



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन , "पहलीमंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380009.

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DIN: 20260371MN0000444D78

PREAMBLE

A	फ़ाइल संख्या/ File No.	: VIII/10-56/DRI/SVPIA/O&A/HQ/2025-26
B	कारण बताओ नोटिस संख्या-तारीख/ Show Cause Notice No. and Date	: DRI/AZU/GI-02/ENQ-45/2025 Dt. 11.11.2025
C	मूल-आदेश संख्या / Order-In-Original No.	: 226/ADC/SRV/O&A/HQ/2025-26
D	आदेश तिथि / Date of Order-In-Original	: 23.03.2026
I	जारी करने की तारीख / Date of Issue	: 23.03.2026
F	द्वारा पारित / Passed By	: Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	: 1. Shri Rakeshkumar Pandey, residing at 18, Aditya Nagar, Manjipura (part), Kheda, Gujarat-387320 E-mail ID: shivansh88896@gmail.com 2. Shri Imran Haji Mohammed Hotelwala, 6/A, Kismat Apartment, Karimi Flats, Khancho Vaysyabha Jamalpur, Ahmedabad, Gujarat-380001 E-mail ID: imranhotelwala123@gmail.com. 3. Shri Mahmadarif Amadmiya Kazi urf Arif Kazi '302 3rd f 2989/4/1 Lallu rajjis wando Mirzapur Ahmedabad City GJ 380001. E-mail ID: arifkazi927@gmail.com 4. Shri Rajubhai urf Raju Bangali @Dubai (To be served Through Notice Board)
1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।	
2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क) अपील (, ४वि मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
3)	अपील के साथ केवल पांच) ५.00) रुपये पे न्यायलय 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) ५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ %अधिकतम १० करोड़ शुल्क जमा 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, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

BRIEF FACTS OF THE CASE:

1. Intelligence developed by the Directorate of Revenue Intelligence, Zonal Unit Ahmedabad, (hereinafter also referred to as DRI) indicated that, one passenger arriving from Dubai to Ahmedabad via SpiceJet Flight No. SG16 through SVPI, Airport Ahmedabad on 13.05.2025 is carrying contraband/ dutiable goods and is planning to smuggle it out by handing it over to an immigration officer in the men's toilet before the immigration counter in the airport so that the said goods may pass the Customs Channel without detection.

ACTION TAKEN ON THE INTELLIGENCE:

2. Acting on the said intelligence, a team of officers from DRI mounted surveillance near the men's toilet before the immigration counter for the passengers of the flight no. SG16 to arrive at around 23:57 hrs. on 13.05.2025, a passenger matching with the profile of the target proceeded straight to the toilet situated before the immigration counter. DRI Officers followed the said passenger namely Shri Imran Haji Mohammed Hotelwala and observed that in the toilet area, he entered the toilet compartment near the wall. After few minutes, another person wearing Bureau of Immigration Uniform also entered the toilet compartment adjacent to the toilet compartment in which the said passenger Shri Imran Haji Mohammed Hotelwala was already present. After few minutes, the passenger left the toilet compartment of the Toilet and proceed towards the immigration counter. The DRI officers waited outside the toilet compartment for the other person who was present in the adjacent toilet compartment to that of the passenger Shri Imran Haji Mohammed Hotelwala. After few minutes, the person left the toilet compartment. The DRI officer present outside the toilet intercepted the person wearing Bureau of Immigration Uniform just outside the gate of the toilet. Panchnama Dated 14.05.2025 drawn at the Arrival Hall of Terminal-2 of SVPI Airport, Ahmedabad)

2.1 The person intercepted by DRI introduced himself as **Shri Rakeshkumar Pandey**, Security Assistant, Bureau of Immigration (BOI). The DRI officer asked Shri Rakeshkumar Pandey, if he had concealed and contraband/dutiable goods. In response, Shri Rakeshkumar Pandey took out a black-coloured pouch from the inner pocket of his pant and handed it over to the DRI officer. Shri Rakeshkumar Pandey informed that the same was handed over to him by a passenger in the toilet compartment. The DRI officer opened the pouch and took out its contents, i.e. **Two Metallic Kada** which prima facie appeared to be made of gold. The DRI officers then informed him that his thorough personal search needed to be conducted. In response Shri Rakeshkumar Pandey gave his consent to be searched in front of the Superintendent of Customs (Gazetted officer) present at the Airport.

2.2 Simultaneously, another DRI officer who was following the passenger (who originally carried the Gold Kada) from the toilet compartment intercepted the said passenger after the immigration counter. On being asked by the DRI officer, the passenger/person introduced himself as **Shri Imran Haji Mohammed Hotelwala**. The officer inquired with the said passenger whether he had anything to be declared before the Customs authorities, to which he declines. The officers, thereafter, specifically asked the passenger whether he had any precious metal or foreign currency or gold to be declared before Customs, to which he again denies. The DRI officer informed Shri Imran Haji Mohammed Hotelwala that his thorough personal search was required to be conducted in response he gave his consent to be searched in front of the Superintendent of Customs.

2.3 The DRI officers, the Panchas, Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala proceed to the Air Intelligence Unit (AIU) room inside the Airport. Personal search of Shri Rakeshkumar Pandey and Shri Imran Haji

Mohammed Hotelwala and search of their baggage was performed, however, nothing objectionable was found. The details of the persons intercepted were as following:

(i) Details of Shri Rakeshkumar Pandey:

Sr. No.	Name of the Person	Identity card provided	Designation and Department of the person	AEP No.	Aadhar No.
1	Shri Rakeshkumar Pandey	Airport Entry pass and Aadhar	Security Assistant, Bureau of Immigration	AMD2401229723	XXXX XXXX 9476

(ii) Details of Shri Imran Haji Mohammed Hotelwala:

Sr. No.	Name of the Passenger	Passport No.	Expiry of the Passport	Seat Number	No. of check-in baggage accompanied
1	Shri Imran Haji Mohammed Hotelwala	B8248948	17.01.2034	8D	1

2.4 On being asked about the metallic *Kadas* Shri Rakeshkumar Pandey informed that the said *Kadas* are actual gold. Shri Rakeshkumar Pandey informed that he was told by some person named Shri Arif Kazi (Phone no. +971 56 363 7928 and +91 9978671640) to do the said task of taking the said gold from a passenger in the toilet compartment before the immigration counter and carry it outside the airport. Shri Rakeshkumar Pandey informed that he was supposed to enter in the second last toilet compartment and knock at the partition on entering inside the toilet compartment while the passenger present in the last toilet compartment was supposed to show him his shoes at the partition of the toilet compartments which was meant to be a code to identify each other. Shri Rakeshkumar Pandey also informed that he was also sent the photo of the shoes of the passenger and he was supposed to identify the passenger on the basis of the same. Accordingly, on entering the toilet compartment, he knocked on the partition of the toilet compartment and on knocking, the passenger in the other toilet compartment showed his shoes from below the toilet compartment. Shri Rakeshkumar Pandey stated that as his shoes were the same as that in the photo that was sent to him by Phone no. +971 56 363 7928, he extended his hands down the partition of the toilet compartments. The passenger accordingly had handed over the pouch containing the metallic *Kadas* to Rakeshkumar Pandey.

2.5 On being confronted in presence of Shri Rakeshkumar Pande, Shri Imran Haji Mohammed Hotelwala confirmed that he had handed over the said Gold *Kadas* to Shri Rakeshkumar Pandey in the men's toilet compartment. Shri Imran Haji Mohammed Hotelwala also informed that he had brought the said Gold *Kadas* from Dubai, where the said Gold was given to him by some person and the said person had asked him to hand over the said Gold inside the toilet compartment before immigration counter at SVPI airport by showing his shoes to other person in the manner as told by Shri Rakeshkumar Pandey.

2.6 Thereafter, officer called the Government Approved Valuer and handed over the above said two metallic *Kadas*/solid Yellow Colour Shining Metal for the purpose of testing/ weighment and if he confirmed it to be of Gold, then purity and valuation thereof.

After completion of the procedure of testing, purity check, weighment in presence of the Panchas, Shri Imran Haji Mohammed Hotelwala and Shri Rakeshkumar Pandey, the Government Approved Valuer confirmed that two metallic *Kadas*/solid

Yellow Color Shining Metal were of pure Gold and submitted his Report Certificate No. 166/2025-26 dated 14.05.2025, which is reproduced as below.

SR. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs)	Tariff Value (Rs)
1	Gold <i>Kadas</i>	02	400	999.0/ 24Kt	38,90,000/-	36,41,008/-



(Images showing two *Kadas* Shape Thick/solid Pure Gold and gross Weight 400.00 grams recovered from the Shri Rakeshkumar Pandey and handed over by Shri Imran Haji Mohammed Hotelwala.)

