’ to be fulfilled before or after clearance, as

may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. *This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negated the said contention and held thus:-* "... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. **Hence, in the instant case, Gold brought was under restriction/prohibition. Relying on the ratio of the judgment stated above, I find that the goods brought by and recovered from possession Smt. Mumtaz Salimbhai Kandawala, are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

Further, Hon'ble Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I Vs. Samynathan Murugesan [2009 (247) E.L.T 21 (Mad.)] relied on the definition of 'Prohibited goods' given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi [2003 (155) ELT 423(SC)] and has also held as under:-  
*"in view of meaning of the word "prohibition" as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold the*

*imported gold was 'prohibited goods' since the respondent is not eligible passenger who did not satisfy the conditions"*

**18.** I find that as per paragraph 2.20 of Foreign Trade Policy (FTP), *bona fide* household goods and personal effects may be imported as a part of passenger's baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in his baggage is "Restricted" and subject to fulfilment of conditions imposed under the Customs Act, 1962, the baggage rules, 2016.

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, 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 and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. *As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India.* It has also been explained for purpose of the notifications, "eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 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 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.

**19.** As per Notification no. 49/2015-2020 dated 05.01.2022 (FTP), gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is **restricted**. Further, I find that 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/her bon-fide baggage of jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger. Further, the Board has also issued instructions for compliance by “eligible passenger” and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

**20.** A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import 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 these mandatory conditions can import gold as a part of their bone fide personal baggage and the same has be declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find from the content of the statement tendered by the noticee under Section 108 of Customs Act, 1962 that the she went Jeddah on 04.02.2025 and returned back on 10.02.2025 which clearly establish that the noticee is not an “eligible passenger” in terms of the conditions prescribed to become an eligible passenger as prescribed under Notification. Further, I find that noticee has brought the gold having net weight of 674.140 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on her arrival which is also an integral condition to import the gold and same has been admitted in her voluntary statement that she wants to clear the gold items clandestinely without payment of eligible custom duty.

**21.** Further, the noticee has accepted that she deliberately had not declared the said gold concealed by her, on her arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the said gold items viz. two gold bars of 24Kt /999.0 purity, totally weighing 674.140 grams and having Market Value of Rs. 59,04,118/- and Tariff Value of Rs. 53,45,580/-, by way of concealment

in form of paste in waist of her underwear. Thus, it is proved that the noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. The case of smuggling of gold items recovered from her possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

In her request letter she claimed that the copy of bill was produced at the time of interception and also claimed that the gold was purchased by her from her personal savings and money borrowed from his friend circle. In this regard, I would like to refer to the conditions prescribed in Para 3 of Circular 06/2014-Cus dated 06.03.2014 wherein it is explicitly mentioned that "in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt". And "Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by unscrupulous elements who may hire such eligible passengers to carry gold for them". From the conditions it is crystal clear that all eligible passengers have to declare the item wise inventory of the ornaments and have to provide the source of money from which gold was purchased. Further, I find no such declaration alongwith claimed invoice on the record and also the noticee has failed to submit the copy of such invoice alongwith his request letter dated 10.03.2025 which suggests that she has nothing to submit and having purchase invoice is a false claim. Also, it becomes more evident from her confessional statement wherein she admitted that the gold was not purchased by her and same was handed over to her by an unknown person at Jeddah Airport. She admitted that on successful delivery of the same in Ahmedabad she would get Rs.

20,000/- which evidences her role as a willing carrier for smuggling of gold. Further, I find that to avoid the detection at Airport, the gold which is generally found in solid form was deliberately converted in to paste form by mixing it with some chemical and consciously concealed in waist of underwear by the noticee, which also affirms that the noticee was not willing to declare the same before customs authority, so as to clear it clandestinely without detection and without payment of duty. Had, she been not apprehended by the officers, she would have gone with smuggled gold. Therefore, the claim that copy of invoice was already produced at the time of interception before the officers, is baseless. Had, it been produced earlier then why she failed to submit the copy of the same before Adjudicating Authority alongwith his waiver request. Therefore, I find that the noticee failed miserably to produce any documentary evidences such as copy of purchase invoice, Bank Statement showing transaction regarding money borrowed from friends and debit entry against the purchase, which prove that the gold was purchased in legitimate way and as bona fide personal use. Further, her non-appearance before the adjudicating authority confirms that she has nothing to submit in her defense and the gold under question was not for personal use but was smuggled one.

