

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/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.20250171MN000000F378

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-143/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-143/SVPIA-A/O&A/HQ/2024-25 dated: 11.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	234/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	23.01.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	23.01.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Smt. Mehjabeen Mujahid Ali Qureshi, 293/295, Khandwani Bldg, 1st Floor, Room No. 13-14, Maulana Azad Road, Two Tank, Mumbai, Pin-400004, Maharashtra, India.
(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:		

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

(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: -

Mrs. Mehjabeen Mujahid Ali Qureshi, (hereinafter referred as “the passenger/ Noticee”), aged 39 years (DOB 31.07.1984) Wife of Shri Mujahid Ali Qureshi, holding Indian Passport No. Z5778625 address (as per passport): 293/295, Khandwani Bldg, 1st Floor, Room No. 13-14, Maulana Azad Road, Two Tank, Mumbai, Pin-400004, Maharashtra, India arrived from Abu Dhabi to Ahmedabad on 04.02.2024 by Flight No. EY 284 at SVPI Airport, Ahmedabad around 3:30 hours. On the basis of passenger profiling and suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration to the Customs, under the panchnama proceedings dated 04.02.2024 in presence of two independent witnesses for passenger’s personal search and examination of her baggage.

2. The pax 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 informed the passenger that they would be conducting her personal search and detailed examination of her baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether she wanted to be checked

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave her consent to be searched in presence of the Superintendent of Customs. The officer asked her to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger readily removed all the metallic objects from her body/clothes such as mobile, purse etc. and kept it in a tray placed on the table and while the passenger passed through the DFMD machine, no beep sound was heard indicating that nothing objectionable/dutiable item was on her body. Thereafter, the said passenger, the panchas and the officers moved to the AIU office located opposite belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The AIU officers checked the baggage of the passenger thoroughly. All the bags were scanned in the X-Ray Baggage Scanning Machine (XBIS) located near the green channel counter at terminal 2 of SVPI Ahmedabad. On checking her baggage some suspicious /objectionable x-ray images were noticed/observed by the AIU officers. Hence, the officers asked the passenger about the suspicious x-ray image but she didn't give a satisfactory reply. The officer of the AIU again and again asked the passenger whether she is carrying any dutiable/contraband item but again she denied. However, the officer of AIU have strong belief that the dress material which shows suspicious x-ray image is doubtful, so the officers of AIU asked to opened the packet, the same were opened by the passenger while the dress materials were checked and taken in to hand it was noticed that the four dress materials clothes were of very poor quality and too heavy than the other dress material, now it becomes more doubtful and also the x-ray image shows suspicious (like gold dust/paste sprayed on the cloth/dress material). On

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

sustained interrogation about the said dresses, in presence of the panchas, the passenger stated that the said baggage was not pertaining to her but it was handed over to her from her friend just to hand over the same to another person at Ahmedabad and she did not know anything about the same. However, she said that she was ready to co-operate in the matter. So, it needs to confirm whether there is gold in the said dresses or not.

2.1 Therefore, in presence of panchas, the AIU officers called Shri Kartikey Vasantrai Soni, the Govt. Approved Valuer for testing the content of the dress material. In reply the Govt. Approved valuer said the testing of the material is only possible at his workshop. So, the AIU officer, two panchas and the passenger reached the premises of the Govt. Approved valuer situated at 301, Golden Signature, B/h. Ratnam Complex, C.G. Road, Ahmedabad-380006.

2.2 The Government Approved Valuer examined all the dress/dresses materials and stated that he is not sure as to whether the said dress materials are containing any yellow metals inside it since prima facie it appeared that some liquid material is poured into the fabrics of clothes and in the circumstances, he suggested to go for a sample analysis and to burn one piece of dress material out of four first to confirm if any gold paste in liquid form is poured on it or not. First, he started the detailed examination of the dress materials recovered from Mehjabeen Mujahid Ali Qureshi. After weighing the said dress materials on his weighing scale, Mr. kartikey Vasantrai Soni informed that the dress materials coated with the Gold having Gross weight 1220.800 grams and 1481.500 grams. The photograph of the same is as under-