2.7 The DRI officers informed Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala that two Gold *Kadas* weighing a total of 400.00 grams having purity 999.0/24kt found concealed in the black colored pouch was tantamount to smuggling of Gold as the same were not allowed under the Customs Baggage Rules, 2016. Therefore, the Gold as well as black colored pouch is liable for confiscation under the provisions of the Customs Act, 1962. For the above said reasonable belief, the officer informed Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala that the two Gold *Kadas* of 400.00 grams along with black colored pouch were seized under the provisions of the Customs Act, 1962. Further, the two Gold *Kadas* of 400.00 grams and black colored pouch were sealed in a plastic box and marked as “**A**” and “**B**”. The officer also, seized the shoes of Shri Imran Haji Mohammed Hotelwala, considering crucial evidence for the investigation and sealed in a cardboard box marked as ‘**C**’. Plastic containers (Marked as “A” and “B”) and the cardboard box (Marked as “C”) and were handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide Ware House Entry No. **7391**, and **7392** dated **14.05.2025** for safe custody.

SEIZURE OF SMUGGLED GOLD AND OTHER RELEVANT ARTICLES:

3. Two Gold Kadas totally weighing 400 grams, having purity of 999.0/24Kt and Market Value of **Rs.38,90,000/-** (Rupees Thirty Eight Lakhs Ninety Thousand only) and Tariff Value of Rs.36,41,008/- (Rupees Thirty Six Lakhs Fourty One Thousand and Eight Only) were seized on 14.05.2025 under Section 110 of the Customs Act 1962 on the reasonable belief that the said Gold *Kadas* have been attempted to be smuggled into India through SVPI Airport, Ahmedabad by them and were liable to confiscation under section 111 of the Customs Act, 1962.

3.1 Further, packing material i.e. black colored pouch which contained the said Gold *Kadas* and shoes of Shri Imran Haji Mohammed Hotelwala was seized as the same were liable for confiscation under section 119 of the Customs Act 1962 and under the reasonable belief that the same were used for concealment of said Gold *Kadas* and for identification of the person attempting to smuggle them into India in violation of Section 77, Section 79 and Section 135 of the Customs Act, 1962, were also placed under seizure on 14.05.2025. An order under section 110 of the Customs Act, 1962 dated 14.08.2025 was issued for the seizure of above said 2 Gold *Kadas* and other relevant articles.

STATEMENTS OF KEY PERSONS:

4. Statement dated 14.05.2025 of Shri Rakeshkumar Pandey was recorded under the section 108 of the Customs Act, 1962 wherein, he inter-alia stated that:

- He was working as Security Assistance (S.A.) (Immigration) at SVP International Airport, Ahmedabad, his job was to check the passport; make necessary entry stamp on the passport and systems; verifying VISA details; looking after LOC, Queue maintaining, attending Pax, suspicion checking etc.
- His duty hours were 6.30 PM. on 13.5.2025 to 9.30 AM on 14.5.2025.
- He confirmed the event that happened as mentioned in the Panchnama dated 14.05.2025
- He was told by person namely Mr. Arif Kazi (Phone no. +971 56 363 7928 and +91 9978671640) to do the task of taking the Gold from a passenger in the toilet compartment before the immigration counter and remove the same without the knowledge of Customs officers and was to deliver at the given place suggested by Mr. Arif Kazi outside the Airport. Mr. Arif Kazi had sent the photo of the passenger's legs for identification by his footwear to him in advance. Accordingly, he entered in the Toilet compartment and knocked at the partition on entering inside the toilet compartment, in response, passenger showed his shoes at the partition of the toilet compartments which was meant to be a code to identify each other. He matched the shoes with the photo received from Phone No. +971 56 363 7928. He then extended his hands down the partition of the toilet compartments and he took the pouch containing the Gold *Kadas* and kept the same in his pant pocket. Then he confirmed the receipt to Mr. Arif Kazi through WhatsApp by sending him thumbs-up emoji (👍). He had not opened the said pouch.
- He met Mr. Arif Kazi one year ago. Mr. Arif Kazi suggested him that he has a business plan, wherein Mr. Arif Kazi would send Gold with the passengers and he may collect the same from the toilet situated before the immigration counter and deliver said pouch having Gold to him at Mr. Arif Kazi's choice place. He was also offered Rs.6000/- per the said delivery. For the communication purpose, he was provided a mobile phone with SIM card and the same was being replaced from time to time by Mr. Arif Kazi.
- He did not know the exact date on which he collected the gold articles from the passengers sent/managed by Mr. Arif Kazi in the past.

4.1 Statement dated 14.05.2025 of Shri Imran Haji Mohammed Hotelwala was recorded under the section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He confirmed that he was present during the whole proceedings mentioned therein in the panchnama dated 14.05.2025 agreed with the facts mentioned therein.
- He confirmed that two number of Gold *Kadas* weighing 400 grams were recovered from Shri Rakeshkumar Pandey, Immigration Officer working at SVPI Airport, Ahmedabad was actually handed over by him in the men's toilet before the immigration counter. The market value of the two golden *Kadas*, as per the Certificate no. 166/2025-26 dated 14.05.2025 was Rs. 38,90,000/-.
- He received the flight ticket on WhatsApp from a number +971563637928 in Dubai to return to India.
- He received the said two Gold *Kadas* of 400 grams from one Raju Bhai who promised him to pay Rs.10,000/- to 12,000/- on handing over the said goods. Raju Bhai lives in Deira, Dubai. He was instructed by Shri Rajubhai to further handover the two Gold *Kadas* to a person in men's toilet at SVPI Airport Ahmedabad.
- He was instructed by Raju Bhai to handover the two Gold *Kadas* to a person in men's toilet before the immigration counter. As per the instructions given by Rajubhai, he had to sit in the last toilet compartment and had to show

his shoes to the person who was to come and sit in next compartment and was to give a signal by knocking on the partition of the toilet compartment.

4.2 Statement dated 26.05.2025 of Shri Rakeshkumar Pandey was recorded under the section 108 of the Customs Act, 1962. Data of chats/call logs between Mr. Arif Kazi and Shri Rakeshkumar Pandey were extracted from mobile phone Redmi A3x Model No. 24048RN6CI Vivo IMEI No. 1- 866882075703763/01 and IMEI No. 2- 866882075703771/01 having SIM card of mobile number (917624027464) therein, recovered from Shri Rakeshkumar Pandey and the chats were shown to Shri Rakeshkumar Pandey during statement dated 26.05.2025. The chats show mobile number (917624027464) as '*Khavjausman*' & mobile number (97971563637928) of Mr. Arif Kazi as '*aaaa*'. During statement shri Rakeshkumar Pandey inter-alia stated that:

- Chat with Mr. Arif Kazi was done by him as '*Khavjausman*' (917624027464). The Mobile phone Redmi A3x Model No. 24048RN6CI Vivo IMEI No. 1- 866882075703763/01 and IMEI No. 2- 866882075703771/01 was given to him by Mr. Arif Kazi along with the SIM Card (917624027464) inside it.
- As shown in Call Log, usually, Mr. Arif Kazi used to call him from his mobile numbers (Phone no. +971 56 363 7928 and +91 9978671640) to do the task of taking the Gold from a passenger in the toilet compartment before the immigration counter and conceal it in his person in the clothes worn by him and remove the same without the knowledge of Customs officers and was to deliver at the given place suggested by Mr. Arif Kazi outside the Airport.
- Before execution of plan, they used to discuss it over phone and the purpose of chat between Arif Kazi (aaaa 971563637928) and him (*as Khavjausman*) (917624027464) was regarding gold smuggling.

4.3 Further, statement dated 30.10.2025 of Shri Rakeshkumar Pandey was recorded under the section 108 of the Customs Act, 1962. Chats were shown to Shri Rakeshkumar Pandey during statement dated 30.10.2025 and he inter-alia stated/confirmed that: -

- He knows Shri Imran Haji Hotelwala only after the incident of instant case. He did not know any Rajubhai in connection with the present case.
- He confirmed that the chat between him and Shri Arif Kazi (aaaa 97971563637928@s.whatsapp.net) and (9978671640) was for delivery of the gold article (2 Gold Kadas, 400 grams) on 13.05.2025. He used to identify the carrier by photographs of his legs being forwarded by Shri Arif Kazi.
- The image '*IMG-20250513-WA000*' was of legs with shoes of the passenger was sent by Shri Arif Kazi on 13.05.2025 (17:31 Hrs). Shri Arif Kazi has sent emoji of 3 airplanes at 23.38 Hrs to him upon reaching the flight at Ahmedabad and his subsequent message on 23:50 Hrs having mentioned "3" was indicating that the passenger was reaching/ reached in toilet number 3 adjacent to Immigration Counter/ Arrival. He could not remember about the deleted message at 23:57 Hrs. Shri Arif's subsequent message as "*Cheli toilet*" at 23:57 Hrs. indicating that the passenger was in last toilet. In his next message as "???" at 00:01 Hrs Shri Arif Kazi was asking reply for the present situation. Further, he stated that he replied from the toilet itself in 'Thumbs up' emoji (👍) indicating Shri Arif Kazi that he had collected the goods.

