

OIO No:39/ADC/SRV/O&A/2025-26
F. No. VIII/10-253/SVPIA-D/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-253/SVPIA-D/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-253/SVPIA-D/O&A/HQ/2024-25 dated: 28.01.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	39/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	28.05.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	28.05.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Abdul Khader Gafoor Ahammed, S/o Late Shri Abdulla Gafoor Ahammed, At:- C M Nagar, Hassainar Quarters, P.O.- Thekkil, Kasargod, Kerala – 671541
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी 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: -

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On the basis of passenger profiling and suspicious movements of passengers by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a male passenger **Shri Abdul Khader Gafoor Ahammed**, Aged 48 years (DOB: 13.07.1976), S/o Late Shri Abdulla Gafoor Ahammed holding an Indian Passport Number No. W8512175, residing at:- C M Nagar, Hassainar Quarters, P.O.- Thekkil, Kasargod, Kerala – 671541, arriving from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad by Flight No. 6E-1432 of Indigo Airlines on 07.08.2024 (Seat No. 22C) at the arrival Hall of the SVPIA, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said Panchnama dated 07.08.2024.

2. Whereas, the passenger was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. The officers asked /informed the passenger that a search of his baggage as well as his personal search was to be carried out and gave him an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the passenger desired to be searched in presence of a gazetted customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the officers. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival Hall of Terminal 2 building; however, no beep sound was heard.

The passenger carrying one black colour luggage trolley bag as checked-in bag and one black colour backpack bag as handbag. Thereafter, the AIU officers instructed the passenger to put his entire luggage on the X-Ray Bag Scanning Machine for scanning in presence of the Panch witnesses. In presence of the panchas, the bags are checked by the AIU officers in the baggage Scanning machine installed near the Green Channel of the arrival hall of Terminal-2, SVPI Airport by the AIU officers. Nothing objectionable is noticed in the black colour backpack handbag.

Thereafter on passing the checked-in baggage i.e. the black colour luggage trolley bag through the screening machine, some dark metallic images are seen with less density. The passenger is asked by the Custom officers

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whether he is carrying any dutiable item (especially any metal e.g. Gold/silver) inside the said items at which he denies having any such item. Thereafter, the AIU officers inform us that they have suspicion that the passenger is carrying Gold/Restricted/ dutiable goods in the baggage. The Customs Officer then opened the black colour luggage trolley bag and found packages of ladies' dresses, two packets of saffron, one cashew packet and one kishmish (raisin) packet in the said bag. The Customs Officers further opened and examined each packet of ladies' dresses and found yellowish metal jewellery in concealed inside the ladies' dress in some of the packets by sticking/pasting with the white medical adhesive tape. The officers in presence of the panch witnesses and the passenger segregated the yellowish metal jewellery from the cloths carefully and placed the same in one plastic tray. Then Customs Officers removed all the goods from the black colour luggage trolley bag and empty bag is once again checked by the AIU officers in the baggage Scanning machine, wherein one flat dark image noticed indicating presence of semi solid paste/powder type material concealed in bag. The Customs Officer then searched/examined the black colour luggage trolley bag thoroughly and found one brown (khaki) colour paper packet concealed in between the layers of inner bottom side of the trolley bag. Thereafter on passing the brown (khaki) colour paper packet through the screening machine, dark image is seen with less density showing the packet contain paste/powder like material of gold.

The passenger Shri Abdul Khader Gafoor Ahammed accepted that he carrying gold paste concealed in brown (khaki) colour paper packet & Gold jewellery concealed in ladies dress & 02 packets of Saffron of 1060 grams as he wanted to clear it illicitly without declare it to the Customs for the evasion of Customs Duty.

