

OIO No:224/ADC/SRV/O&A/2024-25  
F. No: VIII/10-108/SVPIA-D/O&A/HQ/2024-25



### प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380009.

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DIN:20250171MN0000919246

### PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-108/SVPIA-D/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	VIII/10-108/SVPIA-D/O&A/HQ/2024-25 dated 15.07.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>224/ADC/SRV/O&amp;A/2024-25</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>10.01.2025</b>
E	जारी करने की तारीख/ Date of Issue	:	<b>10.01.2025</b>
F	द्वारा पारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	<b>Mr. Umerfaruq Usmangani Panwala,</b> 4277, Moto Vas, Near Nadiawad, Jamalpur, Ahmedabad-380001
(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 मंजिल, हुड़को 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 वाले व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ज्यूटी 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: -

Intelligence passed on by the Directorate of Revenue Intelligence, Ahmedabad (hereinafter referred to as "DRI") indicated that one passenger namely

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Mr. Umerfaruq Usmangani Panwala, holder of Indian Passport No. N8939737, aged around 50 years would be arriving at Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad from Jeddah (Saudi Arabia) by Indigo Flight No. 6E-92 (Seat No. 24A) on 24/03/2024 and suspected to be carrying restricted/ prohibited goods and that the same would be attempted to be smuggled into the country.

**2.** Whereas, acting on the aforesaid intelligence, the officers of DRI, Ahmedabad Zonal Unit (AZU), Ahmedabad and officers of Customs, Air Intelligence Unit (AIU), SVPIA, Ahmedabad identified the said passenger from his passport and intercepted him when he was about to exit through the green channel for personal search and examination of his baggage under Panchnama proceedings dated 24/03/2024 in presence of two independent Panch witnesses. The passenger was asked as to whether he was carrying any dutiable/ restricted/ prohibited goods and whether he wished to declare before Customs Authorities, in reply the passenger Mr. Umerfaruq Usmangani Panwala denied and informed that he had nothing to declare as he was not carrying any dutiable goods with him. Thereafter, the passenger Mr. Umerfaruq Usmangani Panwala was asked to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building of Airport, after removing all metallic objects from his body/ clothes. The passenger readily removed all the metallic substances from his body such as mobile, coins etc. and kept in a plastic tray and placed it on the table. Thereafter, Mr. Umerfaruq Usmangani Panwala was asked to pass through the Door Frame Metal Detector (DFMD). However, no beep sound was generated by the DFMD machine indicating nothing objectionable/ metallic substance present on his body/ clothes. He was again asked to pass through the DFMD machine and again no beep sound was generated by the DFMD machine indicating no metallic thing present on person with the pax. Thereafter, all his baggage were subjected to X-Ray screening at the Baggage Screening Machine (BSM) installed at the Green Channel counter no unusual images were noticed indicating anything objectionable was present in his baggage.

**2.1** As the passenger was intercepted on specific intelligence that he was carrying Gold in paste form concealed in his body, he was taken to the AIU office located at opposite of Belt No. 2, in arrival Hall of SVPI Airport, Ahmedabad and there on repeated questioning and interrogation, the passenger finally confessed that he was carrying gold in paste form in three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear. Thereafter, the passenger was taken to the washroom opposite to belt no. 6 of arrival hall, Terminal 2 by officers, where Mr. Umerfaruq

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Usmangani Panwala removed his brown-coloured underwear which had grey coloured cloth stitched into it containing the strip which had the gold paste mixed with some chemical and also removed 3 (three) capsules containing gold paste from his rectum. The said strip removed from his underwear was covered with transparent plastic and all the 3 capsules were covered with white rubber material. On being asked the passenger accepted that the said three capsules and 1 (one) strip consisted of gold in paste form and further admitted that on arrival he did not want to declare the same to Customs so that he could clear it illicitly.

**2.2** Thereafter, the Government approved valuer, Shri Kartikey Vasantrai Soni was called upon for examining the authenticity and purity of said semi solid paste in capsules and 1 (one) strip. The Govt. approved valuer informed that the testing of the said materials is only possible at his workshop as gold has to be extracted from such semi solid paste by melting it and also informed the address of his workshop. Thereafter, the panchas along with the passenger and the officers reached at the referred premises located at 301, Golden Signature, B/h Ratnam Complex, C.G. Road, Ahmedabad-380 006. The Government Approved Valuer, at the premises of the work shop, weighed the said semi-solid/ paste/ dust substances in capsule and strip recovered from the passenger on his weighing scale one by one. After, weighing the semi-solid/ paste/ dust substance in 1 strip form and 3 capsules recovered from Shri Umerfaruq Usmangani Panwala, Mr. Kartikey Vasantrai Soni informed that 1 strip and 3 capsules weighed 1065.85 grams and 761.01 grams respectively. The Valuer then converted the said semi solid paste in 1 strip form and 3 capsules recovered from Mr. Umerfaruq Usmangani Panwala into solid gold by melting in furnace one by one separately. After completion of the procedure, the Government Approved Valuer informed that Two Solid bars weighed 950.280 grams & 673.220 grams having purity of 999.0/24kt were derived/ retrieved from the 1065.850 grams & 761.010 grams of semisolid paste substance consisting of Gold paste and some chemical mix, respectively.