4.4 Statement dated 06.11.2025 of Shri Imran Haji Mohammed Hotelwala was recorded under the section 108 of the Customs Act, 1962 wherein he inter-alia stated that:-

- He did not know Shri Arif Kazi. However, on 08.05.2025, he was in Borivali Mumbai when he received a call from 9978671640 who asked him to bring

some goods from Dubai and offered Rs.15000/- for bringing of the goods from Dubai. He had not told anything about the goods. Shri Arif Kazi had also asked him to leave for Dubai directly from Mumbai and sent ticket from Mumbai to Dubai on WhatsApp. Later on, he came to know at Dubai while meeting with Mr. Liyakat that whose call he received from (9978671640) was of Mr Arif Kazi.

- He had saved the number 971563637928 as 'aaaa'. Shri Arif Kazi had asked him to work as carrier and used to give him flight tickets and Rs.15,000/- each such trip. He used to deliver the goods in Ahmedabad to the persons whom Shri Arif Kazi indicated. On 13.05.2025 (23.48.20 Hrs) Shri Arif Kazi asked him to go in Toilet Number 3 before immigration counter. In subsequent call on 14.05.2025 (00.10.38 HRS) Shri Arif Kazi enquired him if the work is completed and he replied as "OK ho gaya".
- when he was leaving Dubai, Mr. Raju Bangali and Liyakat met him at *Bakhala* (snacks shop) and Mr. Raju Bangali handed over the goods. When he saw the goods given to him packed in black pouch, he came to know that the same were two Gold *Kadas*. At the same time Mr. Raju Bangali took photograph of his shoes and instructed him to go Toilet number 3 before immigration. He did the same and handed over the said pouch containing two Gold *Kadas* to the person (later on he came to know about the immigration officer) sitting at toilet number 2.

4.5 Summons dated 29.10.2025 and 03.11.2025 were issued to Shri Arif Kazi but the summons returned undelivered.

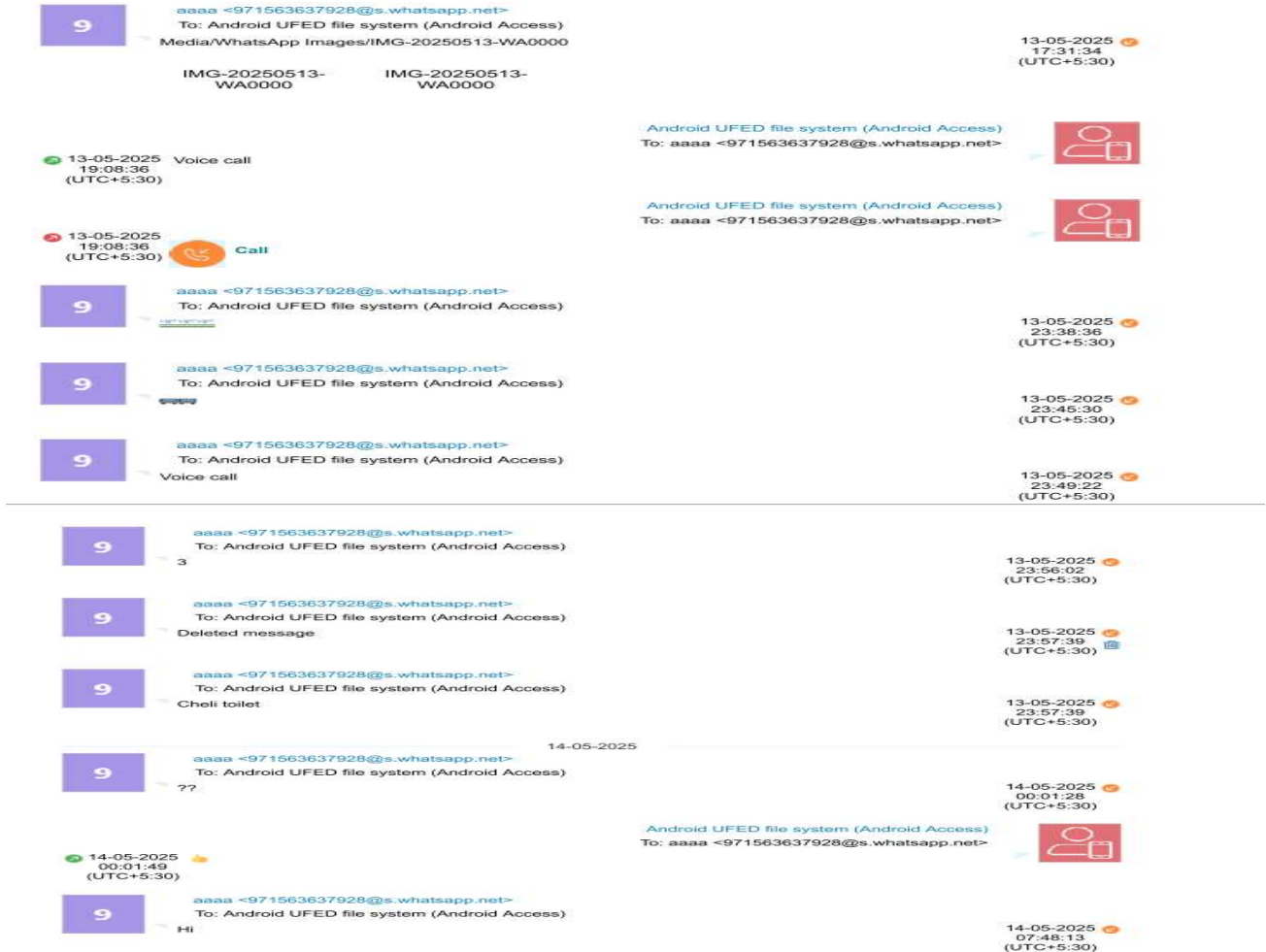
INVESTIGATION RELATED TO DIGITAL DEVICES:

5. Data has been retrieved from the Mobile phone of Shri Rakeshkumar Pandey i.e. mobile handset (Brand: Redmi A3x Model No. 24048RN6CI Vivo IMEI No. 1-866882075703763/01 and IMEI No. 2- 866882075703771/01 containing SIM Card having No. 7624027464 vide report dated 14.05.2025 issued by ECS Infotech Pvt. Ltd. Further, the Data of above said Mobile phone of Shri Rakesh Kumar Pandey and mobile phone Shri Imran Haji Mohammed Hotelwala of number 9328076246 Device name Infinix HOT 30i having IMEI No 358651719148841(SIM Slot 1) IMEI2 No. 358651719148858 (SIM Slot 2) Model-Infinix X669C was also retrieved vide report issued by the NFSU-DGGI Digital Forensics Laboratory, Gandhinagar vide letter Ref No. DGGI-NFSU/DFL/2025/AZU/46/102 dated 11.06.2025.

5.1 Analysis of forensic data extracted from the Mobile Phone used by Shri Rakesh Kumar Pandey provided/given by Shri Arif Kazi for covert communications:

Shri Rakesh Kumar Pandey had voluntarily submitted his phone i.e. mobile handset (Brand: Redmi A3x Model No. 24048RN6CI Vivo IMEI No. 1-866882075703763/01 and IMEI No. 2- 866882075703771/01 containing SIM Card having No. 7624027464 during statement dated 14.05.2025 for further investigation and forensic retrieval of the data and during analysis of the data extracted from the Mobile Phone pertaining to Shri Rakesh Kumar Pandey following facts emerged:

5.2 From forensic data WhatsApp chats between Shri Rakesh Kumar Pandey (Mobile No. 7624027464) and Shri Arif Kazi (971563637928) were recovered. Screenshot of the chats on dates 13th & 14.05.2025 as extracted from forensic recovery, are shown below:



(Image depicting screenshots of some whatsapp chat between Shri Rakesh Kumar Pandey (Mobile No. 7624027464) and Shri Arif Kazi (971563637928) (contact saved in Shri Rakesh Kumar Pandey phone as 'aaaa').

5.3 On analysis of the above chat between Shri Rakesh Kumar Pandey (Mobile No. 7624027464) and Shri Arif Kazi (971563637928), it is observed that Shri Rakesh Kumar Pandey was in continuous touch with Shri Arif Kazi over WhatsApp during the time of attempting to smuggle gold out of SVPI Airport on 13/14.05.2025. Shri Arif Kazi had sent photos of the shoes of the passengers many times which were deleted after the completion of the modus-operandi similar as instant case to Shri Rakesh Kumar Pandey.