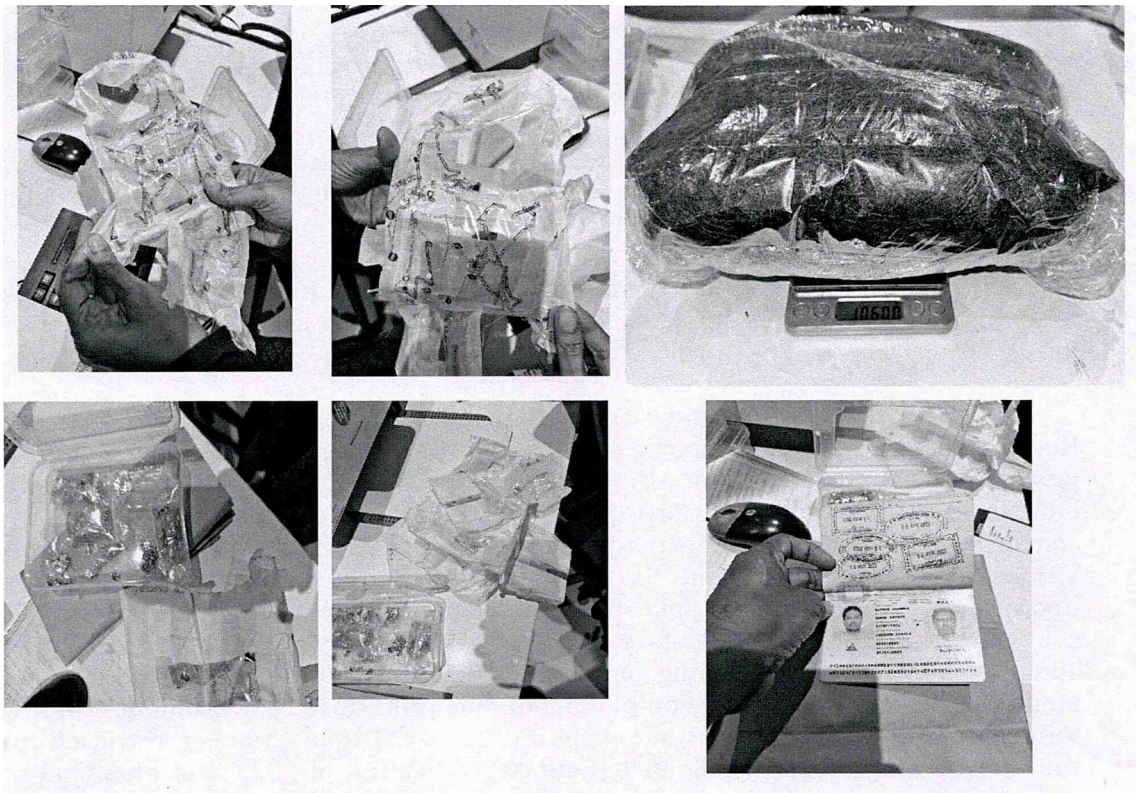
2.1 Based on primary inference, the Government Approved Valuer, Shri Kartikey Vasantraï Soni was called upon to confirm the contents of the gold jewellery & gold paste wrapped in brown (khaki) colour paper packet. Accordingly, the AIU officer telephonically contacted Shri Kartikey Vasantraï Soni and requested him to come to the office of the Air Intelligence Unit, SVPI Airport, Ahmedabad for testing and valuation purpose of the recovered semi solid paste. In reply, the Government Approved Valuer Shri Kartikey Vasantraï Soni informs the officer that the testing and melting of the material recovered is possible only at his workshop as gold has to be extracted from semi-solid paste form by melting it and also informs the address of his workshop. Thereafter, AIU officers along with the passenger leave the Airport premises in a government vehicle and reach at the premises of the Government Approved Valuer located

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at 301, Golden Signature, B/h Ratnam Complex, C.G.Road, Ahmedabad-380006 at 12:10 Hrs on 07.10.2024.

2.2 On reaching the above referred premises, the officers introduced the panchas, as well as the passenger to one person namely Mr. Kartikey Vasantraai Soni, Government Approved Valuer. Mr. Kartikey Vasantraai Soni, asked the officers in presence of panchas that he would do the examination of the gold paste in brown (khaki) colour paper packet & Gold jewellery recovered from the passenger. The valuer started the detailed examination of the gold paste in brown (khaki) colour paper packet & Gold jewellery that was recovered from Shri Abdul Khader Gafoor Ahammed. After preliminary examination the Government Approved Valuer, Mr. Kartikey Vasantraai Soni informs that the said jewellery is made up of gold weighing 140.820 grams (gross weight) of 750.0 / 18 Kt and the brown (khaki) colour paper packet weighing 103.05 grams (gross weight) having purity 999/24 KT. Further, Government Approved Valuer informs that one Solid bar weighing 101.48 Grams has been retrieved from the 103.05 grams of Semi Solid substance consisting of Gold and chemical mix concealed in brown (khaki) colour paper packet recovered from Mr. Abdul Khader Gafoor Ahammed. After weighing the said gold paste & Gold jewellery on his weighing scale, Shri Kartikey Vasantraai Soni provided detailed primary verification report and informed that the weight of the gold paste and & Gold jewellery recovered from Shri Abdul Khader Gafoor Ahammed has a total Gross weight of 243.87 grams. After completion of the procedure, Government Approved Valuer Shri Kartikey Vasantraai Soni informed that jewellery made up of gold weighing 140.820 grams (gross weight) of 750.0 / 18 Kt & 01 Gold bar weighing 101.48 grams having purity 999.0/24 Kt was derived from 103.05 grams paste concealed in brown (khaki) colour paper packet of the passenger. The photograph of the same is as:-

