OIO No:16/ADC/SRV/O&A/2025-26
F. No. VIII/10-228/SVPIA-A/O&A/HQ/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद –380009.
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DIN No. 20250471MN0000222EED

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-228/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-228/SVPIA-A/O&A/HQ/2024-25 dated: 09.12.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**16/ADC/SRV/O&A/2025-26**
D	आदेशतिथि/ Date of Order-In-Original	:	**24.04.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**24.04.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Shri Kutbuddin Najirbhai Saniyarawala** S/o Shri Najirbhai Saniyarawala Amli Faliya, Vohra Cottage, Vhorwad, Godhara Panchmahal, Gujarat, India PIN-389001
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी 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: -

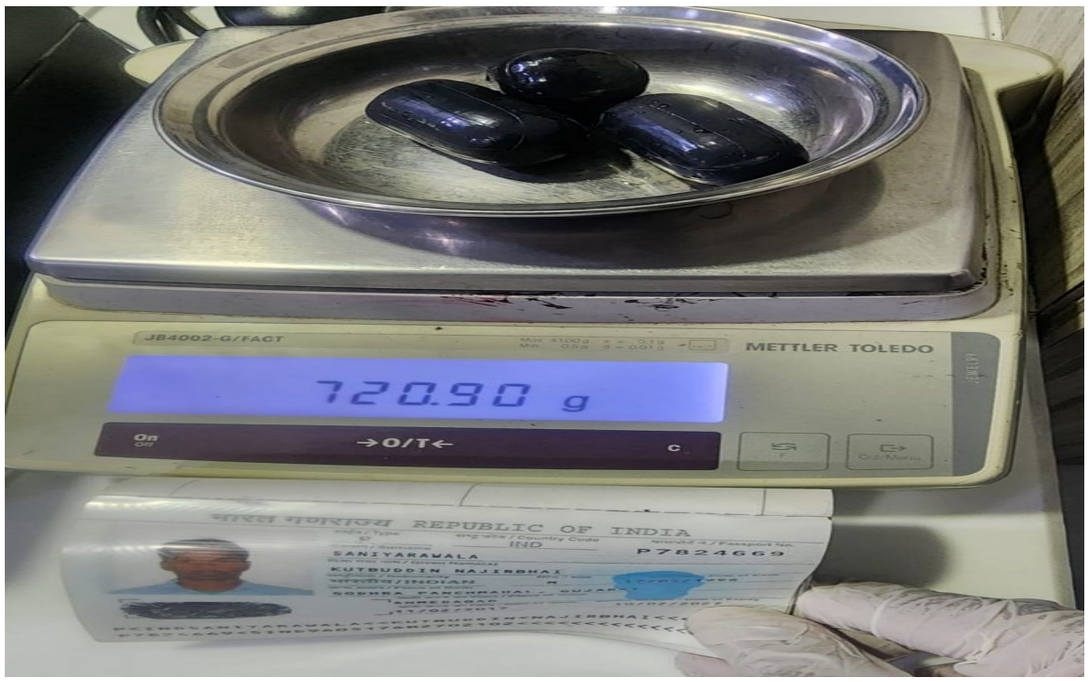
On the basis of specific inputs received by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a male passenger **Shri Kutbuddin Najirbhai Saniyarawala** (hereinafter referred to as the said "passenger/Noticee"), **aged 38 years S/o Shri Najirbhai Saniyarawala, residing at Amli Faliya, Vohra Cottage, Vhorwad, Godhara Panchmahal, Gujarat, India PIN-38900** arriving from Abu Dhabi by Indigo airlines Flight No. 6E 1432 on 27.06.2024 (Seat No. 10F) at the arrival Hall of the SVPIA, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said **Panchnama dated 27.06.2024**.

2. Whereas, the passenger was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. The officers asked /informed the passenger that a search of his baggage as well as his personal search was to be carried out and gave him 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 customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the officers. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival hall of Terminal 2 building; however no beep sound was heard. Further, no objectionable material was found from the baggage of the said passenger. However, upon sustained interrogation, the said passenger confessed that he had three capsules wrapped with black coloured adhesive tape consisting of gold paste inside his rectum. Thereafter, on being asked the passenger removed the three capsules of gold paste in the washroom from his body and handed over the same to the AIU officers. The officers of AIU also checked his baggage thoroughly but nothing objectionable was noticed.

