प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद –380009.
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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-250/SVPIA-C/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-250/SVPIA-C/O&A/HQ/2024-25 dated: 20.12.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**35/ADC/SRV/O&A/2025-26**
D	आदेशतिथि/ Date of Order-In-Original	:	**20.05.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**20.05.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Shri Jamsheer Kuttikkattil S/o Jaleel Kuttikkattil**, Kuttikkattil House", Eranhimangad PO, Malappuram, Pin-679329, Kerala

(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 information received from the DRI, Calicut, the Air Intelligence Unit (AIU) Officers, SVPIA, Customs Ahmedabad, intercepted a male passenger named **Shri Jamsheer Kuttikkattil, Son of Jaleel Kuttikkattil** (D.O.B. 05.12.1990) (hereinafter referred to as the said "passenger/Noticee"), residing at 'Kuttikkattil House", Eranhimangad PO, Malappuram, Pin-679329, Kerala (address as per passport), holding an Indian Passport M3519671, arriving from Jeddah to Ahmedabad on11.07.2024 via Indigo Flight No. 6E76 (Seat No. 30B) , at the arrival hall of the Terminal-2 of 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 thereof were recorded under the Panchnama dated 11.07.2024.

2. Whereas, the passenger was questioned by the AIU Officers as to whether he was carrying any contraband/dutiable goods in person or in baggage to which he denied. The Officers asked/ informed the passenger that a search of his baggage as well his personal search was to be carried out and give 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.

2.1 Thereafter, the AIU officers contact the Government Approved Valuer and inform him that a long strip pouch covered with white tape has been detected and the passenger has informed that the said pouch contains mix of semi solid paste of gold and chemical and hence, he needs to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informs the AIU officer that the testing of the said material is only possible at his workshop as gold has to be extracted from such semi solid paste by melting it and also informs the address of his workshop. Thereafter, the AIU officers along with the panchas and the passenger reach at the premises of the Government Approved Valuer in a Govt vehicle. Shri Kartikey Soni Vasantrai, Government Approved Valuer weighs the pouch recovered from the vest of Shri Jamsheer Kuttikkattil and informs that the gross weight of the said pouch is 559.790 gms.

2.2 Thereafter, the AIU Officer called the Government Approved Valuer and informed him that a yellow paste like material has been recovered from the underwear of the passenger and as per the passenger this yellow paste is semi solid paste of gold and chemical mix and that he needed to come to the Airport for verification, examination and valuation of the recovered item. 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 such semi solid paste form by melting it and also informed the address of his workshop.

2.3 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, Behind Ratnam Complex, C.G.Road, Ahmedabad-380 006. On reaching the above-mentioned premises, the officers introduced the panchas as well as the passenger to one person namely Shri Kartikey Soni Vasantrai, Government Approved Valuer. Shri Kartikey Soni weighed the said pouch recovered from the underwear worn by the said passenger and informed that the gross weight of the said pouch as 502.430 gms. Thereafter, the Government Approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Shri Kartikey Soni started the process of converting the semi solid paste into solid gold by putting it into the furnace and upon heating the substance turned into liquid material. The said substance consisting of gold in liquid state was then 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, the Government Approved Valuer vide its report No. 387/2024-25 dated 11.07.2024 informed that 01 (One) gold bar totally weighing 418.110 Grams having purity 999.0/24 Kt. has been derived from the semi solid paste concealed in a pouch, that was recovered from the underwear of the passenger, Shri Jamsheer Kuttikkattil. The photographs of the said pouch recovered from the underwear of the passenger and the gold bar derived from it are as under:

2.4. The Government Approved valuer further vide his Certificate No. 387/2024-25 dated 11.07.2024, certified that it is pure gold and the gold bar, having purity 999.0/24 Kt., weighing 418.110 (Net Weight) , is having the Market Value of Rs.31,45,860/- (Rupees Thirty One Lakhs Forty Five Thousands Eight Hundred Sixty Only) and Tariff value as Rs.26,36,451/- (Rupees Twenty Six Lakhs Thirty Six Thousands Four hundred and Fifty One only), which has been calculated as per the Notification No.46/2024-Customs (N.T.) dated 28.06.2024 (Gold) and Notification No. 45/2024-Customs (N.T.) dated 20.06.2024 (Exchange Rate). He submits his valuation report to the AIU Officers. The valuation provided by the said Govt. Approved Valuer is summarized as under:-

Sl. No.	Item Particulars	PCS	Net Weight (in Grams)	Market Value (in Rs.)	Tariff Value (in Rs.)
1.	Gold Bar-999.0/24 Kt. purity	1	418.110	31,45,860/-	26,36,451/-
	Total	1	418.110	31,45,860/-	26,36,451/-

3. Thereafter, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the completion of the extraction of gold at the workshop of Govt. Approved Valuer, along with the extracted gold bar weighing 418.110 grams derived from the semi solid paste concealed in the pouch having gross weight of 502.430 gms,

that was recovered, from the underwear of the passenger, on 11.07.2024.