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2.3 After testing the said derived bar & jewellery, the Government Approved Valuer, Shri Kartikey Vasantrai Soni confirmed that it is pure gold and Shri Kartikey Vasantrai Soni issued a Certificate, vide Certificate No. 540/2024-25 dated 07.08.2024, wherein it is certified that the gold bar is having purity 999.0/24kt, weighing 101.48 grams (net weight), 103.05 grams (gross weight) & jewellery made up of gold weighing 140.820 grams (gross weight) of 750.0 / 18 Kt. Further, the Govt. Approved Valuer, Shri Kartikey Vasantrai Soni informs that the total Market Value of the said gold bar & gold jewellery having purity 999.0/24 Kt & 750.0 / 18 Kt respectively of Rs. 14,71,617/- (Rupees Fourteen Lakh Seventy-One Thousand Six Hundred Seventeen Only) and Tariff Value as Rs. 13,42,529/- (Rupees Thirteen Lakh Forty Two Thousand Five Hundred Twenty Nine only), which has been calculated as per the Notification No. 53/2024-Customs (N.T.) dated 31/07/2024 (Gold) and Notification No. 45/2024-Customs (N.T.) dated 20/06/2024 (Exchange Rate). The Govt. Approved Valuer, Shri Kartikey Vasantrai Soni submits his valuation report to the AIU Officers. The details of quantity, purity, Tariff Value and Market Value are as detailed in below table.

Valuation Certificate No. and date	Details of items	Total Weight of paste recovered from pax (In Grams)	Gross weight in grams	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
540/2024-25	Gold Bar retrieved from gold paste	1	103.05	101.480	999.0 24KT	7,21,117/-	6,57,861/-

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dated 07.08.20 24	recovered in form of brown (khaki) colour paper packet						
	Gold Jewellery	--	140.82	140.820	750.0 / 18 KT	7,50,500/-	6,84,667/-
TOTAL			243.87 0	242.300		14,71,617/-	13,42,529/-

Apart from the gold, 1060 grams of saffron of value of Rs. 2,32,155/- is also recovered from the passenger.

2.4 The method of testing and the valuation used by the Government Approved Valuer was done in a perfect manner in the presence of independent panchas and the passenger who were satisfied and agreed with the Testing and Valuation Report dated 07.08.2024 and in token of the same, the independent Panch witnesses and the passenger, all had put their dated signature on the said valuation report of having seen, read and in agreement of the same.

2.5 Thereafter, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the proceedings of the extraction of gold at the workshop, along with the extracted gold bar on 07.08.2024. The photographs of the said Gold Bar & gold jewellery having total gross weight of 243.870 grams & net weight of 242.300 grams are as under:

		
Gold recovered in form of Paste/ powder in brown (khaki) colour paper packet	Paste/ powder found in brown (khaki) colour paper packet	Gold bar weighing 101.480 grams retrieved from the paste/powder

Seizure of the above gold bar and saffron:

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3. The said Gold Bar & gold jewellery having total gross weight of 243.870 grams & net weight of 242.300 grams & saffron total weight of 1060 grams was attempted to be smuggled into India 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 & gold jewellery having total gross weight of 243.870 grams & net weight of **242.300 grams** having purity 999/24 KT & 750.0 / 18 Kt respectively having **Market value of Rs. 14,71,617/-/- (Rupees Fourteen Lakh Seventy-One Thousand Six Hundred Seventeen Only)** and **Tariff Value as Rs. 13,42,529/- (Rupees Thirteen Lakh Forty-Two Thousand Five Hundred Twenty-Nine only)**, & **saffron 1060 grams having value of Rs. 2,32,155/-** recovered from the passenger were placed under seizure vide order dated 07.08.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject gold bar & gold jewellery is liable for confiscation under Section 111 of the Customs Act, 1962.

Statement of Shri Abdul Khader Gafoor Ahammed:

4. Statement of Shri Abdul Khader Gafoor Ahammed was recorded on 07.08.2024 wherein he inter alia stated as under:

4.1 He gave his personal details like name, address, profession, family details and education etc. His date of birth is 13.07.1976. He studied upto Eighth standard, he can read, write and understand Malayalam, English and Hindi languages and his mobile no. is +91-9605565459. His Email ID is kabdulkhader089@gmail.com and he has using it regularly for his personal purposes. He had saving account in State Bank of India, Kasargod, however at present he is unable to recall the account no.

He was residing with his family, his wife Mrs. Subaida Abdul Khader, Three Sons and One daughter at the address **C M Nagar, Hassainar Quarters, P.O.- Thekkil, Kasargod, Kerala – 671541.**

4.2 He said that he has a PAN number but at present he unable to recall his PAN No. He also stated that he never filed any Income Tax returns. He is a farmer and engaged in agriculture in his hometown. Further, he stated that he also visits Dubai, Abu Dhabi and Sharjah (UAE) regularly for purchasing readymade garments (ladies' suits/Burkha/Children suits etc.) and sell the same to various traders/shopkeepers at Kasargod and nearby areas for additional income. His monthly income is around Rs. 40,000/- to Rs. 45,000/-.