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25



2.3 Thereafter, in presence of the panchas, Mr. kartikey Vasantrai Soni burned the one piece of the dress and extracted the ash from it for its further process. After that, in presence of the panchas the Government Approved Valuer Shri Kartikey Vasantrai Soni started the process of converting the said ash materials extracted from the burning of dress materials to convert it into solid gold. After giving the material perfect heating and sufficient time say about 45 to 50 minutes, it turns into liquid material which indicates the presence of heavy yellow material. In presence of the panchas after due process, government valuer confirmed that the said piece of dress/dress material is containing heavy yellow metal such as gold in it. Thereafter, in presence of the panchas, the Government Approved Valuer Shri Kartikey Vasantrai Soni repeated the process of burning, heating and extracting the heavy yellow material from remaining dress materials. Thereafter, the Government Approved Valuer i.e. Shri Kartikey Vasantrai Soni informed that the total weight of Gold Ashes after burning the dress materials is 189.540 grams and

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

242.470 grams (total 432.01 grams). The photograph of the same is as under-



2.4 After completion of the process, the Government Approved Valuer Shri Kartikey Vasantraai Soni informed that two gold bars total weighing **195.630 grams** (100.900 grams + 94.730 grams) having purity of 999.00 (24Kt.) derived from the said dress materials.

2.5 After testing the said 195.630 grams gold the Government Approved Valuer confirmed vide his Valuation certificate

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

No.1301/2023-24 dated 04.02.2024 that it was pure gold. Further, he informed that the total Market Value of the said recovered gold is **Rs.12,71,204/- (Rupees Twelve Lac Seventy-One Thousand Two Hundred and Four only) and Tariff Value is Rs.10,87,212/- (Rupees Ten Lac Eighty Seven Thousand Two Hundred and Twelve Only)**. The value of the gold bar has been calculated as per the Notification No. 09/2024-Customs (N.T.) dated 31.01.2024 (gold) and Notification No. 10/2024-Customs (N.T.) dated 01.02.2024 (exchange rate). The outcome of the said testing is summarized in below table:

Sr. No.	Detail s of Items	Pieces	Purity	Net Weight (in Grams)	Market Value (In Rs.)	Tariff Value (In Rs.)
1	Gold Bar	02	24kt. Gold, 999.0	195.63 0	12,71,204/-	10,87,212/ -

2.6. The photograph of the extracted gold bar is as follows:-

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25



3. The following documents produced by the passenger Mrs. Mehjabeen Mujahid Ali Qureshi were withdrawn under the Panchnama dated 04.02.2024:-

- (i) Boarding pass showing Seat No. 29D of Etihad Flight No. EY284 dated 04.02.2024 from Abu Dhabi to Ahmedabad.
- (ii) Copy of Stamped pages of Passport No. Z5778625 issued at Mumbai on 30.09.2019 valid up to 29.09.2029.
- (iii) Copy of Aadhar Card No. 278938823314 showing her residence address as W/o Shri Mujahid Ali Qureshi, address- 293, Khandwani Bldg, 1st Floor, Room No. 13, Maulana Azad Road, Two Tank, Mumbai, Pin-400004, Maharashtra.

4. Accordingly, 02 gold bars having purity 999.0/24 Kt. total weighing 195.630 grams, derived from the dress materials recovered from Mrs. Mehjabeen Mujahid Ali Qureshi was seized vide Panchnama dated 04.02.2024, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bars was smuggled

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made there under.

5. A statement of the passenger Smt. Mehjabeen Mujahid Ali Qureshi dated 04.02.2024 was recorded under Section 108 of the Customs Act, 1962 wherein she stated that:

- i. She is a housewife and lives in Mumbai with her husband and four kids. She has studied 12th;
- ii. On being asked regarding her overseas travels, she stated that she is a frequent traveller for purchase of the clothes/dresses/Burkhas & Abaya as she has small business. Her ticket was booked by her brother and she travelled on 26.01.2024 from Mumbai to Hyderabad to Sharjah. When she planned to return to India some unknown person was given this trolley bag and told her to deliver/handover the same in India and for this delivery he will pay Rs. 15000/- to her. The person who will be received her after arriving in India at Ahmedabad Airport, she don't know his name and his contact number.
- iii. She had never indulged in any smuggling activity in the past. This is the first time for her to brought gold from abroad.
- iv. She stated that she had intentionally not declared the seized items, i.e. gold before the Custom Authorities on her arrival at SVP International Airport Ahmedabad as she wanted to clear it illicitly and evade payment of Customs Duty; she said that she was fully aware of the concealment of the gold by way of spray on clothes, she was fully aware that clearing gold without declaring before Customs, with an intent to evade payment of Customs duty was an offence, under the provisions of Customs Act, 1962 and regulations;
- v. She also stated that she did not fill any Declaration form for declaring dutiable goods to Customs as she wanted to clear it illicitly and evade payment of duty to raise some quick money for her own benefit and the same will be handover to other unknown person at SVPI Airport.