2.1 Thereafter, the Customs officers called the Government Approved Valuer and informed him that three capsules wrapped with black coloured adhesive tape have been recovered from one passenger and the passenger **Shri Kutbuddin Najirbhai Saniyarawala** had informed that it was gold in paste form and hence, he is required to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informed the officers that the testing of the material is possible only at his workshop as gold

has to be extracted from semi-solid paste form by melting it and also informs the address of his workshop.

2.2 Thereafter, the AIU Officers, along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G.Road, Ahmedabad-380006. On reaching the above referred premises, the officers introduced the panchas, as well as the passenger to one person namely Mr. Soni Kartikey Vasantrai, Government Approved Valuer. Mr. Soni Kartikey Vasantrai, asked the officers in presence of panchas that he would do the examination of the 03 Capsules wrapped with black tape containing gold paste recovered from the Rectum of the passenger. The valuer started the detailed examination of the gold paste that was recovered from **Shri Kutbuddin Najirbhai Saniyarawala**. After weighing the said gold paste on his weighing scale, Shri. Soni provided detailed primary verification report of semi solid substance and informed that the weight of the semi solid substance mixture of gold and chemicals mix recovered has a Gross weight of **720.90** grams. The Photograph of the same is as:-



2.3 Thereafter, the Government approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Mr. Kartikey Vasantrai Soni started the process of converting the semi solid material concealed in the rectum of the passenger into solid gold. The semi solid substance consisting of Gold and Chemical mix put into the furnace and upon heating, the semi solid substance turned into mixture of

gold like material. The said substance consisting of gold was tested by the valuer for the gold component by putting in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time,

it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that 01 Gold bar weighing **647.82** grams having purity 999.0/24 Kt. was derived from 720.90 grams paste concealed in the rectum of the passenger. The Photograph of the same is

3. After testing the said derived bar, the Government Approved Valuer confirmed that it is pure gold and Shri Soni Kartikey Vasantrai issued a Certificate, vide Certificate No. 351/2024-25 dated 27.06.2024, wherein it is certified that the gold bar is having purity 999.0/24kt, weighing 647.82 grams. The valuation provided by the said Govt. Approved Valuer is summarized as under:

Sr. No.	**Item particulars**	**PCS**	**Net Weight (in grams)**	**Market Value (In Rs.)**	**Tariff Value (In Rs.)**
1.	Gold bar - 999.0 purity	1	647.82	47,54,351/-	40,63,075/-
	Total	1	647.82	47,54,351/-	40,63,075/-

3.1 Whereas, the Govt. Approved Valuer informs that the total Market Value of the said gold bar having purity 999.00 24 Kt is Rs. 47,54,351/- (Rupees Forty Seven Lakhs Fifty Four Thousand Three Hundred Fifty One only) and is having tariff value of Rs. 40,63,075/- (Rupees Forty Lakhs Sixty

Three Thousand Seventy Five only), which has been calculated as per the Notification No. 43/2024-Customs (N.T.) DTD. 14-06-2024 (Gold) and Notification No. 45/2024-Customs (N.T.) dtd. 20-06-2024 (exchange Rate). He submits his valuation report to the AIU Officers vide Certificate No. 351/2024-25 dated 27.06.2024.

3.2 Thereafter, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the proceedings of the extraction of gold at the workshop, along with the extracted gold bar on 27.06.2024.

Seizure of the above gold bar:

4. The said 01 gold bar totally weighing 647.82 Grams was recovered 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. Therefore, the said gold Bar totally weighing 647.82 grams having purity 999 & having Market Value of is Rs. 47,54,351/- (Rupees Forty Seven Lakhs Fifty Four Thousand Three Hundred Fifty One only) and is having tariff value of Rs. 40,63,075/- (Rupees Forty Lakhs Sixty Three Thousand Seventy Five only), were placed under seizure vide order dated 27.06.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold bar is liable for confiscation under Section 111 of the Customs Act, 1962.

5. Statement of Shri Kutbuddin Najirbhai Saniyarawala:

Statement of Kutbuddin Najirbhai Saniyarawala was recorded under Section 108 of the Customs Act, 1962 on 27.06.2024 (**RUD-4**), wherein he gave his personal details like name, age, address, education, profession and family details and informed that he is uneducated and earns ten to fifteen thousand rupees per month. Further, he inter alia stated as under:

5.1 He visited abroad 2 times. Firstly he visited Sharjah and then he visited Dubai at that time. During his trip to Dubai, he was approached by an unknown person who purchased and handed over gold capsules to him. He stated that he had no idea about the source of money and how it got purchased. He stated that this was his first attempt at smuggling gold. He further informed that the "to and fro" tickets were arranged by the unknown person.

