

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.
दूरभाष: (079) 2754 4630E-mail: cus-ahmd-adj@gov.in फैक्स: (079) 2754 2343

DIN: 20250371MN0000666EC7

PREAMBLE

A	फाइलसंख्या / File No.	:	VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-02/ENQ-09/2024 dated 15.07.2024
C	मूलआदेशसंख्या / Order-In-Original No.	:	274/ADC/SRV/O&A/2024-25
D	आदेशतिथि / Date of Order-In-Original	:	07.03.2025
E	जारीकरनेकीतारीख / Date of Issue	:	07.03.2025
F	द्वारापारित / Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	(i) Mr. Aftab Firojbhai Kachara, Son of Shri Firojbhai Kachara, Block No. 29, Ghanchipat, Behind Sardarbaug, Junagadh - 362001 (ii) Ms. Nasima Samir Shekh, wife of Shri Samir Shekh, Daughter of Shri Bodubhai Alibhai Khokhar, 72, Sunni Borval, Junagadh -362001. (iii) Shri Lucky@Rajasthan near Jaipur (iv) Shri Haroon@Rajasthan near Jaipur (v) Shri Sarfaraz (vi) Ms Nasrinbanu Fesal Suriya, Mirza Colony, Mishkin Colony, Bage Zam Zam, Veraval, Gir Somnath-362265
(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 इयूटी 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:

An intelligence was received by Directorate of Revenue Intelligence, Zonal Unit Ahmedabad, (hereinafter also referred to as DRI) that two passengers namely (a) Shri Aftab Firojbhai Kachara (herein after mentioned as Noticee No. 1), Male, Passport No. W8445208 and (b) Ms Nasima Samir Shekh (herein after mentioned as Noticee No. 2), Female, Passport no. X8908954 arriving by Indigo Flight No. 6E-92 on 28.01.2024 from Jeddah to Ahmedabad are suspected to be carrying restricted/prohibited goods.

2. Acting on the said intelligence, a team of officers from DRI along with officers of Air Intelligence Unit, Customs, SVPI Airport Ahmedabad, discreetly kept a watch over all passengers arriving by Indigo flight No. 6E 92 from Jeddah to Ahmedabad on 28.01.2024. The officers then intercepted 2 passengers viz. (a) Shri Aftab Firojbhai Kachara, Male, Passport No. W8445208 and (b) Ms Nasima Samir Shekh, Female, Passport no. X8908954 by verifying their passport, when the said passengers tried to exit through the Green Channel at arrival hall of Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad and the proceedings thereof were recorded under panchnama of dated. 28.1.2024.

2.1 Upon inquiry, the male passenger identified himself as Shri Aftab Firojbhai Kachara (Passport No. W8445208), who had travelled from Jeddah to Ahmedabad on 28.01.2024. He was having his boarding pass which confirmed his arrival by Indigo Flight No. 6E 92 (Seat No. 3C) on 28.01.2024 at SVPI Airport, Ahmedabad. He had one check-in baggage of

blue colour having marks as “Star Shine” and one cabin baggage having marks “Apple L-544” along with him.

2.2 Upon inquiry, the female passenger identified herself as Ms Nasima Samir Shekh (Passport No. X8908954), who had travelled from Jeddah to Ahmedabad on 28.01.2024. She was having her boarding pass which confirmed her arrival by Indigo Flight No. 6E 92 (Seat No. 3B) on 28.01.2024 at SVPI Airport, Ahmedabad. She had one check-in baggage having marks as “Al Hamid Tours & Travels” and one cabin baggage of green colour having marks “Y’r Choice” along with her. The details of the said passengers are as below:

Sr. No.	Name of the passenger	Passport No.	Seat No.
1	Shri Aftab Firojbhai Kachara	W8445208	3C
2	Ms Nasima Samir Shekh	X8908954	3B

2.3 The DRI & Customs Officers then asked Shri Aftab Firojbhai Kachara and Ms Nasima Samir Shekh, if they had anything to declare before the Customs, to which they both denied of having any dutiable or restricted items with them.

2.4 Thereafter the officers asked the passengers i.e. Shri Aftab Firojbhai Kachara and Ms Nasima Samir Shekh whether they wish to be searched before a Gazetted officer or Magistrate, to which they agreed to be searched in front of a Gazetted officer of Customs. Both the said passengers were then asked to pass through Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival hall of Terminal 2, SVPI Airport Ahmedabad, however, no beep sound was heard from the machine.

2.5 The check-in and cabin baggage of both the passengers were then passed through the Baggage Screening Machine (BSM) installed near the green channel in the Arrival hall of Terminal 2, SVPI Airport Ahmedabad, however the officers did not notice any unusual images indicating anything objectionable item present in their baggage.

2.6 The DRI officer then systematically checked the baggages of Shri Aftab Firojbhai Kachara but nothing objectionable was found in them. Further, the female Custom Officer systematically checked the baggages of Ms. Nasima Samir Shekh but nothing objectionable was found in them.

2.7 The DRI officers then again asked Shri Aftab Firojbhai Kachara and Ms Nasima Samir Shekh, if they had anything dutiable / restricted /

prohibited items which were required to be declared to the Customs, to which both the said passengers denied. Upon sustained interrogation by the DRI and Customs officers, both the passengers confessed that they were carrying gold in paste form hidden inside their body in rectum and in their undergarments.

2.8 Shri Aftab Firojbhai Kachara informed the officer that he was carrying 04 (four) capsules containing gold paste mixed with some chemical in his rectum and 1 (one) packet of gold paste mixed with some chemical inside his underwear. Thereafter, Shri Aftab Firojbhai Kachara was taken to the Gents washroom opposite to belt No. 6 of Arrival hall, Terminal 2 where he removed his blue coloured underwear with marking / brand “Bruty Smart” containing the packet of gold paste and also removed 4 (four) capsules containing gold paste from his rectum. The packet was removed from underwear. The said packet was covered with white adhesive tape and the 4 capsules recovered from rectum were covered with white rubber balloon.



Image-I: 4 Capsules recovered from rectum and 1 No. of packet recovered from underwear of passenger Shri Aftab Firojbhai Kachara on 28.1.2024

2.9 Ms. Nasima Samir Shekh informed the lady officer that she was carrying 04 (four) capsules containing gold paste in her rectum, 1 (one) packet containing gold paste inside her underwear and 2 (two) packets containing gold paste inside her bra. Thereafter, a female Customs Officer namely Smt. Nanda Khumbhare, Superintendent took Ms. Nasima Samir Shekh to the Ladies washroom opposite belt No. 6 of arrival hall, Terminal 2, where she handed over her black coloured underwear containing packet of gold in paste form, her black colour bra containing packet of gold in paste form and 4 (four) capsules containing gold in paste form concealed

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

in her rectum, to the female Custom Officer. The packet removed from underwear was found to be covered with white adhesive tape, the packets removed from the bra were found to be covered with black adhesive tape and all the 4 capsules recovered from the rectum were found to be covered with white rubber balloon.



Image-II: 4 Capsules recovered from the rectum and 1 packet recovered from underwear of passenger Ms Nasima Samir Shekh on 28.1.2024



Image-III: 2 packets recovered from the Bra of passenger Ms Nasima Samir Shekh on 28.1.2024

2.10 Thereafter, the officer contacted Government Approved Valuer Shri Kartikey Vasantrai Soni and informed about the recovery of gold in paste form. Further, the officer requested Shri Kartikey Vasantrai Soni to carry out the testing, extraction and valuation of the gold recovered in paste form. Shri Kartikey Vasantrai Soni informed that testing, valuation and extraction of gold is only possible at his workshop. The officers along with both the passengers then left the airport for the workshop of Government Approved Valuer. At the workshop, Shri Kartikey Vasantrai Soni carried out the weighment of semi-solid/paste/dust substance in 1 packet form and 4 capsules recovered from Shri Aftab Firojbhai Kachara and found that the gross weight of said substance was 1103.37 grams and 1276.28 grams respectively. The photographs taken thereof are reproduced as below:-

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

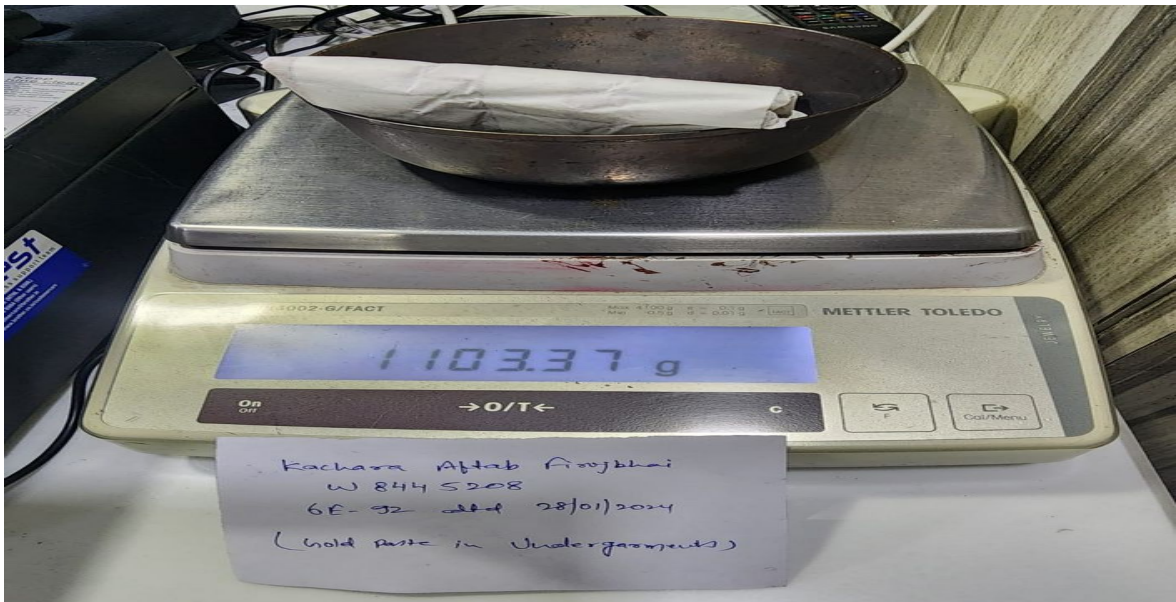


Image-IV: Weight 1103.37 grams of 1 packet recovered from underwear of Shri Aftab Firojibhai Kachara

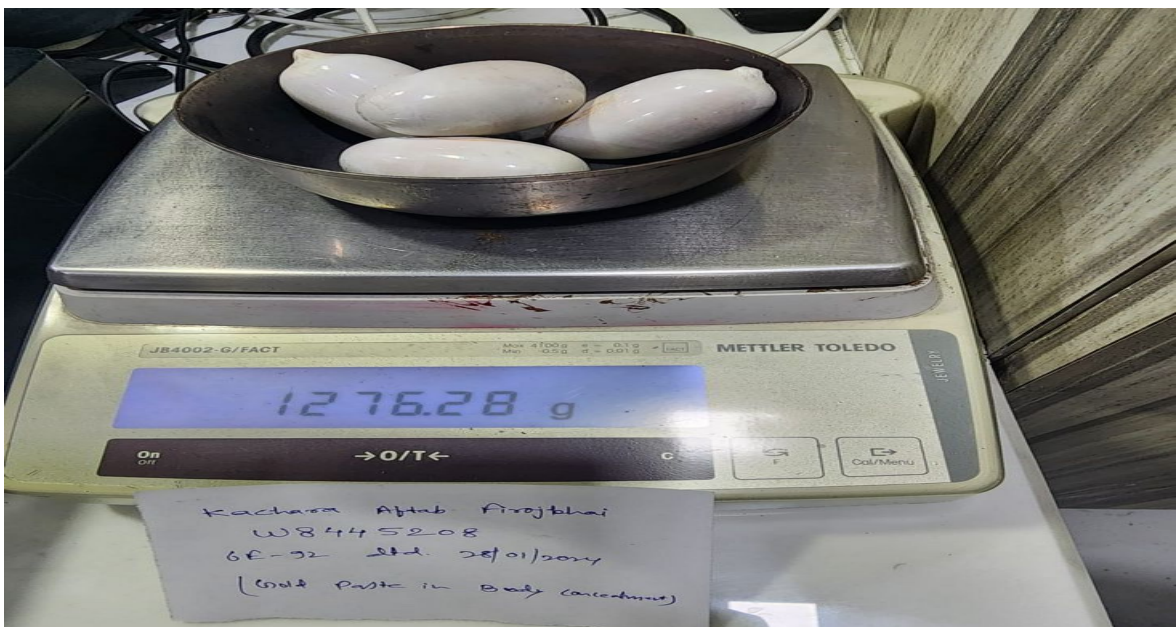


Image-V: Weight 1276.28 grams of 4 Capsules recovered from rectum of Shri Aftab Firojibhai Kachara

2.11 Similarly Shri Kartikey Vasantrai Soni, carried out the weighment of semi-solid/paste/dust substance in 1 packet recovered from the underwear, 2 packets recovered from the bra and 4 capsules recovered from the rectum of Ms Nasima Samir Shekh. The gross weight of said substances was found to be 560.53 grams, 852.89 grams and 1277.49 grams respectively. The photographs taken thereof are reproduced as below.