6. The above said 02 gold bars total weighing 195.630 grams, valued at Rs.10,87,212/- (Tariff value) and Rs.12,71,204/- (Market

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

value), recovered from Mrs. Mehjabeen Mujahid Ali Qureshi, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing gold in the form of spray on clothes, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the 02 Gold bars total weighing 195.630 grams which was attempted to be smuggled by Mrs. Mehjabeen Mujahid Ali Qureshi, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said 02 gold bars total weighing 195.630 grams derived from the dress materials was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 04.02.2024.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

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

(22) *"goods" includes-*

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

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

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

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

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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

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

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

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

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

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

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

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

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

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

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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

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

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

VII) Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation."

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

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

I) Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."*

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

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

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

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

CONTRAVENTION AND VIOLATION OF LAWS

8. It therefore appears that:

- (a) The passenger viz. Smt. Mehjabeen Mujahid Ali Qureshi had dealt with and knowingly indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 195.630 grams having purity 999.0/24 Kt. concealing in form of spray on clothes and having Market Value of Rs.12,71,204/- (Rupees Twelve Lac Seventy One Thousand Two Hundred and Four only) and Tariff Value is Rs.10,87,212/- (Rupees Ten Lac Eighty Seven Thousand Two Hundred and Twelve Only). The above said gold was in the form of gold paste/dust sprayed on dress material/clothes and not declared to the Customs. The passenger opted green channel to exit the Airport with the

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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. Thus, the element of mens rea appears to have been established beyond doubt. Therefore, the improperly imported 02 gold bar weighs 195.630 grams of purity 999.0/24 Kt. by Smt. Mehjabeen Mujahid Ali Qureshi by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger 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.

- (b) By not declaring the value, quantity and description of the goods imported by her, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported gold by the passenger viz. Smt. Mehjabeen Mujahid Ali Qureshi found concealed in form of gold dust/paste sprayed on clothes, 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.
- (d) Smt. Mehjabeen Mujahid Ali Qureshi by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.
- (e) As per Section 123 of Customs Act 1962, the burden of proving that the gold in the form of bar weighing 195.630 grams of purity 999.0/24 Kt. and having Market value of Rs.12,71,204/- (Rupees Twelve Lac Seventy One Thousand Two Hundred and Four only) and Tariff Value is Rs.10,87,212/- (Rupees Ten Lac Eighty Seven Thousand Two

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

Hundred and Twelve Only) derived from dress materials, without declaring it to the Customs, is not smuggled goods, is upon the passenger Smt. Mehjabeen Mujahid Ali Qureshi.

09. Accordingly, a Show Cause Notice was issued to **Smt. Mehjabeen Mujahid Ali Qureshi** Aged 39 years (DOB 31.07.1984) wife of Shri Mujahid Ali Qureshi, holding Indian Passport No. Z5778625 address (as per passport): 293/295, Khandwani Bldg, 1st Floor, Room No. 13-14, Maulana Azad Road, Two Tank, Mumbai, Pin-400004, as to why:

- i. Two gold bars total weighing **195.630** grams having purity of 999.0 (24 Kt) having Market Value of **Rs.12,71,204/-** (Rupees Twelve Lac Seventy One Thousand Two Hundred and Four only) and Tariff Value is **Rs.10,87,212/-** (Rupees Ten Lac Eighty Seven Thousand Two Hundred and Twelve Only), derived from gold concealed in the form of gold paste/dust sprayed on dress materials by the passenger and placed under seizure under panchnama proceedings dated 04.02.2024 and Seizure Memo Order dated 04.02.2024, should not be confiscated under the provisions of Sections 111(d), 111 (f), 111(i), 111 (j), 111 (l) and 111(m) of the Customs Act, 1962 and ;
- ii. Penalty should not be imposed upon the passenger under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.;

Defense reply and record of personal hearing:

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

11. The noticee was given opportunity for personal hearing on 09.12.2024, 20.12.2024 & 27.12.2024 but she failed to appear and represent her case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

times but she failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and she do not have anything to say in her 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.

11.1 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.