5.2 He perused the Panchnama dated 27/06/2024 and stated that the fact narrated therein were true and correct.

5.3 He further stated that he had attempted to smuggle the said gold paste illegally into India to earn quick money and that he was aware that smuggling of gold without payment of duty was an illegal activity.

From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of The Baggage Rules, 2016, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 03 gold capsules (one Gold bar) totally weighing 647.82 Grams having purity of 24 KT/999.0 were recovered from the rectum of **Shri Kutbuddin Najirbhai Saniyarawala** who had arrived from Abu Dhabi by Indigo airlines Flight No. 6E 1432 on 27.06.2024 (Seat No. 10F) at T-2 of SVPIA Ahmedabad. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules and for these reasons alone it cannot be considered as a bonafide baggage under the Customs Baggage Rules 2016 as amended. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold items totally weighing 647.82 Grams having purity of 24 KT/999.0 because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 647.82 Grams having purity of 24 KT/999.0 recovered from **Shri Kutbuddin Najirbhai Saniyarawala**, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 647.82 Grams having purity of 24 KT/999.0 is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 647.82 Grams recovered from the rectum of **Shri Kutbuddin Najirbhai Saniyarawala** who had arrived from Abu Dhabi by Indigo airlines Flight No. 6E 1432 on 27.06.2024 (Seat No. 10F) at T-2 of SVPIA Ahmedabad, were placed under seizure vide Panchanama dated 27.06.2024 and Seizure order dated 27.06.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

Summation:

6. The aforementioned proceedings indicates that **Shri Kutbuddin Najirbhai Saniyarawala** had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold bar having purity 999.00 24 Kt and having Market Value of Rs. 47,54,351/- (Rupees Forty-Seven Lakhs Fifty-Four Thousand Three Hundred Fifty-One only) and is having tariff value of Rs. 40,63,075/- (Rupees Forty Lakhs Sixty-Three Thousand Seventy-Five only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure.

7. <u>Legal provisions relevant to the case:</u>

Foreign Trade Policy 2015-20 and Foreign Trade (Development and Regulation) Act, 1992

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, 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. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

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 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.

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

(n) any dutiable or prohibited goods transitted with or without transhipment 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 he 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 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.

7.15 All dutiable goods imported into India by a passenger in his 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 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 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 his 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.

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	(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 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	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) **Shri Kutbuddin Najirbhai Saniyarawala** had attempted to smuggle/improperly import 03 Gold capsultes (1 gold bar) totally weighing 647.82 Grams having purity 24KT /999.0 and having Market Value of Rs. 47,54,351/- (Rupees Forty Seven Lakhs Fifty Four Thousand Three Hundred Fifty One only) and is having tariff value of Rs. 40,63,075/- (Rupees Forty Lakhs Sixty Three Thousand Seventy Five only), derived from his rectum in form of 03 gold capsules, with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. The passenger had knowingly and intentionally smuggled the said gold in his rectum on his arrival from Abu Dhabi by Indigo airlines Flight No. 6E 1432 on 27.06.2024 (Seat No. 10F) T-2 Ahmedabad, with an intent to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by **Shri Kutbuddin Najirbhai Saniyarawala,** by way of concealment in his rectum and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. **Shri Kutbuddin Najirbhai Saniyarawala** 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, as amended.

(ii) **Shri Kutbuddin Najirbhai Saniyarawala** , by not declaring the gold concealed in his rectum, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended vide Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification 31/2016 (NT) dated 01.03.2016.

(iii) The improperly imported/smuggled gold by **Shri Kutbuddin Najirbhai Saniyarawala**, concealed gold in his rectum before arriving from Abu Dhabi by Indigo airlines Flight No. 6E 1432 on 27.06.2024 (Seat No. 10F), T-2 Ahmedabad, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(iv) **Shri Kutbuddin Najirbhai Saniyarawala**, 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 said Gold items totally weighing 647.82 grams which was recovered from the rectum of **Shri Kutbuddin Najirbhai Saniyarawala** who arrived Abu Dhabi by Indigo airlines Flight No. 6E 1432 on 27.06.2024 (Seat No. 10F), at Terminal -2, SVPIA Ahmedabad are not smuggled goods, is upon **Shri Kutbuddin Najirbhai Saniyarawala** , who is the Noticee in this case.

