OIO No:262/ADC/SRV/O&A/2024-25
F. No: VIII/10-110/SVPIA-C/O&A/HQ/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380 009.
दूरभाष: (079) 2754 4630**E-mail:** cus-ahmd-adj@gov.in फैक्स: (079) 2754 2343

DIN: 20250271MN0000777EFD

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-110/SVPIA-C/O&A/HQ/ 2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-110/SVPIA-C/O&A/HQ/ 2024-25 dated 12.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**262/ADC/SRV/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**25.02.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**25.02.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Smt. Musarrat Ashfaq Shah** C-71, Tirupati Nagar, Udhana, Surat City, Surat, Gujarat- 394210
(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:

Smt. Musarrat Ashfaq Shah D/o Shri Sajid Abdul Mannan Shaikh, (D.O.B: 14.01.1987) (hereinafter referred to as the said "passenger/ Noticee"), residential address as per passport is C-71, Tirupati Nagar, Udhana, Surat City, Surat, Gujarat, holding Indian Passport No. X 5920549, arrived by Indigo Flight No. 6E 092 from Jeddah to Ahmedabad on 25.03.2024 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 25.03.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggage.

2. The officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from her body/ clothes. The passenger removed all the metallic objects such as mobile, belt etc. and keep it in a plastic tray and passes through the DFMD. However, no beep sound was heard indicating there was nothing objectionable/ metallic substance on her body/ clothes. Thereafter, the said passenger, Panchas and the officers of AIU move to the AIU Office, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The AIU officers checked the baggage of the passenger however nothing objectionable was found. The AIU officers asked the said passenger again if she has anything dutiable which is required to be declared to the Customs to which she denied. Then in presence of the Panchas, the Lady Officer interrogated Smt. Musarrat Ashfaq Shah and on sustained interrogation, she finally confessed that she is carrying two capsules concealed inside her rectum containing semi-solid substance consisting of Gold and Chemical mix. She is taken to the washroom of Arrival Hall, Terminal 2 (near exit), where she removed two capsules containing semi solid substance from her rectum. The officers then checked the toilet cabin after she exits from it and found nothing objectionable inside. The said capsules had a white covering.

2.1 Thereafter, the AIU officer called the Government Approved Valuer and informed him that white colour capsules have been recovered from a passenger and the passenger has informed that it is gold in semi solid paste form 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 Customs 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 form by melting it and also informs the address of his workshop. Thereafter, the panchas along with the passenger and the AIU officers leave the Airport premises in a Government Vehicle and reach at the premises of the Government Approved Valuer located at Shop No. 301, Golden Signature, B/h Ratnam Complex, C.G. Road, Ahmedabad-380006. On reaching the above referred premises, the AIU officers introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, the Government Approved Valuer. After weighing the said semi solid substance covered in white material on his weighing scale, Shri Kartikey Vasantrai Soni informs that the said two capsules derived from the passenger have Gross weight 531.10 gram.

2.2 Thereafter, he leads us to the furnace installed in his shop. Shri Kartikey Vasantrai Soni started the process of converting the said semi solid material into solid gold. First the capsules derived from the said passenger are put into the furnace and upon heating the said substance, turns into liquid material. The said substance in liquid state is taken out of furnace, and poured in a mould and after cooling for some time, it becomes golden coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that gold bar weighing **492.92** Grams having purity 999.0 is derived from the 531.10 Grams of two capsules containing gold paste and chemical mix. After testing the said golden coloured metal, the Government Approved Valuer confirms that it is pure gold. He informs that the market value of this gold is **Rs.33,78,967/-** and Tariff value is **Rs.28,73,231/-**.

The details of the valuation of the said gold bar is as under:

Sl. No.	Details of Items	PCS	Gross Weight In Gram	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	531.10	492.92	999.0 24 Kt	33,78,967/-	28,73,231/-

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

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate dated 25.03.2024 given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates.

3. The following documents produced by the said passenger were withdrawn under the Panchnama dated 25.03.2024:-

i) Copy of Passport No. X5920549 issued at Surat, on 06.03.2023 valid up to 05.03.2033.
ii) Boarding pass of Indigo Flight No. 6E 092 dated 25.03.2024 from Jeddah to Ahmedabad.

4. Accordingly, a gold bar having purity 999.0/24 Kt. weighing 492.92 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Smt. Musarrat Ashfaq Shah was seized vide Panchnama dated 25.03.2024, under the provisions of the Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger 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.

5. A statement of Smt. Musarrat Ashfaq Shah was recorded on 25.03.2024, under Section 108 of the Customs Act, 1962, wherein she *inter alia* stated that -

(i) she is a worker in a factory;
(ii) she went to Jeddah on 03.03.2024 and came on 25.03.2024 by Indigo Flight No. 6E 92; she booked air ticket by agent; she had never indulged in any illegal/smuggling activities, but this is first time when she carried gold in capsules form.
(iii) One unknown person has given her the gold capsules in Jeddah and said to deliver in Surat; that person (receiver) himself will contact through mobile.
(iv) she had been present during the entire course of the Panchnama dated 25.03.2024 and she confirmed the events narrated in the said panchnama drawn on 25.03.2024 at Terminal-2, SVPI Airport, Ahmedabad;

she was aware that smuggling of gold without payment of Customs duty is an offence; she was well aware of the gold concealed in her rectum in the form of two capsules but she did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty.