5.4 Further during the Statement dated 30.10.2025 of Shri Rakesh Kumar Pandey, he confirmed that: -

- the chat between him and Shri Arif Kazi (aaaa) 97971563637928@s.whatsapp.net and 9978671640) was for delivery of the gold article (2 Gold Kadas, 400 grams) on 13.05.2025. He used to identify the carrier by photographs of his legs being forwarded by Shri Arif Kazi.
- the image IMG-20250513-WA000 was of legs with shoes of the passenger was sent by Shri Arif Kazi on 13.05.2025 (17:31 Hrs). Shri Arif Kazi has sent emoji of 3 airplanes at 23.38 Hrs to him upon reaching the flight at Ahmedabad and his subsequent message on 23:50 Hrs having mentioned "3" was indicating that the passenger was reaching/ reached in toilet number 3 adjacent to Immigration Counter/Arrival. He could not remember about the deleted message at 23:57 Hrs. Shri Arif's subsequent message as "Cheli toilet" at 23:57 Hrs. indicating that the passenger was in last toilet. In his next message as "??" at 00:01 Hrs Shri Arif Kazi was asking reply for the present situation. Further, He state that he replied from the toilet itself in 'Thumbs up' emoji (👍) indicating Shri Arif Kazi that he had collected the goods.

5.5 Analysis of forensic data extracted from the Mobile Phone pertaining to Shri Imran Haji Mohammed Hotelwala provided/given By Shri Arif Kazi for covert communications:

5.6 Shri Imran Haji Mohammed Hotelwala had voluntarily submitted his phone i.e. Device name Infinix HOT 30i having IMEI No 358651719148841(SIM Slot 1) IMEI2 No. 358651719148858 (SIM Slot 2) Model-Infinix X669C during statement dated 14.05.2025 for further investigation and forensic retrieval of the data and during analysis of the data extracted from the Mobile Phone pertaining to Shri Imran Haji Mohammed Hotelwala following facts emerged:

5.7 Analysis of WhatsApp Chats between Shri Imran Haji Mohammed Hotelwala (Mobile No. 9328076246) and Shri Arif Kazi (971563637928):

During analysis of the chat between Shri Imran Haji Mohammed Hotelwala (Mobile No. 9328076246) and Shri Arif Kazi (971563637928), it is observed that Shri Arif Kazi was in continuous touch with Shri Imran Haji Mohammed Hotelwala over whatsapp. Shri Arif Kazi had contacted Shri Imran Haji Mohammed Hotelwala just after his landing on SVPI, Air Port, Ahmedabad and directed him the steps to be taken to complete the said modus-operandi of gold smuggling. Screenshot of some of the chats are shown below:

7774	Incoming	WhatsApp Messenger backup	Call	2025-05-13 23:48:20	00:00:21	aaaa <971563637928@s.whatsapp.net>	Android UFED file system (Android Access)
7775	Incoming	WhatsApp Messenger	Call	2025-05-14 00:10:38	00:00:18	aaaa <971563637928@s.whatsapp.net>	imranhotelwala123 <@s.whatsapp.net>

(Image depicting screenshots of some whatsapp chat between Shri Imran Haji Mohammed Hotelwala (Mobile No. 9328076246) and Shri Arif Kazi (971563637928) (contact saved in Shri mran Haji Mohammed Hotelwala phone as 'aaaa')

5.8 Further during the Statement dated 06.11.2025 of Shri Imran Haji Mohammed Hotelwala, he confirmed that: -

- He has saved the number 971563637928 as 'aaaa'. Shri Arif Kazi had asked him to work as carrier and used to give him flight tickets and Rs.15,000/- each such trip. He used to deliver the goods in Ahmedabad to the persons whom Shri Arif Kazi indicate on 13.05.2025 (23.48.20 HRS) Shri Arif Kazi asked him to go in Toilet Number 3 before immigration counter. In subsequent call on 14.05.2025 (00.10.38 HRS) Shri Arif Kazi enquired him if the work is completed and he replied as "OK ho gaya".

CALL DATA RECORD (CDR)/SUBSCRIBER DATA RECORDS (SDR) ANALYSIS:

5.9 CDR/SDR details of the contact no. 9978671640 (Shri Arif Kazi), 9328076246 (Shri Imran Haji Mohammed Hotelwala) and 7624027464 (Shri Rakesh Kumar Pandey) were called from the respective operators vide letter dated 21.05.2025, 29.08.2025 for the period 01.03.205 to 14.05.2025 and analysis of the said CDRs shows that Shri Arif Kazi was in contact with both Shri Rakesh Kumar Pandey and Shri Imran Haji Mohammed Hotelwala.

919978671640	in	PRE PAID	919328076246	4106		09/05/2025	12:57:11	100	On the terrace of Gajanan Complex Opp Bank of India Gujarat
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(Image depicting screenshots of CDR of Mobile No. 9978671640 of Shri Arif Kazi which shows call details between him and Shri Imran Haji Mohammed Hotelwala (Mobile No. 9328076246).

919978671640	in	PRE PAID	917624027464			12/05/2025	13:08:06	176	On The SH 11 Roadsie, Vadodara to Dabhoi Road, Beside Indian Oil Petrol Pump, Near Kisan Nagar Housing, Village Hetampura, Taluka Vadodara Gujarat	405857059 8830
919978671640	in	PRE PAID	917624027464			12/05/2025	13:43:12	21	On The SH 11 Roadsie, Vadodara to Dabhoi Road, Beside Indian Oil Petrol Pump, Near Kisan Nagar Housing, Village Hetampura, Taluka Vadodara Gujarat	405857059 8830
919978671640	out	PRE PAID	917624027464	4106	GJVODA	13/05/2025	19:11:45	131	On the terrace of Gajanan Complex Opp Bank of India Gujarat	405857052 4930

(Image depicting screenshots of CDR of Mobile No. 9978671640 of Shri Arif kazi which shows call details between him and Shri Rakeshkumar Pandey (Mobile No. 7624027464).

5.10 Further, CDR records of the Mobile No. 7624027464 and 9328076246 does not show any direct contact over cell phone call using SIM between Shri Rakesh Kumar Pandey and Shri Imran Haji Mohammed Hotelwala.

5.11 From the above analysis, it appears that Shri Arif Kazi was in the contact of both the carrier (Shri Imran Haji Mohammed Hotelwala) and the receiver (Shri Rakesh Kumar Pandey) from the beginning of the instant case of gold smuggling and organized the syndicate and act as mastermind.

5.12 Further, from CDR/SDR details, it revealed the full name and address of Shri Arif Kazi are as following:

Full Name	Father Name	Address
Mahmadarif Amadmiya Kazi	Amadmiya	302 3rd f 2989/4/1 Lallu Rajjis Wando Mirzapur Ahmedabad City Ahmedabad Ahmedabad GJ 380001

LEGAL PROVISIONS:

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

6.1 All the dutiable articles imported into India by a passenger in his baggage are classified under CTH 9803. As per Section 77 of the Customs Act, 1962, the owner of any baggage shall for the purpose of clearing it, make a declaration of its contents to the proper officer of Customs. As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, no export or import shall be made by any person except in accordance with the provisions of Foreign Trade (Development and Regulation) Act, 1992, the Rules and Orders made there under and the Foreign Trade Policy for the time being in force.

6.2 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-2020, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. The Gold can be imported by the banks (authorized by RBI) and the agencies nominated for the said purpose under Para 4.41 of Chapter-4 of Foreign Trade Policy or by "Eligible Passenger" as per the provision of Notification No. 50/2017- Customs dated 30.06.2017 (Sr. No. 356). As per Notification No. 50/2017- Customs dated 30.06.2017, the 'eligible passenger' means passenger of Indian origin or a passenger holding valid passport issued under the Passport Act, 1967 who is coming to India after a period of not less than 6 months of stay abroad.

The above said legal provisions are reproduced below:

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

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

Para 4.41 of the Foreign Trade Policy 2015-2020:

Nominated Agencies: -

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

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

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

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

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

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

6.3 Condition 41 of Sl. No. 356 of CBIC Customs Notification No. 50/2017 dated 30.06.2017 where the condition regarding import of gold by passenger is regulated in the following manner:

If,

1. (a) the duty is paid in convertible foreign currency;

(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and

2. the gold or silver is, -

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

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

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

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

warehouse and pays the duty leviable thereon before his clearance from customs.