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

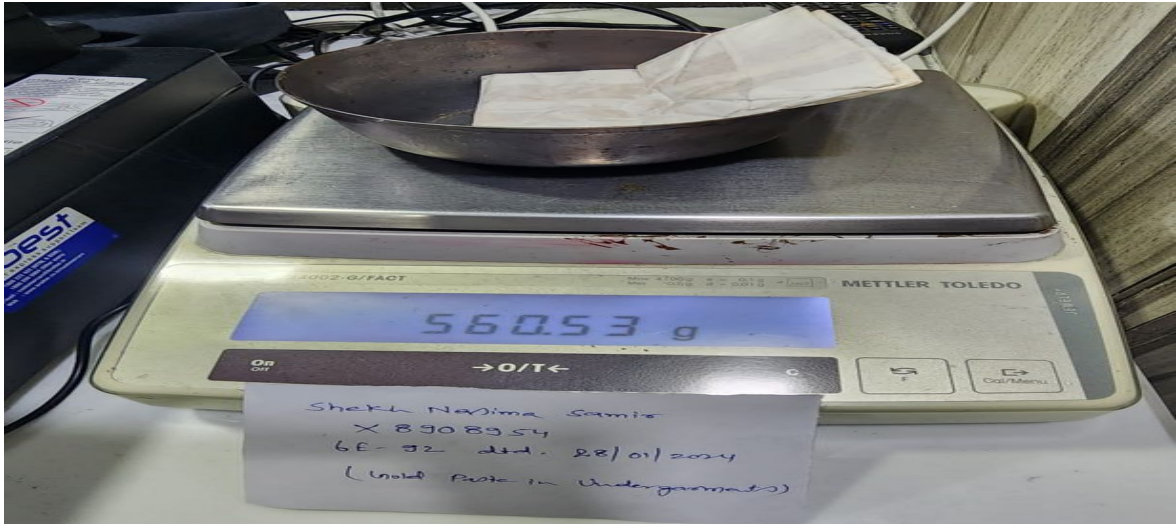


Image-VI: Weight 560.53 grams of 1 packet recovered from underwear of Ms Nasima Samir Shekh)

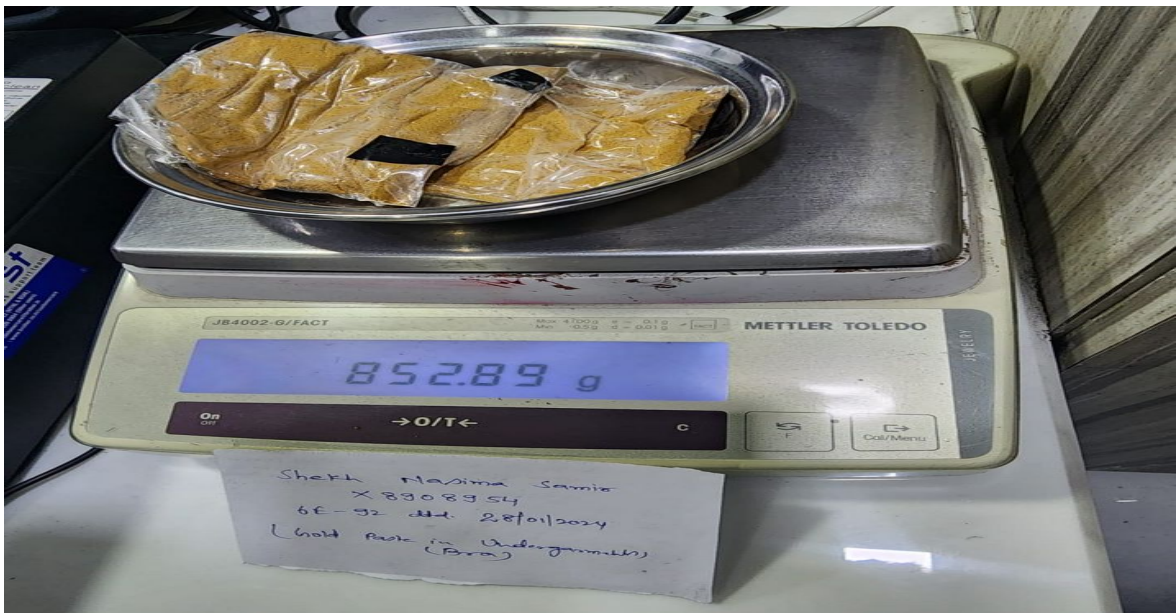


Image-VII: Weight 852.89 grams of 2 packets recovered from Bra of Ms Nasima Samir Shekh)

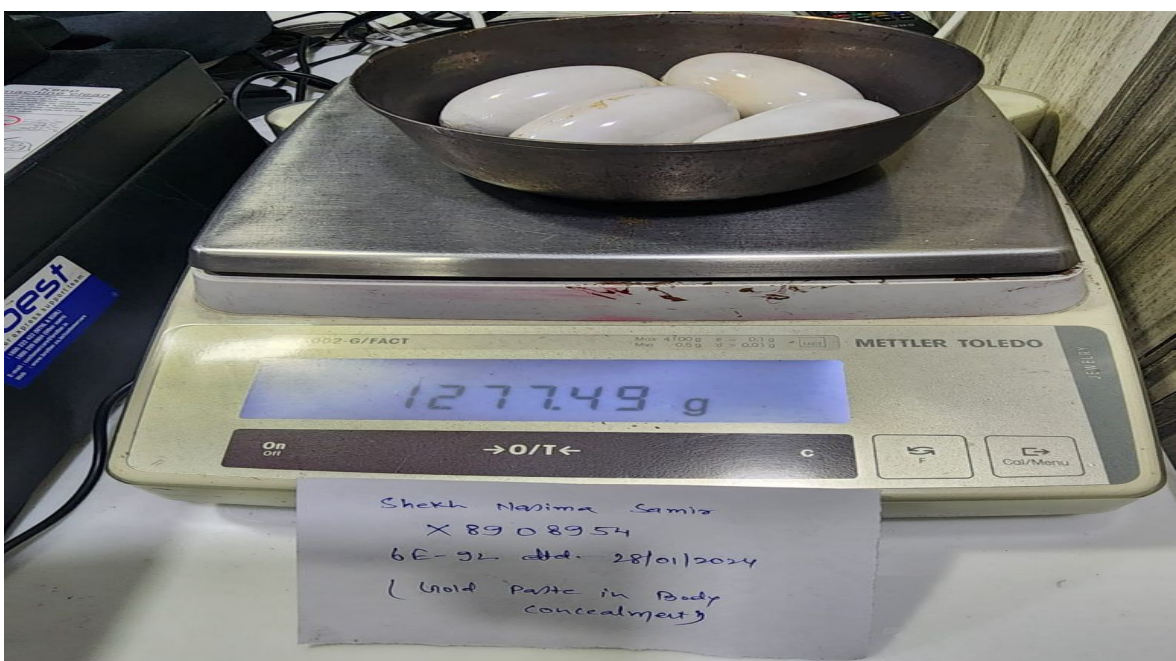


Image-VIII: Weight 1277.49 grams of 4 Capsules recovered from the rectum of Ms Nasima Samir Shekh)

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

2.12 Further, after extraction of gold from the said recovered Gold in paste form, purity test and weighment of the extracted gold was done. The photographs taken in this regard are reproduced as below.

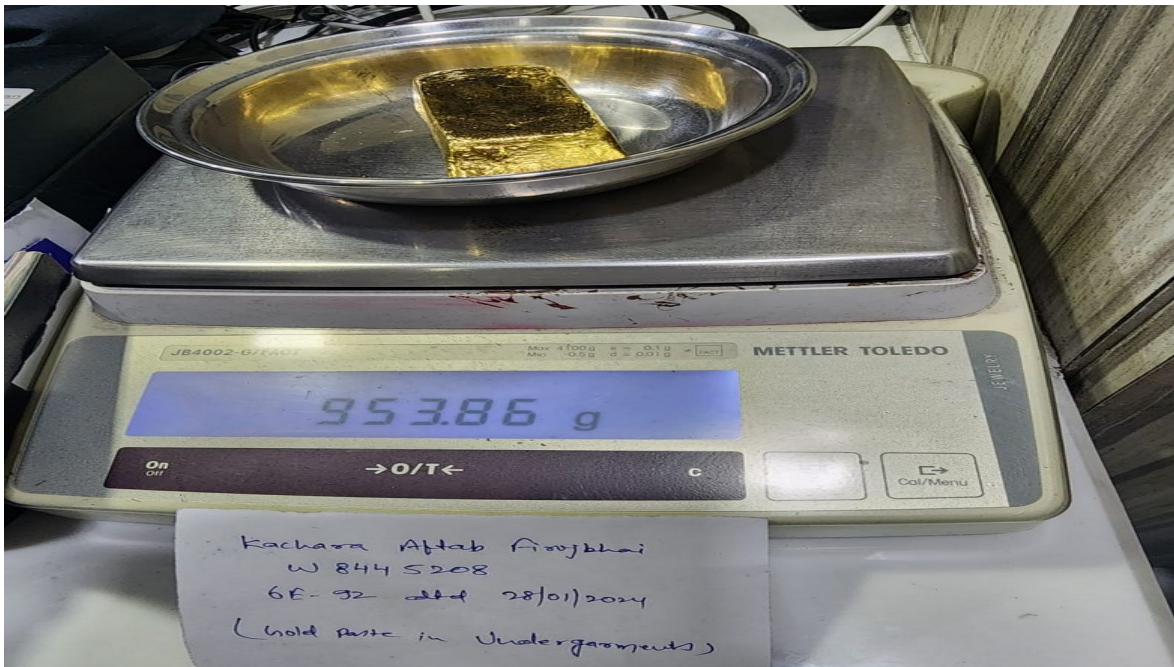


Image-IX: Net Weight of Gold Bar – 953.86 grams recovered from melting 1 packet recovered from underwear of Shri Aftab Firojbhai Kachara)



Image-X: Net Weight of Gold Bar – 1136.58 grams recovered from melting of 4 Capsules recovered from rectum of Shri Aftab Firojbhai Kachara

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

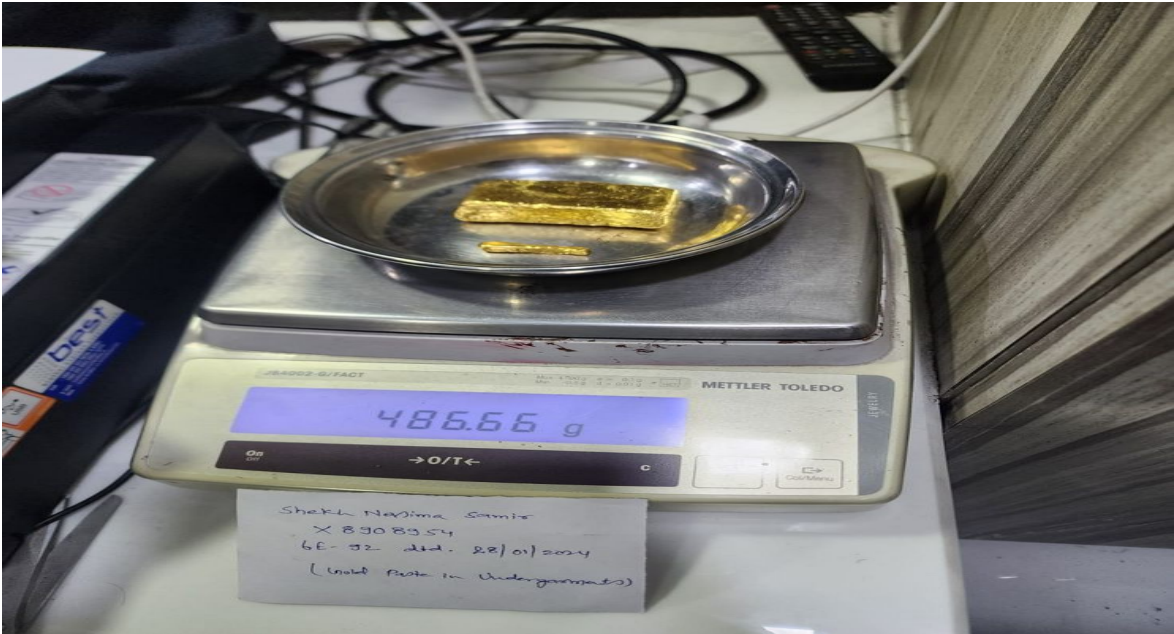


Image-XI: Net Weight of Gold Bar – 486.66 grams recovered from melting of 1 packet recovered from underwear of Ms Nasima Samir Shekh