6. The above said gold bar weighing 492.92 grams, recovered from Smt. Musarrat Ashfaq Shah, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of capsules comprising of gold and chemical mix, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 492.92 grams is attempted to be smuggled by Smt. Musarrat Ashfaq Shah, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 492.92 grams was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 25.03.2024.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. *—In ther 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 ther 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;"

II) Section11A – Definitions *-In the Chapter, unless the context otherwise requires,*

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

(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 ther 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 ther 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 119 – Confiscation of goods used for concealing smuggled goods–*Any goods used for concealing smuggled goods shall also be liable to confiscation."*

VIII) 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.

B. <u>THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;</u>

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 ther Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."*

C. <u>THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:</u>

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.*

<u>Contravention and violation of laws:</u>

8. It therefore appears that:

(a) The passenger Smt. Musarrat Ashfaq Shah had dealt with and knowingly indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 492.92 grams having purity 999.0/24 Kt. derived from two capsules weighing 531.10 grams and having market value of Rs.33,78,967/- (Rupees Thirty-three lakhs seventy-eight thousand nine hundred sixty-seven only) and Tariff Value is Rs.28,73,231/- (Rupees Twenty-eight lakhs seventy-three thousand two hundred thirty-one only). The said two capsules containing gold and chemical mix were concealed in the rectum of the passenger and not declared to the Customs. The passenger opted green channel to exit the Airport with 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 gold bar weighing 492.92 grams of purity 999.0/24 Kt. by Smt. Musarrat Ashfaq Shah 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 Smt. Musarrat Ashfaq Shah, found concealed in two capsules containing gold and chemical mix in semi-solid form hidden in the rectum, 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 the Customs Act, 1962.

(d) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

(e) Smt. Musarrat Ashfaq Shah 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.

(f) As per Section 123 of the Customs Act 1962, the burden of proving that the gold bar weighing 492.92 grams of purity 999.0/24 Kt. derived from two capsules weighing 531.10 grams concealed in the rectum of the passenger, without declaring it to the Customs, is not smuggled goods, is upon the passenger Smt. Musarrat Ashfaq Shah.

9. Accordingly, a Show Cause Notice F.No. VIII/10-110/SVPIA-C/O&A/HQ/2024-25 dated 12.07.2024 was issued to **Smt. Musarrat Ashfaq Shah,** residing at C-71, Tirupati Nagar, Udhana, Surat City, Surat, Gujarat, holding Indian Passport No. X 5920549, as to why:

(i) One Gold Bar weighing **492.92** grams having purity 999.0/24 Kt. and having market value of **Rs.33,78,967/-** (Rupees Thirty-Three Lakhs Seventy-Eight Thousand Nine Hundred Sixty-Seven Only) and Tariff Value is **Rs.28,73,231/-** (Rupees Twenty Eight Lakhs Seventy Three Thousand Two Hundred Thirty One Only) derived from two capsules containing gold and chemical mix weighing 531.10 grams concealed in rectum of the passenger and placed under seizure under panchnama proceedings dated 25.03.2024 and Seizure Memo Order dated 25.03.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon the 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 her.

11. The noticee was given opportunity for personal hearing on 03.01.2025, 16.01.2025 and 03.02.2025 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 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. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."*

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

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

c) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in

2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon'ble court has observed that;

> *Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]*

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

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

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

> *Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained -*

Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

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

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

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

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

Discussion and Findings:

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 **492.92** grams of gold bar, derived from semi solid gold paste in form of 02 capsules containing gold and chemical mix concealed in rectum, having **tariff value of Rs.28,73,231/-** (Rupees Twenty Eight Lakhs Seventy Three Thousand Two Hundred Thirty One Only) and **Rs.33,78,967/-** (Rupees Thirty-Three Lakhs Seventy-Eight Thousand Nine Hundred Sixty-Seven Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 25.03.2024 , 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 25.03.2024 clearly draws out the fact that the noticee, who arrived from Jeddah (UAE) in Indigo Flight No. 6E-92 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on basis of passenger profiling and suspicious movement, when she was trying to exit through green channel of the Arrival Hall of Terminal 2 of SVPI Airport, without making any declaration to the Customs. Thereafter, officers asked to pass through DFMD machine after removing all metallic objects, 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. The AIU officers checked the baggage of the passenger however nothing objectionable was found. Then in presence of the Panchas, the Lady Officer interrogated Smt. Musarrat Ashfaq Shah and on sustained interrogation Smt. Musarrat Ashfaq Shah confessed that she was carrying capsules containing semi-solid substance consisting of Gold and Chemical mix concealed inside her rectum. The officers then led the noticee to the wash room located near terminal 2 and after some time, the noticee came out of the washroom with two capsules of semi solid substance consisting of gold and chemical mix each covered with white rubber. The weight of the said capsules is measured which comes to 531.10 grams. It is on record that the noticee had admitted that she was carrying the capsules containing gold in paste form concealed in her rectum, with intent to smuggle into India without declaring before Customs Officers. It is also on record that Government approved Valuer had tested and converted said capsules in Gold Bar with certification that the gold is of 24 kt and 999.0 purity, weighing 492.92 Grams. The Tariff Value of said gold bar weight 492.92 grams having purity 999.0/24 Kt. derived from 531.10 grams of 02 capsules containing semi solid paste consisting of gold and chemical mix concealed in rectum, having Tariff value of Rs.**28,73,231/-** and market Value of **Rs.33,78,967/-,** which was placed under seizure under Panchnama dated 25.03.2024, in the presence of the noticee and independent panch witnesses.