10. Accordingly, a Show Cause Notice was issued to **Shri Kutbuddin Najirbhai Saniyarawala, aged 38 years S/o Shri Najirbhai Saniyarawala, residing at Amli Faliya, Vohra Cottage, Vhorwad, Godhara Panchmahal, Gujarat, India PIN-38900**, as to why:

(i) The 01 Gold Bar weighing **647.82 Grams** having purity 24KT /999.0 and having Market Value of **Rs. 47,54,351/- (Rupees Forty Seven Lakhs Fifty Four Thousand Three Hundred Fifty One only)** and is having tariff value of **Rs. 40,63,075/- (Rupees Forty Lakhs Sixty**

Three Thousand Seventy Five only) recovered from the rectum of **Shri Kutbuddin Najirbhai Saniyarawala**, who arrived Abu Dhabi by Indigo airlines Flight No. 6E 1432 on 27.06.2024 (Seat No. 10F), at Terminal -2, SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 27.06.2023 and Seizure Memo Order dated 27.06.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon the **Shri Kutbuddin Najirbhai Saniyarawala,** under Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

11. The noticee has not submitted any written submission to the Show Cause Notice issued to him.

12. The noticee was given opportunity for personal hearing on 28.02.2025, 17.03.2025 & 04.04.2025 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

12.1 Before, proceeding further, I would like to mention that Hon'ble Supreme Court, High Courts and Tribunals have held, in several judgments/decision, that ex-parte decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon some the relevant judgments/orders which are as under-

a) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the

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

b). Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), the Hon'ble Court has observed that;

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

c) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon'ble court has observed that;

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also

been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

d) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.). The Hon'ble Court has observed that:

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

e) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), the Hon'ble CESTAT has observed that;

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

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

"Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date

of personal hearing for four times; but the petitioner did not respond to either of them.

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

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

Discussion and Findings:

13. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

14. In the instant case, I find that the main issue to be decided is whether the 647.82 grams of 01 gold bar (derived from the paste of gold and chemical hidden/concealed in his rectum in form of 03 capsules) of 24KT (999.0 purity), having Tariff Value of Rs. 40,63,075/- and Market Value of Rs. 47,54,351/-, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 27.06.2024 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

15. I find that the Panchnama has clearly drawn out the fact that on the basis of Specific input, Shri Kutbuddin Najirbhai Saniyarawala was suspected to be carrying restricted/prohibited goods and accordingly intercepted by AIU officers while he was trying to exit through the green channel without making any declaration and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers under Panchnama

proceedings dated 27.06.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he is not carrying any high valued dutiable goods. Further, no objectionable material was found from the baggage of the said passenger. However, upon sustained interrogation, the said passenger confessed that he had three capsules wrapped with black coloured adhesive tape consisting of gold paste inside his rectum. Thereafter, on being asked the passenger removed the three capsules of gold paste in the washroom from his body and handed over the same to the AIU officers. The officers of AIU also checked his baggage thoroughly but nothing objectionable was noticed.

16. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said 03 capsules wrapped with black coloured adhesive tape consisting of gold and chemical mix and informed that the weight of said capsules was **720.90** Grams. After completion of process of extraction of gold from the gold and chemical mix paste, the govt. approved valuer informed that 01 gold bar was extracted having purity 999.0/24KT and weight of said gold bar was 647.82 grams. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said derived 01 gold bar is **Rs.40,63,075/-** and Market value is **Rs.47,54,351/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	01	647.82	999.0/ 24Kt	47,54,351/-	40,63,075/-

17. Accordingly, the said 01 gold bar (derived from gold and chemical mix in form of 03 capsules concealed in his rectum) having purity 999.0/24 Kt. weighing 647.82 grams, recovered from noticee was seized vide Panchnama dated 27.06.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold bar was smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same was liable for

confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 647.82 grams of 01 gold bar, having Tariff Value of **Rs.40,63,075/-** and Market value is **Rs.47,54,351/-** carried by the passenger appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 27.06.2024 under Section 108 of the Customs Act, 1962.