**2.3** After completion of entire testing and purity process, Shri Soni Kartikey Vasantrai, submitted Valuation Report (Annexure B) certification No. 1599/2023-24 dated 24/03/2024 in respect of Mr. Umerfaruq Usmangani Panwala. As per the certificate, the total Net weight 1623.500 grams (950.280+673.220) of 2 gold bars recovered from gold paste which was recovered from Shri Umerfaruq Usmangani Panwala having purity 999.0/24kt and total Market Value at Rs.1,11,29,093/- (Rupees One Crore, Eleven Lakh, Twenty-Nine Thousand and Ninety-Three only) and total tariff value at Rs.94,63,382/- (Rupees Ninety-four Lakh, Sixty-Three

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Thousand, Three Hundred and Eighty-two only). The value of the gold bars had been calculated as per the Notification No. 22/2024-Customs (N.T.) dated 15/03/2024 (Gold) and Notification No. 18/2024-Customs (N.T.) dated 07/03/2024 (Exchange Rate).

The details of which are as under:

S. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1	Gold Bar (derived from 3 capsule)	1	950.280	999.0 24 Kt	65,14,169/-	55,39,182/-
2	Gold Bar (derived from strip)	1	673.220	999.0 24 Kt	46,14,923/-	39,24,199/-
<b>TOTAL</b>		<b>2</b>	<b>1623.500</b>		<b>1,11,29,093/-</b>	<b>94,63,382/-</b>

**2.4** The passenger, Mr. Umerfaruq Usmangani Panwala and the Panch witnesses were satisfied and agreed with the testing and Valuation Report given by Government Approved Valuer and they put their dated signature on the said valuation report as a token of the fact that everything was done before them in a perfect manner.

**2.5** After the proceedings of the extraction of gold at the workshop, its valuation and checking of purity, the officers took possession of the recovered 2 gold bars as well packing material (Underwear and transparent plastic material used for concealment). Thereafter, the officers along with the panch witnesses and passenger left the workshop premises of Shri Soni Kartikey Vasantrai and reached back to the AIU office at terminal 2 of SVPI Airport, Ahmedabad.

**2.6** Shri Umerfaruq Usmangani Panwala produced the identity proof documents which are as under: -

- (i) Copy of Passport No. N8939737 issued at Ahmedabad on 17/03/2016 valid up to 16/03/2026.
- (ii) Boarding pass of Indigo Flight No. 6E92 from Jeddah to Ahmedabad dated 24/03/2024 having seat No.24A.

**2.7** Thereafter, the Officers showed the passenger Mr. Umerfaruq Usmangani Panwala as well as the Panch witnesses the passenger manifest of Indigo Flight No. 6E- 92, in which name of Mr. Umerfaruq Usmangani Panwala was mentioned at Seat No. 24A. The panchas as well as the passenger put their dated signatures on the copies of all the above-mentioned documents and the above passenger manifest, as a token of having seen and agreed to the same.

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**2.8** Whereas, the Officers informed the panchas as well as the passenger Mr. Umerfaruq Usmangani Panwala that the recovered 2 Gold bars having purity 999.0/24kt and total Market Value at Rs.1,11,29,093/- (Rupees One Crore, Eleven Lakh, Twenty Nine Thousand and Ninety Three only) and total tariff value at Rs.94,63,382/- (Rupees Ninety four Lakh, Sixty Three Thousand, Three Hundred and Eighty two only) was attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962. The 2 Gold Bars, totally weighing 1623.500 Grams of purity 999.0/24 KT having value of Rs.1,11,29,093/- [Market Value] and Rs.94,63,382/- [Tariff Value] recovered from Mr. Umerfaruq Usmangani Panwala were placed under seizure vide panchnama drawn on 24/03/2024. The seizure was made under the provisions of Section 110 of the Customs Act, 1962, on the reasonable belief that the said goods was smuggled into India and are liable for confiscation. The passenger Mr. Umerfaruq Usmangani Panwala had attempted to smuggle gold into India by way of concealment in his rectum and hiding in his underwear in form of Gold Paste, with an intent to evade payment of Customs duty which was clear violation of the provisions of the Customs Act, 1962. Further, the packing material used for packing and concealment of the said gold paste were also placed under seizure vide panchnama drawn on 24/03/2024 under reasonable belief that same was liable for confiscation under the provisions of the Customs Act, 1962.

**2.9** The officer, then, in presence of the panchas and the said passenger Mr. Umerfaruq Usmangani Panwala placed 2 gold bars of 999.0/ 24 kt. purity weighing 1623.500 (950.280+673.220) grams recovered from Mr. Umerfaruq Usmangani Panwala in one transparent plastic box and the packing material (Underwear and transparent plastic used for concealment) in another transparent plastic box and after placing the packing list on the said transparent boxes, tied it with white thread and sealed with the Customs lac seal in such a manner that same cannot be opened without tempering the Customs lac seal.