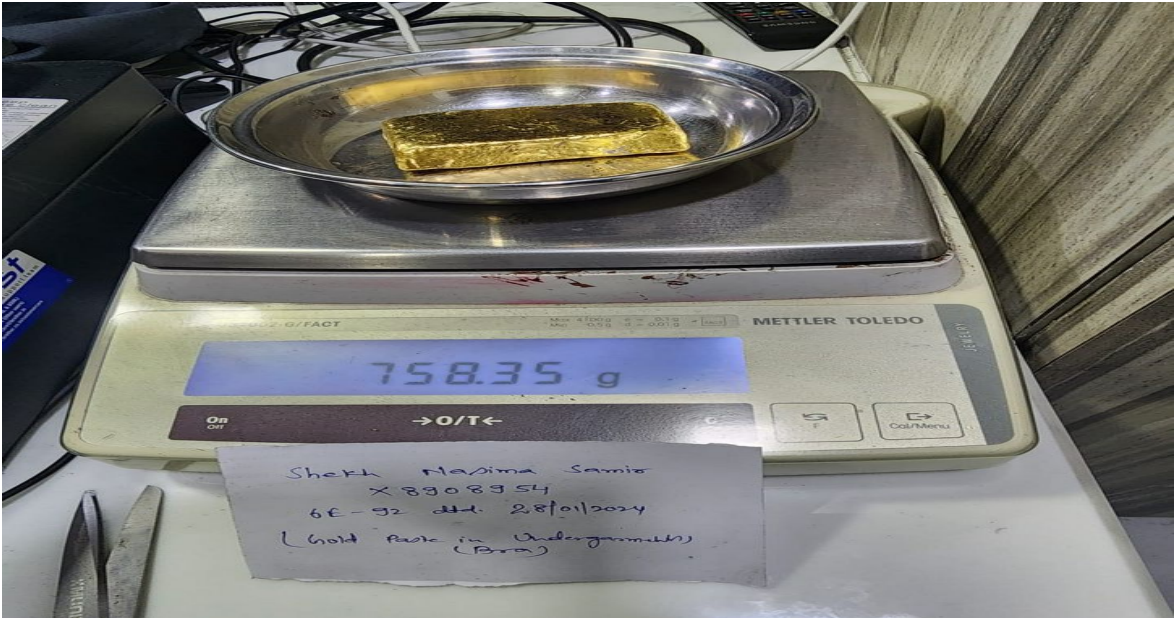


Image-XII: Net Weight of Gold Bar – 758.35 grams recovered from melting of 2 packets recovered from Bra of Ms Nasima Samir Shekh

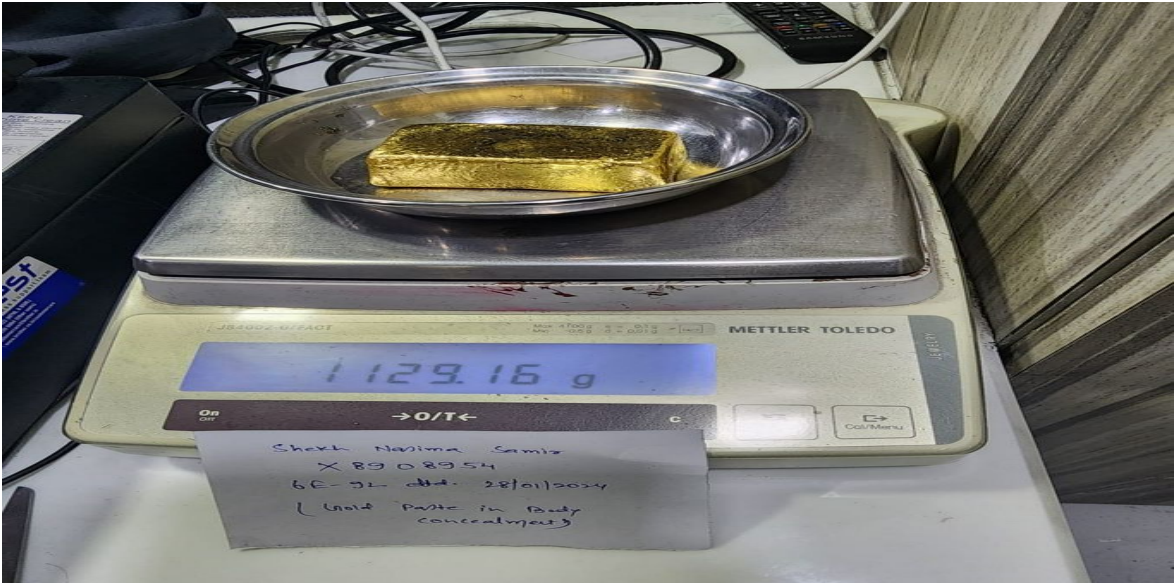


Image-XIII: Net Weight of Gold Bar – 1129.16 grams recovered from melting of 4 Capsules recovered from rectum of Ms Nasima Samir Shekh)

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

2.13 After completion of entire testing and purity process, Shri Soni Kartikey Vasantrai, issued his Valuation Report (Annexure - B) Certificate No. 1256 & 1257/2023-24 both dated 28.01.2024 in respect to the gold recovered from Shri Aftab Firojbhai Kachara and Ms Nasima Samir Shekh respectively.

Details as per the Certificate No. 1256/23-24 Dated 28.1.2024 issued by Shri Soni Kartikey Vasantrai, Govt. Approved Valuer pertaining to the Gold recovered/extracted from passenger Shri Aftab Firojbhai Kachara:-

S . N .	Details of Items	PCS	Quantity of Gold in Paste form Gross Weight	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bar (derived from capsules)	1	1276.28	1136.580	999.0 24Kt	7327531	6327818
2	Gold Bar (derived from Pouch)	1	1103.37	953.860	999.0 24Kt	6149535	5310539
	Total	2	2379.65	2090.440		13477067	1163835 7

Details as per the Certificate No. 1257/23-24 Dated 28.1.2024 issued by Shri Soni Kartikey Vasantrai, Govt. Approved Valuer pertaining to the Gold recovered/extracted from passenger Ms Nasima Samir Shekh:-

Sr . N o	Details of Items	PCS	Quantity of Gold in Paste form Gross Weight	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bar (derived from capsules)	1	1277.49	1129.160	999.0 24Kt	7279695	6286508
2	Gold Bar (derived from Pouch)	2	560.53	486.660	999.0 24Kt	3137497	2709441
3	Gold Bar (derived from Two Pouch)	1	852.89	758.350	999.0 24Kt	4889082	4222053
	Total	4	2690.91	2374.170		1530627 4	1321800 2

Seizure of smuggled gold

2.14 Since, Shri Aftab Firojbhai Kachara did not declare the said gold to the Customs Authorities and thereby have attempted to smuggle gold in the conceal manner with an intention to evade payment of Customs duty in violation of the provisions of Customs Act, 1962, total 2090.440 Grams Gold of 24Kt. with purity 999.0, having total Market Value of Rs. 1,34,77,067/- (Rupees One Crore Thirty-Four Lakhs Seventy-Seven Thousand Sixty-Seven only) and total tariff value of Rs. 1,16,38,357/- (Rupees One Crore Sixteen Lakhs Thirty-Eight Thousand Three Hundred Fifty-Seven only) extracted from the 2379.65 Grams of Gold in Paste form recovered from him along with the packing material were placed under seizure vide seizure memo dated 28.1.2024 on the reasonable belief that the said gold was attempted to be smuggled by Shri Aftab Firojbhai Kachara and was liable to confiscation as per the provisions of Customs Act, 1962.

2.15 Further, Since Ms. Nasima Samir Shekh, did not declare the said gold to the Customs Authorities and thereby have attempted to smuggle gold in the conceal manner with an intention to evade payment of Customs duty in violation of the provisions of Customs Act, 1962, total 2374.170 Grams Gold of 24 Kt. with purity 999.0, having total Market Value of Rs.1,53,06,274/- (Rupees One Crore Fifty Three Lakhs Six Thousand Two Hundred Seventy Four only) and total tariff value of Rs.1,32,18,002/- (Rupees One Crore Thirty Two Lakhs Eighteen Thousand Two only) extracted from the 2690.91 Grams of Gold in Paste form recovered from her along with the packing material were placed under seizure vide seizure memo dated 28.1.2024 on the reasonable belief that the said gold was attempted to be smuggled by Ms Nasima Samir Shekh and was liable to confiscation as per the provisions of Customs Act, 1962.

2.16 The seized gold bars along with packing material used for concealment were handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide ware House Entry No. 5651 (Ms Nasima Samir Shekh) & 5652 (Shri Aftab Firojbhai Kachara) both dated 28.01.2024

3. STATEMENTS OF KEY PERSONS:

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

Upon completion of the panchnama proceedings at SVPI Airport, summons were issued to (I) Ms. Nasima Samir Shekh (II) Shri Aftab Firojbhai Kachara for recording their statement.

3.1 Statement of Ms. Nasima Samir Shekh was recorded under Section 108 of the Customs Act, 1962 on 28.01.2024, wherein she inter-alia stated that:

3.1.1 She went to Jeddah from Ahmedabad on 15.01.2024 with her husband Shri Samir for Umrah and arrived by Flight No. 6E 92 (Seat No. 3B).

3.1.2 2690.910 grams of gold in paste form was recovered from her worn clothes i.e. undergarment (Bra and Panty) as well as from her body (Rectum concealment). Upon extraction, 2374.170 Grams of Pure gold with purity 999.0/24 KT was recovered and seized.

3.1.3 The gold paste was concealed in such a manner that it could be fully covered/concealed and the same could be cleared from the Airport without the knowledge of Customs Authority at SVPI Airport Ahmedabad.

3.1.4 She received the said quantity of gold in the presence of her husband in Jeddah at around 23.00 Hrs on 27.01.2024 from one person, who came to her hotel room. The said person handed over to her a packet filled with gold paste + Panty to wear + Bra with Gold paste and 4 capsules of Gold paste. She did know anything about the said person.

3.1.5 The said person asked her to wear said undergarments (Bra and Panty) during her return journey from Jeddah to Ahmedabad. Further, the said person asked her to keep the packet of gold paste inside the worn panty for concealment. He also explained her the method of concealing/carrying the 4 capsules containing gold paste in rectum.

3.1.6 On following his directions, she concealed the given gold paste in her undergarment (Panty), wore the given Bra and concealed 4 capsules of gold paste in her body i.e. rectum. The said person then dropped her at Jeddah Airport and further asked her to get the gold cleared from Ahmedabad airport without the knowledge of Airport Customs.

3.2 Statement of Mr. Aftab Firojbhai Kachara, Son of Shri Firojbhai Kachara, was recorded under Section 108 of the Customs Act, 1962 on 28.01.2024, wherein, he inter-alia stated:

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

3.2.1 He went to Jeddah on 15.01.2024 from Ahmedabad with her wife Ms. Ateka, Shri Samir Shekh & Ms Nasima. They went to Jeddah for Umrah and arrived by Flight No. 6E 92.

3.2.2 2379.650 grams of gold in semi-solid substance in paste form was recovered from his worn clothes i.e. Knicker as well as from his body (Rectum concealment). Upon extraction, 2390.440 Grams of Pure gold with purity 999.0/24 KT having market value of Rs. 1,34,77,066/- was recovered and seized.

3.2.3 The gold was concealed in such a manner that it could be fully covered/concealed and the same could be cleared from the Airport without the knowledge of Customs Authority at SVPI Airport Ahmedabad.

3.2.4 He received the said quantity of the gold in Jeddah at around 23.00 Hrs of 27.01.2024 from one person, who came to their hotel room at Hotel Surakha Al Kher, Umrah.

3.2.5 The person gave him a packet filled with gold paste + Knicker to wear and 4 capsules of Gold paste in the presence of Shri Samir, husband of Ms Nasima.

3.2.6 The said person asked him to wear the said knicker during his return journey from Jeddah to Ahmedabad. Further, the said person asked him to keep the packet of gold paste in the worn knicker for concealment and also explained him the method of concealing/carrying the said 4 capsules of gold paste in rectum.

3.2.7 He followed the said person's directions and concealed the given gold paste in his worn knicker. Further, he inserted 4 capsules of gold paste in his body i.e. rectum. At around 23.55 hrs of 27.01.2024, the said person dropped him at Jeddah airport and asked him to clear the gold at Ahmedabad airport without the knowledge of Airport Customs.

3.3 Statement of Ms. Nasima Samir Shekh was recorded under Section 108 of the Customs Act, 1962 on 29.01.2024 wherein she inter-alia stated that:

3.3.1 Her husband was not accompanying her when the person in Umrah dropped her at the airport. However, Shri Aftab Firojbhai Kachara was accompanying her to the airport and the person in Umrah informed that Shri Aftab Firojbhai Kachara was also carrying gold in concealed manner given by him.

3.3.2 Upon dropping them at the airport, the said person took their photographs separately and informed that he would forward the said photographs to his person in Ahmedabad, who would come to receive gold from them at SVPI Airport, Ahmedabad and would give Rs 50,000/- in cash for execution of the said work.

