प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद –380009.
दूरभाष: (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in, फैक्स: (079) 2754 2343

DIN No. 20250471MN000000B316

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-230/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-230/SVPIA-A/O&A/HQ/2024-25 dated: 18.11.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**10/ADC/SRV/O&A/2025-26**
D	आदेशतिथि/ Date of Order-In-Original	:	**23.04.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**23.04.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	**Smt. Uma Jaikumar Mamtani,** BK No.225, R.No.9, Near Doluram Darbar, Ulhasnagar-1, Thane, Pin; 421001, Maharastra, India.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

On the basis of passenger profiling and suspicious movements of passengers by the Air Intelligence Unit (AIU) officers, SVPIA, Customs,

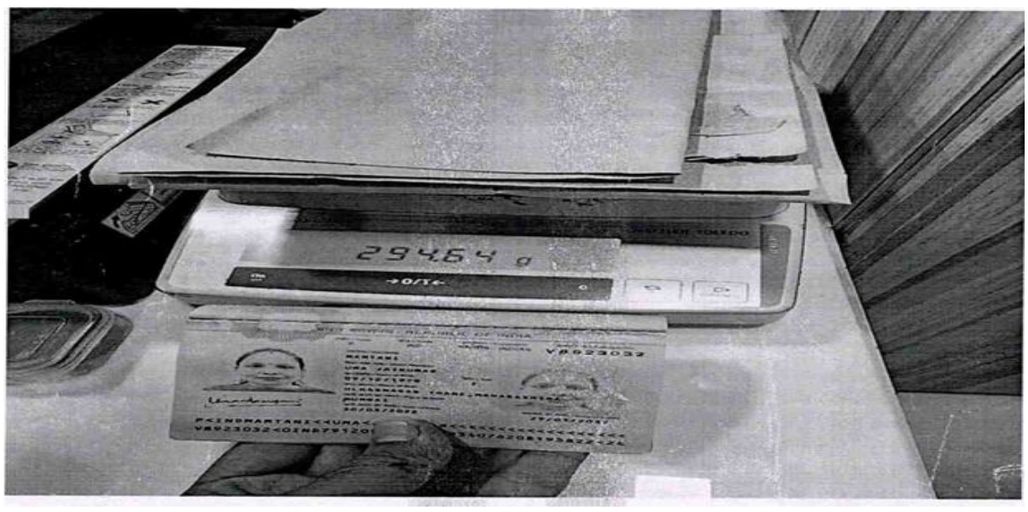
Ahmedabad, intercepted a female passenger **Smt. Uma Jaikumar Mamtani** (hereinafter referred to as the said "passenger/Noticee")**, aged 45 years, W/o Shri Jaikumar Mamtani holding an Indian Passport Number No. V8923032, residing at BK No.225, R.No.9, Near Doluram Darbar, Ulhasnagar-1, Thane, Pin;421001, Maharashtra, India** arriving from Dubai to Ahmedabad on 25.05.2024 via Spicejet flight SG 16 from (Seat No. 27B), at the arrival Hall of the SVPIA, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of her baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said **Panchnama dated 25/26.05.2024**.

2. Whereas, the passenger was questioned by the AIU officers as to whether she was carrying any dutiable/ contraband goods in person or in his baggage, to which she denied. The officers asked /informed the passenger that a search of her baggage as well as her personal search was to be carried out and gave her an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the passenger desired to be searched in presence of a gazetted customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the officers. The officers asked her to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival hall of Terminal 2 building; however, no beep sound was heard. Further, the officers scan all the baggage in the X-ray machine, while the baggages were scanned some suspicious image is observed by the AIU officers. The AIU officers asked about the suspicious x-ray image but the passenger denies does not give any satisfactory reply. Therefore, the officer of AIU removed and checked the corrugated boxes of plates, the officer noticed that some layer of gold coloured dust was there on the brown coloured sheet.