4. The said 01 Gold Bar (derived from the semi solid paste of gold and chemical mix concealed in belt area of underwear) totally weighing 418.110 Grams was derived from the semi solid paste concealed in the pouch, that was recovered, from the underwear of the passenger 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 **418.110** grams having purity 999 and having the Market Value of **Rs.31,45,860/-** (Rupees Thirty One Lakhs Forty Five Thousands Eight Hundred Sixty Only) and Tariff value as **Rs.26,36,451/-** (Rupees Twenty Six Lakhs Thirty Six Thousands Four hundred and Fifty One only)was placed under seizure vide Order dated 11.07.2024 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.

Statement of Shri Jamsheer Kuttikkattil:

5. Statement of Shri Kuttikkattil Jamsheer was recorded on 11.07.2024, wherein he inter alia stated that his personal details like name, address and family details as mentioned in the statement are true and correct and that he is educated up to class 12th and is working as a cook in Saudi.

5.1 He further stated that he went to Saudi one year ago and returned on 11.07.2024 by Indigo Flight No.6E-76 from Jeddah to Ahmedabad and that his to and fro tickets were booked by him through the travel agent. He also admitted that while he was in Saudi, he came in contact with a person who offered him Rs.20,000/- alongwith air tickets from Jeddah to India in lieu of delivering gold from Jeddah to India. Shri Kuttikkattil Jamsheer further stated that in greed of money, he accepted his offer and when he was to commence the journey, that person gave an underwear wherein pouch of gold paste was concealed in the belt part of the said underwear with directions that one person with whom the credentials of the passenger have been shared will contact him to collect gold at Ahmedabad. He also stated that the gold bar derived from the gold paste having net weight of 418.110 grams, was hidden by him in the form of gold paste concealed in the stitched

layer made in the underwear that he was wearing, so as to evade payment of Customs duty. The said gold bar was seized by the Officers under Panchnama dated 11.07.2024 under the provisions of the Customs Act, 1962. He was also aware that import of gold by way of concealment and evasion of duty is an offence and that he knowingly did not make any declaration on his arrival and opted for green channel, as an attempt to smuggle the gold without payment of customs duty.

5.2 He perused the Panchnama dated 11.07.2024 and stated that the facts narrated therein are true and correct.

5.3 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, 01 gold bar totally weighing 418.110 gms having purity of 24Kt/999.0 was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by the passenger, Shri Kuttikkattil Jamsheer, who had arrived from Jeddah to Ahmedabad on 11.07.2024 via Indigo Flight No. 6E76, at Terminal-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.

5.4 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 418.110 grams having purity of 24 Kt/999.0 because of malafide intention and thereby contravened the provisions of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 418.110 gms having purity of 24 Kt/999.0 recovered from Shri Kuttikkattil Jamsheer, 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 418.110 grams having purity of 24 Kt/999.0 is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

Consequently, 01 gold bar totally weighing 418.110 gms having purity of 24Kt/999.0 derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by the passenger, Shri Kuttikkattil Jamsheer, who had arrived from Jeddah to Ahmedabad on11.07.2024 via Indigo Flight No. 6E76, at Terminal-2 of SVPIA Ahmedabad was placed under seizure vide Panchnama dated 11.07.2024 and Seizure Order dated 11.07.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

6. The aforementioned proceedings indicates that Shri Kuttikkattil Jamsheer had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having the Market Value of Rs.31,45,860/- (Rupees Thirty One Lakhs Forty Five Thousands Eight Hundred Sixty Only) and Tariff value as Rs.26,36,451/- (Rupees Twenty Six Lakhs Thirty Six Thousands Four hundred and Fifty One only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under seizure vide Order dated 11.07.2024 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.

7. <u>RELEVANT LEGAL PROVISIONS</u>:

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

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, as amended only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. 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 transited with or without transhipment or attempted to be so transited 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 the 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 the bonafide baggage, 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.