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

Baggage Rules, 2016: -

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

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

6.6 In exercise of powers conferred by Section 3 read with Section 5 of FT (D&R) Act, 1962, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government vide DGFT's Notification No. 49/2015-2020 dated 5th January, 2022 made amendment in import policy conditions of gold in any form Chapter 71 of ITC (HS), 2017, Schedule-1 (Import Policy) as under:

ITC(HS) Code	Item Description	Policy	Existing Policy Condition	Revised Policy Condition
71061000	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069110	Unwrought: Grains	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069190	Unwrought: Others		Silver dore can be imported by refineries against a license with AU condition.	
71069210	Sheets, plates, strips, tubes and pipes	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069290	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71081100	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition

71081200	Other unwrought forms	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies). Gold dore can be imported by refineries against a license with AU condition.	Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA (for qualified jewellers through India International Bullion Exchange) Gold Dore can be imported by refineries against an import license with AU condition.
71081300	Other semi-manufactured forms	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71189000	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA (for qualified jewellers through India International Bullion Exchange).

As per the said Notification, the expression “Gold in any form” includes *gold in any form above 22 Kts* under Chapter 71 of ITC (HS), 2017, Schedule-I (Import Policy).

6.7 Further, as per Section 2(33) of the Customs Act, 1962, ‘prohibited goods’ means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with, implying that any goods imported in violation of the conditions subject to which the goods are permitted to be imported are nothing but prohibited goods. Hence, the smuggling of 2 gold *Kadas* having purity of 999.00/24 Kt. recovered from Shri Rakeshkumar Pandey handed over by Shri Imran Haji Mohammed Hotelwala in the toilet near the immigration counter are in contravention of the Foreign Trade Policy 2015-20 read with the relevant notification issued under the Customs Act, 1962 & rules made thereunder, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in the said Regulations. It is pertinent to note that any prohibition applies to every type of prohibition which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence the restrictions imposed on the said imports are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable for confiscation under Section 111 of Customs Act, 1962.

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

Section 2(33) of the Customs Act, 1962 - *"Prohibited Goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.*

Section 2(39) of the Customs Act, 1962 - *"Smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.*

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

Section 123: Burden of proof in certain cases.

- (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.

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

Section 111. Confiscation of improperly imported goods, etc. -*The following goods brought from a place outside India shall be liable to confiscation: -*

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

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

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

Section 112. Penalty for improper importation of goods, etc. -

Any person, -

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

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

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

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

6.13 From all 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. It clearly appears that import of goods whereof 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. Gold is not allowed to be imported freely in baggage and it is permitted to be imported subject to fulfillment of certain conditions.

VIOLATIONS & CONTRAVENTION OF VARIOUS PROVISIONS:

7. The seized goods, 2 (Two) gold *Kadas* having purity of 999.0/24 Kt, totally weighing of 400.00 grams & having a market value of Rs. 38,90,000/- have been attempted to be illegally imported / smuggled into India without declaring before

the custom authority in violation of the provisions of the Customs Act, 1962 & Foreign Trade Policy (FTP) and Custom Baggage Rules. The said gold does not also appear to be allowed to be imported by Shri Rakeshkumar Pandey and/or Shri Imran Haji Mohammed Hotelwala keeping the restrictions on such import under the provisions of FTP and Customs Act, 1962. Hence, it appears that the said 2 (Two) gold *Kadas* were brought into India with a motive to smuggle into India by way of fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Therefore, the same prohibited goods may be treated as imported illegally into India and liable for confiscation under the provisions of Section 111(d) and 111(l) of the Customs Act, 1962. Further, the black colour pouch used for concealing the above said 2 (Two) gold *Kadas* of purity 999.0/24Kt., totally weighing 400.00 grams believed to be used for concealment is also liable for confiscation under Section 119 of the Customs Act, 1962. Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala have acquired possession and concerned themselves in carrying, removing, depositing, harbouring, keeping, concealing which they know are liable for confiscation. However, they failed to discharge their onus in terms of the provisions of Section 123 of the Custom Act, 1962. Therefore, it appears that the said gold is smuggled into India and liable for confiscation and these actions render the persons dealing with the said goods liable for penal action under the Customs Act, 1962.

ROLE OF PERSONS:

8. Role of Shri Imran Haji Mohammed Hotelwala:

8.1 On carefully going through the evidences available on record in the form of statements of Shri Imran Haji Mohammed Hotelwala and other related persons recorded under Section 108 of the Customs Act, 1962, digital evidences etc., it appears that:-

- Shri Imran Haji Mohammed Hotelwala acted as a carrier of gold and played a crucial role in physically bringing the gold into India from Dubai, utilizing his flight from Dubai to Ahmedabad for this purpose.
- Shri Imran Haji Mohammed Hotelwala received two gold *Kadas* weighing 400 grams from one "Rajubhai" in Deira, Dubai, against a promised financial incentive.
- Shri Imran Haji Mohammed Hotelwala followed Shri Rajubhai's instructions for the covert handover of the gold to an unknown recipient by the use of the men's toilet near the immigration counter at SVPI Airport, Ahmedabad. He identified himself to the recipient by using a prearranged signal (knocking and showing shoes through the partition of the pre-decided toilets before the Immigration Counter of SVPI Airport Ahmedabad).
- During the course of interception, Shri Imran Haji Mohammed Hotelwala was also enquired by the officers of DRI, whether, he wanted to declare any dutiable item before the custom authority, to which he had denied.
- Shri Imran Haji Mohammed Hotelwala was aware that his act constituted gold smuggling under the Customs Act, 1962, failed to declare the gold upon arrival, and knowingly attempted to evade Customs duty.

8.2 The act of the covert handover of the gold to Shri Rakeshkumar Pandey (recipient) by the use of the men's toilet near the immigration counter at SVPI Airport, Ahmedabad using a prearranged signal (knocking and showing shoes through the partition) and not declaring before the custom authority itself appears and suggests the *mens-rea* on the part of Shri Imran Haji Mohammed Hotelwala with a view to avoiding payment of Customs duty. It therefore, appears that Shri Imran Haji Mohammed Hotelwala, was not inclined to declare the goods viz. gold

items that he was carrying before the Customs Authorities. Thus, 2 (Two) Gold Kadas, totally weighing 400.00 grams, purity of 999.0/24Kt. and having market value of Rs.38,90,000/-, recovered from the possession of Shri Rakeshkumar Pandey handed over by Shri Imran Haji Mohammed Hotelwala by the use of the men's toilet near the immigration counter, were illegally attempted to be smuggled by them into India without declaration and payment of appropriate Customs duties.

8.3 Therefore, Shri Imran Haji Mohammed Hotelwala has concerned himself in the act of smuggling of 2 (Two) Gold Kadas and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d) and 111(1) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112(a) & 112(b) and Section 117 of Customs Act, 1962. Shri Imran Haji Mohammed Hotelwala has failed to discharge his onus in terms of the provisions of Section 123 of the Custom Act, 1962. These actions render the said gold quantity liable for confiscation and also render penal action under the Customs Act, 1962.

9. Role of Shri Rakeshkumar Pandey:

9.1 On carefully going through the evidences available on record in the form of statements of Shri Rakeshkumar Pandey and other related persons recorded under Section 108 of the Customs Act, 1962 etc., it appears that: -

- Shri Rakesh Kumar Pandey, an Immigration Officer at SVPI Airport, knowingly participated in the collection of gold hand-delivered by passengers arriving from Dubai, as orchestrated by mastermind "Arif Kazi".
- On the date of detection, Shri Rakeshkumar Pandey collected two gold *Kadas* via a covert handover in the men's toilet before the immigration counter, precisely following advance instructions and identification cues shared by Arif Kazi (e.g., recognizing the passenger by shoes and specific toilet compartment).
- Shri Rakeshkumar Pandey suppose to remove the gold without the knowledge of Customs officers and was to deliver at the given place suggested by Mr. Arif Kazi outside the Airport. Shri Rakeshkumar Pandey had received commission for the delivery in the past occasions also.
- He was using a separate mobile phone and SIM card provided by Arif Kazi for secure and clandestine communications, regularly changing handsets to avoid detection and deleting WhatsApp messages post-delivery.
- Shri Rakeshkumar Pandey was aware that his act constituted gold smuggling under the Customs Act, 1962 and knowingly attempted to evade Customs duty.