**3.** Statement of Mr. Umerfaruq Usmangani Panwala was recorded on 24/03/2024 under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that :

- He is Ola Rapido Two-Wheeler driver and work at Ahmedabad; that his monthly income was Rs.13,000/- to 15,000 (approx.).
  
- He had gone to Jeddah on 29 February 2024 for religious purpose i.e. umra. His all trip was sponsored by one of his cousin sisters namely Ms. Amrin

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Chhipa, who lived in Jeddah itself and Ms. Amrin Chhipa his cousin sister had arranged flight ticket for him.

- The said trip was his second abroad trip and before this trip, one time earlier too. I along with my wife had gone to Jeddah four months ago. That trip was my personal trip and the expenses for the same were born by myself only.
- On being asked to go through the Panchnama dated 24/03/2024, he thoroughly gone through the Panchnama dated 24/03/2024 drawn at Terminal-2 of SVP International Airport, Ahmedabad and he stated that he was present during the entire course of the said panchnama proceedings and he agreed with the contents of the said Panchnama. He further stated that on his request he had been explained the said Panchnama in Hindi Language. Upon perusal of the panchnama, in token of its correctness, he put his dated signature on the last page of the panchnama.
- On being asked that as per above Panchnama dated 24/03/2024 drawn at SVP International Airport, Ahmedabad, he was intercepted on 24/03/2024 by the officers of customs at green channel and during the further comprehensive physical examination, gold in paste form/ semi solid form was recovered from him, he stated that he agreed that after his arrival at SVPI Ahmedabad Airport, when he was trying to exit from Airport after crossing red channel, he was intercepted by the custom officers at green channel. After interception, he was also enquired by the officers whether he had any dutiable items to declare, to which he had denied to them; that he had carried gold in paste form/semi solid form by way of concealing the same in his underwear, which, he was wearing during his arrival at SVPI Airport. In addition to the same. he had also carried three capsules containing gold in paste form/semi solid form by way of concealing the same in his rectum. During the physical examination the custom officers recovered the said gold items from him.
- On being asked to go through the valuation report/ certificate submitted by the government approved valuer after completing the examination, melting & valuation process of gold in paste form & semi solid form recovered from him and provide the purchase documents/ details such as invoice etc., if any, in respect of the above gold in paste form/ semi solid form, which was recovered from him, he stated that he had gone through the valuation report/certificate no. 1599/2023-24 dated 24/03/2024 submitted by the government approved

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valuer and he put his dated signature on the said valuation report as a token of having seen the same. He further stated that after completion of examination, melting & valuation, two gold bars totally weighing of 1623.500 Grams having purity 999.0/24 Kt and market value of Rs.1,11,29,093/- have been extracted/ derived from the gold in paste form/ semi solid form recovered from him; that he did not possess any documents such as purchase invoice, delivery challan etc. in relation to the above gold; that he was not the owner of the said gold, on the contrary, the same had been handed over to him by a person in Jeddha for sole purpose to smuggle the same into India.

- On being asked that who was the owner of the said gold items recovered from him, he stated that his cousin sister Ms. Amrin Chhipa at Jeddha, had introduced him to a person, who asked him to smuggle the above gold items into India and offered him monitory consideration of Rs.17,000/- along with arrangement of flight tickets for his journey from Jeddah to India. He also stated that he agreed to the said offer made by him (the person in Jeddah) and subsequently, he (the person in Jeddah) handed over such gold items to him (Mr. Umerfaruq Usmangani Panwala) for undertaking the process of smuggling of above gold items into India. Since, his cousin sister had introduced him to the said person in Jeddah, he (Mr. Umerfaruq Usmangani Panwala) didn't ask the detail contact such as name, address etc. He didn't have any contact detail of such person.
- On being asked to provide the contact detail, address etc. of his sister Ms. Amrin Chhipa, he stated that he didn't have her address details as after his arrival to Jeddah, she herself had come to airport to receive him (Mr. Umerfaruq Usmangani Panwala). However, he had her contact no. 9265513400.
- On being asked why he had not declared the Gold on arrival and opted for green channel, he stated that he had brought the above gold items for the sole purpose of illegal smuggling of Gold by way of concealment in his underwear as well as by way of hiding in his body though he was fully aware that smuggling of gold without payment of Custom duty is an offence. He also stated that after the interception at green channel, the custom officials had enquired him whether he had any dutiable items to declare, to which he had denied so as to evade the Custom Duty. He did not make any declarations in this regard. He confirmed the total two gold bars totally weighing of 1623.500

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Grams having purity 999.0/24 Kt. and market value of Rs.1,11,29,093/- as narrated under the Panchnama dated 24/03/2024 have been extracted/derived from total gold in paste form/semi solid form recovered from him. He had opted for green channel so that he could smuggle the gold without paying custom duty.