2.1 Thereafter, the AIU officer called the Govt. Approved Valuer and informed that gold dust was recovered from the corrugated boxes of plates carried by **Smt. Uma Jaikumar Mamtani**, who had arrived from

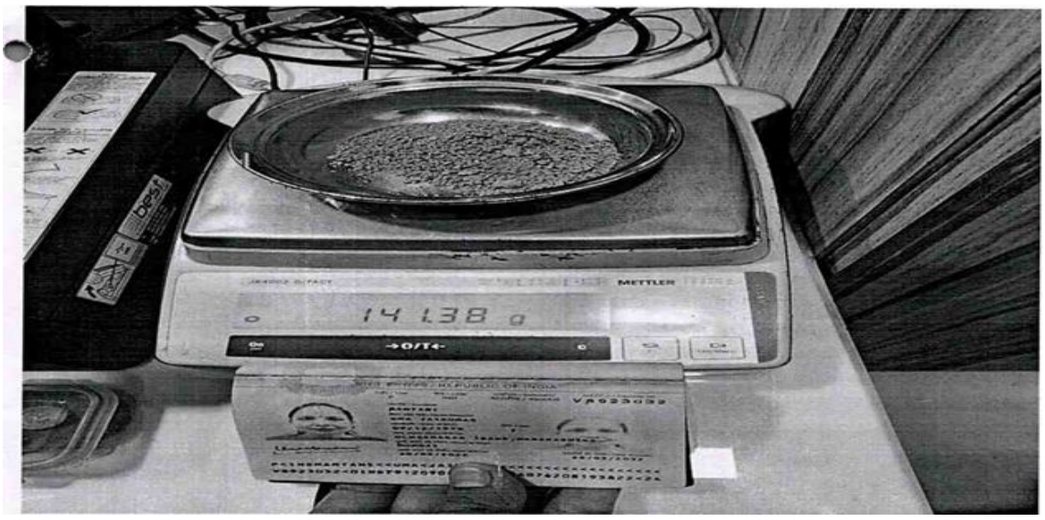
Dubai to Ahmedabad on 25.05.2024 by Spicejet flight SG 16 (Seat No. 27B) at T-2 of SVPIA Ahmedabad and that he needed to come to the Airport for verification, examination and valuation. In reply, the Government Approved Valuer informed the officers that the testing of the material is possible only at his workshop as gold has to be extracted from dust form by melting it and also informs the address of his workshop.

2.2 Thereafter, the AIU Officers, along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G.Road, Ahmedabad-380006. On reaching the above referred premises, the officers introduced the panchas, as well as the passenger to one person namely Mr. Soni Kartikey Vasantrai, Government Approved Valuer. Mr. Soni Kartikey Vasantrai, asked the officers in presence of panchas that he would do the examination of the gold dust recovered from the brown coloured sheets. The valuer started the detailed examination of the gold dust that was recovered from **Smt. Uma Jaikumar Mamtani**. After weighing the said gold dust on his weighing scale, Shri. Soni provided detailed primary verification report of semi solid substance and informed that the weight of the semi solid substance mixture of gold dust and chemicals recovered has a Gross weight of **294.600 grams. The photograph of the same is as:-**