3.3.3 No details regarding the receiver was shared to her, but it was informed that the receiver would recognize her on the basis of the photograph been shared to him.

3.3.4 She did not know who managed their i.e her and her husband`s tickets as they did not make any payment for the tickets from Ahmedabad to Jeddah and had to make the payment after arrival in India. She believed that her air tickets from Ahmedabad to Jeddah might be booked through agent namely Al-Hamid Tours and Travel. Further, one lady namely Ms Nasrin met them at SVPI Airport, Ahmedabad when they were going to Jeddah and gave them two empty luggage bags (Handbag) with label Al-Hamid Tours and Travels, one for her and another for her husband as well as their Air Tickets for Ahmedabad to Jeddah.

3.3.5 Neither she nor her husband had visited the office of Al Hamid Tours and Travels.

3.3.6 She did not know Ms Nasrin. She met her once at SVPI Airport at the time of their departure to Jeddah. She handed over to them their tickets to Jeddah as well as two empty luggage bags. She did not have any contact details of Ms Nasrin. Her husband received a call from Ms Nasrin, when they were leaving from Junagadh to Ahmedabad. She did not receive any call or message from Ms Nasrin during their stay at Umrah or during her return journey from Jeddah to Ahmedabad.

3.3.7 She along with her husband stayed in hotel but she did not have any details about the person who managed/booked their hotel at Umrah. Further, the person who handed over the gold managed their tickets from Jeddah to Ahmedabad.

3.3.8 Shri Aftabbhai and his wife travelled along with them from Junagarh to Ahmedabad while going to Umrah. Further, they all stayed in the same hotel at Umrah. Further, the same person handed over the gold to her and Shri Aftabbhai, while coming back to India. The gold carried by her and Shri Aftab was to be delivered to same person in Ahmedabad.

3.3.9 She had no prior idea that she would have to carry gold while returning from Jeddah to Ahmedabad.

3.3.10 She denied to have anything to be declared to the Customs authority at SVPI Airport, Ahmedabad on being asked by the officer, as the Gold brought by her was to be cleared without the knowledge of Customs Authority at SVPI Airport, Ahmedabad.

3.4 Statement of Mr. Aftab Firojbhai Kachara, Son of Shri Firojbhai Kachara, was recorded under Section 108 of the Customs Act, 1962 on 29.01.2024, wherein he inter alia stated:

3.4.1 Ms. Nasima Samir Shekh was accompanying him when the person in Umrah dropped him at the airport. The person in Umrah informed him that Ms. Nasima Samir Shekh was also carrying gold in concealed manner given by the said person.

3.4.2 Upon dropping them at the airport, the said person took their photographs separately and informed that he would forward the same to his person in Ahmedabad, who would come to receive the gold from them at SVPI Airport and would also give 50,000/- in cash for execution of the said work. No details about the receiver of gold in Ahmedabad was shared to him but it was informed that the receiver would recognize him on the basis of the photograph been shared to him/her.

3.4.3 Before departing from India, he was not knowing about carrying gold. But when he reached for Umrah, one person gave him an offer that if he would carry gold to India, then his & his wife's journey would be sponsored by them and would also give 50000/- in cash. He accepted his offer of bringing gold from Jeddah to Ahmedabad. He did not have any details of the said person.

3.4.5 He planned to go for Umrah with his wife. He had to make the payment for his tour after returning to India. At the time of departure, one person met him at SVPI Airport, Ahmedabad and handed over two empty luggage bags with label Al-Hamid Tour and Travels on the directions of one lady namely Nasrin. He believed that his tickets might be managed by Al-Hamid Tours and Travel and Ms Nasrin might be related to Al Hamid Tours and Travels. Further, while travelling from Junagadh to Ahmedabad, he had received a call from lady namely Nasrin mobile number i.e. 9337366273 to get confirmation, whether they were going for the trip to Jeddah or not. He did not know much about Ms Nasrin.

3.4.6 He did not visit the office of Al Hamid Tours and Travels. He did not receive any call or message from Ms Nasrin during his stay at Umrah or during his return journey from Jeddah to Ahmedabad.

3.4.7 He, his wife, Ms Nasima Samir Shekh and her husband Shri Samir Shekh came together from Junagadh to Ahmedabad by State Transport Bus.

3.4.8 On being asked by the officers, he denied to have anything to be declared before the Customs authority at SVPI Airport, Ahmedabad.

4. Arrest of (I) Ms. Nasima Samir Shekh (II) Mr. Aftab Firojbhai Kachara

Based on the evidences gathered and the statement recorded, it appeared that (I) Ms. Nasima Samir Shekh and (II) Mr. Aftab Firojbhai Kachara have committed an offence punishable under Customs Act, 1962. As (I) Ms. Nasima Samir Shekh and (II) Mr. Aftab Firojbhai Kachara, have smuggled gold in paste form without declaration of the same before Customs Authorities with a view to evade payment of Customs duty. The said gold smuggled by the above persons was liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. Thus, they had knowingly concerned themselves in an offence punishable under Section 135(1) of the Customs Act, 1962, as they had knowingly concerned themselves in dealing/carrying 4464.610 grams of smuggled gold of 24 carat having purity of 999 having total market value of Rs. 2,61,67,649/- and concerned themselves in carrying, removing, depositing, harboring, keeping, concealing of smuggled Gold which they knew and/or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Hence, (I) Ms. Nasima Samir Shekh and (II) Mr. Aftab Firojbhai Kachara were arrested on 29.01.2024 at Ahmedabad under the provisions of Section 104 of the Customs Act, 1962.

5. Further Investigation

5.1 Statement of Persons whose role emerged during the investigation

5.1.1 Statement of Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh revealed that one lady Ms Nasrin had approached them on phone as well as also delivered empty luggage bags with label Al Hamid Tours Travels to them at SVPI airport, Ahmedabad when the said passengers were departing from Ahmedabad to Jeddah. Accordingly, investigation was further extended to M/s Al Hamid Tours Travels, Ahmedabad. Also, investigation was extended to Ms Nasrin by way of issuance of summons, on the basis of her address retrieved from the CDR/SDR of her mobile number, recovered from the mobile of Shri Aftab Firojbhai Kachara.

5.1.2 Statement of Shri Abdul Hamid, Proprietor of M/s Al Hamid Tours & Travels was recorded on 17.04.2024 under Section 108 of the Customs Act, 1962 wherein, he inter-alia stated that he runs a business in the name of M/s Al Hamid Tours travel, wherein mainly he entertains passengers who approaches him for Umrah or Ziyarat. He offers them the package given by M/s Al Furqan Travels, Jodhpur against which M/s Al

Furqan Travels give them commission on each booking. For advertisement of his business, he distributes empty bag with label "Al-Hamid" among the passengers, who travels from Ahmedabad. He hand over the bags to the passengers at their office and in some cases at a nearby place convenient to the said passengers through courier boy/porter. He did not know Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh as their bookings were not done at their end, but was done through Shri Zahir bhai of M/s Al Furqan Travels and he distributed 12 Bags among the said passengers at Ahmedabad. He did not know any person namely Ms Nasrin.

5.1.3 As per the statement dated 17.04.2024 of Shri Abdul Hamid, Proprietor of M/s Al Hamid Tours Travels, it was revealed that air ticket bookings in respect to the passengers namely Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh were done through Shri Zahirul Islam of M/s Al Furqan Travels. Accordingly, summons was issued to Shri Zahirul Islam of M/s Al Furqan Travels and his statement was recorded on 22.04.2024 under Section 108 of the Customs Act, 1962, where he inter-alia stated that:

5.1.3.1 He runs two Tour and Travel agencies i.e. M/s Yushra Haj Travels, 1st Floor, 1st Phase, H-2-135, Sangariya RICCO Ltd, Jodhpur – 342013, which is a proprietorship firm in the name of his son. The other one is M/s Al-Furqan Travels Haj & Umrah, 540, Opposite Udai Mandir, Niwar Factory, Jodhpur, which is a partnership firm in the name of his wife and him.

5.1.3.2 He confirmed that the tickets and visa for travel of Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh from Ahmedabad to Jeddah were done through M/s Yushra Haj Travels.

5.1.3.3 One Shri Ashraf Bhai Sherani contacted him for booking of tickets to Jeddah for the said 2 passengers along with 10 other passengers. He booked their tickets for departure from Ahmedabad on 15.01.2024 and sent it to Ashraf Bhai on his number through Whatsapp. The payment for the said tickets and visa was done by Shri Ashraf bhai by depositing cash in the bank account of his company M/s Yushra Haj Travels, State bank of India Account No. 61262246011. He produced the visa and tickets of the above said 12 passengers.

5.1.3.4 Shri Ashraf requested him to give complimentary hand bag to the said 12 passengers at Ahmedabad. Accordingly, he requested Mr. Abdul Hamid of M/s Al Hamid Tours & Travel, Ahmedabad to give the hand bag to the said passengers in Ahmedabad. Shri Ashraf gave him a number of Ms Nasrin Junagarh (9327366273), to whom the said hand bags were to be delivered in Ahmedabad. Mr. Abdul Hamid got the bags delivered to Ms Nasrin in Ahmedabad.

5.1.3.5 The return tickets for the said 12 passengers were not booked by his travel agency and also he did not have any idea, when did they come back.

5.1.4 Statement of Ms Nasrinbanu Fesal Suriya (herein after mentioned as Noticee No. 6) was recorded under Section 108 of the Customs Act, 1962 on 26.04.2024 wherein, she inter-alia stated that:

5.1.4.1 On 12.01.2024, she received a call from person namely Lucky, who informed her that 12 passengers were going for Umrah from Ahmedabad to Jeddah. He directed her to drop them at Ahmedabad Airport and more specifically the lady passengers.

5.1.4.2 Upon perusal of the visa and tickets of 12 passengers produced by Mr. Zahirul Islam of M/s Yushra Haj Travels and M/s Al-Furqan Travels Haj & Umrah, she informed that she personally knew Ms Mumatazben Rafikbhai Husenun and Shri Mustufakhan Liyakatkhan among them the said 12 persons.

5.1.4.3 She visited Ahmedabad on around 13.01.2024 and stayed at Hotel Manila, Near Kalupur Railway Station. Further, Shri Lucky (herein after mentioned as Noticee No. 03) came to meet her at Hotel Manila on 14.01.2024 and handed over Rs. 10000/- to her with a direction to distribute the said amount among the said 12 passengers.

5.1.4.4 Shri Lucky also forwarded the contact details of the said 12 passengers and asked her to call them and confirm their arrival at Ahmedabad. Accordingly, she had a talk with Shri Aftab Firojbhai Kachara, Shri Samir Shekh(husband of Ms Nasima Shekh) and other passengers to confirm their arrival time and place at Ahmedabad as per the direction of Shri Lucky. She did not know Ms Nasima Samir Shekh. She did not know much about Shri Aftab Firojbhai Kachara. She called up Shri Aftab Firojbhai Kachara on 13.01.2024.

5.1.4.5 She also received the air-tickets of all the 12 passengers (From Ahmedabad to Jeddah) through Whatsapp from Shri Lucky and Shri Haroon.

5.1.4.6 She was to get Rs 15000/- to drop the passengers at airport and had to manage the expenditure incurred on refreshment, rickshaw/taxi fare etc.

5.1.4.7 She received a call from mobile number 9414128523 on 14.01.2024, who then sent the hand bags at Hotel Manila. She then handed over the tickets to the respective passengers along with the hand/luggage bag. She did not know the person, who was speaking on mobile number 9414128523.

(It is important to mention that from the deposition of Shri Abdul Hamid, Proprietor of M/s Al Hamid Tours Travels during recording of his statement on dated. 17.4.2024, mobile number 9414128523 belonged to Shri Zahirul Islam of Ms Al Furqan Travels/Ms Yushra Haj Travels.)

5.1.4.8 She did not know much about the person namely Shri Lucky and Shri Haroon (herein after mentioned as Noticee No. 4). She shared the mobile number of Shri Lucky as +971526508411, +971564539401 and Shri Haroon`s number as +971471209754.

5.1.4.9 She did not manage tour for Umra of Shri Aftab and Ms Nasima. She went to drop the said 12 passengers including Shri Aftab, at SVPI Airport, Ahmedabad on 14.01.2024. She did not enquire about the tickets of the said 12 passengers from Mr. Zahirul Islam. She was not having any idea about the return journey of the said 12 passengers.

No further whereabouts details in respect to Shri Lucky and Shri Haroon, except their UAE mobile numbers, were revealed. Hence, the investigation could not be extended further in this regard.