4.3 He stated that he had visited UAE specifically for purchasing readymade Garments, as he had found reasonable business opportunity in readymade Garments in past. However, this time he was unable to finalize deal on decided

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prices/rates therefore, he had not purchased any goods there. In Abu Dhabi he came in contact with one unknown person namely Mr. Hibrahim, who offered him to carry the trolley bag containing new readymade Garments and some dry fruits and deliver the same to one person at Ahmedabad as directed by Mr. Hibrahim. Further, Mr. Hibrahim also offered him a handsome amount of Rs. 10,000/- and a return ticket to Ahmedabad for the said work. He further state that he was not in position to purchase the readymade Garments on low prices/rates and therefore he agreed to the offer given by Mr. Hibrahim of Abu Dhabi. Mr. Hibrahim provided him the trolley bag to carry and deliver the same outside the Ahmedabad Airport. As per direction of Mr. Hibrahim, he was supposed to inform Mr. Hibrahim on whatsapp call that he reached Ahmedabad. On direction of Mr. Hibrahim any person from Ahmedabad was supposed to approach him to take delivery of trolley bag and after confirmation the person from Ahmedabad was supposed to give him amount of Rs.10,000/-.

4.4 He further stated that he has never indulged in any smuggling activity in the past. This is the first time he had carried gold paste concealed in brown (khaki) colour paper packet & gold jewellery concealed inside the ladies dress.

4.5 He also confirmed that the facts narrated in the Panchnama dated 07.08.2024 were true and correct.

5. 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, 1998, 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 & gold jewellery having total gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively were recovered from **Shri Abdul Khader Gafoor Ahammed** who had arrived from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad, by Flight No. 6E-1432 of Indigo Airlines on 07.08.2024 (Seat No. 22C) at T-2 of SVPIA Ahmedabad on 07.08.2024. 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 1998. 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 gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively because of malafide intention and thereby contravened the provision of Section 77 of the Customs

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Act, 1962. It therefore, appears that the said gold items totally gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively recovered from **Shri Abdul Khader Gafoor Ahammed**, 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 gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively recovered from **Shri Abdul Khader Gafoor Ahammed** who had arrived from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad, Flight No. 6E-1432 of Indigo Airlines on 07.08.2024 (Seat No. 22C) at T-2 of SVPIA Ahmedabad on 07.08.2024 were placed under seizure vide Panchanama dated 07.08.2024 and Seizure order dated 07.08.2024 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 Abdul Khader Gafoor Ahammed** had attempted to smuggle the aforesaid gold and saffron into India and thereby rendered the aforesaid gold having **Market value of Rs. 14,71,617/- (Rupees Fourteen Lakh Seventy-One Thousand Six Hundred Seventeen Only)** and **Tariff Value as Rs. 13,42,529/- (Rupees Thirteen Lakh Forty-Two Thousand Five Hundred Twenty-Nine only)** and saffron having market value of **Rs. 2,32,155/-**, liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure.

7. Legal provisions relevant to the case:

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

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less

- than 6 months of stay abroad.
- 7.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- 7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

- 7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
- (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property;
- 7.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- 7.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 7.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- 7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a

declaration of its contents to the proper officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under

this Act, or in the case of baggage in the declaration made under section 77;

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

(n) any dutiable or prohibited goods transited with or without transshipment 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

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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.	71 or 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

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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.
- 7.21 Similarly, as per Regulation 3 of Food Safety and Standards (Import) Regulations, 2017, “no person shall import any article of food (Saffron in this case) without an import license from the Central Licensing Authority in accordance with the provisions of the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011”. Saffron brought into India in violation of this legal provision is to be treated as ‘Prohibited Goods’ as defined under Section 2(33) of the Customs Act, 1962 and as ‘Smuggled Goods’ as defined under Section 2(39) of the Act.

CONTRAVENTION AND VIOLATION OF LAWS:-

8. It therefore appears that:

- (i) **Shri Abdul Khader Gafoor Ahammed** had attempted to smuggle/improperly import 01 Gold Bar & gold jewellery having total gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively having Market value of Rs. 14,71,617/-/- (Rupees Fourteen Lakh Seventy One Thousand Six Hundred Seventeen Only) and Tariff Value as Rs. 13,42,529/- (Rupees Thirteen Lakh Forty Two Thousand Five Hundred Twenty Nine only), derived from him by concealing in paste form in brown (khaki) colour paper packet &

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gold jewellery concealing in ladies dress & saffron 1060 grams having value of Rs. 2,32,155/- recovered from the passenger, with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. The passenger(s)/person(s) had knowingly and intentionally smuggled the said gold on his arrival from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad, by Indigo Airlines Flight No. 6E-1432 dated 07.08.2024 Seat No. 22C at Terminal -2, SVPIA Ahmedabad on 07.08.2024 with an intent to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by **Shri Abdul Khader Gafoor Ahammed**, by way of concealment in his trolley bag without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. **Shri Abdul Khader Gafoor Ahammed** 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 Abdul Khader Gafoor Ahammed**, by not declaring the gold concealing in paste form in brown (khaki) colour paper packet & gold jewellery concealing in ladies dress, 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) **Shri Abdul Khader Gafoor Ahammed**, by not declaring the saffron concealing in luggage trolley bag, which included dutiable and prohibited goods to the proper officer of the Customs has contravened the provision of Regulation 3 of Food Safety and Standards (Import) Regulations, 2017 read with the provisions of the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011.
- (iv) The improperly imported/smuggled gold by **Shri Abdul Khader Gafoor Ahammed**, concealed in paste form in brown (khaki)

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colour paper packet & gold jewellery concealed in ladies dress before arriving from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad, by Indigo Airways Flight No. 6E-1432 dated 07.08.2024 Seat No. 22C at Terminal -2, SVPIA Ahmedabad on 07.08.2024, 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.