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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:

12. 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 her reply/submissions or to appear for the personal hearing opportunities offered to her. The adjudication proceedings cannot wait until the Noticee makes it convenient to file her 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.

13. In the instant case, I find that the main issue to be decided is whether the **195.630 grams** of 02 gold bars, derived from gold concealed in the form of gold paste/ dust sprayed on dress

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

materials, having tariff value of **Rs.10,87,212/-** and market value is **Rs.12,71,204/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 04.02.2024, 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 noticee is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the panchnama dated 04.02.2024 clearly draws out the fact that the noticee, who arrived from Abu Dhabi in Flight No. EY 284 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad On the basis of passenger profiling and suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration to the Customs. While the noticee passed through the Door Frame Metal Detector (DFMD) Machine no beep sound was heard which indicated there was no objectionable/dutiable substance on her body/clothes. Thereafter, the said passenger, the Panchas and the officers of AIU moved to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad alongwith the baggage of the passenger. Thereafter, the said passenger, the panchas and the officers moved to the AIU office located opposite belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The AIU officers checked the baggage of the passenger thoroughly. All the bags were scanned in the X-Ray Baggage Scanning Machine (XBIS) located near the green channel counter at terminal 2 of SVPI Ahmedabad. On checking her baggage some suspicious /objectionable x-ray images were noticed/observed by the AIU officers. Hence, the officers asked the passenger about

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

the suspicious x-ray image but she didn't give a satisfactory reply. The officer of the AIU again and again asked the passenger whether she is carrying any dutiable/contraband item but again she denied. However, the officer of AIU have strong belief that the dress material which shows suspicious x-ray image is doubtful, so the officers of AIU asked to open the packet, the same were opened by the passenger while the dress materials were checked and taken in to hand it was noticed that the four dress materials clothes were of very poor quality and too heavy than the other dress material, now it becomes more doubtful and also the x-ray image shows suspicious (like gold dust/paste sprayed on the cloth/dress material). On sustained interrogation about the said dresses, in presence of the panchas, the passenger stated that the said baggage was not pertaining to her but it was handed over to her from her friend just to hand over the same to another person at Ahmedabad and she did not know anything about the same. However, she said that she was ready to co-operate in the matter. So, it needs to confirm whether there is gold in the said dresses or not.

14.1 It is also on the record that the Government Approved valuer Shri Kartikey Vasantrai Soni examined the dress materials recovered from Mehjabeen Mujahid Ali Qureshi. After weighing the said dress materials on his weighing scale, Mr. kartikey Vasantrai Soni informed that the dress materials coated with the Gold having Gross weight 1220.800 grams and 1481.500 grams and after burning the said dress material, he informed that total weight of Gold Ashes after burning the dress materials is 189.540 grams and 242.470 grams (total 432.01 grams) and after completion of the extraction process, the Government Approved Valuer Shri Kartikey Vasantrai Soni informed that two gold bars total weighing **195.630 grams** (100.900 grams + 94.730 grams) having purity of 999.00 (24Kt.) derived from the said dress materials and submitted his

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

valuation report vide certificate No.1301/2023-24 dated 04.02.2024, wherein he mentioned that the total Market Value of the said recovered gold is **Rs.12,71,204/- (Rupees Twelve Lac Seventy-One Thousand Two Hundred and Four only) and Tariff Value is Rs.10,87,212/- (Rupees Ten Lac Eighty Seven Thousand Two Hundred and Twelve Only)**. The value of the gold bar has been calculated as per the Notification No. 09/2024-Customs (N.T.) dated 31.01.2024 (gold) and Notification No. 10/2024-Customs (N.T.) dated 01.02.2024 (exchange rate).

15. I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of 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 04.02.2024, she has clearly admitted that she had travelled from Abu Dhabi to Ahmedabad by Flight No. EY 284 dated 04.02.2024 carrying/concealed the gold by spraying the paste/dust on clothes. She admitted that the said gold was not her and also not purchased by her. The gold in form of paste was given by someone and directed to deliver the same in India for an amount of Rs. 15,000/-. Further, she mentioned that she had intentionally not declared the substance containing foreign origin gold 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.

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

16. I find that the noticee has clearly accepted that she had not declared the said gold bars (derived from gold concealed in the form of gold paste/ dust sprayed on dress materials), to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the foreign origin gold before the Customs Authorities on her arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that 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, 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.

17. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 195.630 gms., retrieved/derived from gold concealed in the form of gold paste/ dust sprayed on dress materials, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 195.630 gms., seized under panchnama dated 04.02.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By secreting the gold in form of capsules having gold and chemical mix concealed in her rectum and not

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

declaring the same before the Customs, it is established that the passenger/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.

18. 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 her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended and she 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 195.630 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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.

19. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity weighing 195.630 gms., retrieved/derived from gold concealed in the form of gold paste/ dust sprayed on dress materials, having total Tariff Value of Rs.10,87,212/- and market Value of Rs.12,71,204/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 04.02.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing in the form of gold paste/ dust sprayed on dress materials and without declaring to the Customs on arrival in India, it is observed that the passenger/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 and failed to declare the same to the Customs on his arrival at the 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 were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

20. I find that the passenger/noticee has confessed of carrying gold of 24 kt having 999.0 purity, weighing 195.630 grams and attempted to remove the said gold by concealing the gold in her rectum and attempted to remove the said gold from the Customs Airport without declaring it to the Customs Authorities violating the

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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 Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. 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 passenger 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.

21. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. One Gold Bar weighing 195.630 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bar Rs.12,71,204/- and Tariff Value Rs.10,87,212/- retrieved/ derived from gold concealed in the form of gold paste/ dust sprayed on dress materials, were placed under seizure vide panchnama dated 04.02.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, she attempted to remove

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

the gold by concealing in the form of gold paste/ dust sprayed on dress materials and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) of Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

22. I further find that gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfillment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger trying to smuggle the same was not eligible passenger to bring or import gold into India in baggage. The gold was recovered in a manner concealed in rectum in form of capsules and kept undeclared with an intention to smuggle the same and evade payment of customs duty. 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.

23. In view of the above discussions, I hold that the gold weighing 195.630 grams of 24Kt./999.0 purity, retrieved/ derived from gold concealed in the form of gold paste/ dust sprayed on dress materials and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

in concealed manner for extraneous consideration. In the instant case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

24. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble 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 has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

25. Further I find that in a 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)."

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

26. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)] has held-

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

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

27. 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 7-10-2019 in F. No.375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

28. 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."

24.....

25.....

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

29. Given the facts of the present case before me and the judgements and rulings cited above, 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 bars. 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 the form of gold paste/ dust sprayed on dress materials, with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 195.630 grams of 24Kt./999.0 purity in form of gold bar, retrieved/

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

derived from gold concealed in the form of gold paste/ dust sprayed on dress materials is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 195.630 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.**

30. I further find that the passenger had involved herself in the act of smuggling of gold weighing 195.630 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules. Further, it is fact that the passenger/noticee has travelled with gold weighing 195.630 grams of 24Kt./999.0 purity, retrieved from paste concealed in her rectum, from Abu Dhabi to Ahmedabad 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 thereunder. Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Sections 112 of the Customs Act, 1962 and I hold accordingly.

31. Accordingly, I pass the following Order:

ORDER

- i.)** I order absolute confiscation of the Two Gold Bar weighing **195.630** grams having Market Value at **Rs.12,71,204/-** (Rupees Twelve Lac Seventy One Thousand Two Hundred and Four only) and Tariff Value is **Rs.10,87,212/-** (Rupees Ten Lac Eighty Seven

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

Thousand Two Hundred and Twelve Only) derived/retrieved from gold concealed in the form of gold paste/dust sprayed on dress materials by the passenger/noticee Smt. Mehjabeen Mujahid Ali Qureshi and placed under seizure under panchnama dated 04.02.2024 and seizure memo order dated 04.02.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- ii.)** I impose a combined penalty of **Rs. 3,00,000/-** (Rupees Three Lakh Only) on Smt. Mehjabeen Mujahid Ali Qureshi under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

32. Accordingly, the Show Cause Notice No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25 dated 11.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25 Date:23.01.2025

DIN: 20250171MN000000F378

By SPEED POST A.D.

To,
Smt. Mehjabeen Mujahid Ali Qureshi,
293/295, Khandwani Bldg,
1st Floor, Room No. 13-14,
Maulana Azad Road, Two Tank,
Mumbai, Pin-400004,
Maharashtra, India.

Copy to :-

OIO No:234/ADC/SRV/O&A/2024-25
F. No. VIII/10-143/SVPIA-A/O&A/HQ/2024-25

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.