9.2 The act of the covert receipt of the gold by Shri Rakeshkumar Pandey by the use of the men's toilet near the immigration counter at SVPI Airport, Ahmedabad using a prearranged signal (knocking and showing shoes through the partition) and not declaring before the custom authority itself appears and suggests the mens-rea on the part of Shri Rakeshkumar Pandey with a view to avoiding payment of Customs duty. His own deposition wherein he stated that he had been involved in activity of similar modus operandi, facilitating passengers carrying foreign origin gold. It therefore, appears that he had aided, abetted and facilitated syndicate formed by Shri Arif Kazi, Shri Rajubhai and their carrier passengers. Shri Rakeshkumar Pandey, was not inclined to declare the goods viz. gold items before the Customs Authorities. Thus, 2 (Two) Gold Kadas, totally weighing 400.00 grams, purity of 999.0/24Kt. and having market value of Rs.38,90,000/-, recovered from the possession of Shri Rakeshkumar Pandey handed over by Shri Imran Haji

Mohammed Hotelwala by the use of the men's toilet near the immigration counter, were illegally attempted to be imported by them into India without declaration and payment of appropriate Customs duties.

9.3 By the above act and omission, Shri Rakeshkumar Pandey became instrumental in facilitating the syndicate indulged in gold smuggling and there by concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad and had knowingly violated the various provisions of Foreign Trade Policy 2023, Baggage Rules, 2016, Customs Notifications, etc. which rendered the subject seized smuggled gold liable for confiscation under the provision of Section 111(d) and 111(l) of the Custom Act, 1962 and rendered himself liable for penalty under Section 112(a) & 112(b) and Section 117 of Customs Act, 1962.

10 Role of Shri Arif Kazi:

10.1 On carefully going through the evidences available on record in the form of statements of Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala recorded under Section 108 of the Customs Act, 1962, digital evidences etc., it appears that: -

- Shri Arif Kazi functioned as the mastermind and abettor, methodically organizing and directing smuggling activities through local airport insiders and vulnerable carriers.
- Shri Arif Kazi managed logistics, issued stepwise instructions for identification (footwear photos), maintained covert communications with Shri Rakeshkumar Pandey (providing phones/SIM cards, instructing WhatsApp deletion and device swaps), coordinated gold handover, and arranged onward delivery outside the airport.
- Shri Arif Kazi provided financial incentive to the receiver and directed every step to avoid Customs detection, evidencing deep involvement and accountability for abetment and facilitation of the offence under the Customs Act, 1962.

10.2 It appears that Shri Arif Kazi has orchestrated the whole gold smuggling syndicate and, on his instructions, only the whole syndicate have acted in the act of smuggling and the same is evident from the depositions of Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala. As per the set devised plan, Shri Imran Haji Mohammed Hotelwala had handed over gold Kadas to Shri Rakeshkumar Pandey at SVPI, Airport with an intention to smuggle the same into India on the instruction of Shri Arif Kazi.

10.3 By the above act and omission, Shri Arif Kazi mastermind/ beneficial owner, have concerned himself in the act of smuggling of foreign origin gold weighing 400.00 grams and have knowingly violated the various provisions of Foreign Trade Policy 2023, Baggage Rules, 2016, Customs Act and Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d) and 111(l) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & 112(b) and Section 117 of the Customs Act, 1962.

11. Role of Shri Rajubhai urf Raju Bangali @ Dubai:

11.1 On carefully going through the evidences available on record in the form of statements recorded under Section 108 of the Customs Act, 1962, digital evidences etc., it appears that: -

- Shri Rajubhai based in Dubai, took up the role of overseas recruiter and abettor, offering gold to be smuggled by carriers like Shri Imran Haji Mohammed Hotelwala and planning delivery logistics in India.

- Shri Rajubhai provided instructions, arranged handover plans, promised payment, and ensured the gold was concealed and delivered according to a pre-arranged protocol (coded signals inside airport toilet).
- Shri Rajubhai was instrumental in initiating the supply chain for gold smuggling and directly abetting the illegal importation process.

11.2 However, whereabouts of Shri Rajubhai@Dubai was not found. Thus, he has not joined with the investigation and he has not come forward to prove his innocence in the smuggling of gold by above said persons. Hence, it appears that Shri Rajubhai@Dubai in a very planned manner attempted to smuggle 2 foreign origin gold Kadas through Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala to India through SVPI Airport. The said Gold Kadas recovered and seized are liable to confiscation under Section 111(d) and 111(l) of the Customs Act, 1962. Thus, he appears to be the overseas recruiter and abettor in this entire smuggling racket of the above 2 Gold Kadas.

11.3 Therefore, Shri Rajubhai urf Raju Bangali @Dubai has concerned himself in the act of smuggling of 2 foreign origin Gold Kadas and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d) and 111(l) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112(a) & 112(b) and Section 117 of Customs Act, 1962. As per the evidences gathered, available on records it appears that Shri Rajubhai@Dubai is one of the persons of the syndicate involved in smuggling of seized 2 Gold Kadas. However, he has not participated in the investigation and failed to discharge his onus to terms of the provisions of Section 123 of the Custom Act, 1962. These actions render the said 2 Gold Kadas liable for confiscation and also renders Shri Rajubhai/ Raju Bangali @Dubai liable for penal action under the Customs Act, 1962.

12. Accordingly, a Show Cause Notice No. DRI/AZU/GI-02/ENQ-23/2025 Dt. 11.11.2025 was issued to **(i) Shri Rakeshkumar Pandey**, residing at 18, Aditya Nagar, Manjipura (Part), Kheda, Gujarat-387320, **(ii) Shri Imran Haji Mohammed Hotelwala**, residing at 6/A, Kismat Apartment, Karimi Flats, Khancho Vaysyabha Jamalpur, Ahmedabad, Gujarat-380001, **(iii) Shri Arif Kazi** having address-302 3rd Floor, 2989/4/1, Lallu Raijis Wando Mirzapur, Ahmedabad, Gujarat-380001 and **(iv) Shri Rajubhai urf Raju Bangali @Dubai**, as to why: -

- i. Two (02) Gold Kadas** totally weighing 400.00 grams having purity of 999.0/24Kt. and Market Value of Rs.38,90,000/- seized on 14.05.2025 under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111(d) and 111(l) of the Customs Act, 1962 also read with Section 123 of the Custom Act,1962;
- ii. The Black-Coloured Pouch** believed to be used for concealing the above said Two (2) Gold Kadas totally weighing 400.00 grams having purity of 999.0/24Kt. should not be confiscated under Section 119 of the Customs Act, 1962;
- iii. Penalties** should not be imposed upon them under Section 112(a) & 112(b) and Section 117 of the Customs Act, 1962.

DEFENSE REPLY:

13. Defense Reply of the Noticee (i) Shri Rakeshkumar Pandey: Shri Rakeshkumar Pandey submitted a Defence Reply to SCN/ Written Submission, through his Advocate and Authorised Representative Shri Rishikesh Mehra on dated **21.02.2026**. Vide the said letter, the noticee Shri Rakeshkumar Pandey

submitted that he is a government employee and serving as a Security Assistant with the Bureau of Immigration at SVPI Airport, Ahmedabad, and has maintained an honest, sincere, and unblemished service record without any involvement in illegal activities. He contends that the allegations against him are baseless and asserts that the statements recorded under Section 108 of the Customs Act, 1962, as well as the panchnama, were obtained under fear, coercion, and the threat of arrest. He claims the statements were typed by the officers themselves, not read or explained to him, and that he was not permitted to write them in his own handwriting or language. According to him, he was forced to sign the English-typed statements without understanding their contents, rendering them involuntary and unreliable for invoking the alleged violations in the impugned show cause notice.

He, further submitted that the statement allegedly recorded from the noticee was obtained under duress and threat and is therefore not legally sustainable. Under Section 138B of the Customs Act, 1962, a statement made before a Gazetted Customs Officer becomes relevant only upon fulfillment of specific statutory conditions. Its admissibility is not automatic and must satisfy the requirements laid down in the provision.

He submitted that the Section 138B provides that such a statement can be relied upon only in limited circumstances, namely when the person who made the statement is unavailable for reasons specified in clause (a), or when the person is examined before the court and the court, in the interest of justice, permits the statement to be admitted under clause (b). Thus, the statute mandates judicial scrutiny before such statements can be treated as evidence.

He further submitted that the Hon'ble Supreme Court in Noor Aga Vs. State of Punjab clarified that Section 138B contains mandatory safeguards and does not permit mechanical reliance on confessional statements. The Court emphasized that a confession of an accused is a weak piece of evidence and cannot be used unless the statutory requirements are strictly satisfied. The provision was interpreted as addressing specific situations and not as a blanket authority to rely upon alleged confessions.

Further, Article 20(3) of the Constitution of India protects an accused from being compelled to be a witness against himself. Any statement obtained through coercion or compulsion violates this constitutional safeguard and cannot be relied upon. Therefore, a statement recorded under duress is inadmissible and cannot form the basis of penal action.