- (v) **Shri Abdul Khader Gafoor Ahammed**, by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.
- (vi) As per Section 123 of Customs Act 1962, the burden of proving that the said 01 Gold Bar & gold jewellery having total gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively which was concealing in paste form in brown (khaki) colour paper packet & gold jewellery concealing in ladies dress recovered from the trolley bag of **Shri Abdul Khader Gafoor Ahammed** who arrived from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad, by Indigo Airlines Flight No. 6E-1432 dated 07.08.2024 Seat No. 22C at Terminal -2, SVPIA Ahmedabad on 07.08.2024 are not smuggled goods, is upon Shri Abdul Khader Gafoor Ahammed, who is the Noticee in this case.

ROLE OF SHRI ABDUL KHADER GAFOOR AHAMMED:-

8.1 The evidences unearthed in the course of the investigation have revealed that Shri Abdul Khader Gafoor Ahammed knowingly and actively participated in the smuggling of gold from Abu Dhabi (UAE) to India. Shri Abdul Khader Gafoor Ahammed had not made any declaration before the Customs Authority at SVPI Airport, Ahmedabad regarding any dutiable goods carried by him and on being enquired by AIU officers before initiation of search proceedings, he denied to having any contraband/ Restricted/ dutiable goods. Shri Abdul Khader Gafoor Ahammed was intercepted after he opted to exit the airport through the Green Channel. He also had not made any disclosure about the import

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of Gold in form of paste concealed in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress and saffron in 02 packets in the luggage trolley bag, on arrival before the Customs Authorities suo-moto /voluntarily and in contrary he concealed/hide the same in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress and he tried to exit the airport through the Green Channel without making any declaration and without payment of appropriate Customs Duty. It, therefore, appears that Shri Abdul Khader Gafoor Ahammed had consciously and deliberately dealt with the said Gold in form of paste concealed in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress, totally weighing 242.300 Grams & Saffron having total weight of **1060 grams of Rs. 2,32,155/-** and had tried to exit the airport through the Green Channel without making any declaration before the Customs Authorities (at Red channel), which he knew or had reason to believe was liable to confiscation under the provisions of the Customs Act, 1962. It, therefore, appears that all the above acts of contravention on the part of Shri Abdul Khader Gafoor Ahammed have rendered the above seized gold and saffron liable to confiscation, under the provisions of Sections 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. Thus, it appears that Shri Abdul Khader Gafoor Ahammed had acquired possession of and has concerned himself in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with gold bar derived from the paste form concealed in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress and saffron concealed in bag, which he knew or has reason to believe is liable to confiscation under Section 111 of the Customs Act, 1962, and has thus by his acts of omission and commission rendered himself liable to penalty under Section 112 (a) and (b) of the Customs Act, 1962.

09. Accordingly, a Show Cause Notice vide F.No. VIII/10-253/SVPIA-D/O&A/HQ/2024-25 dated 28.01.2025 was issued to **Shri Abdul Khader Gafoor Ahammed**, Aged 48 years (DOB: 13.07.1976), S/o Late Shri Abdulla Gafoor Ahammed holding an Indian Passport Number No. W8512175, residing at:- C M Nagar, Hassainar Quarters, P.O.- Thekkil, Kasargod, Kerala – 671541, as to why:

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- (i) The 01 Gold Bar derived from the gold paste concealed in paste form in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress having total gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0 / 18 Kt respectively having Market value of Rs. 14,71,617/-/- (Rupees Fourteen Lakh Seventy-One Thousand Six Hundred Seventeen Only) and Tariff Value as Rs. 13,42,529/- (Rupees Thirteen Lakh Forty Two Thousand Five Hundred Twenty Nine only) recovered from the passenger, **Shri Abdul Khader Gafoor Ahammed**, who arrived from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad, by Indigo Airlines Flight No. 6E-1432 dated 07.08.2024 Seat No. 22C at Terminal -2, SVPIA Ahmedabad on 07.08.2024, placed under seizure under panchnama proceedings dated 07.08.2024 and Seizure Memo Order dated 07.08.2024, 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) **Saffron weighing to the tune of 1060 grams having value of Rs. 2,32,155/-** recovered from the passenger, **Shri Abdul Khader Gafoor Ahammed**, who arrived from Abu Dhabi, United Arab Emirates (UAE) to SVPI Airport, Ahmedabad, by Indigo Airlines Flight No. 6E-1432 dated 07.08.2024 Seat No. 22C at Terminal -2, SVPIA Ahmedabad on 07.08.2024, placed under seizure under panchnama proceedings dated 07.08.2024 and Seizure Memo Order dated 07.08.2024, 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;
- (iii) Penalty should not be imposed upon the **Shri Abdul Khader Gafoor Ahammed**, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