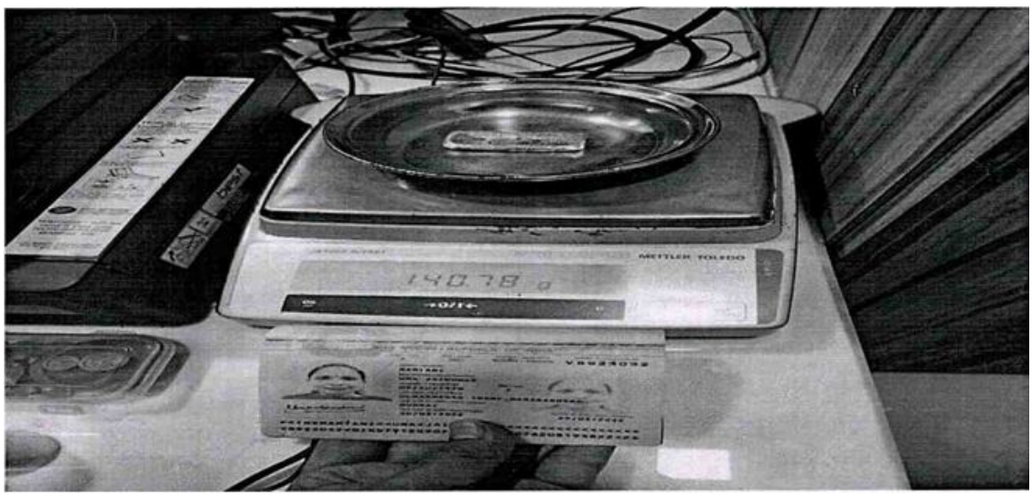


2.3 Thereafter, the Government approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Mr. Kartikey Vasantrai Soni started the process of converting the said dust concealed in the brown coloured

sheet found in the luggage of the passenger into solid gold. The said substance consisting of Gold was put into the furnace and upon heating, the substance turned into mixture of gold like material. The Photo graph of the same is as:-



2.4 The said substance consisting of gold was tested by the valuer for the gold component by putting in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that 01 Gold bar weighing 140.780 grams having purity 999.0/24 Kt. was derived from 294.640 grams dust found in the luggage of the passenger. The Photograph of the same is as:-



2.5. After testing the said derived bar, the Government Approved Valuer confirmed that it is pure gold and Shri Soni Kartikey Vasantrai issued a Certificate, vide Certificate No.224/2024-25 dated 26.05.2024, wherein it is certified that the gold bar is having purity 999.0/24kt,

weighing 140.780 grams. The valuation provided by the said Govt. Approved Valuer is summarized as under:

Sr. No.	**Item particulars**	**PCS**	**Net Weight (in grams)**	**Market Value (In Rs.)**	**Tariff Value (In Rs.)**
1.	Gold bar - 999.0 purity	1	140.780	10,43,743/-	8,91,797-/
	Total	1	140.780	10,43,743/-	8,91,797/-

2.6. Further, the Govt. Approved Valuer informs that the total Market Value of the said 1 cut gold bar having purity 999.00 24 Kt is having a Market Value of Rs. 10,43,743/- (Rupees Ten Lakh Forty Three Thousand Seven Hundred Forty Three only) and Tariff Value Rs. 8,91,797/- (Rupees Eight Lakh Ninety One Thousand Seven Hundred Ninety Seven only), which has been calculated as per the Notification No. 37/2024-Customs (N.T.) DTD. 21-05-2024 (Gold) and Notification No. 36/2024-Customs (N.T.) dtd. 16-05-2024 (exchange Rate). He submits his valuation report to the AIU Officers.

2.7 Thereafter, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the completion of the extraction of gold at the workshop of Govt Approved valuer, along with the extracted gold bar weighing 140.780 grams derived from gold dust sprinkled on brown sheet having gross weight of 294.600 grams on 26.05.2024.

Seizure of the above gold bar:

3. The said 01 gold bar totally weighing 140.780 Grams was recovered without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said gold Bar totally weighing 140.780 grams having purity 999 & having Market Value of Rs. 10,43,743/- (Rupees Ten Lakh Forty Three Thousand Seven Hundred Forty Three only) and Tariff Value Rs. 8,91,797/- (Rupees Eight Lakh Ninety One Thousand Seven Hundred Ninety Seven only), were placed under seizure vide order dated 26.05.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold bar is liable for confiscation under Section 111 of the Customs Act, 1962.

4. Statement of Smt. Uma Jaikumar Mamtani:

Statement of Smt. Uma Jaikumar Mamtani was recorded on 26.05.2024, wherein she inter alia stated as under:

4.1 She gave her personal details like name, age, address, education, profession and family details and informed that she is educated upto B.Com.

4.2 She informed that she visited Dubai for business shopping. She further informed that she was a frequent traveller to Dubai.

4.3 She stated that the aforesaid gold is not her and not purchased by her. Before returning to India from Dubai on 25.05.2024 by SG16 via. Spice-Jet Airways one Mr. Samir met her at Dhera in Dubai and gave her a trolley bag to hand over the same in India and for this delivery the unknown person will pay her Rs. 8000/-. She didn't have receiver's mobile number or photo (who would receive the trolley bag in India). She was also aware that import of gold such ways of concealment and evade of duty is an offence.