**22.** 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 her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and she was tried to exit through Green Channel which shows her intention of not willing to declare the same and was trying to evade the payment of eligible customs duty. I also find that the definition of “eligible passenger” is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the

total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold items weighing 674.140 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

I find that, the manner of concealment being clever, conscious and pre-meditated. The quantity and type of gold being for commercial use, this being a clever attempt to brazenly smuggle the impugned gold and noticee was fully aware that the import of said goods is offending in nature. It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold items weighing 674.140 grams, having Tariff Value of Rs. 53,45,580/- and Market Value of Rs.59,04,118/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings dated 10.02.2025 liable to confiscation under the provisions of Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in form of paste and in commercial quantity in her underwear, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that she has knowingly carried the gold bars and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same is liable to confiscation under the Act. Moreover, the noticee failed established the licit importation of the said goods. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**23.** I thus, find that the recovery of gold from the possession of the noticee which was concealed and not declared to the Customs with an intention to illicitly clear it from the Airport to evade the payment of Customs duty is an act of smuggling and the same is conclusively

proved. By her above act of commission, it is proved beyond doubt that the noticee has violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find from the statement that the gold brought by the noticee from Jeddah, however the same has not been declared intentionally before the Customs to evade payment of customs duty. Therefore, the gold imported by the noticee in the form of paste from which 02 gold bars recovered and not declared before the Customs on her arrival in India and in commercial quantity cannot be treated as a bonafide household goods and thus the noticee has contravened the Para 2.26 of the Foreign Trade Policy 2015-20 and thereby 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 read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No.50/2017-Customs dated 30.06.2017 as amended. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by banks authorized by RBI or other authorized by DGFT and to some extent by passengers. Therefore, gold which is restricted item for import but which was imported without fulfilling the conditions for import becomes prohibited goods in terms of Section 2(33) and it is liable for confiscation under Section 111 of Customs Act, 1962.

**23.1** 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 fulfilment 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 fulfilment 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 ;*

*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 evident that conditions stipulated above were not fulfilled by the noticee. As per the statement, she went to Jeddah on 04.02.2025 and returned on 10.02.2025 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 conditions were 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 gold bars in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

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

*(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 bars were not declared by the noticee to the Customs under Section 77 of the Customs Act, 1962 and she 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 gold bars which were found concealed and recovered in manner as described above, was made by the Noticee, in the prescribed declaration form. Also, I find that noticee is not eligible to import gold and that too undeclared in substantial quantity of 674.140 grams and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

**23.3** 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 bars totally weighing 674.140 Grams recovered from the possession of noticee having market value of Rs. 59,04,118/- and admittedly smuggled into India. Further, the test report certified that the gold was of purity of 999.0/24kt which is not in conformity of locally available gold but similar to the gold brought from foreign countries. 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 origin found in her possession, thus failing to discharge the “burden of proof” that the gold was legally imported/possessed. She has 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.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Smt. Mumtaz Salimbhai Kandawala in prescribed declaration form. I also find that the noticee was not eligible to import the said gold items concealed by her in waist of underwear, hence the said gold is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**24.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon’ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of ‘prohibited

goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold items weighing 674.140 grams, were recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the manner of concealment is clever and pre-mediated.