- On being asked whether he was aware that bringing dutiable/ prohibited/ restricted goods without declaration and without payment of duty is an offence under Customs Act 1962 & Rules made thereunder, he stated that he was well aware that bringing dutiable/prohibited/restricted goods without declaration and without payment of duty is an offence. He confessed/admitted his mistake.

4. Whereas, from the foregoing paras, it appears that Mr. Umerfaruq Usmangani Panwala had brought gold in form of semi solid paste substance consisting of Gold & other Chemical Mix in form of 1 strip and 3 capsules weighing 1065.85 grams and 761.01 grams respectively and Two gold bars weighing 950.280 grams & 673.220 grams having purity of 999.0/24kt valued Rs.1,11,29,093/- [Market Value] and Rs.94,63,382/- [Tariff Value] were derived/ retrieved from the same. The above said Gold in form of paste recovered from the said passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealment in his body i.e. rectum and cloths (underwear), which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the said two gold bars weighing 950.280 grams & 673.220 grams retrieved from the 1065.85 grams and 761.01 grams of gold paste recovered from Mr. Umerfaruq Usmangani Panwala, having purity of 999.0 /24 KT and valued at Rs.1,11,29,093/- [Market Value] and Rs.94,63,382/- [Tariff Value], which was an attempt to smuggle by the passenger, liable for confiscation as per the provisions of the Customs Act, 1962; hence, the said retrieved gold were placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo/ Order dated 24/03/2024.

##### 5. **ARREST OF Mr. UMERFARUQ USMANGANI PANWALA:**

5.1 From the statement of Mr. Umerfaruq Usmangani Panwala recorded under Section 108 of the Customs Act, 1962 as well as from Panchnama proceedings dated 24/03/2024, it was evident that Mr. Umerfaruq Usmangani Panwalahad knowingly and intentionally attempted to smuggle 1623.500 grams of Gold, having purity of 999.0/24 Kt and having Market value of Rs.1,11,29,093/-and Tariff Value

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of Rs.94,63,382/- concealed in his underwear as well as inside the rectum by him with an intend of illicitly clearing the said gold and to evade customs duty as recorded under panchnama dated 24/03/2024.

**5.2** The said passenger, Mr. Umerfaruq Usmangani Panwala was arrested on 24/03/2024 for committing offences punishable under section 135 of the Customs Act, 1962, and he was produced before the Hon'ble Additional Chief Metropolitan Magistrate, Ahmedabad on 25/03/2024 who pleased to remand him to Judicial Custody. The bail application No. 3540/2024 of the accused was rejected vide order dated 01/05/2024 by the Hon'ble Additional Chief Metropolitan Magistrate, Ahmedabad. The accused had then filed Criminal Misc. Application No. 6307 of 2024 before the Hon'ble Additional Chief Metropolitan Magistrate, Ahmedabad on 24/05/2024 for default bail and the accused was granted default bail, subject to conditions, vide order dated 25/05/2024 by the Hon'ble Additional Chief Metropolitan Magistrate, Ahmedabad.

#### **Allegations and relevant legal provisions of the Customs Act, 1962**

**6.** Whereas from the facts and circumstances discussed above, it is evident that Mr. Umerfaruq Usmangani Panwala had attempted to smuggle gold in form of semi solid substance material consisting of Gold & other Chemical Mix totally weighing 1623.500 grams (950.280+673.220) with an intention to evade payment of customs duty. The said gold was brought into India by the passenger for commercial purpose and cannot be construed as 'bonafide baggage' within the meaning of Section 79 of the Act read with Para 2.27 of the Foreign Trade Policy, 2023. As per Para 2.27 of the Foreign Trade Policy, a passenger is allowed to import Bona-fide household goods and personal effects as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance. It appears that the import of goods in commercial quantity was with intent to evade customs duty & earn profit and not covered within the ambit of 'bonafide baggage'. Therefore, imports of such goods are not permitted through the baggage mode. It also appears that the passenger attempted to smuggle the goods without filing the Customs declaration form, which appears to be in contravention of Section 77 of the Act read with the Baggage Rules, 2016 ('Baggage Rules') and Regulation 3 of the Customs Baggage Declaration Regulations, 2013 ('Baggage Regulations'). The above act on the part of the passenger appears to be amounting to smuggling within the meaning of Section 2(39) of the Act. It also appears that the gold is to be construed as 'Prohibited' in terms of the provisions of Section 2(33) of the Act.