4.4 She perused the Panchnama dated 25-26/05/2024 and stated that the fact narrated therein were true and correct.

5. From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of The Baggage Rules, 2016, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 01 gold bar totally weighing 140.780 Grams having purity of 24 KT/999.0 was recovered from brown coloured paper concealed in luggage of **Smt. Uma Jaikumar Mamtani**, who had arrived from Dubai to Ahmedabad on 25.05.2024 by Spicejet flight SG 16 (Seat No. 27B) at T-2 of SVPIA Ahmedabad. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules, and for these reasons alone it cannot be considered as a bonafide baggage under the Customs Baggage Rules 2016. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold item totally weighing 140.780 Grams having purity of 24 KT/999.0 because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally

weighing 140.780 Grams having purity of 24 KT/999.0 recovered from **Smt. Uma Jaikumar Mamtani**, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 140.780 Grams having purity of 24 KT/999.0 is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold bar totally weighing 140.780 Grams recovered from brown coloured paper concealed in her luggage of **Smt. Uma Jaikumar Mamtani** at Terminal -2, SVPIA Ahmedabad on 25.05.2024 was placed under seizure vide Panchanama dated 25/26.05.2024 and Seizure order dated 26.05.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

6. Summation:

The aforementioned proceedings indicates that **Smt. Uma Jaikumar Mamtani,** had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having Market Value of Rs. 10,43,743/- (Rupees Ten Lakh Forty Three Thousand Seven Hundred Forty Three only) and Tariff Value Rs. 8,91,797/- (Rupees Eight Lakh Ninety One Thousand Seven Hundred Ninety Seven only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure.

7. RELEVANT LEGAL PROVISIONS:

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

7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification “Eligible Passenger” means passenger

of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.

7.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

7.5 As per Section 2(3) – "baggage includes unaccompanied baggage but does not include motor vehicles.

7.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

(a) vessels, aircrafts and vehicles;
(b) stores;
(c) baggage;
(d) currency and negotiable instruments; and
(e) any other kind of movable property;

7.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.

7.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will

render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.

7.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

7.10 As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

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

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

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

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

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

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

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

(e) any dutiable or prohibited goods found concealed in any

manner in any conveyance;

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

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

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

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

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

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

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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

(n) any dutiable or prohibited goods transited with or without transhipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof

under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

7.13 Section 112. Penalty for improper importation of goods etc.:

any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

7.14 As per Section 123 of Customs Act 1962,

(1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

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

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

7.15 All dutiable goods imported into India by a passenger in his

baggage are classified under CTH 9803.

Customs Baggage Rules and Regulations:

7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form under Section 77 of the Customs Act, 1962.

7.17 As per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bon-fide baggage of jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

Notifications under Foreign Trade Policy and The Customs Act, 1962:

7.18 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.

7.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or

column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or Heading or sub–heading or tariff item	Description of goods	Standard rate	Condition No.
356.	71or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

7.20. From the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22 kt.) was restricted as per DGFT notification and import was permitted only by nominated agencies. Further, it appears that import of goods whereas it is allowed subject to certain conditions are to be treated as prohibited goods under section 2(33) of the Customs Act, 1962 in case such conditions are not fulfilled. As such import of gold is not permitted under Baggage and therefore

the same is liable to be held as prohibited goods.

CONTRAVENTION AND VIOLATION OF LAWS

8. It therefore appears that:

(i) **Smt. Uma Jaikumar Mamtani** had attempted to smuggle/improperly import 01 Gold Bar totally weighing 140.780 Grams having purity 24KT /999.0 and having Market Value of Rs. 10,43,743/- (Rupees Ten Lakh Forty Three Thousand Seven Hundred Forty Three only) and Tariff Value Rs. 8,91,797/- (Rupees Eight Lakh Ninety One Thousand Seven Hundred Ninety Seven only), recovered from brown coloured paper concealed in her luggage, with a deliberate intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. The said passenger **Smt. Uma Jaikumar Mamtani** had knowingly and intentionally smuggled the said gold in brown coloured paper concealed in her luggage on her arrival from Dubai to Ahmedabad on 25.05.2024 by Spicejet flight SG 16 (Seat No. 27B) at Terminal -2, SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by **Smt. Uma Jaikumar Mamtani**, by way of concealment in brown coloured paper concealed in her luggage and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. **Smt. Uma Jaikumar Mamtani** has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as amended.