5.1.5 Shri Ashraf Sherani was issued summons dated 10.06.2024 for recording of his statement. In response to the summons, Shri Ashraf Sherani vide his letter dated 10.06.2024 deposed that he is engaged in the business of booking of Air tickets at Nagaur. He had received a call from a person namely Shri Sarfraz (herein after mentioned as Noticee No. 5) on Whatsapp (Mobile number 00966575273516), who requested him to send a group of people for Umrah. As, he was not dealing in managing booking for Umrah tour, he contacted Shri Zahirul Islam of Jodhpur, who was carrying out Umrah booking and asked him to do the needful. Shri Zahirul Islam booked the tickets and he simply forwarded the details of

the passengers to Shri Sarfaraz. He further submitted that he did not know more about Shri Sarfaraz and he had never met him.

Further details about Shri Sarfaraz, except his Saudi Arabia Mobile Number were revealed, Hence, investigation could not be further extended in this regard.

5.2 Enquiry with the airlines regarding the booking details of return journey

Further, vide email dated 02.05.2024, Indigo Airlines was requested for booking details of the passengers namely Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh, who had traveled from Jeddah to Ahmedabad. Vide email dated 02.05.2024, Indigo Airlines reported that the tickets of both the passengers were booked by a travel agency and in the said booking, contact details were given as +966575273516 and email as rstar0481@gmail.com. It is important to mention that the contact number shared with the Airlines at the time of booking is the same number, from which Shri Ashraf Sherani of Shahin Tours & Travels, Thikwana, Nagaur-342902 received the enquiry for a group to Umrah.

5.3 SDR/CDR details of contact no. belonging to M/s Nasrin

CDR/SDR data of contact no. 9327366273 belonging to Ms. Nasrin were called and analyzed to check her presence at SVPI airport on 15.01.2024 & 28.01.2024. Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh departed from Ahmedabad for Jeddah on 15.01.2024 and returned to Ahmedabad on 28.01.2024. On analysis of the CDR, it is revealed that M/s Nasrin was present at the airport on 15.01.2024. Further, on 28.01.2024 also, she was in Ahmedabad and from 09:45 AM onwards, she put her phone in switched off mode i.e. after booking of the case by DRI.

6. Relevant Legal Provisions:

6.1 According to the Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification 31/2016 (NT) dated 01.03.2016, all passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage under Section 77 of the Customs Act, 1962.

6.2 All the dutiable articles imported into India by a passenger in his baggage are classified under CTH 9803. As per Section 77 of the Customs Act, 1962, the owner of any baggage shall for the purpose of clearing it,

make a declaration of its contents to the proper officer. 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 Foreign Trade (Development and Regulation) Act, 1992, the Rules and Orders made there under and the Foreign Trade Policy for the time being in force.

6.3 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-2020, 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. The gold can be imported by the banks (authorized by RBI) and the agencies nominated for the said purpose under Para 4.41 of Chapter-4 of Foreign Trade Policy or by "Eligible Passenger" as per the provision of Notification No. 50/2017-Customs dated 30.06.2017 (Sr.No. 356). As per Notification No. 50/2017-Customs dated 30.06.2017, the '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.

The above said legal provisions are reproduced below:

Para 2.26 (a) of the Foreign Trade Policy 2015-2020:

Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance.

Para 4.41 of the Foreign Trade Policy 2015-2020:

Nominated Agencies:-

(i) Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.

(ii) Nominated Agencies are MMTC Ltd, The Handicraft and Handlooms Exports Corporation of India Ltd, The State Trading Corporation of India Ltd, PEC Ltd, STCL Ltd, MSTC Ltd, and Diamond India Limited.

(iii) Notwithstanding any provision relating to import of gold by Nominated Agencies under Foreign Trade Policy (2015-2020), the import of gold by Four Star and Five Star Houses with Nominated Agency Certificate is subjected to actual user condition and are permitted to import gold as input only for the purpose of

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

manufacture and export by themselves during the remaining validity period of the Nominated Agency certificate.

(iv) Reserve Bank of India can authorize any bank as Nominated Agency.

(v) Procedure for import of precious metal by Nominated Agency (other than those authorized by Reserve Bank of India and the Gems & Jewellery units operating under EOU and SEZ schemes) and the monitoring mechanism thereof shall be as per the provisions laid down in Hand Book of Procedures.

(vi) A bank authorized by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

6.4 CBIC Customs Notification No. 50/2017 dated 30.06.2017 where the condition regarding import of gold by passenger in the following manner:

If,

1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,-
 - (a) carried by the eligible passenger at the time of his arrival in India, or
 - (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and
 - (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not

availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

Baggage Rule, 2016 –

6.5 As per Rule 5 of the Baggage Rules, 2016, “a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewelry up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees, if brought by a lady passenger”.

6.6 A combined reading of the above-mentioned legal provisions under Foreign Trade Regulations, the Customs Act, 1962 and the notifications issued therein - clearly indicate that import of gold including gold jewellery through Baggage is Restricted and conditions have been imposed on the said imports by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. Only passengers who satisfy those mandatory conditions can import gold as a part of their bona fide personal baggage and the same has to be declared to the Customs at the time of their arrival and applicable duty paid. These conditions are nothing but restrictions imposed on the import of gold through passenger baggage. Further, from the foregoing legal provisions of Foreign Trade Policy, 2015-2020 read with Reserve Bank of India circulars issued under Foreign Exchange Management Act (FEMA), Notifications issued by the Government of India and Circular issued by CBIC, it is evident that no one can import gold in any other manner as not explicitly stated/permitted above. The impugned gold bars of 999/24K purity extracted from the semi-solid substance in paste form concealed in the clothes of the above 3 passengers smuggled into India in the instant case are not covered by any of the above circulars/notifications.

6.7 Further, as per Section 2(33) of the 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 but does not include any goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with, implying that any goods imported in violation of the conditions subject to which the goods are permitted to be imported are nothing but prohibited goods. Hence, the smuggling of gold in the

paste/semi-solid form in capsules, in contravention of the Foreign Trade Policy 2015-20 read with the relevant notification issued under the Customs Act, 1962, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in the said Regulations. It is pertinent to note that any prohibition applies to every type of prohibition which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence the restrictions imposed on the said imports are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable for confiscation under Section 111 of Customs Act, 1962.

6.8 Therefore, it appears that import of gold in contravention of the Foreign Trade Policy 2015-20 read with the Customs Act, 1962 and RBI circulars, as well as the Rules and regulations mentioned supra, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in said Regulations.

Section 2(33) of the 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 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.

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.

6.9 Further, in terms of provisions under Section 123 of the Customs Act, 1962, it is the responsibility of the person who is in possession of the said gold / silver or the person claiming ownership of the same, to prove that the same were not smuggled gold. Relevant provisions of Section 123 of the Customs Act, 1962 are as under:

Section 123: Burden of proof in certain cases. –

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.

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

- (b) In any other case, on the person, if any, who claims to be the owner of the goods so seized.

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.

6.10 Further, Section 111 of the Customs Act, 1962 provides for the confiscation of the goods which are imported improperly.

Section 111. Confiscation of improperly imported goods, etc. -

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

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

(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;]

6.11 Further, Section 112 of the Customs Act, 1962 provides the penalty on the persons for the improper import of the goods.

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, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

6.12 Section 119: Confiscation of goods used for concealing smuggled goods :

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

Any goods used for concealing smuggled goods shall also be liable to confiscation.

7. Contraventions and Charges:

7.1 Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara agreed to carry gold with a clear intention to smuggle gold for personal monetary consideration/benefit. Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara had received a packet filled with gold paste + undergarments with Gold paste and 4 capsules of Gold paste and a packet filled with gold paste + Knicker to wear and 4 capsules of Gold paste respectively before their departure from Jeddah. Further, following the directions of their akka, Ms. Nasima Samir Shekh wore the undergarments with gold in paste form concealed therein and also inserted 4 capsules of gold paste in her body i.e. rectum and Shri Aftab Firojbhai Kachara wore the given Knicker with gold in paste form concealed therein and also inserted 4 capsules of gold paste in his body i.e. rectum, during their return journey from Jeddah to Ahmedabad, with an intention to smuggle the same into India to evade payment of Customs duty. They both had chosen to move through Green Channel and did not declare the gold before the Customs Authorities at SVPI Airport which was concealed in their undergarments and body (Rectum) for monetary consideration and other benefits which included the cost of their to and fro Journey Air Tickets + Expenditure incurred at Umrah and also Rs 50,000/- in cash to each of them. The act of concealing the gold in paste form in the clothes and rectum and intentional non-declaration of the said gold before the Customs authority shows the mens-rea on the part of Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara, with a view to avoid payment of Customs duty. Further, both of them were also informed that their journey would be sponsored, provided they would carry gold during their return journey i.e. from Jeddah to Ahmedabad. Further, both of them had a clear idea that upon delivery of gold at SVPI airport, they would get Cash of Rs. 50,000/- each. Therefore, it appears that Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara, were not inclined to declare the goods viz. gold in paste form that they were carrying before the Customs Authorities. If they were carrying the said goods legally then they would have to pay the Customs duty and would not indulge into converting the gold into paste/powder form and concealing the same in clothes (under garments) and rectum. Thus, the gold bars weighing 2374.170 Grams &

2090.440 Grams extracted from the gold paste recovered from the possession of Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara having market value of Rs. 1,53,06,274/- & Rs. 1,34,77,067/- respectively, handed over to them by the same person in Umrah, was illegally smuggled by them into India without the knowledge of the Customs Authorities, without declaration and payment of appropriate Customs duties, which rendered the above said quantity of 4464.610 grams of gold liable to confiscation under the provisions of Section 111(d), (l) and (m) of the Customs Act, 1962.

7.2. Therefore, Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara have concerned herself/himself in the act of smuggling of foreign origin Gold and have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111 of the Customs Act, 1962 and rendered themselves liable for penalty under Section 112(a) & (b) of Customs Act, 1962.

7.3 Further, Shri Lucky, Shri Haroon, Shri Sarfaraz and Ms Nasrinbanu Fesal Suriya have concerned themselves in the illegal activity of gold smuggling through SVPI airport, which has rendered themselves liable for penalty under Section 112(a) and 117 of Customs Act, 1962.

8. ROLE OF PERSONS.

From the investigation conducted, role of following persons were emerged.

8.1 Role of Ms. Nasima Samir Shekh

As evident from the evidences available on record in the form of Panchnama dated 28.01.2024, statement dated 28/29.1.2024 as well as statement of her co-passenger Shri Aftab Firojbhai Kachara recorded under Section 108 of the Customs Act, 1962 etc., it appears that Ms. Nasima Samir Shekh indulged in the act of smuggling of Gold totally weighing 2374.170 Grams extracted from the gold in paste form, which was concealed in the clothes and body i.e. under garments and inside the rectum, having total market value of Rs. 1,53,06,274/- from Jeddah to India. It appears that she went to Umrah for smuggling purpose only with the intention of smuggling of gold into India against monetary personal

enrichment. She knowingly participated in all the activities related to smuggling of foreign origin gold in lure of money.

8.2 Role of Shri Aftab Firojbhai Kachara

8.2.1 As evident from the evidences available on record in the form of Panchnama dated 28.01.2024, statement dated 28/29.1.2024 as well as statement of his co-passenger Ms. Nasima Samir Shekh recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri Aftab Firojbhai Kachara indulged in act of smuggling of Gold totally weighing 2090.440 Grams (999/24 Kt) extracted from the gold in paste form, which was concealed in the clothes and body i.e. under garments and inside the rectum, having total market value of Rs. 1,34,77,067/- from Jeddah to India. He went to Jeddah for smuggling purpose only with the intention of smuggling of gold into India against monetary personal enrichment. He knowingly participated in all the activities related to smuggling of foreign origin gold in lure of money.

8.2.2 Moreover, as per the evidences available on record in the form of Panchnama dated 28.01.2024, statements of the concerned persons, it is clear that both the said passengers viz. Ms. Nasima Samir Shekh & Shri Aftab Firojbhai Kachara indulged in act of smuggling of gold. Both belong to the same syndicate, whose handler was common at Jeddah/Umrah. They indulged in smuggling of gold into India without the knowledge of the Customs Authorities and without declaration/payment of appropriate Customs duty at Airport. Both the said passengers travelled together from Junagadh to Ahmedabad. Both were given hand bags with Al Hamid printed on them. Both of them were given undergarments, gold in paste form and gold paste capsules by one same person, who then dropped them at the Jeddah airport too. Further, one of the key persons in the syndicate namely Ms Nasrin is also common among the said passengers. These facts have been corroborated in the statements of the said two passengers.