7.20 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

8. It therefore appears that:

(i) Shri Jamsheer Kuttikkattil had attempted to smuggle/improperly import 01 Gold Bar totally weighing 418.110 Grams having purity 24KT /999.0 and having the Market Value of Rs.31,45,860/- (Rupees Thirty One Lakhs Forty Five Thousands Eight Hundred Sixty Only) and Tariff value as Rs.26,36,451/- (Rupees Twenty Six Lakhs Thirty Six Thousands Four hundred and Fifty One only), recovered from the semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by the passenger, with a deliberate intention to evade 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 said

passenger, Shri Jamsheer Kuttikkattil had knowingly and intentionally smuggled the said gold in the form of semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by him, on his arrival from Jeddah to Ahmedabad on 11.07.2024 by Indigo Flight No. 6E76 (Seat No. 30B) at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by Shri Jamsheer Kuttikkattil, by way of concealment in the stitched belt part of the underwear worn by him and without declaring it to Customs on arrival in India cannot be treated as Bonafide household goods or personal effects. Shri Jamsheer Kuttikkattil 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 Jamsheer Kuttikkattil** by not declaring the gold brought by him in the form of 01 gold bar totally weighing 418.110 gms having purity of 24Kt/999.0 that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by him, 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.

(iii) The improperly imported/smuggled gold by Shri Jamsheer Kuttikkattil, in the form of 01 gold bar totally weighing 418.110 gms having purity of 24Kt/999.0 that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by him , before arriving from Jeddah to SVPI Airport, Ahmedabad, on 11.07.2024 via Indigo Flight

No. 6E76 (Seat No. 30B) at Terminal -2, SVPIA Ahmedabad on 11.07.2024, 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 Jamsheer Kuttikkattil**, by the above-described acts of omission/commission and/or abetment has rendered himself 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 bar totally weighing 418.110 grams that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by the passenger , Shri Jamsheer Kuttikkattil who arrived from Jeddah via Indigo Flight No. 6E76 (Seat No. 30B) at Terminal -2, SVPIA Ahmedabad on 11.07.2024 are not smuggled goods, is upon Shri Jamsheer Kuttikkattil, who is the Noticee in this case.

09. Accordingly, a Show Cause Notice was issued to **Shri Jamsheer Kuttikkattil S/o Jaleel Kuttikkattil (D.O.B. 05.12.1990), residing at 'Kuttikkattil House", Eranhimangad PO, Malappuram, Pin-679329, Kerala (address as per passport), holding an Indian Passport M3519671**, as to why:

i) The said One (01) Gold Bar, having purity 999.0/24 Kt., weighing 418.110 (Net Weight) and having the Market Value of Rs.31,45,860/- (Rupees Thirty One Lakhs Forty Five Thousands Eight Hundred Sixty Only) and Tariff value as Rs.26,36,451/- (Rupees Twenty Six Lakhs Thirty Six Thousands Four hundred and Fifty One only), derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 502.430 Grams (One Strip covered with white tape), found concealed in the stitched belt part of the underwear worn by the passenger, Shri Jamsheer Kuttikkattil, who arrived from Jeddah to Ahmedabad on

11.07.2024 by Indigo Flight No. 6E76, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 11.07.2024 and Seizure Memo Order dated 11.07.2024, 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 **Shri Jamsheer Kuttikkattil**, under the provisions of 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 17.03.2025, 04.04.2025 & 21.04.2025 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.

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. 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 <u>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.</u>

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, <u>we</u>

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 this case and the submissions made by the noticee in his written submission as well as during the personal hearing and documents submitted. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the 418.110 grams of 01 gold bar of 24KT(999.0 purity), recovered/ derived from strip covered with white tape containing gold and chemical mix in semi solid paste form concealed in underwear, having Tariff Value of **Rs.26,36,451/-** and Market Value of **Rs.31,45,860/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 11.07.2024 , 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, or otherwise.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of specific input received from DRI, Calicut, Shri Jamsheer Kuttikkattil was intercepted by AIU officers and therefore a thorough search of all the baggage of the passenger as well as his personal search was carried out. The AIU officers under Panchnama proceedings dated 11.07.2024 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. Thereafter, the noticee was asked to come at AIU office located opposite belt no. 2 of the Arrival Hall, Terminal-2, SVPI, Airport, Ahmedabad alongwith the

baggage and checked the baggage, however nothing objectionable was found. Further, during personal search/frisking of the noticee, the AIU Officers found unusual heaviness in the belt area of the underwear. On further examination, it was found that the belt part of the black-coloured underwear, worn by the noticee, has two layers stitched on the inner side. The AIU Officers in presence of the panchas then cut opened the stitched layer wherein a long pouch containing semi solid paste, covered with white coloured adhesive tape, was found concealed. On being asked, the noticee, Shri Kuttikkattil Jamsheer told the officers that the said semi solid paste, yellow in colour, is paste of gold and chemical mix.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said strip covered with white tape containing semi solid substance consisting of gold and chemical mix and after completion of extraction process, the Government Approved Valuer informed that 01 gold bar weighing **418.110** Grams having purity 999.0/24KT is derived from the said strip containing gold and chemical mix concealed in his underwear. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar is **Rs.26,36,451/-** and Market value is **Rs.31,45,860/-**. 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	1	418.110	999.0/ 24Kt	31,45,860/-	26,36,451/-

16. Accordingly, the said 01 gold bar having purity 999.0/24 Kt. weighing 418.110 grams, recovered from noticee was seized vide Panchnama dated 11.07.2024, 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 418.110 grams of 01 gold bar, having Tariff Value of **Rs.26,36,451/-** and Market value is **Rs.31,45,860/-** carried by the noticee appeared to be “smuggled goods” as defined

under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the noticee in his statement recorded on 11.07.2024 under Section 108 of the Customs Act, 1962.