The noticee stated that he has been falsely implicated in the matter based solely on assumptions and without any independent or legally admissible evidence. He asserts that he was performing his official duties at the airport and had entered the washroom only for natural purposes as part of his routine movement within the premises. He denies any intention to receive, conceal, or assist in smuggling contraband goods and claims no prior acquaintance, connection, or conspiracy with the passenger involved. He further denies any knowledge or possession of the alleged gold or the mobile phone recovered from the washroom, stating that neither the phone nor the SIM card belonged to or was used by him. He emphasizes that no contraband was recovered from his personal possession or control, and mere presence at a location does not establish involvement in any offence without clear and independent evidence.

The noticee, Shri Rakeshkumar Pandey, submits that he has no claim over the seized gold and contends that no penalty should be imposed on him under Section 112(a) or 112(b) of the Customs Act, 1962. He maintains that he was not involved in acquiring, possessing, concealing, transporting, or dealing with goods liable to confiscation under the relevant provisions of the Section 111(d), 111(i), 111(l) and

111(m) of the Customs Act, 1962. Claiming absence of criminal intent or knowledge, he requested that the proposed penalties be set aside and that the proceedings against him be dropped. He also seeks the opportunity to be heard in person and reserves the right to add, alter, or amend his submissions.

13.2 Defense Reply of the Noticee (ii) Shri Imran Haji Mohammed Hotelwala, the Noticee (iii) Shri Mahmadarif Amadmiya Kazi urf Arif Kazi and the Noticee (iv) Shri Rajubhai urf Raju Bangali @Dubai: They have not submitted any Written Submission or Defense Reply against the allegations made against them in the SCN.

RECORD OF PERSONAL HEARING:

14. Adequate opportunities of **Personal Hearing** were given to all noticees in the Show Cause, which is summarized as under: -

14.1 Noticee No. 1: Shri Rakeshkumar Pandey: The noticee was given an opportunity for personal hearing on 09.01.2026, the noticee appeared and requested for adjournment and re-schedule the personal hearing after 10 to 15 days. Accordingly, the noticee was given again opportunities for appearing on 28.01.2026, 09.02.2026 and 25.02.2026.

The noticee Shri Rakeshkumar Pandey appeared for personal hearing on 25.02.2026 alongwith his Advocate Shri Rishikesh Mehra. Advocate, Shri Rishikesh Mehra, produced a copy of Vakalatnama to represent the case. He submitted that the noticee has been falsely implicated in the present case merely on assumption and presumption without any independent corroborative evidence. He reiterated the written submissions dated **21.02.2026** and requested to drop the SCN and take lenient view in the matter.

14.2 Noticee No. 2: Shri Imran Haji Mohammed Hotelwala: The noticee was given opportunity for personal hearing on 09.01.2026, the noticee and requested through his Advocate for adjournment and re-schedule the personal hearing after 30 days. Accordingly, the noticee was given again opportunities for appearing on 28.01.2026, 09.02.2026 and 25.02.2026. The letters were dispatched on the given address through speed post and also served to the noticee by affixing the same on notice board in terms of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunities of being heard in person for four times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

14.3 Noticee No. 3: Shri Mahmadarif Amadmiya Kazi urf Arif Kazi: The noticee was given opportunities for personal hearing on 09.01.2026, 28.01.2026, 09.02.2026 and 25.02.2026. The letters were dispatched on the given address through speed post and also served to the noticee by affixing the same on notice board in terms of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunities of being heard in person for four times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

14.4 Noticee No. 4: Shri Rajubhai urf Raju Bangali @Dubai: The noticee was given opportunity for personal hearing on 09.01.2026, 28.01.2026, 09.02.2026 and 25.02.2026. The letters for intimation for personal hearing were served to the noticee by affixing the same on notice board in terms of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the

noticee has been granted sufficient opportunities of being heard in person for four times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

DISCUSSION AND FINDINGS:

15. I have carefully gone through the case records, Show Cause Notice, relied upon documents to Show Cause Notice and Statements of the Noticees alongwith any submissions made by the noticees and the relevant legal provisions pertaining to this case. Further, sufficient opportunities to be heard were extended to all the noticees of the SCN following the Principles of Natural Justice. I am of the opinion that sufficient opportunities have been offered to the Noticees in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

15.1 From the evidence available on record, including the Panchnama dated 14.05.2025, the Statements of Shri Rakeshkumar Pandey recorded on 14.05.2025, 26.05.2025 and 30.10.2025, the Statements of other involved persons recorded under Section 108 of the Customs Act,1962 and the Forensic and Digital Data, I find that Shri Rakeshkumar Pandey engaged himself in smuggling activities through Sardar Vallabhbhai Patel International (SVPI) Airport, Ahmedabad, in lure of monetary consideration.

15.2 I find from the statement dated 14.05.2025 of Shri Rakeshkumar Pandey, recorded under Section 108 of the Customs Act, 1962, he was working as Security Assistant (Immigration) at SVP International Airport, Ahmedabad, stated that his duties included passport verification, visa checks, stamping, system entries, LOC monitoring, queue management, and passenger scrutiny, and that he was on duty from 6:30 PM on 13.05.2025 to 9:30 AM on 14.05.2025. I find that he confirmed the events described in the Panchnama dated 14.05.2025 and admitted that, at the instruction of Mr. Arif Kazi, he collected a pouch containing Gold Kadas from a passenger inside a toilet compartment before the immigration counter, using footwear as an identification code based on a photograph sent to him in advance. After receiving the pouch and keeping it in his pocket without opening it, he confirmed receipt to Mr. Kazi via WhatsApp by sending a thumbs-up emoji. He further stated that he had met Mr. Kazi about a year earlier, who had proposed a scheme of sending gold through passengers for collection inside the airport in return for ₹6,000 per delivery, and had provided him with mobile phones and SIM cards for communication, which were replaced periodically. He also stated that he did not recall the exact dates of previous instances when he had collected gold from passengers arranged by Mr. Kazi.

15.3 I also find from his statement dated 26.05.2025 recorded under Section 108 of the Customs Act, 1962, Shri Rakeshkumar Pandey stated that chat and call log data extracted from the Redmi A3x mobile phone (Model No.24048RN6CI, IMEI Nos. 866882075703763/01 and 866882075703771/01) containing SIM number 917624027464, recovered from him, reflected his communication with Mr. Arif Kazi. The chats showed his number saved as "Khavjausman" and Mr. Arif Kazi's number as "aaaa." I find that he admitted that he used the said phone and SIM, which had been provided by Mr. Arif Kazi. He further stated that Mr. Kazi used to call him from mobile numbers +971 56 363 7928 and +91 9978671640 to instruct him to collect gold from passengers in the toilet compartment before the immigration counter, conceal it in his clothing, and deliver it outside the airport at locations specified by Mr. Kazi without the knowledge of Customs officers. He also stated that prior to executing the plan, they would discuss the details over phone, and that the chats exchanged between them pertained to gold smuggling activities.

15.4 From his statement dated 30.10.2025 recorded under Section 108 of the Customs Act, 1962, Shri Rakeshkumar Pandey stated that he came to know Shri Imran Haji Hotelwala only after the incident in the present case and that he did not know any person named Rajubhai in connection with it. He confirmed that his chats with Shri Arif Kazi (WhatsApp ID aaaa97971563637928@s.whatsapp.net and mobile number 9978671640) related to the delivery of two gold kadas weighing 400 grams on 13.05.2025, and that he used to identify the carrier through photographs of the passenger's legs sent by Shri Arif Kazi. He stated that the image "IMG-20250513-WA000" showing the passenger's legs and shoes was sent at 17:31 hrs. on 13.05.2025; that three airplane emojis sent at 23:38 hrs. indicated the flight's arrival at Ahmedabad; and that the message "3" at 23:50 hrs. signified that the passenger had reached or was reaching toilet number 3 near the Immigration Arrival area. He could not recall the deleted message at 23:57 hrs. but stated that the message "Cheli toilet" at 23:57 hrs. indicated the last toilet. He further stated that the "??" message at 00:01 hrs. were Shri Arif Kazi seeking an update, and that he responded from inside the toilet with a thumbs-up emoji to confirm that he had collected the gold.

15.5 By the above acts of commission and omission, **Shri Rakeshkumar Pandey**, an Immigration Officer at SVPI Airport, knowingly participated in a gold smuggling operation orchestrated by the syndicate leader Arif Kazi. Evidence shows that he received two gold Kadas weighing 400 grams from Shri Imran Haji Mohammed Hotelwala through a covert handover in the men's toilet near the immigration counter, following prearranged signals such as recognizing shoes and specific toilet compartments. His role involved removing the gold without the knowledge of Customs officers and delivering it to locations specified by Arif Kazi, for which he had received commissions in previous occasions. To maintain secrecy, he used a separate mobile phone and SIM card provided by Kazi, frequently changing devices and deleting WhatsApp messages after deliveries. Shri Rakeshkumar Pandey was fully aware that his actions constituted gold smuggling under the Customs Act, 1962, demonstrating clear mens-rea to evade Customs duty. He had facilitated similar smuggling operations previously, actively aiding and abetting the syndicate formed by Arif Kazi, Rajubhai, and the carrier passengers. The gold, with a purity of 999.0/24Kt and a Market Value of ₹38,90,000/- was illegally brought into India without declaration or payment of customs duties. By these acts, Shri Rakeshkumar Pandey directly facilitated the smuggling syndicate, violating provisions of the Foreign Trade Policy 2023, Baggage Rules 2016, and Customs Notifications, rendering the gold liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962, and making himself liable for penalties under Sections 112(a), 112(b) and Section 117 of the Customs Act, 1962.