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 and also not at later stage during the adjudication process. 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 25.03.2024 , she has clearly admitted that she had travelled from Jeddah to Ahmedabad by Indigo Flight No. 6E-92 dated 25.03.2024 carrying gold paste in form of capsule concealed in her rectum; 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 and the Baggage Rules, 2016. She admitted in her statement that she was just a carrier of gold and the gold was given to her by someone else and asked to carry the same into India.

16. I find that the noticee has clearly accepted that she had not declared the gold in paste form concealed in her rectum, 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 492.92 gms., retrieved from the gold paste in form of capsules concealed by the noticee in her rectum, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 492.92 gms., seized under panchnama dated 25.03.2024 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 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. Further, I find that the noticee has accepted of smuggling the gold during the personal hearing wherein she submitted that the gold was not purchased by her and given to her by another person to smuggle the same in India.

18. 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 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 passenger/noticee had not filed the baggage declaration form and had not declared the 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. It is also observed that the imports were also for non-bonafide purposes. Therefore, the improperly imported gold concealed in rectum and without declaring 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.

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 492.92 gms., retrieved from gold paste concealed in rectum in form of capsules, having total Tariff Value of Rs.28,73,231/- and market Value of Rs.33,78,967/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 25.03.2024 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 the gold in rectum 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 her 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 492.92 gms 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 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 (as amended) 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 492.92 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bar Rs.33,78,967/- and Tariff Value Rs.28,73,231/-, retrieved from the gold paste concealed in rectum, were placed under seizure vide panchnama dated 25.03.2024. 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 the gold by concealing in rectum 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) & Section 112(b) 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 noticee 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 492.92 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules 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 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-CUSin 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)."

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

28. 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 and also the noticee has not appeared for the personal hearing given to her, on the basis of principle of natural justice, which shows that the noticee has nothing to say in her defense and allegation made under the SCN is correct and legally sustained. Also, the noticee has failed to discharge the burden placed on her 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 her rectum with intention to smuggle the same into India*** and evade payment of customs duty. Therefore, the gold weighing 492.92 grams of 24Kt./999.0 purity in form of gold bar, derived from the gold and chemical paste concealed in rectum in form of capsules is therefore, liable to be **confiscated absolutely**. **I therefore hold in unequivocal terms that the gold weighing 492.92 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.**

29. I further find that the passenger had involved herself in the act of smuggling of gold weighing 492.92 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 492.92 grams of 24Kt./999.0 purity, retrieved from paste concealed in her rectum, from Jeddah 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.

30. Accordingly, I pass the following Order:

O R D E R

i.) I order absolute confiscation of the One Gold Bar weighing **492.92** grams having Market Value of **Rs.33,78,967/-** (Rupees Thirty-Three Lakhs Seventy-Eight Thousand Nine Hundred Sixty-Seven Only) and Tariff Value is **Rs.28,73,231/-** (Rupees Twenty Eight Lakhs Seventy Three Thousand Two Hundred Thirty One Only) derived from semi solid gold paste in form of 02 capsules containing gold and chemical mix covered with white rubber concealed in rectum by the passenger/noticee Smt. Musarrat Ashfaq Shah and placed under seizure under panchnama dated 25.03.2024 and seizure memo order dated 25.03.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii.) I impose a penalty of **Rs. 8,50,000/-** (Rupees Eight Lakh Fifty Thousand Only) on Smt. Musarrat Ashfaq Shah under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-110/SVPIA-C/O&A/HQ/2024-25 dated 12.07.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 25-02-2025 18:11:43

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-110/SVPIA-C/O&A/HQ/2024-25 Date:25.02.2025

DIN: **20250271MN0000777EFD**

By SPEED POST A.D.

To,
Smt. Musarrat Ashfaq Shah,
C-71, Tirupati Nagar, Udhana,
Surat City, Surat, Gujarat- 394210

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.