**25.** In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold items. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Therefore, I hold that the said gold weighing 674.140 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in her statement dated 10.02.2025 stated that she has carried the said gold in form of paste and concealed the same in her underwear to evade payment of Customs duty. Under her waiver request, the noticee has agreed to pay the duty, penalty, fine and requested to redeem the gold on payment of redemption fine. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

**Section 125. Option to pay fine in lieu of confiscation. -**

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods <sup>1</sup> [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

*<sup>2</sup> [ **Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of [section 28](#) or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, <sup>3</sup> [no such fine shall be imposed]:*

***Provided** further that] , without prejudice to the provisions of the proviso to*

*sub-section (2) of [section 115](#), such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration." Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive." Now in the latest judgment the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer." Therefore, keeping in view the judicial pronouncement above and nature of concealment alongwith the facts of the case, **I do not inclined to exercise the option to allow redemption fine in lieu of confiscation of gold.** Further, to support my view, I also relied upon the following judgment which are as :-

**25.1.** 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]*

**25.2.** 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.

**25.3.** 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).*

**25.4** 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.*

**25.5.** 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”.

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

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

*“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.**”*

**25.7.** I find that the noticee has referred that there are number of judgments wherein the gold was released on payment of redemption fine. In this regard, I find that the Hon'ble Supreme Court in case of Ambica Quarry Works Vs. State of Gujarat & Others [1987 (1) S.C C.213] observed that "the ratio of any decision must be understood in the background of fact of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it." Further, in case of Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd 2003 (2) SC 111, the Hon'ble Apex Court observed "it is well settled that a little difference in facts or additional fact may make a lot of difference in the precedential value of a decision." In view of above, I hold that every case has different moments and facts when compare in minute-to-minute details. With respect to case law submitted it is stated that every case is unique and facts are different in every case, the same has to be considered accordingly. The orders are having different facts and even a small change in facts can completely change the complexion of the case. Given the facts of the present case before me and the judgements and rulings cited above, the said gold items viz. 02 gold bars totally weighing 674.140 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold items weighing 674.140 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.**

**26.** I further find that the noticee had involved herself and abetted the act of smuggling of the said gold bars weighing 674.140 grams, carried by her. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the nature of concealment of gold items is ingenious in nature and clearly showed that the noticee was not inclined to declare the same and she wants to clear the gold clandestinely, to evade the payment of applicable duty. Accordingly, 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 evade the Customs Duty by not declaring the gold items weighing 674.140 grams (02 gold bars). Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on her part. I further find that the noticee had involved herself and abetted the act of smuggling of the said gold items weighing 674.140 grams, carried by her. She has agreed and admitted in her statement that she travelled from Jeddah to Ahmedabad with the said gold items concealed in her underwear. Despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold items weighing 674.140 grams, having purity 999.0/24Kt, by concealment. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

27. Accordingly, I pass the following Order:

**ORDER**

- i. I order **absolute confiscation** of the impugned gold items i.e. two Gold bars having **total net weight of 674.140 Grams of purity of 999.0/24kt**, having tariff value of **Rs.53,45,580/-** (Rupees Fifty Three Lakhs Forty Five Thousand Five Hundred Eighty only) and market value of **Rs.59,04,118/-** (Rupees Fifty Nine Lakhs Four Thousand One Hundred Eighteen Only) recovered and seized from the noticee Smt. Mumtaz Salimbhai Kandawala vide Seizure Order dated 10.02.2025 under Panchnama proceedings dated 10.02.2025 under the provisions of Section 111(d), 111(l) & 111(m) of the Customs Act, 1962;

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- ii. I impose a penalty of **Rs.15,00,000/-** (Rupees Fifteen Lakh Only) on Smt. Mumtaz Salimbhai Kandawala under the provisions of Section 112 (a)(i) & Section 112 (b)(i) of the Customs Act 1962.

**28.** This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

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

F. No. VIII/10-05/SVPIA-A/O&A/HQ/2025-26      Date:30.06.2025  
DIN: 20250671MN000000A845

**BY SPEED POST A.D.**

To,  
**Smt. Mumtaz Salimbhai Kandawala,**  
**W/o Salimbhai Mahammadhusen Kandawala**  
2666, Khajuri Pole,  
Jamalpur, Ahmedabad-380001.

**Copy to:**

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
- (v) Guard File.