(ii) **Smt. Uma Jaikumar Mamtani**, by not declaring the gold dust concealed in brown coloured paper concealed in her baggage, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

(iii) The improperly imported/smuggled gold by **Smt. Uma**

Jaikumar Mamtani, concealed gold in brown coloured paper concealed in her luggage before arriving from Dubai to Ahmedabad on 25.05.2024 by Spicejet flight SG 16 (Seat No. 27B) at Terminal -2, SVPIA Ahmedabad, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(iv) **Smt. Uma Jaikumar Mamtani**, by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.

(v) As per Section 123 of Customs Act 1962, the burden of proving that the said Gold item totally weighing 140.780 grams which was recovered from the brown-coloured paper concealed in luggage of **Smt. Uma Jaikumar Mamtani** who arrived Dubai to Ahmedabad on 25.05.2024 by Spicejet flight SG 16 (Seat No. 275B) at Terminal -2, SVPIA Ahmedabad are not smuggled goods, is upon **Smt. Uma Jaikumar Mamtani**, who is the Noticee in this case.

09. Accordingly, a Show Cause Notice was issued to Smt. Uma Jaikumar Mamtani W/o Shri Jaikumar Mamtani holding an Indian Passport Number No. V8923032, residing at BK No.225, R.No.9, Near Doluram Darbar, Ulhasnagar-1, Thane, Pin;421001, Maharashtra, India, as to why:

(i) The 01 Gold Bar weighing 140.780 Grams having purity 24KT /999.0 and having Market Value of Rs. 10,43,743/- (Rupees Ten Lakh Forty-Three Thousand Seven Hundred Forty-Three only) and Tariff Value Rs. 8,91,797/- (Rupees Eight Lakh Ninety One Thousand Seven Hundred Ninety Seven only) recovered from brown coloured paper concealed in her luggage of **Smt. Uma Jaikumar Mamtani**, who arrived from Dubai to Ahmedabad on 25.05.2024 by Spicejet flight SG 16 (Seat No. 27B) at Terminal -2, SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated

25/26.05.2023 and Seizure Memo Order dated 26.05.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon the **Smt. Uma Jaikumar Mamtani**, under Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

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

11. The noticee was given opportunity for personal hearing on 28.02.2025. 17.03.2025 & 04.04.2025 but she failed to appear and represent her case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but she failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and she do not have anything to say in her defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

11.1 Before, proceeding further, I would like to mention that Hon'ble Supreme Court, High Courts and Tribunals have held, in several judgments/decision, that ex-parte decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon some the relevant judgments/orders which are as under-

a) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to

the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

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

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

c) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon'ble court has observed that;

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question

referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

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

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

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

Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

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

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

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural

justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

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

Discussion and Findings:

12. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file her reply/ submissions or to appear for the personal hearing opportunities offered to her. The adjudication proceedings cannot wait until the Noticee makes it convenient to file her submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

13. In the instant case, I find that the main issue to be decided is whether the **140.780 grams** of 01 gold bar, derived from gold dust found on brown coloured sheets recovered from her trolley bag, having tariff value of **Rs.8,91,797/-** and market value is **Rs.10,43,743/**-, seized vide Seizure Memo/Order under Panchnama proceedings both dated 25/26.05.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the panchnama dated 25/26.05.2024 clearly draws out the fact that the noticee, who arrived from Dubai in SpiceJet flight SG 16 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on the basis of passenger profiling and suspicious movement, the noticee was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while noticee was attempting to exit through green channel without making any declaration to the Customs. While the noticee passed through the Door Frame Metal Detector (DFMD) Machine no beep sound was heard which indicated there was no objectionable/dutiable substance on her body/clothes. Further, the officers scan all the baggage in the X-ray machine, while the baggages were scanned some suspicious image is observed by the AIU officers. The AIU officers asked about the

suspicious x-ray image but the passenger does not give any satisfactory reply for the same. Therefore, the officer of AIU removed and checked the corrugated boxes of plates, the officer noticed that some layer of gold coloured dust there on the brown coloured sheet.