8.3 Role of Ms. Nasrinbanu Fesal Suriya

8.3.1 On carefully going through the evidences available on record in the form of Panchnama dated 28.1.2024 and statements of concerned persons recorded under Section 108 of the Customs Act, 1962 etc., it appears that Ms Nasrinbanu Fesal Suriya has concerned herself in the illegal activity of gold smuggling through SVPI airport as evident from her submission

during the recording of her statement on dated 26.04.2024 that she received air-tickets of 12 passengers from Ahmedabad to Jeddah through Whatsapp from Shri Lucky and Shri Haroon. Shri Lucky called up and directed her to drop the said 12 passengers at Ahmedabad Airport and more specifically the lady passengers. Shri Lucky also forwarded the contact details of the said 12 passengers and asked her to call them and confirm their arrival at Ahmedabad. Accordingly, she contacted Shri Aftab Firojbhai Kachara, Shri Samir Shekh (husband of Ms Nasima Shekh) and other passengers to confirm their arrival time and place at Ahmedabad. She was to get Rs 15000/- to drop the said passengers at airport and also had to manage the expenditure incurred on refreshment, rickshaw/taxi fare etc. Shri Lucky met her at Hotel Manila, Near Kalupur Railway Station on 14.01.2024 and gave her Rs. 10000/- with a direction to distribute the said amount among the said 12 passengers. Shri Lucky also informed her that she would receive a call from mobile number 9414128523 in relation to empty luggage bag (hand bag) to be delivered among the said 12 passengers. Accordingly, she managed to deliver empty luggage bag (Handbag) with label Al-Hamid Tours and Travels to the passengers and their copy of air tickets from Ahmedabad to Jeddah. She personally knew Ms. Mumatazben Rafikbhai Husenun and Shri Mustufakhan Liyakatkhan only among the said 12 passengers. She was not having any idea about the return journey of the said 12 passengers.

8.3.2 As per her submission, she personally knew Ms. Mumatazben Rafikbhai Husenun and Shri Mustufakhan Liyakatkhan among the said 12 passengers. Further, she was deputed to call each of the 12 passengers to confirm their arrival in Ahmedabad for Umrah as well as had to drop the said 12 passengers at airport for which, she was to be paid Rs 15000/-. Further, as per the SDR details, Ms Nasrin resides in Veraval. Shri Lucky could have easily got the passengers managed by any other person present in Ahmedabad. It does not make any sense for Shri Lucky to hire or direct Ms Nasrin to come to Ahmedabad from Veraval and ask her to manage the said passengers till their departure to Jeddah. As evident from the details in her CDR, she was present in Ahmedabad on 28.01.2024 and later put her mobile phone in switched off mode from 09:45 am onwards i.e. after booking of case by DRI. It shows that Ms Nasrin was aware of the purpose of visit of said passengers to Jeddah and she might have come to Ahmedabad to receive gold from the said

passengers. Further, she does not have any details of Shri Lucky and Shri Haroon except their international contact numbers. In spite of having incomplete details about the said persons, she agreed to work for them on receiving their phone call, which shows her connection with Shri Lucky and Shri Haroon and also raises suspicion of her involvement with the syndicate involved in the said gold smuggling activity.

8.3.3 It appears that Ms Nasrin has concerned herself and abetted the syndicate involved in the smuggling of gold through SVPI airport. She played the role of an abettor in the said act of smuggling of gold, thereby making herself liable for penalty under section 112 & 117 of the Customs Act, 1962.

8.4 Role of Shri Lucky, Shri Haroon & Shri Sarfaraz

8.4.1 On carefully going through the evidences available on record in the form of Panchnama dated 28.1.2024 and statements of concerned persons recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri Lucky and Shri Haroon have concerned themselves in the illegal activity of gold smuggling through SVPI airport. It is evident from the submission of Ms Nasrinbanu Fesal Suriya during recording of statement on dated 26.04.2024 that she received air-tickets of the said 12 passengers from Ahmedabad to Jeddah through Whatsapp from Shri Lucky and Shri Haroon. Shri Lucky called up and directed her to drop the said 12 passengers at Ahmedabad Airport and more specifically the lady passengers. He also forwarded the contact details of the said 12 passengers to her and asked her to call them and confirm their arrival at Ahmedabad. Accordingly, she contacted Shri Aftab Firojbhai Kachara, Shri Samir Shekh (husband of Ms Nasima Shekh) and other passengers to confirm their arrival time and place at Ahmedabad. She was to get Rs 15000/- for managing the expenditure incurred on refreshment, rickshaw/taxi fare etc and had to drop the said passengers at airport. Shri Lucky met her at Hotel Manila, Near Kalupur Railway Station on 14.01.2024 and gave her Rs. 10000/- with a direction to distribute the said amount among the said 12 passengers. Shri Lucky also informed her that she would receive a call from mobile number 9414128523 in relation to empty luggage bag (hand bag) to be delivered among the said 12 passengers. Accordingly, she managed to deliver the said empty handbags

with label Al-Hamid Tours and Travels and their copy of air tickets from Ahmedabad to Jeddah.

8.4.2 The malafide intention of Shri Lucky is clear from the fact that in spite of being present in Ahmedabad on 14.01.2023, he himself did not manage the passengers going to Umrah and did not even met them once. Shri Lucky directed Ms Nasrin to manage and drop the said passengers at SVPI Airport, which shows their intention that they did not want their identity to be revealed. Shri Lucky and Shri Haroon shared the air-tickets & contact details of the said 12 passengers to Ms Nasrinbanu and asked her to call each of the passengers to confirm their arrival at Ahmedabad, as well as asked her to drop them at airport, which shows that they were managing the departure of the said passengers for Umrah from Ahmedabad on behalf of Shri Sarfaraz. Further, Ms Nasrin was to get Rs 15000/- for the said job from Shri Lucky. Shri Lucky also gave Rs. 10000/- to Ms Nasrin for distributing of the same among the said 12 passengers. Moreover, both Shri Lucky and Shri Haroon reside in Rajasthan, however, they were interacting with Ms Nasrin from Jeddah mobile no. i.e. Lucky (+971526508411, +971564539401) and Haroon (+971471209754).

8.4.3 It is also evident from the submission dated 10.06.2024 of Shri Ashraf Sherani that a person namely Shri Sarfaraz called him on Whatsapp from mobile number 00966575273516 and requested him to form/send a group for Umrah. Shri Ashraf forwarded the details of group formed/created and received from Shri Zahirhul Islam on the above said number. Further, it is also evident from the return journey booking details of Ms. Nasima Samir Shekh & Shri Aftab Firojbhai Kachara received from Indigo Airlines, that the contact number +966575273516 is mentioned against the ticket of both the said passengers, who had traveled from Jeddah to Ahmedabad by Flight No. 6E 92 on 28.1.2024. From the above, it appears that Shri Sarfaraz got the tickets of the said passengers managed at his end, for both the journeys i.e. for Ahmedabad to Jeddah as well as for Jeddah to Ahmedabad.

8.4.4 In view of the above, it appears that Shri Lucky, Shri Haroon & Shri Sarfaraz have concerned themselves and abetted the syndicate involved in the smuggling of gold through SVPI airport. It is also important

to mention that the possibility of their being Kingpin/actual beneficiary of the said smuggling activity also cannot be ruled out. Thus, they made themselves liable for penalty under section 112 & 117 of the Custom Act, 1962.

09. Accordingly, a Show Cause Notice was issued to **(i)** Mr. Aftab Firojbhai Kachara (**Noticee No. 1**), Son of Shri Firojbhai Kachara, Aged 20 years (D.O.B. 23.06.2003) residing at Block No. 29, Ghanchipat, Behind Sardarbaug, Junagadh -362001 **(ii)** Ms. Nasima Samir Shekh(**Noticee No. 2**), Wife of Shri Samir Shekh, Daughter of Shri Bodubhai Alibhai Khokhar, Aged 27 years (D.O.B. 05.08.1996) residing at 72, Sunni Borval, Junagadh -362001, **(iii)** Shri Lucky (**Noticee No. 3**), **(iv)** Shri Haroon (**Noticee No. 04**), **(v)** Shri Sarfaraz (**Noticee No. 5**)and **(vi)** Ms Nasrinbanu Fesal Suriya (**Noticee No. 6**) as to why:-

- i. Gold bar weighing 2090.440 Grams extracted from the gold found concealed i.e. 4 capsules containing gold paste in rectum and one pouch containing gold paste in under-garment having a market value of Rs. 1,34,77,067/- recovered from the possession of Shri Aftab Firojbhai Kachara should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- ii. Gold bar weighing 2374.170 grams extracted from the gold found concealed i.e. 4 capsules containing gold paste in rectum and 3 pouches containing gold paste in under-garments having a market value of Rs. 1,53,06,274/- recovered from the possession of Ms Nasima Samir Shekh should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iii. White tape and under garments & tape and under garments used to conceal the gold paste recovered from Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh respectively, which were used for the concealment of gold wrapped in transparent polythene containing gold in paste/semi-solid form having no value should not be confiscated under Section 119 of the Customs Act, 1962.
- iv. Penalties should not be imposed upon Noticee No.1 to Noticee No. 6 under Section 112(a) and (b) of the Customs Act, 1962.
- v. Penalty should not be imposed upon Noticee No.1 to Noticee No. 6 under Section 117 of the Customs Act, 1962.

10. Defense reply and record of personal hearing:

10.1 Defense Reply of Noticee No. 1 i.e Mr. Aftab Firojbhai Kachara, Son of Shri Firojbhai Kachara: - The noticee has not submitted any written defense reply against the allegation made against him in SCN.

10.2 Defense Reply of Noticee No. 2 i.e Ms. Nasima Samir Shekh, Wife of Shri Samir Shekh:- The noticee has not submitted any written defense reply against the allegation made against her in SCN.

10.3 Defense Reply of Noticee No. 3 i.e Ms Nasrinbanu Fesal Suriya, Mirza colony, Mishkin Colony, Bage Zam :- The noticee has not submitted any defense reply against the allegation made against her in SCN.

10.4 Defense Reply of Noticee No. 4 i.e Shri Lucky @ Rajasthan near Jaipur:- The noticee has not submitted any defense reply.

10.5 Defense Reply of Noticee No. 5 i.e Shri Haroon @ Rajasthan near Jaipur:- The noticee has not submitted any defense reply.

10.6 Defense Reply of Noticee No. 6 i.e Shri Sarfaraz:- The noticee has not submitted any defense reply.

Personal Hearing:-

11. Adequate opportunities of personal hearing were given to all noticees in the Show Cause, which is summarized as under:-

Noticee No. 1: i.e Mr. Aftab Firojbhai Kachara, Son of Shri Firojbhai Kachara

The noticee was given opportunity for personal hearing on 03.01.2025, 20.01.2025 & 03.02.2025. Shri Bhavneet Singla, Advocate and Authorized Representative appeared for personal hearing on 03.02.2025 on behalf of Mr. Aftab Firojbhai Kachara. He requested to attend the PH in person instead of through video conferencing. He submitted that the one of noticee named Ms. Nasirbanu Fesal Suriya has asked his client to visit the Jeddah for Umrah purpose for which she sponsored all the expenses of the trip for worship and in return favor they have to carry some goods in India, according to them which was not illegal. Upon denying such favor in Jeddah, their partner threatens his client to not give back their passport and they will never go back to India and will be held as laborer in Jeddah. Upon such threaten, his client was brought the gold into India in semi solid form containing gold in form of capsules. He was not aware of gold given to him in form of capsules. He submitted that the gold was not purchased by his client and have no purchase bill/copy of invoice, bank Statement but they have claimed

the ownership on the seized gold as he suffered the subsequent losses due to the act. In the instant case, there is no mens-rea established against his client. Further, he submitted that this was their final submission and nothing more to add.

Noticee No. 2: 2. Ms. Nasima Samir Shekh, wife of Shri

Samir Shekh: The noticee was given opportunity for personal hearing on 03.01.2025, 20.01.2025 & 03.02.2025. Shri Bhavneet Singla, Advocate and Authorized Representative appeared for personal hearing on 03.02.2025 on behalf of Ms. Nasima Samir Shekh. He requested to attend the PH in person instead of through video conferencing. He submitted that the one of noticee named Ms. Nasirbanu Fesal Suriya has asked his client to visit the Jeddah for Umrah purpose for which she sponsored all the expenses of the trip for worship and in return favor they have to carry some goods in India, according to them which was not illegal. Upon denying such favor in Jeddah, their partner threatens his client to not give back their passport and they will never go back to India and will be held as laborer in Jeddah. Upon such threaten, his client was brought the gold into India in semi solid form containing gold in form of capsules. He was not aware of gold given to him in form of capsules. He submitted that the gold was not purchased by his client and have no purchase bill/copy of invoice, bank Statement but they have claimed the ownership on the seized gold as he suffered the subsequent losses due to the act. In the instant case, there is no mens-rea established against his client. Further, he submitted that this was their final submission and nothing more to add.

Noticee No. 3: Shri Lucky@Rajasthan near Jaipur:

The noticee was given opportunity for personal hearing on 03.01.2025, 20.01.2025 & 03.02.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962, 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.

Noticee No. 4: Shri Haroon@Rajasthan near Jaipur:

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

The noticee was given opportunity for personal hearing on 03.01.2025, 20.01.2025 & 03.02.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962, 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.

Noticee No. 5: Shri Sarfaraz:

The noticee was given opportunity for personal hearing on 03.01.2025, 20.01.2025 & 03.02.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962, 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.