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**7.** Whereas it appears that Mr. Umerfaruq Usmangani Panwalawas carrying the above gold personally. As per Section 123 of the Customs Act, 1962 Gold is a notified item and as per Section 123 (1) of Customs Act, 1962:

*"123 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.*

Further, sub section (2) of the Section 123 of Customs Act, 1962 stipulates that

*(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.* Thus, it appears that the said gold brought into India by the passenger was liable for seizure under the Customs Act., 1962, on the reasonable belief that these were smuggled goods, and the burden of proof that these goods have been legally imported lies upon the claimant or on the person from whose possession the said goods were recovered. In the instant case the passenger, Mr. Umerfaruq Usmangani Panwala was unable to produce any documents showing the legitimate import of the said gold into India on payment of duty and through legal channels. Further the passenger, Mr. Umerfaruq Usmangani Panwala had admitted that he had brought the said gold to gain pecuniary/financial benefits. Therefore, it appears that the passenger knowingly dealt with the said goods, i.e. carrying, keeping, concealing or in any other manner dealing with the goods which he knew or had reason to believe that the same were liable for confiscation under the Customs Act. Therefore, it appears that the said gold was smuggled in contravention of the provisions of Customs Act, 1962 and the same are therefore, liable to confiscation under section 111(d), 111(i), 111(l), and 111(m) of the Customs Act, 1962. Further Adhesive tapes and underwear used as packing material to conceal and hide the said gold are also liable for confiscation under Section 118(a) and 119 of the Customs Act, 1962. From the statement dated 24/03/2024 of the passenger

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it appears that he was actively involved in the smuggling of the said gold. Hence, the acts of omission and commission on the part of Mr. Umerfaruq Usmangani Panwala appears to have rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

**8.** It thus appears that the various provisions of the Customs Act, 1962 have been contravened in the instant case of smuggling:

- Section 77 of the Act as Mr. Umerfaruq Usmangani Panwala had failed to make a declaration of the imported gold in form of semi solid paste substance consisting of Gold & other Chemical Mix totally weighing 1065.85 grams and 761.01 grams which were recovered from his possession;
- Section 79 of the Act as he has imported the said gold for commercial purpose which was not for his bonafide use;
- Section 7 of the Foreign Trade (Development & Regulations) Act, 1992 as he imported gold in form of semi solid substance material consisting of Gold & other Chemical Mix for commercial purpose.
- Rule 11 of the Foreign Trade (Regulation) Rules, 1993 as he failed to declare the value, quantity and description of the gold imported by him;
- Para 2.27 of the Foreign Trade Policy 2023 as he acted contrary to the restrictions imposed and imported non bonafide baggage.

**9.** It appears that the passenger Mr. Umerfaruq Usmangani Panwala had not filed the baggage declaration form and had not declared that gold in form of semi solid substance material consisting of Gold & other Chemical Mix in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Baggage Regulations. It also appears that the import was for non bonafide purpose. Moreover, gold or silver, in any form, other than ornaments is not allowed free of duty. Further, one kg of gold can also be imported by an eligible passenger as envisaged under Notification No 50/2017-Cus dated 30/06/2017 (Sr. No 356 read with condition no: 41) wherein an 'eligible passenger' means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 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. In the instant case the passenger had carried the Gold and not declared before the Customs Authority at Ahmedabad Airport and in contrary he concealed the said Gold in paste form in his body i.e. rectum and cloth (underwear) with an

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intent to evade payment of applicable Customs duty. It, therefore, appears that all the above acts of contravention on the part of the passenger have rendered the seizure of gold retrieved from semi solid substance material consisting of Gold & other Chemical Mix, liable to confiscation, under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Act. It further appears that the gold in form of semi solid substance material consisting of Gold & other Chemical Mix totally weighing 1065.85 grams and 761.01 grams imported by Mr. Umerfaruq Usmangani Panwalais to be construed as 'smuggling' within the meaning of Section 2 (39) of the Act and the said gold also appear to be 'prohibited' within the meaning of Section 2(33) of the Act. By using the modus of concealing the gold in form of semi solid substance material consisting of Gold & other Chemical Mix in his body i.e. rectum and cloth (underwear), it appears that the passenger was fully aware that the goods would be of offending nature on its import. It appears that he has involved himself in carrying, keeping, concealing and dealt with the offending goods in a manner which he knew or had reasons to believe was liable to confiscation under the Act. Adhesive tapes and underwear used as packing material to conceal and hide the said gold are also liable for confiscation under Section 118(a) and 119 of the Customs Act, 1962. It, therefore, appears that the passenger has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Act.

**10.** Further, the passenger did not produce any valid declaration for possession of Gold in form of semi solid substance material consisting of Gold & other Chemical Mix wherein Mr. Umerfaruq Usmangani Panwalahad brought gold weighing 1623.500 grams (950.280+673.220) valued Rs.1,11,29,093/- [Market Value] and Rs.94,63,382/- [Tariff Value] as required in terms of Regulation No. 3 of the Customs Baggage Declaration Regulations, 2013 framed under Section 81 of the Customs Act, 1962, with an intention to evade payment of Customs duty. The passenger therefore appears to has rendered himself liable for penalty under the Customs Act, 1962.