14.1 It is also on the record that the Government Approved valuer Shri Kartikey Vasantrai Soni examined the said gold dust found on brown coloured sheet found in baggage of Smt. Uma Jaikumar Mamtani. After weighing the said brown coloured sheet containing gold dust on his weighing scale, Mr. kartikey Vasantrai Soni informed that the Gross weight comes 294.600 grams and after completion of the extraction process, the Government Approved Valuer Shri Kartikey Vasantrai Soni informed that one gold bar total weighing **140.780 grams** having purity of 999.00 (24Kt.) derived from the said gold dust and submitted his valuation report vide certificate No. 224/2023-24, dated 26.05.2024, wherein he mentioned that the total Market Value of the said recovered gold is **Rs.10,43,743/- and Tariff Value is Rs.8,91,797/-**. The value of the gold bar has been calculated as per the Notification No. 37/2024-Customs (N.T.) dated 21.05.2024 (gold) and Notification No. 36/2024-Customs (N.T.) dated 16.05.2024 (exchange rate).

15. I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. In fact, in her statement dated 26.05.2024, she has clearly admitted that she had travelled from Dubai to Ahmedabad by SpiceJet flight SG 16 dated 25.05.2024 carrying the gold dust in brown coloured sheet in her trolley bag. She admitted that the trolley bag containing said brown coloured sheet containing gold dust was given by a person named Shri Samir at Dubai to handover the same to someone in India and for that she would receive Rs. 8000/-. She submitted that the gold is not purchased by her. Further, she mentioned that she had intentionally not declared the substance containing foreign origin gold before the Customs authorities as she wanted to clear the same illicitly and evade payment of customs duty; that in temptation of earning quick money, she opted this illegal way; that she was aware that smuggling of gold without payment of

customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act, 1962 and the Baggage Rules, 2016.

16. I find that the noticee has clearly accepted that she had not declared the said gold bar (derived from gold dust sprinkled over brown coloured sheet found concealed in corrugated boxes of plates in her trolley bag), to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on her arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

17. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 140.780 gms., retrieved/derived from gold dust sprinkled on brown coloured sheet concealed in trolley bag, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 140.780 gms., seized under panchnama dated 25/26.05.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By secreting the gold in form of gold dust sprinkled on brown coloured sheet concealed in trolley bag and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

18. 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 her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended* and she was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days*. I find that the 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 140.780 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

18.1 In terms 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 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 by the Noticee as the noticee visited Dubai on 25.05.2024 and returned on same day i.e 25.05.2024, therefore, the condition of staying more than six months for becoming eligible passenger was not fulfilled in the instant case. *I find that a 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/EOUs. 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 gold in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

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

> *(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;*

I find that the said gold in form of gold dust sprinkled over brown coloured sheet concealed in trolley bag and was not declared to the Customs under Section 77 of the Customs Act, 1962 and she 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 gold in form of gold dust which were found concealed and recovered in manner as described above, was made by the Noticee,

in the prescribed declaration form. Also, I find that she was 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 (l) 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 total 140.780 grams of derived gold bar of foreign origin which was recovered from possession of noticee and admittedly smuggled into India. On test, the gold was found to be of purity of 999.0/24kt. Moreover, I find that the noticee could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Smt. Uma Jaikumar Mamtani, thus failing to discharge her "burden of proof" that the gold was legally imported/possessed. She has 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 Smt. Uma Jaikumar Mamtani in prescribed declaration form and hence the said gold is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

19. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered the gold of 24 kt having 999.0 purity weighing 140.780 gms., retrieved/derived from gold dust sprinkled on brown coloured sheet concealed in trolley bag, having total Tariff Value of Rs.8,91,797/- and market Value of Rs.10,43,743/-, seized vide