18. I also 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 his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the noticee. In fact, in his statement, he has clearly admitted that the said gold was not purchased him and an unknown person at Dubai handed over him the gold in form of capsules containing gold and to earn quick money he agreed to carry/smuggle the same. He further admitted that the gold in form of capsules was not belonging to him and not purchased by him. He was fully aware that the gold in form of 03 capsules was concealed in his rectum. I find that under the statement, he admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. His intention was to evade the customs duty, so he had done this illegal carrying of gold of 24KT. in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

19. Further, the noticee has accepted that he had not declared the said gold concealed by him, on his 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 01 gold bar derived from the paste, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his 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. Thus, it is proved that the passenger 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. 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.

20. From the facts discussed above, it is evident that noticee had carried the said gold weighing 647.82 grams, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold bar of 24KT/999.00 purity totally weighing 647.82 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By concealing the said gold in form of paste of gold and chemical containing in form of capsules in his rectum and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

21. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for

passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013* and he was tried to exit through Green Channel which shows that the noticee 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 weighing 647.82 grams concealed by him, 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.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 647.82 grams, having Tariff Value of Rs.40,63,075/- and Market Value of Rs.47,54,351/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 27.06.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in paste of gold and chemical in form of Capsules and concealed the same in his rectum, 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 he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. *It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had*

reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

22. I find that the Noticee confessed of carrying the said gold of 647.82 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

23. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to smuggle the same clandestinely and to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bar weighing 647.82 grams, having Tariff Value of Rs.40,63,075/- and Market Value of Rs.47,54,351/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 27.06.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bar weighing 647.82 grams, by deliberately not declaring the same by him on arrival at airport with the

wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 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 noticee, trying to smuggle it and was not eligible passenger to bring it in India or import gold into India in baggage as per the prescribed conditions. The said gold bar weighing 647.82 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the noticee concealed the said gold in his rectum in form of capsules containing gold and chemical mix. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

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/submitted to prove licit import of the seized gold bar, which shows that the noticee has nothing to submit in his defense and sole purpose of the noticee to smuggle the same into India and to avoid the payment of duty without declaring the same before customs authority at airport. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123.*** Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of capsules in his rectum with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 647.82 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 his statement dated 27.06.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit/personal benefit and that too by concealment of the said gold in form of paste in capsules in his rectum. ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

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

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

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

27. 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.

28. 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).*

29. 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.*

30. 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".

31. 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."*

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*"**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**."*

32. Given the facts of the present case before me and the judgements and rulings cited above, the said 01 gold bar weighing 647.82 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 647.82 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962**.

33. As regard imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Kutbuddin Najirbhai Saniyarawala, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold and deliberately concealed the gold in form of paste in capsules in his rectum, thus, established that

the concealment of said gold is ingenious in nature. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that *"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute."* In the instant case, the noticee was attempting to smuggled the gold bar and attempting to evade the Customs Duty by not declaring the gold weighing 647.82 grams having purity of 999.0 and 24K. 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 his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said 01 gold bar weighing 647.82 grams, carried by him. He has agreed and admitted in his statement that he travelled from Dubai to Ahmedabad with the said gold in form paste in capsules concealed in his rectum. Despite his knowledge and belief that the gold carried by him 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 of 647.82 grams, having purity 999.0/24kt by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same 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) and Section 112(b) of the Customs Act,1962 and I hold accordingly.

34. Accordingly, I pass the following Order:

O R D E R

i) I order **absolute confiscation** of 01 gold bar weighing **647.82** grams having purity of 999.0 (24KT.) derived from paste of gold and chemical mix, containing in form of 03 capsules concealed in his rectum, having Market value of **Rs.47,54,351/-** and Tariff Value of **Rs.40,63,075/-**, placed under seizure under Panchnama dated 27.06.2024 and seizure memo order dated 27.06.2024, under the provision of

Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs. 12,00,000/- (Rupees Twelve Lakh Only)** on **Shri Kutbuddin Najirbhai Saniyarawala** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

35. Accordingly, the Show Cause Notice No. VIII/10-228/SVPIA-A/O&A/HQ/2024-25 dated 09.12.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 24-04-2025 17:39:42

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-228/SVPIA-A/O&A/HQ/2024-25 Date:24.04.2025
DIN: 20250471MN0000222EED

BY SPEED POST AD

To,
Shri Kutbuddin Najirbhai Saniyarawala
S/o Shri Najirbhai Saniyarawala
Amli Faliya, Vohra Cottage, Vhorwad,
Godhara Panchmahal,
Gujarat, India PIN-389001

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in
6. Guard File.