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

11. The noticee was given opportunity for personal hearing on 21.03.2025, 09.04.2025 & 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

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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 his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it

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convenient to file his submission 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 gold bar of 101.480 grams of 999/24 KT, derived from the gold paste concealed in paste form in brown (khaki) colour paper packet and gold jewellery of 140.820 grams concealed in dress material, total weighing of both items comes to 242.300 grams, having total Tariff Value of **Rs.13,42,529/-** and Market Value of **Rs.14,71,617/-**, seized vide Seizure Memo dated 07.08.2024 and placed under seizure under Panchnama proceedings dated 07.08.2024, 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, **Saffron weighing to the tune of 1060 grams having value of Rs. 2,32,155/-** recovered from the noticee is liable for confiscation or not and whether, the noticee is liable for penal action under the provisions of Section 112 of the Act.

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

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

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any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negated the said contention and held thus:- "... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. In the instant case, I find that the recovered derived gold bar weighing 1489.680 grams made of 24 K Gold of foreign origin and were brought under restriction, and the same was not declared before the proper officer which makes the gold brought "Prohibited Goods" under the definition of Section 2 (33) of the Customs Act, 1962. **From the said judgment of the Apex Court, it is amply clear that the goods are to be treated as 'prohibited' if there is failure to fulfil the conditions/restrictions imposed by the Government on such import or export. In this case, I find that the noticee has smuggled impugned goods, i.e. Gold Paste and Saffron, by concealment and attempted to clear from the Customs authorities. Accordingly, the goods brought by the noticee falls under the ambit of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

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15. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement that Shri Abdul Khader Gafoor Ahammed was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the noticee as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 07.08.2024 in presence of two independent witnesses asked the noticee if he had anything dutiable to declare to the Customs authorities, to which the said noticee replied in negative. The officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival Hall of Terminal 2 building, however, no beep sound was heard. Thereafter, the AIU officers instructed the noticee to put his entire luggage on the X-Ray Bag Scanning Machine for scanning in presence of the Panch witnesses. In presence of the panchas, the bags are checked by the AIU officers in the baggage Scanning machine installed near the Green Channel of the arrival hall of Terminal-2, SVPI Airport by the AIU officers. Nothing objectionable is noticed in the black colour backpack handbag.

Thereafter on passing the checked-in baggage i.e. the black colour luggage trolley bag through the screening machine, some dark metallic images are seen with less density. The noticee is asked by the Custom officers whether he is carrying any dutiable item (especially any metal e.g. Gold/silver) inside the said items at which he denies having any such item. The Customs Officer then opened the black colour luggage trolley bag and found packages of ladies' dresses, two packets of saffron, one cashew packet and one kishmish (raisin) packet in the said bag. The Customs Officers further opened and examined each packet of ladies' dresses and found yellowish metal jewellery concealed inside the ladies' dress in some of the packets by sticking/pasting with the white medical adhesive tape. The officers in presence of the panch witnesses and the passenger segregated the yellowish metal jewellery from the cloths carefully and placed the same in one plastic tray. Then Customs Officers removed all the goods from the black colour luggage trolley bag and empty bag is once again checked by the AIU officers in the baggage Scanning machine, wherein one flat dark image noticed indicating presence of semi solid paste/powder type material concealed in bag. The Customs Officer then searched/examined the black colour luggage

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trolley bag thoroughly and found one brown (khaki) colour paper packet concealed in between the layers of inner bottom side of the trolley bag. Thereafter on passing the brown (khaki) colour paper packet through the screening machine, dark image is seen with less density showing the packet contain paste/powder like material of gold.

The noticee Shri Abdul Khader Gafoor Ahammed accepted that he carrying gold paste concealed in brown (khaki) colour paper packet & Gold jewellery concealed in ladies dress & 02 packets of Saffron of 1060 grams as he wanted to clear it illicitly without declare it to the Customs for the evasion of Customs Duty.

16. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said gold paste in brown (khaki) colour paper packet & Gold jewellery and after completion of extraction, the Government Approved Valuer informed that 01 gold bar weighing **101.480 Grams** having purity 999.0/24KT is derived from gold paste in brown (khaki) colour paper packet and informed that the jewellery is made up of gold weighing 140.820 grams of 750.0/18 Kt. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar and jewellery is **Rs.13,42,529/-** and Market value is **Rs.14,71,617/-**. The details of the Valuation of the said gold bar are tabulated as below:

Valuation Certificate No. and date	Details of items	Gross weight in grams	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
540/2024-25 dated 07.08.2024	Gold Bar retrieved from Gold paste recovered in form of brown (khaki) colour paper packet	103.05	101.480	999.0/24KT	7,21,117/-	6,57,861/-
	Gold Jewellery	140.82	140.820	750.0/18KT	7,50,500/-	6,84,667/-
TOTAL		243.870	242.300		14,71,617/-	13,42,529/-

17. Accordingly, the said 01 gold bar having purity 999.0/24 Kt. weighing 101.480 grams derived from gold paste found in brown (khaki) colour paper packet and gold jewellery of 140.820 grams of purity 750.0/18kt and saffron weighing 1060 grams recovered from noticee was seized vide Panchnama dated 07.08.2024, under the provisions of

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the Customs Act, 1962, on the reasonable belief that the said 01 gold bar, jewellery and saffron 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 gold items having gross weight of 242.300 grams, having Tariff Value of **Rs.13,42,529/-** and Market value is **Rs.14,71,617/-** and Saffron weighing 1060 grams valued of Rs. 2,32,155/- 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 07.08.2024 under Section 108 of the Customs Act, 1962.