**09.** Accordingly, a Show Cause Notice was issued to **Mr. Umerfaruq Usmangani Panwala**, 4277 Moto Vas Near Nadiawad, Jamalpur, Ahmedabad-380001, as to why:

- i) Two Gold bars, totally weighing **1623.500** grams (950.280+673.220), having purity of 999.0/ 24KT retrieved from semi solid paste substance material consisting of Gold & other Chemical Mix, totally weighing 1826.86 Grams (1065.85 + 761.01 grams), having total value of **Rs.1,11,29,093/-** (Rupees One Crore, Eleven Lakh, Twenty-Nine

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Thousand and Ninety-Three only) [Market Value] and **Rs.94,63,382/-** (Rupees Ninety-four Lakh, Sixty-Three Thousand, Three Hundred and Eighty-Two only) [Tariff Value] placed under seizure vide panchnama drawn on 24/03/2024 and Seizure Memo/Order dated 24/03/2024, should not be confiscated under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962;

- ii) The packing material adhesive tapes and underwear used as packing material to conceal and hide the gold placed under seizure under panchnama dated 24/03/2024 and Seizure Memo/Order dated 24/03/2024, should not be confiscated under Section 118(a) and 119 of the Customs Act, 1962.
- iii) penalty should not be imposed upon him under Section 112(a) and 112(b) of the Act;

#### **Defense reply and record of personal hearing:**

**10.** The noticee through his advocate vide letter dated 16.08.2024 submitted his written submission wherein he mentioned that the conclusion made in the SCN is not correct. He had studied in Gujarati Medium School and can read, write and understand Gujarati and not able to read, write and understand English. He was carrying gold with him which was for his personal use and bought the said gold to gift his family members. The intention to bring gold into India was not to smuggle the same and as a matter of fact, I was ready and willing to pay custom duty. He submitted that he approached the customs officers for declaration form and for payment of duty as, he was not aware of the procedure of payment. The Customs officer promised to help for preparing documents for payment of duty on gold. He signed the documents, trusting the officers that the documents were regarding payment of duty. After signing the documents, the officers have taken the gold in custody. The statement dtd 24.03.2024 was false and wrong as, the same was typed by the officers and took his signature on that. He wanted to pay the applicable duty for Gold though the officers misguided him and roped in the false case. He submitted that he is ready and willing to pay applicable duty on gold as the gold is belong to him and was purchased by him from his hard-earned money and borrowings. He submitted that the gold is not prohibited item, unlike in case of drugs, brown sugar, items like arm and ammunition etc. and prayed to quash the SCN, to Return back the seized gold, to not impose penalty under Section 112 (a) and 112 (b) of the Customs, Act, 1962, to provide an opportunity of being heard in person.

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At the time of personal hearing, his advocate has relied upon the judgment of Hon'ble CESTAT, Regional Bench, Allahabad in the matter of Waqar Vs. Commissioner of Customs (Preventive), Lucknow reported in 2024 (387) E.L.T 91 (tri.All.) *wherein the Appellate Authority has set aside the absolute confiscation order and allow the option to redeem the confiscated goods on payment of Redemption Fine.*

**11.** The noticee was given opportunity for personal hearing on 23.12.2024. Shri Mahavir Bhansali, Advocate and Authorized representative on behalf of noticee i.e Mr. Umerfaruq Usmangani Panwala is appeared for personal hearing. He requested to attend the PH in person instead of video conferencing. He re-iterated his written submission dated 16.08.2024. He submitted that gold is not in the list of prohibited items and his client is the owner of the gold. He submitted the case law in their defense and request to consider the same. He submitted that his client is ready to pay applicable duty, fine and penalty on release of the gold.

#### **Discussion and Findings:**

**12.** I have carefully gone through the facts of this case and the written submission made by the noticee and submission made during personal hearing. I find that the noticee has attended the PH and requests for release of gold in lieu of payment of applicable duty/tax, fine and penalty. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

**13.** In the instant case, I find that the main issue to be decided is whether the **1623.500 grams (950.280+673.220) of 2 gold bars** derived from semi solid paste containing gold and chemical mix concealed in three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear of 24KT(999.0 purity), having Tariff Value of **Rs.94,63,382/-** and Market Value of **Rs.1,11,29,093/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 24.03.2024 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

After having identified and framed the main issue to be decided, as stated above, I now proceed to deal with the issue in the light of facts and circumstances of the case provision of the Customs Act, 1962, contentions of the noticee and evidences available on record.

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**14.** I find that the Panchnama has clearly drawn out the fact that on the basis of input that Shri Umerfaruq Usmanagi Panwala was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers alongwith officers of DRI, under Panchnama proceedings dated 24.03.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. Thereafter, the noticee was asked to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building of Airport, after removing all metallic objects from his body/ clothes. However, no beep sound was generated by the DFMD machine indicating nothing objectionable/ metallic substance present on his body/ clothes. Thereafter, all his baggage were subjected to X-Ray screening at the Baggage Screening Machine (BSM) installed at the Green Channel counter no unusual images were noticed indicating anything objectionable was present in his baggage. On sustained interrogation, the noticee has confessed that he was carrying gold in paste form in three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear and handed over the same to the officers in presence of panchas.