Noticee No. 6: Ms. Nasrinbanu Fesal Suriya:

The noticee was given opportunity for personal hearing on 03.01.2025, 20.01.2025 & 03.02.2025 and letters dispatched on the given address through speed post. This office has not received the letters back undelivered from the post which implies the same were delivered to the noticee, 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.

Discussion and Findings:

12. I have carefully gone through the case records, Show Cause Notice, relied upon documents to Show Cause Notice and Statements of the Noticees alongwith the submission made by the noticees or their representative at the time of personal hearing scheduled on various

dates. Further, sufficient opportunities to be heard were extended to all the noticees of the SCN following the Principles of Natural Justice.

12.1. Before discussing the allegations levelled in the impugned SCN in light of submissions made by some of the noticees, it is imperative to mention that none of them have retracted from their voluntarily statements tendered by them before DRI officers under Section 108 of Customs Act, 1962. I find that the said noticees have admitted in their respective statements that they have given statements voluntarily and without any inducement, threat and coercion or by any improper means. I find that the statements recorded under Section 108 of the Customs Act, 1962 have evidentiary value under the provisions of law. The Judgment relied upon in this matter as follows:-

- (i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that evidence-confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.
- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidences"
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that " It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- (iv) There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- (v) Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional

Statement corroborated by the Seized documents admissible even if retracted."

- (vi) The Hon'ble Supreme Court in another case of Gulam Hussain Shaik Chougule Vs. S.Reynolds, Supdt of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC) categorially held that "Statement recorded by the Customs officer under Section 108 of the Customs Act, is admissible in evidence. The Court has to test whether the inculpatory portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."
- (vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "

13. I perused the facts presented before me. The question that need to be addressed in the instant case are within the jurisdiction of Customs Act, 1962 and allied laws as under:-

- i. Whether the goods seized are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;
- ii. Whether, seized Gold bars weighing 2090.440 Grams extracted from the gold found concealed i.e. 4 capsules containing gold paste in rectum and one

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

pouch containing gold paste in under-garment having a market value of Rs. 1,34,77,067/- recovered from the possession of Shri Aftab Firojbhai Kachara(herein after mentioned as Noticee No. 1) is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.

- iii. Whether, seized Gold bars weighing 2374.170 grams extracted from the gold found concealed i.e. 4 capsules containing gold paste in rectum and 3 pouches containing gold paste in under-garments having a market value of Rs. 1,53,06,274/- recovered from the possession of Ms Nasima Samir Shekh(herein after mentioned as Noticee No. 2) is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iv. Whether, White tape and under garments & tape and under garments used to conceal the gold paste recovered from Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh respectively, which were used for the concealment of gold wrapped in transparent polythene containing gold in paste/semi-solid form having no value seized under Section 110 of the Customs Act, 1962 is liable for confiscation under Section 119 of the Customs Act, 1962.
- v. Whether the act of the Noticee No. 1 to Noticee No. 6 renders them to be penalized discretionarily under Section 112 & Section 117 of the Customs Act, 1962;

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 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. Hence, in the instant case, Gold brought was under restriction/prohibition. **Relying on the ratio of the judgment stated above, I find that the goods**

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

brought by the Noticee No. 1 and Noticee No. 2 named Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh respectively, are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.

15. I will now examine the submission made by the noticees one by one as per the relevant law and as per the provisions:-

15.1 I find that based on specific intelligence, officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as 'DRI') had intercepted two passengers namely Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh, who were trying to exit through green channel without making any declaration, on the basis that both were trying to smuggle huge quantities of contraband/primary gold of foreign origin from Jeddah to Ahmedabad. Upon sustained interrogation by the DRI and Customs officers, both the passengers confessed that they were carrying gold in paste form hidden inside their body in rectum and in their undergarments. It is on the record that the gross weight of the gold recovered from Shri Aftab Firojbhai Kachara was 2379.65 grams which was concealed in form of 04 capsules and in a pouch in underwear and upon extraction of the same by the Govt. Approved Valuer the Net weight of Gold bars comes to 2090.440 grams with 999.0/24kt purity and having market value of Rs. 1,34,77,067/-. Also in similar manner, the gross weight of gold paste recovered from Ms. Nasima Samir Shekh was 2690.91 grams which was concealed in form of 04 Capsules in rectum and paste in form of pouches concealed in underwear and bra worn by the noticee and from which 04 gold bars derived having weight 2374.170 grams with 999.0/24kt purity and market value of Rs. 1,53,06,274/-. It is uncontested fact that the gold in form of paste was not declared to the Customs Under Section 77 of the Customs Act, 1962 and both noticees were trying to pass through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely gold paste mix with chemical, which were found concealed and recovered in manner as described above, was made by Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh in prescribed declaration form. The noticees were not eligible to import gold and that too undeclared in substantial

quantity and hence the same cannot be treated as "bonafide baggage" in terms of section 79 of the Customs Act, 1962 and the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

15.2 I find during the personal hearing, the authorized representative on behalf of Noticee No. 1 and Noticee No.2 mentioned that the gold in form of paste was not purchased by his clients i.e Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh and someone else had given the said gold in form of paste to conceal and carry the same to India. He submitted that his clients were pressurized and threatened at Jeddah by the partners of Ms. Nasirbanu Fesal Suriya, therefore, they were ready to brought the said gold. I find from submission during the personal hearing that, they have claimed the ownership on the seized gold, even the gold was not purchased by Noticee No. 1 and Noticee No. 2 and have no purchase bill or other legitimate documents regarding this. I find that both noticee i.e Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh have not submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Section 123 of the Customs Act, 1962 stipulates: -

Section 123. Burden of proof in certain cases. -

¹[(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, ²[and manufactures thereof],

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

In the instant case, the burden of proving that the derived gold bars from the paste are not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bars (derived from paste) having net total weight 4464.610 grams (2374.170 Grams & 2090.440 Grams) of foreign origin are not smuggled in nature lie on Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh from whose possession the gold was recovered or other noticees, if claims ownership of the impugned gold seized on 28.01.2024. The gold in form of paste and capsules recovered from Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh and both admitted to have smuggled it into India in their respective voluntarily statements recorded under Section 108 of Customs Act, 1962 as well as at the time of Personal hearing. The test report shows that the derived gold bars were found to be purity of 999.0/24Kt. I find that during the personal hearing Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh have claimed the ownership on the gold, however they have clearly admitted that the gold was neither purchased by them nor they have any purchase invoices/bank statement regarding purchase or other legitimate documents which establish their ownership, therefore, I hold that merely claiming the ownership on the gold on the basis of suffering, without any documentary evidences does not make them the owner of the gold. Thus, they failed to discharge their 'burden of proof that the Gold was legally imported/possessed and also they had not declared the same to the Customs in the prescribed Indian Customs Declaration Form. Applying the ratio of the judgments of the Hon'ble Supreme Court in the matter of Om Prakash Bhatia Vs Commissioner of Customs [2003 (6) SCC 161] and the Hon'ble High Court, Madras in the case of Samynathan Murugesan Vs. Commissioner of Customs 1201,0 (254) ELT A0151, I find that the said smuggled Gold Bars weighing 4464.610 grams (2374.170 Grams & 2090.440 Grams) of foreign origin are liable to absolute confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962 and accordingly, the claim of ownership on gold does not hold ground as they have not even purchased or have any legitimate documents which establish their ownership.

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where Gold Bars weighing 4464.610 grams (2374.170 Grams & 2090.440 Grams) of foreign origin were seized under Section 110 of the Customs Act, 1962 on reasonable belief that they were smuggled in to India from Jeddah. As per Sub-Section 2 of Section 123 of the Customs Act, 1962, onus for proving that the seized gold bars, having total net weight 4464.610 grams (2374.170 Grams & 2090.440 Grams) and valued at Rs. 1,34,77,067/- & Rs. 1,53,06,274/- respectively are not of smuggled in nature, shall be on Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh, from whose possession the impugned goods were seized. Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh were the two persons, traveling together, intercepted with the derived gold bars from the gold paste having total net weight 4464.610 grams (2374.170 Grams & 2090.440 Grams), found in possession of Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh. I find from the statements of both noticees i.e Noticee No. 1 and Noticee No. 2 recorded under Section 108 of Customs Act, 1962, that the said gold paste was given to them by some unknown person at their place of stay for smuggling the said goods in India. I find that the noticee Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh could not produce any valid legal documents for procuring or transporting or possessing such gold of foreign origin. In their statement recorded under Section 108 of Customs Act, 1962, they admitted that they were aware that the gold in form of paste, they were carrying, had been smuggled into India from Jeddah and they were knowingly carrying the smuggled gold from Jeddah to Ahmedabad for monetary benefits. It shows that knowingly and consciously they were involved in carrying and handling the foreign origin gold which they have reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended. They in their statement admitted that the gold was not purchased by them and was given by someone else at Jeddah to smuggle the same into India.

15.3 I also find that the noticee Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh 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 their 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 noticees. In fact, in their statements dated 28.01.2024/29.01.2024, they have clearly admitted that they had travelled from Jeddah to Ahmedabad carrying gold in form of paste concealed in rectum as well as in underwear and bra, to smuggle the same and conceal in the manner that the same was not noticed by the Customs Authority. They have mentioned that they were 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. By using the modus of concealing the gold in form of paste concealed in rectum, underwear and bra without declaring to the Customs on arrival in India, it is observed that the both noticees were fully aware that the import of said goods is offending in nature. It is therefore very clear that they have knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. It is seen that they have involved themselves in carrying, keeping, concealing and dealing with the impugned goods in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the both noticees have committed an offence of the nature described in Section 112 of Customs Act, 1962 making them liable for penalty under Section 112 of the Customs Act, 1962.

15.4 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 both noticees had not filed the baggage declaration form and had not declared the said gold which was in their possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were tried to exit through Green Channel which shows that the noticees were trying to

smuggle the goods and 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 noticees have not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported derived gold bars total net weighing 2374.170 Grams & 2090.440 Grams extracted from the gold paste recovered from the possession of Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara having market value of Rs. 1,53,06,274/- & Rs. 1,34,77,067/- respectively, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, both the noticees have not fulfilled the conditions of eligible passenger to brough the gold. 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.

15.5 As per the provisions of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

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

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017- Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

of applicable rate of duty subject to specific conditions as below being fulfilled.

Serial No. 356 (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, subject to fulfillment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

If,-

*1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and*

2. the gold or silver is,-

(a) carried by the eligible passenger at the time of his arrival in India, or

(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and

(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration

of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled. As per the respective statements of Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara recorded under Section 108 of the Customs Act, 1962, both went to Jeddah for umrah on 15.01.2024 and returned on 28.01.2024 well before the stipulated time of stay. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUTs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods i.e derived gold bars in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

(II) In terms of Section 111 (I) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

(I) 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](#);

I find that the said gold paste was not declared by Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh to the Customs under Section 77 of the Customs Act, 1962 and they passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely derived gold bars which were found concealed and recovered in manner as described

above, was made by the Noticee Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh, in the prescribed declaration form. Also, I find that both were not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (I) of the Customs Act, 1962.

(III) in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of [section 54](#)];

In this regard, I find that gold bars weighing 2374.170 Grams & 2090.440 Grams extracted from the gold paste recovered from the possession of Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara having market value of Rs. 1,53,06,274/- & Rs. 1,34,77,067/- respectively and admittedly smuggled into India. On test, those gold were found to be of purity of 999.0/24kt. Further, I find that both the noticees could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign found in person of Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara, thus failing to discharge their "burden of proof" that the gold was legally imported/possessed. They have also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

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.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara in prescribed declaration form. I also find that the noticees were not

eligible to import the said gold bars derived from paste concealed in rectum, underwear and bra and that too undeclared in terms of Section 77 of Customs Act, 1962 and hence the said gold bars are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

16. 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]

17. 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.

18. 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).*

19. 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.

20. 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".

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

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

*"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.**"*

22. On the basis of above discussion in light of the referred judgments and nature of concealment of the gold to smuggle the same, ***I am therefore, not inclined to use my discretion to give an option to both noticees i.e Ms. Nasima Samir Shekh and Shri Aftab Firojbhai Kachara to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

23. Given the facts of the present case before me and the judgements and rulings cited above, the said derived gold bars weighing 4464.610 grams (2374.170 Grams & 2090.440 Grams), carried by both noticees are therefore liable to be confiscated absolutely. ***I therefore hold in unequivocal terms that the said derived gold bars total net weighing 4464.610 grams (2374.170 Grams & 2090.440 Grams), placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. I also hold in unequivocal terms that White tape, under garments & tape and under garments used to conceal the gold paste recovered from Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh respectively, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.***

24. As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticees Shri Aftab Firojbhai Kachara & Ms.

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

Nasima Samir Shekh, I find that in the instant case, the principle of mens-rea on behalf of noticees are established as both the noticees has failed to follow the procedure and intentionally involved in smuggling of the gold. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticees were attempting to smuggled the gold in form of paste and attempting to evade the Customs Duty by not declaring the derived gold bars net weighing 4464.610 grams (gold bars weighing 2374.170 Grams & 2090.440 Grams) having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on their part. I further find that the noticees had involved themselves and abetted the act of smuggling of the said gold bars weighing 4464.610 grams (gold bars weighing 2374.170 Grams & 2090.440 Grams), carried by them. They have agreed and admitted in their respective statements that they had travelled from Jeddah to Ahmedabad with the said gold in form of paste concealed in rectum, underwear and bra of female noticee. Despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticees attempted to smuggle the said gold of 4464.610 grams (gold bars weighing 2374.170 Grams & 2090.440 Grams), having purity 999.0 by concealment. Thus, it is clear that the noticees have concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold which they know very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the both noticees named Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh are liable for the penalty under Section 112(a) of the Customs Act,1962 and I hold accordingly.