18. I also find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the noticee. In fact, in his statement, he has clearly admitted that he was aware that the bringing gold and saffron by way of concealment to India is illegal and it is an offense. Further, he admitted that a person named Mr. Hibrahim, offered him to carry the trolley bag containing new readymade Garments and some dry fruits and deliver the same to one person at Ahmedabad as directed by Mr. Hibrahim and for that he would get Rs. 10,000/- and a return ticket to Ahmedabad. He submitted that the gold in form of gold paste concealed in brown (khaki) colour paper packet & gold jewellery concealed inside the ladies' dress alongwith saffron which was recovered was not purchased by him and was handed over to him by Mr. Hibrahim. He clearly mentioned in his statement that to earn profit, he opted this illegal smuggling of saffron gold in form of gold paste and jewellery. In temptation of earning money, he had done this illegal carrying of gold of 24KT & 18kt in commercial quantity alongwith saffron in India without declaration. Further, I find that the noticee has admitted that the gold items and saffron was not belong to him and a person named Mr. Hibrahim handed over the trolley containing ladies dress and brown (khaki) colour paper packet containing gold paste and also, the noticee has not submitted any supporting documents viz. copy of purchase invoices, bank statement or other relevant documents which proves the

legitimate purchase of gold and saffron. Hence, I find that said smuggled gold and saffron was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were intentionally not declared before Customs and he was aware that smuggling of said goods without payment of customs duty is an offence. Since he had to clear the said goods (gold and saffron) 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 attempt to smuggle the gold items and saffron 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 read with Regulation 3 of Food Safety and Standards (Import) Regulations, 2017. Further, 1060.00 grams of saffron was recovered from the baggage of noticee which was brought by the noticee in violation of Regulation 3 of Food Safety and Standards (Import) Regulations, 2017, which states that “no person shall import any article of food (Saffron in this case) without an import license from the Central Licensing Authority in accordance with the provisions of the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011”. As per website of UAE based packing and trading firm M/s. Ana saffron the price of the saffron is AED 9900 per Kg and after conversion in Indian Rupee (as per Exchange rate) the Market value of the Saffron calculated in equivalent Indian Rupee as detailed below: -

Sr.No	Description of Goods	Quantity In Kg (Gross)	Rate/kg in AED	Exchange Rate (Rs./AED)	Total Value of Saffron
1	Saffron	1.060 kgs	AED 9900	Rs. 23.45/-	2,32,155/-

19. Further, the noticee has accepted that he had not declared the said gold and saffron 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 gold which was in his possession in form of gold paste in brown (khaki) colour paper packet & gold jewellery concealing in ladies dress recovered from the trolley bag and saffron packets weighing 1060 grams and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling

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of gold and saffron 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 and saffron 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 as amended. Further, when goods notified under the act 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 under the Section 123 of Customs Act, 1962. Further, as per Regulation 3 of Food Safety and Standards (Import) Regulations, 2017, "no person shall import any article of food (Saffron in this case) without an import license from the Central Licensing Authority in accordance with the provisions of the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011". Saffron brought into India in violation of this legal provision is to be treated as 'Prohibited Goods' as defined under Section 2(33) of the Customs Act, 1962 and as 'Smuggled Goods' as defined under Section 2(39) of the Act. The noticee has failed to submit any licit documents regarding purchase of gold item as well as saffron, therefore, failed to discharge the burden placed on him in Section 123 of Customs Act, 1962.

20. From the facts discussed above, it is evident that noticee had carried the said gold items total weighing 242.300 grams and Saffron weighing 1060 grams (Net weight 1000grams), while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold items (one derived gold bars of 24KT/999.00 purity weighing 101.480 grams and gold jewellery weighing of 140.820 grams of 750.0/18kt) totally weighing 242.300 grams and saffron weighing 1060 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 items alongwith saffron and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold and saffron clandestinely with the deliberate intention to evade payment of Customs duty.