**15.** It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said gold in paste form in three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear and after completion of extraction, the Government Approved Valuer informed that the weight of the said 02 gold bars comes to **1623.500 grams (950.280+673.220)** having purity 999.0/24KT. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 02 bars is **Rs.94,63,382/-** and Market value is **Rs.1,11,29,093/-**. The details of the Valuation of the said gold bar are tabulated as below:

S. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1	Gold Bar (derived from 3 capsule)	1	950.280	999.0 24 Kt	65,14,169/-	55,39,182/-
2	Gold Bar (derived from strip)	1	673.220	999.0 24 Kt	46,14,923/-	39,24,199/-
<b>TOTAL</b>		<b>2</b>	<b>1623.500</b>		<b>1,11,29,093/-</b>	<b>94,63,382/-</b>

**16.** Under his reply, I find that, the noticee has submitted that being not much educated, he was not aware of the procedure for payment of duty as he wants to

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declare the same and accordingly approached the officer for the same. however, under Panchnama it is very clear that on sustained interrogation, the noticee has confessed he was carrying gold in paste form in three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear. I further note that the noticee in his submission mentioned that he was not aware about the procedure for declaration of goods. The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.

Accordingly, the said 02 gold bars (derived from three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear) having purity 999.0/24 Kt. weighing 1623.500 grams (950.280+673.220), recovered from noticee was seized vide Panchnama dated 24.03.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold jewellery was smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

**17.** I also find that the said 02 gold bars weighing 1623.500 grams (950.280+673.220) having Tariff Value of **Rs.94,63,382/-** and Market value is **Rs.1,11,29,093/-** carried by the noticee appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 24.03.2024 under Section 108 of the Customs Act, 1962. Under Submission, the noticee has alleged that he was forced to sign the documents and statement recorded was false and wrong. I find that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and put his signature on the Statement. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him in Hindi. He clearly admitted in his statement that the gold was not purchased by him and someone else gave him at Jeddah. In the temptation to earn quick money he agreed to smuggle the said gold by concealing the same in rectum and in underwear. The offence committed is admitted by the passenger in his

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statement recorded on 24.03.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows: -

- 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, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA"
- 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"
- The Hon'ble Supreme Court in another matter of Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Supt. Of Cus., Marmagoa [Reported in 2001 (134) E.L.T 3 (SC)] has categorically held that "Statement recorded by Customs Act is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act....."
- 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."

I find under submission that the noticee has claimed the ownership of gold and mentioned that he had purchased the said gold for personal use for himself and his family by his hard-earned money and borrowed money. On going through the statement tendered by the noticee, I find that the noticee has submitted that the gold was not purchased by him and same was given to him by other person and he was just hired to smuggle the same for a consideration of Rs.17,000/- alongwith arrangement of flight tickets. Further, I find that the allegations in show Cause Notice have not established merely based on the statements, rather, the noticee has failed to submit any documentary evidences viz. purchase invoice of Gold, Bank Statement which establish his claim on the gold which was found in possession with him during the panchnama proceeding dated 24.03.2024 and even with the written defense dated 16.08.2024. Therefore, I don't find any force in the contention of noticee in this regard. It is on the record that at the time of arrival, the noticee has

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not produced any purchase invoice for the said gold jewellery as claimed under submission and not even submitted any documentary evidences alongwith his submission.

**18.** I also find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the noticee. Further, I find that under statement, he admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the gold in paste form in three capsules concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold in paste form in form of three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear recovered from his possession and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to proof that they are not smuggled, shall be on the person from whose possession the goods have been seized. In this regard, he admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

**19.** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act

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read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 1623.500 grams (950.280+673.220) concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee does not fall under the criteria of "eligible passenger". The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 1623.500 grams (950.280+673.220), having Tariff Value of Rs.94,63,382/- and Market Value of Rs.1,11,29,093/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 24.03.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in paste form in three capsules containing gold paste concealed in his rectum and 1 (one) strip of gold paste mixed with some chemical inside his underwear, shows the mens-reas of the noticee to not declare and to evade the payment of customs duty. It is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

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**20.** I find that the Noticee confessed of carrying the said gold of 1623.500 grams (950.280+673.220) concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

**21.** It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/dutiable goods with the wilful intention to smuggle the impugned goods. The said 02 gold bars (derived from semi solid paste substance consisting of Gold & other Chemical Mix in form of 1 strip and 3 capsules) weighing 1623.500 grams (950.280+673.220), having Tariff Value of Rs.94,63,382/- and Market Value of Rs.1,11,29,093/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 24.03.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold weighing 1623.500 grams (950.280+673.220), by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

**22.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such

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conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said 02 gold bars (derived from semi solid paste substance consisting of Gold & other Chemical Mix in form of 1 strip and 3 capsules) weighing 1623.500 grams (950.280+673.220), was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in form of paste in one strip and 03 capsules concealed in underwear and rectum respectively. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