24.1 Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019. The detailed discussions in the preceding paragraphs clearly prove that the both noticees not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, both noticee accepted to carry the gold in form of paste for monetary benefit and involved themselves in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticees named Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh.

25. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Lucky (Noticee No. 03) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the records available on file as documentary as well as digitally and voluntary statement tendered by Ms. Nasrinbanu Fesal Suriya (Noticee No. 6) under Section 108 of Customs Act, 1962, I find that Shri Lucky has directed Ms. Nasrinbanu Fesal Suriya (Noticee No. 6) to drop the passengers at Airport, Ahmedabad which includes Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh and Shri Lucky had given Rs. 10,000/- to Ms. Nasrinbanu Fesal Suriya (Noticee No. 6) to distribute the same among all passengers. From the investigation and digital evidences/records available in the file and as per voluntary statements, I find that Shri Lucky was there at Ahmedabad at date of departure and forwarded the details of the passengers to Ms. Nasrinbanu Fesal Suriya and directed to confirm the arrival of the all passengers. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From

the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Further, Ms. Nasrinbanu Fesal Suriya never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in her voluntary statement tendered before DRI officers at any stage of investigation. From the details on records and from Statement of Ms. Nasrinbanu Fesal Suriya, I find that role of Shri Lucky was to facilitate the passengers, confirm their arrival at Ahmedabad on the given date and to manage the departure of the passengers on behalf of Shri Sarfaraz who had booked the tickets of the passenger and accordingly, participated in the activity related to smuggling of gold and a part of syndicate. It is seen that the noticee Shri Lucky has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. His non-appearance before the Investigating Authority and even before the Adjudicating Authority during the entire process of investigation and adjudication respectively alongwith Call Data Records and statements of Noticee No. 06 (Ms. Nasrinbanu Fesal Suriya) reveal that he was involved in the smuggling of the said gold bars. I find that in spite of being present in Ahmedabad on 14.01.2023, Shri Lucky himself did not manage the passengers going to Umrah and did not even meet them once, but depute Ms. Nasrin (Noticee No. 6) to manage and drop the said passengers at SVPI Airport and it is evident that he did not want his identity to be revealed. If the Noticee No. 03 was a law-abiding citizen, he would have appeared before the DRI to prove his innocence. It, is therefore, proved beyond doubt that the noticee Shri Lucky has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

26. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Haroon

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

(Noticee No. 04) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the records available on file as documentary as well as digitally and voluntary statement tendered by Ms. Nasrinbanu Fesal Suriya (Noticee No. 6) under Section 108 of Customs Act, 1962, I find that Shri Haroon has forwarded the details/tickets of the passengers to Ms. Nasrinbanu Fesal Suriya on her phone. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. I also find from the statement of Ms. Nasrinbanu Fesal Suriya that there is an involvement of Shri Haroon in the organized smuggling as he was the one who forwarded the details of passengers alongwith tickets including the details of Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh to Ms. Nasrinbanu Fesal Suriya to facilitate the passengers and confirmation of all passengers which implies that he was a part of syndicate whose role was to manage the departure of the passengers from Ahmedabad Airport. Further, Ms. Nasrinbanu Fesal Suriya never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in her voluntary statement tendered before DRI officers at any stage of investigation. It is seen that the noticee Shri Haroon has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee Shri Haroon has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

27. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Sarfaraz

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

(Noticee No. 05) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the available records on file as documentary as well as digitally and submission made by Shri Ashraf Sherani vide letter 10.06.2024 in response to summons dated 10.06.2024, I find that Shri Sarfaraz contacted Shri Ashraf Sherani to send a group of people for Umrah and accordingly, Shri Ashraf Sherani forwarded the details of group formed/created and received from Shri Zahirul Islam to Shri Sarfaraz. I also find from the details regarding return tickets of Ms. Nasima Samir Shekh & Shri Aftab Firojbhai Kachara received from Airline that in the tickets, contact number was mentioned as +966575273516 which is belonged to Shri Sarfaraz. The circumstantial evidence in the case supports the conclusion that Shri Sarfaraz played a key role in orchestrating the illegal importation of the gold. Further, the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. From the evidences available on record, it is evident that there is a direct involvement of Shri Sarfaraz in the organized smuggling as he was the one who managed booking the to and fro tickets of Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh. It is seen that the noticee Shri Sarfaraz (Noticee No. 5) has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. If the Noticee No. 05 was a law-abiding citizen, he would have appeared before the DRI. Thus, I find that he deliberately did not appear to escape the clutches of law and knowingly/consciously, he is actively involved in carrying, handling and dealing with smuggled derived Gold Bars. It, is therefore, proved beyond doubt that the noticee Shri Sarfaraz has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

28. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Ms. Nasrinbanu Fesal Suriya (Noticee No. 06) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the records available on file as documentary as well as digitally as SDR details/call details and voluntary statement tendered by Ms. Nasrinbanu Fesal Suriya (Noticee No. 6) under Section 108 of Customs Act, 1962, I find that Ms. Nasrinbanu Fesal Suriya came to Ahmedabad on the direction of Shri Lucky to drop the passengers at Airport, Ahmedabad which includes Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh and for that she will be received Rs. 15,000/-. Further, she met Shri Lucky in Ahmedabad and received Rs. 10,000/- from Shri Lucky to facilitate the passenger. From the SDR details/CDR details, it is evident that she was present in Ahmedabad on both dates ie. Date of Departure (14.01.2024/15.01.2024) and arrival date of Shri Aftab Firojbhai Kachara & Ms. Nasima Samir Shekh on 28.01.2024 and she failed to provide any specific reason regarding her visit on particular date i.e date of arrival of passenger from Abu Dhabi to Ahmedabad. This omission raises questions regarding the purpose of her presence in Ahmedabad at such a critical time. Given the facts and circumstances surrounding this case, I find it is reasonable to conclude that the presence of Ms. Nasrinbanu Fesal Suriya in Ahmedabad during the relevant time period strongly suggests that she had premeditated her visit to Ahmedabad with the intention of disposing of the illegally imported gold. Moreover, I also find that there is no reason for a Veraval based resident (Ms. Nasrinbanu Fesal Suriya) to come to Ahmedabad to just facilitate the passengers at Ahmedabad and also as per her statement she was not into the business/job related to travel agent or related work which raises questions regarding the purpose of her presence in Ahmedabad. Further, I also noticed that there is no reason for a resident of Veraval which is far from Ahmedabad came to Ahmedabad on basis of just a call from some person named Shri Lucky, who she hardly knows as per her statement, to just facilitate the passengers and the same could be done by any person at Ahmedabad or by Shri Lucky himself and this implies that she has involved herself in her organized smuggling. Further, I find that the noticee has neither submitted her defense submission, nor present herself before the Adjudicating authority at the time of personal hearing. If the

she was a law-abiding citizen, she would have appeared before adjudicating authority and submit her defense reply which proves her innocence. Thus I find that she deliberately did not appear to escape the clutches of law and knowingly/consciously, she is actively involved herself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which she knew or had reasons to believe that the same were liable to confiscation under the Act. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in her defense. Further, Ms. Nasrinbanu Fesal Suriya never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in her voluntary statement tendered before DRI officers at any stage of investigation or during adjudication proceedings. His non-appearance before the Adjudicating Authority during the adjudication proceeding alongwith SDR/Call Data Records reveal that she was actively involved in the smuggling of the said derived gold bars. It, is therefore, proved beyond doubt that the noticee Ms. Nasrinbanu Fesal Suriya has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has neither appeared before adjudicating authority nor submit any defense reply to prove her innocence, which makes her liable for penal action under Section 117 of Customs Act, 1962.

29. Accordingly, I pass the following Order:

O R D E R

- i.** I order **absolute confiscation** of 02 Gold bars weighing 2090.440 Grams extracted from the gold found concealed i.e. 4 capsules containing gold paste in rectum and one pouch containing gold paste in under-garment having a market value of **Rs. 1,34,77,067/-**(Rupees One Crore Thirty Four Lakhs Seventy Seven Thousand Sixty Seven only) and Tariff Value of **Rs. 1,16,38,357/-**(Rupees One Crore Sixteen Lakhs Thirty-Eight Lakhs Three Hundred Fifty-Seven Only) recovered from the possession of Shri Aftab Firojbhai Kachara and placed under

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

seizure under panchnama dated 28.01.2024 and seizure memo order dated 28.01.2024 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;

- ii. I order **absolute confiscation** of 04 Gold bars weighing 2374.170 grams extracted from the gold found concealed i.e. 4 capsules containing gold paste in rectum and 3 pouches containing gold paste in under-garments having a market value of **Rs.1,53,06,274/-**-(Rupees One Crore Fifty Three Lakhs Six Thousand Two Hundred Seventy Four Only) and Tariff Value of **Rs. 1,32,18,002/-** (Rupees One Crore Thirty-Two Lakhs Eighteen Thousand Two Only) recovered from the possession of Ms. Nasima Samir Shekh and placed under seizure under panchnama dated 28.01.2024 and seizure memo order dated 28.01.2024 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;
- iii. I order absolute confiscation of White tape and under garments & tape and under garments used to conceal the gold paste recovered from Shri Aftab Firojbhai Kachara & Ms Nasima Samir Shekh respectively, which were used for the concealment of gold wrapped in transparent polythene containing gold in paste/semi-solid form having no value, under Section 119 of the Customs Act, 1962.
- iv. I impose a penalty of Rs. 40,50,000/- (Rupees Forty Lakh Fifty Thousand Only) on **Shri Aftab Firojbhai Kachara** under the provisions of Section 112(a)(i) of the Customs Act 1962.
- v. I impose a penalty of Rs. 46,00,000/- (Rupees Forty Six Lakh Only) on **Ms. Nasima Samir Shekh** under the provisions of Section 112(a)(i) of the Customs Act 1962.
- vi. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Lucky @ Rajasthan near Jaipur** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- vii. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Haroon @ Rajasthan near Jaipur** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- viii. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Sarfaraz** under the provisions of Section 112(b)(i) of the Customs Act 1962.

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

- ix.** I impose a penalty of Rs. 40,00,000/- (Rupees Forty Lakh Only) on **Ms. Nasrinbanu Fesal Suriya** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- x.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Aftab Firojbhai Kachara** under the provisions of Section 117 of the Customs Act 1962.
- xi.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Ms. Nasima Samir Shekh** under the provisions of Section 117 of the Customs Act 1962.
- xii.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Lucky @ Rajasthan near Jaipur** under the provisions of Section 117 of the Customs Act 1962.
- xiii.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Haroon @ Rajasthan near Jaipur** under the provisions of Section 117 of the Customs Act 1962.
- xiv.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Sarfaraz** under the provisions of Section 117 of the Customs Act 1962.
- xv.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Ms. Nasrinbanu Fesal Suriya** under the provisions of Section 117 of the Customs Act 1962.

30. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-09/2024 dated 15.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25 Date:07.03.2025

DIN: 20250371MN0000666EC7

By SPEED POST A.D.

To,

1. Mr. Aftab Firojbhai Kachara,
Son of Shri Firojbhai Kachara,
Aged 20 years (D.O.B. 23.06.2003)
Block No. 29, Ghanchipat,
Behind Sardarbaug,
Junagadh -362001
(E-Mail:kacharaaftab72@gmail.com)

OIO No:274/ADC/SRV/O&A/2024-25
F. No: VIII/10-183/DRI/SVPIA/O&A/HQ/2024-25

2. Ms. Nasima Samir Shekh, wife of Shri Samir Shekh,
Daughter of Shri Bodubhai Alibhai Khokhar,
Aged 27 years (D.O.B. 05.08.1996)
72, Sunni Borval,
Junagadh -362001, Gujarat
(E-Mail: ahanaahanasekh@gmail.com)

3. Shri Lucky@Rajasthan near Jaipur

4. Shri Haroon@Rajasthan near Jaipur

5. Shri Sarfaraz

6. Ms Nasrinbanu Fesal Suriya,
Mirza Colony, Mishkin Colony,
Bage Zam Zam, Veraval,
Gir Somnath-362265
(E-mail: nasrinsuriya8@gmail.com)

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
4. The Dy./Asstt. Commissioner of Customs (Prosecution), Ahmedabad.
5. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
6. Guard File.