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21. 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 items as well as saffron 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 as amended and he was tried to exit through Green Channel which shows that the noticee was trying to remove the gold and saffron clandestinely 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 and saffron before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold total weighing 242.300 grams and saffron 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 read with the Regulation 3 of Food Safety and Standards (Import) Regulations, 2017.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 242.300 grams, having Tariff Value of Rs.13,42,529/- and Market Value of Rs.14,71,617/- alongwith the saffron weighing 1060 grams having market value of Rs. 2,32,155/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 07.08.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i),

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111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in form of paste concealed in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress and saffron packets in trolley bag, 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 items alongwith saffron and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

22. I find that the Noticee confessed of carrying the said gold items total weighing of 242.300 grams alongwith the saffron weighing 1060 grams concealed by him and attempted to remove the said goods 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 and saffron by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

23. It is quite clear from the above discussions that the gold items alongwith the saffron 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

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prohibited goods with the wilful intention to smuggle the impugned goods. The said gold items total weighing 242.300 grams, having Tariff Value of Rs.13,42,529/- and Market Value of Rs.14,71,617/- alongwith the saffron weighing 1060 grams valued of Rs. 2,32,155/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings dated 07.08.2024. 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 items weighing 242.300 grams alongwith saffron weighing 1060 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned goods into India. I, therefore, find that the noticee has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

24. I find from the statement that the gold items alongwith the recovered saffron was neither belong to him nor purchased by him and same was handed over to him by a person named Mr. Hibrahim. Further, I find that the noticee is not an illiterate person and studied upto 8th standard and have basic knowledge of the fact that smuggling is an offense. Further, I find that the noticee consciously accepted the offer of smuggling the gold items alongwith saffron, 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.

25. I further find that the gold and saffron are 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

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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 items and saffron seized in the present case "prohibited goods" as the passenger, trying to smuggle them, was not eligible passenger to bring it in India or import gold into India in baggage as per the conditions prescribed under Notification 50/2017-Cus dated 30.06.2017. The said gold items (derived gold bar and jewellery) weighing 242.300 grams alongwith saffron weighing 1060 grams, which was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the noticee concealed the said gold in paste form in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress and saffron packets concealed in his trolley bag. 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.

26. 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 and saffron to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized goods. 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 goods is ingenious in nature, as the noticee concealed the gold in form of paste form in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress and saffron packets concealed in his trolley bag with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold items weighing 242.300 grams alongwith saffron, 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 07.08.2024 stated that he has carried the said goods by concealment to evade payment of Customs duty and also admitted that the he intentionally not declared the same before customs authority. In the instant case, I find that the goods were carried by the Noticee for getting monetary benefit and that too by concealment of the said gold in paste form in brown (khaki)

colour paper packet & gold jewellery concealed in ladies dress and saffron packets concealed in his trolley bag. ***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.***

27. 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]

28. 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.

29. 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).

30. 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.

31. 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".

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

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

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

33. Given the facts of the present case before me and the judgements and rulings cited above, the said gold items (derived gold bar from paste and gold jewellery) total weighing 242.300 grams and saffron weighing 1060 grams concealed in trolley bag, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold items total weighing 242.300 grams and saffron weighing 1060 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.**

34. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold and saffron, carried by him. He has agreed and admitted in his statement that he travelled with the said gold in paste form in brown (khaki) colour paper packet & gold jewellery concealed in ladies dress alongwith saffron concealed in trolley bag from Abu Dhabi to Ahmedabad. Despite his knowledge and belief that the gold and saffron carried by him is an offence under the provisions of the Customs Act, 1962 read with Regulation 3 of Food Safety and Standards (Import) Regulations, 2017 and the Regulations made under it, the noticee attempted to smuggle the said gold items weighing 242.300 grams, having purity 999.0/24kt & 750.0/18kt and saffron by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold and saffron which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of

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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 noticee is liable for penal action under Sections 112 of the Act and I hold accordingly.

35. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of **01 Gold Bar** derived from the gold paste concealed in paste form in brown (khaki) colour paper packet & **gold jewellery** concealed in ladies dress having total gross weight of 243.870 grams & net weight of 242.300 grams having purity 999/24 KT & 750.0/18 Kt respectively having total Market value of Rs. 14,71,617/-/- (Rupees Fourteen Lakh Seventy-One Thousand Six Hundred Seventeen Only) and Tariff Value as Rs. 13,42,529/- (Rupees Thirteen Lakh Forty-Two Thousand Five Hundred Twenty-Nine only), placed under seizure under Panchnama dated 07.08.2024 and seizure memo order dated 07.08.2024, 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 order **absolute confiscation** of Saffron weighing to the tune of 1060 grams having value of Rs. 2,32,155/- recovered from the passenger, Shri Abdul Khader Gafoor Ahammed, placed under seizure under panchnama proceedings dated 07.08.2024 and Seizure Memo Order dated 07.08.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- iii) I impose a penalty of **Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand Only)** on **Shri Abdul Khader Gafoor Ahammed** under the provisions of Section 112(a)(i) and 112(b) (i) of the Customs Act, 1962.

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36. Accordingly, the Show Cause Notice No. VIII/10-253/SVPIA-D/O&A/HQ/2024-25 dated 28.01.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250571MN0000745509

BY SPEED POST AD

To,
Shri Abdul Khader Gafoor Ahammed,
S/o Late Shri Abdulla Gafoor Ahammed,
At:- C M Nagar, Hassainar Quarters,
P.O.- Thekkil, Kasargod, Kerala – 671541.
Email ID:- kabdulkhader089@gmail.com

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.