Seizure Memo/Order under the Panchnama proceedings both dated 25/26.05.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in the form of gold dust sprinkled on brown coloured sheet concealed in trolley bag and without declaring to the Customs on arrival in India, it is observed that the passenger/noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same to the Customs on her arrival at the Airport. *It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same were liable to confiscation under the Act*. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

20. I find that the passenger/noticee has confessed of carrying gold of 24 kt having 999.0 purity, weighing 140.780 grams and attempted to remove the said gold by concealing in form of gold dust and attempted to remove the said gold from the Customs Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

21. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The records before me shows that the

passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. One gold bar weighing 140.780 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bar Rs.10,43,743/- and Tariff Value Rs.8,91,797/- retrieved/ derived from gold dust sprinkled on brown coloured sheet concealed in trolley bag, were placed under seizure vide panchnama dated 25/26.05.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, she attempted to remove the gold by concealing in the form of gold dust on brown coloured sheet concealed in trolley bag and by deliberately not declaring the same on her arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) & Section 112(b) of Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

22. I further find that gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, ***non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'***. This makes the gold seized in the present case "prohibited goods" as the passenger trying to smuggle the same was not eligible passenger to bring or import gold into India in baggage. The gold was recovered in a manner concealed in form of gold dust, in brown coloured sheet found concealed in trolley bag and kept undeclared with an intention to smuggle the same and evade payment of customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

23. In view of the above discussions, I hold that the gold weighing 140.780 grams of 24Kt./999.0 purity, retrieved/ derived from gold dust sprinkled on brown coloured sheet concealed in trolley bag and

undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner for extraneous consideration. In the instant case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act***.

24. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

25. Further I find that in a case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUSin respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

"89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra)."

26. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)] has held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent -

Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

27. In [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No.375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

28. 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."*

*24……**.***

25……..

*"**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**."*

29. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bar. Thus, the noticee has failed to discharge the burden placed on her in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in the form of gold dust sprinkled on brown coloured sheet concealed in trolley bag, with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 140.780 grams of 24Kt./999.0 purity in form of gold bar, retrieved/derived from gold dust, is therefore, liable to be **confiscated absolutely**. ***I therefore hold in unequivocal terms that the gold weighing 140.780 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.***

30. I further find that the passenger had involved herself in the act of smuggling of gold weighing 140.780 grams of 24Kt./999.0 purity, retrieved from gold dust. Further, it is fact that the passenger/noticee has travelled with gold weighing 140.780 grams of 24Kt./999.0 purity, concealed in form of gold dust sprinkled on brown coloured sheet recovered from trolley bag, from Dubai to Ahmedabad despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Sections 112 of the Customs Act, 1962 and I hold accordingly.

31. Accordingly, I pass the following Order:

O R D E R

i.) I order **absolute confiscation** of the One Gold Bar weighing **140.780** grams having Market Value at **Rs.10,43,743/-** **(**Rupees Ten Lakh Forty Three Thousand Seven Hundred Forty Three only) **and Tariff Value is Rs.8,91,797/-** (Rupees Eight Lakh Ninety One Thousand Seven Hundred Ninety Seven only) derived/retrieved from gold dust sprinkled on brown coloured sheet concealed in corrugated boxes of plates in her baggage by the passenger/noticee Smt. Uma Jaikumar Mamtani and placed under seizure under panchnama dated 25/26.05.2024 and seizure memo order dated 26.05.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii.) I impose a penalty of **Rs. 2,50,000/-** (Rupees Two Lakh Fifty Thousand Only) on Smt. Uma Jaikumar Mamtani under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

32. Accordingly, the Show Cause Notice No. VIII/10-230/SVPIA-A/O&A/HQ/2024-25 dated 18.11.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 23-04-2025 18:07:44

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-230/SVPIA-A/O&A/HQ/2024-25 Date:23.04.2025

DIN: 20250471MN000000B316

By SPEED POST A.D.

To,
Smt. Uma Jaikumar Mamtani,
BK No.225, R.No.9, Near Doluram Darbar,
Ulhasnagar-1, Thane, Pin;
421001, Maharastra, India

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.

4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in
6. Guard File.