**23.** In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of paste containing gold and chemical mix concealed in rectum and in underwear with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said 02 gold bars (derived from the semi solid paste of gold and chemical mix) weighing 1623.500 grams (950.280+673.220) carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 24.03.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty. Under his submission, the noticee has requested to redeem the gold on payment of redemption fine and relied on judgment of Hon'ble CESTAT, Regional Bench, Allahabad in case of Waqar Vs. Commissioner of Customs (Preventive), Lucknow wherein redemption fine was allowed to release the gold. Before discussion the contention of the noticee, I would like to go through the provisions mentioned for allowing redemption fine in Section 125 of Customs Act, 1962. On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

**Section 125. Option to pay fine in lieu of confiscation. -**

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the*

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*goods<sup>1</sup> [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

*<sup>2</sup> [ **Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, <sup>3</sup> [no such fine shall be imposed]:*

**Provided** further that] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Further, ongoing through the observation made by the Hon'ble CESTAT in the case relied upon by the noticee, I find that the case law cited by the noticee is not applicable to the present case being in the case cited the concealment of gold was in shoes and socks, however in the instant case, the gold was concealed in rectum in form of capsules. I am of the view that conclusion of case cited may be correct, but it cannot be applied universally without considering the hard realities and specific facts of each case. The decision was made in different contexts, with different facts and circumstances, and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

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In the various judgments, it is very clearly mentioned that the redemption fine is not demanded as a right to claim and adjudicating authority has discretion to give option of redemption fine according to the rules of reason and justice. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that "*the option to release 'Prohibited goods' on redemption fine is discretionary*". In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration.*" Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that "*Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive.*" Now in the latest judgment the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that "*---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer.*" ***Therefore, keeping in view the judicial pronouncement above and facts of the case, I do not inclined to exercise the option to allow redemption fine in lieu of confiscation of gold.*** Further, to support my view, I also relied upon the following judgment wherein redemption fine is not allowed which are as :-

**23.1.** 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]*

**23.2.** 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)

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has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**23.3.** 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).*

**23.4.** 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.*

**23.5.** 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

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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".

**23.6.** 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-reas."*

**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."

**23.7.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold bars weighing 1623.500 grams (950.280+673.220) (derived from semi solid paste), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 02 gold bars weighing 1623.500 grams (950.280+673.220), placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.**

**24.** I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bars weighing 1623.500 grams (950.280+673.220), carried by him. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-reas on behalf of noticee is established wherein it states that "The act is not culpable unless the mind is guilty". Accordingly, 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

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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 noticee was attempting to evade the Customs Duty by not declaring the gold bars weighing 1623.500 grams (950.280+673.220) (derived from semi solid paste concealed in rectum and in underwear) 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 his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bars weighing 1623.500 grams (950.280+673.220), carried by him. He has agreed and admitted in his statement that he travelled from Jeddah to Ahmedabad with the said gold bars in form of capsules and strip in semi solid form). Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 1623.500 grams (950.280+673.220), having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) of the Customs Act, 1962 and I hold accordingly.

**25.** Accordingly, I pass the following Order:

### **ORDER**

- i) I order **absolute confiscation** of two gold bars weighing **1623.500 grams (950.280+673.220)** having purity of 999.0 (24KT.) recovered/ derived from semi solid paste of gold and chemical mix in 03 capsules and 01 strip concealed in his rectum and in his underwear respectively, having Market value of **Rs.1,11,29,093/-** (Rupees One Crore, Eleven Lakh, Twenty-Nine Thousand and Ninety-Three only) and Tariff Value of **Rs.94,63,382/-** (Rupees Ninety-four Lakh, Sixty-Three Thousand, Three Hundred and Eighty-Two only), placed under seizure under Panchnama dated 24.03.2024 and seizure memo order dated 24.03.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) I order absolute confiscation of packing material i.e adhesive tapes and underwear used as packing material to conceal and hide the gold placed under seizure under panchnama dated 24/03/2024 and Seizure

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Memo/Order dated 24/03/2024 under Section 118(a) and 119 of the Customs Act, 1962.

iii) I impose a combined penalty of **Rs. 28,00,000/- (Rupees Twenty-Eight Lakh Only)** on **Shri Umerfaruq Usmangani Panwala** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

**27.** Accordingly, the Show Cause Notice No. VIII/10-108/SVPIA-D/O&A/HQ/2024-25 dated 15.07.2024 stands disposed of.

**(Shree Ram Vishnoi)**  
Additional Commissioner  
Customs, Ahmedabad

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**DIN: 20250171MN0000919246**

**BY SPEED POST AD**

To,  
**Shri Umerfaruq Usmangani Panwala,**  
4277, Moto Vas, Near Nadiawad,  
Jamalpur, Ahmedabad-380001

**Copy to:**

1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. [sys-ccocusam@gov.in](mailto:sys-ccocusam@gov.in).
6. Guard File.