17. 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 he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. Further, he also stated that the gold was not belong to him and also not purchased by him. One unknown person in Jeddah offered him Rs. 20,000/- alongwith the Air tickets from Jeddah to India and for that he had to carry the gold in India. He clearly mentioned in his statement that in temptation of earning quick money, he opted this illegal smuggling of gold in paste form. His intention was to earn fast money, 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 gold was 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 declaration in this regard. He admitted that he had opted for green channel so that he could 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.

18. 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, which was in his possession in paste form 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 noticee violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. 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.

19. From the facts discussed above, it is evident that noticee had carried the said gold weighing 418.110 grams, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24KT/999.00 purity totally weighing 418.110 grams, 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 concealing the said gold 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.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013* and he was exit through Green Channel which shows that the noticee was intentionally trying to remove the gold clandestinely without declaring the same and 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 418.110 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 418.110 grams, having Tariff Value of Rs.26,36,451/- and Market Value of Rs.31,45,860/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 11.07.2024 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 gold concealed by him in form of strip containing gold and chemical mix concealed in underwear, it is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that 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.

21. I find that the Noticee confessed of carrying the said gold of 418.110 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.

22. 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 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 418.110 grams, having Tariff Value of Rs.26,36,451/- and Market Value of Rs.31,45,860/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 11.07.2024. 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 418.110 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.

23. I find from the statement that the gold was neither belong to him nor purchased by him. further, I find that the noticee is not an illiterate person and studied upto 12th standard and have basic knowledge of the fact that smuggling of anything which prohibited is an offense. Further,

I find that the noticee consciously accepted the offer of smuggling the gold, offered to him by an unknown person, for financial gain. This implies that the noticee was aware that he was transporting gold illegally and motivated by financial gain, such as receiving payment or a commission for his involvement in the smuggling. This establishes that the noticee was acting as an agent for someone else, likely an organization or individual involved in the smuggling network. The admission in statement highlights the motive (financial gain) for participating in the illegal activity and suggesting a deliberate choice to engage himself in it. In essence, admitting to smuggling for monetary gain, even when done on behalf of another, demonstrates a clear understanding of the illegal nature of the act and a conscious decision for personal benefit.

24. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, **non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'.** This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 418.110 grams, was recovered from his possession in form of paste and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in semi solid form in his underwear. 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 noticee.

25. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bar. 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 strip wrapped in white tape containing gold in semi solid paste form in his underwear with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 418.110 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 11.07.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty and also admitted that the gold was not purchased by him. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment of the said gold in semi solid form in his underwear. ***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 gold bar weighing 418.110 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 418.110 grams, 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 Customs Act, 1962**.

33. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 418.110 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Jeddah to Ahmedabad. 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 418.110 grams, having purity 999.0 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. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under *"does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act"* and covered under Section 112(a) of the Customs Act, 1962 and *Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962*. Therefore, I find that the passenger is liable for penal action under Sections 112 of the Act and I hold accordingly.

34. Accordingly, I pass the following Order:

O R D E R

i) I order **absolute confiscation** of one gold bar weighing **418.110** grams having purity of 999.0 (24KT.) recovered/ derived from semi-solid gold paste comprising of Gold and chemical mix having gross weight of 502.430 grams containing in strip covered with white tape concealed in his underwear, having Market value of **Rs.31,45,860/-** (Rupees Thirty One Lakhs Forty Five Thousands Eight Hundred Sixty Only) and Tariff Value of **Rs.26,36,451/-** (Rupees Twenty Six Lakhs Thirty Six Thousands Four hundred and Fifty One only), placed under seizure under Panchnama dated 11.07.2024 and seizure memo order dated 11.07.2024, 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. 8,00,000/- (Rupees Eight Lakh Only)** on **Shri Jamsheer Kuttikkattil** 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/10-250/SVPIA-C/O&A/HQ/2024-25 dated 20.12.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 20.05.2025 14:49:40

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-250/SVPIA-C/O&A/HQ/2024-25 Date:20.05.2025
DIN: 20250571MN000000E748

BY SPEED POST AD
To,
Shri Jamsheer Kuttikkattil S/o Jaleel Kuttikkattil,
"Kuttikkattil House", Eranhimangad PO,
Malappuram, Pin-679329, Kerala

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.