16. I further find that the Noticee (ii) Shri Imran Haji Mohammed Hotelwala, the Noticee (iii) Shri Mahmadarif Amadmiya Kazi urf Arif Kazi and the Noticee (iv) Shri Rajubhai urf Raju Bangali @Dubai have neither submitted any written defense reply against the allegation made against them in the SCN nor appeared in personal hearing scheduled on various dates.

16.1 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. vs. 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.”

16.2 I am of the opinion that sufficient opportunities have been offered to the Noticees i.e. **(ii) Shri Imran Haji Mohammed Hotelwala, the Noticee (iii) Shri Mahmadarif Amadmiya Kazi urf Arif Kazi and the Noticee (iv) Shri Rajubhai urf Raju Bangali @Dubai** in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

16.3 From the evidence available on record, including the Panchnama dated 14.05.2025, the statement of Shri Imran Haji Mohammed Hotelwala recorded on 14.05.2025 and 06.11.2025, the statements of other involved persons recorded under Section 108 of the Customs Act, 1962 and the Forensic and Digital Data, I find that Shri Imran Haji Mohammed Hotelwala and Shri Mahmadarif Amadmiya Kazi urf Arif Kazi, for monetary consideration, engaged themselves in the act of smuggling through Sardar Vallabhbhai Patel International (SVPI) Airport, Ahmedabad, by assisting Shri Rajubhai urf Raju Bangali @Dubai.

16.4 I find that **Shri Imran Haji Mohammed Hotelwala**, in his statement dated **14.05.2025** recorded under Section 108 of the Customs Act, 1962, stated that he was present throughout the proceedings detailed in the Panchnama dated 14.05.2025 and agreed with the facts recorded therein. He confirmed that Two Gold Kadas weighing 400 grams, valued at ₹38,90,000/- as per Certificate No. 166/2025-26 dated 14.05.2025, were recovered from Shri Rakeshkumar Pandey, Immigration Officer at SVPI Airport, Ahmedabad, and that these were handed over by him in the men's toilet before the immigration counter. He stated that he had received his flight ticket on WhatsApp from Dubai through mobile number +971563637928. He further stated that he had received the Two Gold Kadas from one Raju Bhai, a resident of Deira, Dubai, who promised to pay him ₹10,000/- to ₹12,000/- upon successful delivery, and instructed him to hand over the gold to a person inside the men's toilet at SVPI Airport, Ahmedabad. As per the instructions, he was to sit in the last toilet compartment, display his shoes for identification, and hand over the gold to the person in the adjacent compartment upon receiving a knock on the partition as a pre-arranged signal.

16.5 I find that Shri Imran Haji Mohammed Hotelwala in his further statement dated **06.11.2025** recorded under Section 108 of the Customs Act, 1962, stated that although he initially did not know Shri Arif Kazi, he received a call on 08.05.2025 while in Borivali, Mumbai, from mobile number 9978671640 offering ₹15,000/- to bring certain goods from Dubai without disclosing details. He was

sent a flight ticket from Mumbai to Dubai via WhatsApp and later learned in Dubai, upon meeting Mr. Liyakat, that the caller was Shri Arif Kazi. He stated that he had saved mobile number 971563637928 as “aaaa” and that Shri Arif Kazi used to arrange flight tickets and pay him ₹15,000/- per trip to act as a carrier and deliver goods in Ahmedabad to persons specified by him. On 13.05.2025 at 23:48:20 hrs., Shri Arif Kazi instructed him to go to Toilet No.3 before the immigration counter, and in a subsequent call at 00:10:38 hrs. on 14.05.2025 enquired whether the task was completed, to which he replied “OK ho gaya.” He further stated that while leaving Dubai, Mr. Raju Bangali and Liyakat met him at a snacks shop named Bakhala, where Mr. Raju Bangali handed over a Black Pouch containing Two Gold Kadas and took a photograph of his shoes for identification, instructing him to go to Toilet No.3 before immigration. He accordingly went there and handed over the Black Pouch containing Two Gold Kadas to the person sitting in Toilet No. 3, who he later came to know was an Immigration Officer.

16.6 I further find that Forensic data was retrieved from the mobile phone of Shri Rakeshkumar Pandey (Redmi A3x, IMEI 1: 866882075703763/01, IMEI 2: 866882075703771/01, SIM 7624027464) as per the report dated 14.05.2025 by ECS Infotech Pvt. Ltd. Additionally, data from his phone and from Shri Imran Haji Mohammed Hotelwala’s Infinix HOT 30i (Model X669C, IMEI 1: 358651719148841, IMEI 2: 358651719148858, SIM 9328076246) was retrieved, according to the report issued by the NFSU-DGGI Digital Forensics Laboratory, Gandhinagar (Ref. No. DGGI-NFSU/DFL/2025/AZU/46/102) dated 11.06.2025. Analysis of Shri Rakesh Kumar Pandey’s phone revealed WhatsApp chats between him and Shri Arif Kazi, indicating continuous communication during the attempted gold smuggling incident at SVPI Airport on 13–14.05.2025. The chats showed that Shri Arif Kazi sent photographs of the carrier’s legs and shoes for identification and shared coded messages, including emojis and references to specific toilet locations near the immigration counter for the handover of gold. In his statement dated 30.10.2025, Shri Rakesh Kumar Pandey confirmed that the communication related to the delivery of Two Gold Kadas weighing 400 grams and explained the meaning of the messages exchanged, including confirmation of successful collection through a “thumbs up” emoji.

16.7 I find that similarly, forensic analysis of Shri Imran Haji Mohammed Hotelwala’s mobile phone revealed WhatsApp communications with Shri Arif Kazi, who had saved his number under a coded name. The chats indicated that Shri Arif Kazi directed Shri Imran immediately after landing at SVPI Airport, Ahmedabad, instructing him on how to execute the gold smuggling operation. In his statement dated 06.11.2025, Shri Imran confirmed that he acted as a carrier at the behest of Shri Arif Kazi, receiving flight tickets and ₹15,000 per trip, and delivering the smuggled goods to designated persons in Ahmedabad. He also confirmed receiving instructions to proceed to Toilet No. 3 before the immigration counter and subsequently informing Shri Arif Kazi that the task had been completed.

16.8 I find that Call Data Record (CDR) and Subscriber Data Record (SDR) analysis was conducted for mobile numbers 9978671640 (Shri Arif Kazi), 9328076246 (Shri Imran Haji Mohammed Hotelwala), and 7624027464 (Shri Rakesh Kumar Pandey) for the period 01.03.2025 to 14.05.2025. The records revealed that Shri Arif Kazi was in regular contact with both Shri Rakesh Kumar Pandey and Shri Imran Haji Mohammed Hotelwala during the relevant period. However, there was no direct SIM-based phone call contact found between Shri Rakesh Kumar Pandey and Shri Imran Haji Mohammed Hotelwala, indicating that communication between the carrier and receiver was not conducted directly through regular calls. Based on the CDR/SDR analysis, I find that Shri Arif Kazi maintained communication with both the carrier and the receiver from the

inception of the gold smuggling operation, suggesting that he organized and coordinated the syndicate as the mastermind.

16.9 Accordingly, I find that, by the above acts of commission and omission **Shri Imran Haji Mohammed Hotelwala** was actively involved in the smuggling of gold into India from Dubai, playing a pivotal role in physically transporting the contraband. He received two gold Kadas weighing a total of 400 grams from an individual named Rajubhai in Deira, Dubai, in exchange for a promised financial incentive and followed explicit instructions for a covert handover of the gold to Shri Rakeshkumar Pandey at SVPI Airport, Ahmedabad. This handover was executed using a prearranged signal, involving knocking and showing shoes through the partition of the men's toilet near the immigration counter, demonstrating premeditation and clear intent to evade customs authorities. Despite being asked by the officers of the Directorate of Revenue Intelligence (DRI) whether he wished to declare any dutiable items, Shri Imran Haji Mohammed Hotelwala denied possession of any, knowingly attempting to avoid payment of customs duty. His actions indicate deliberate mens-rea to conceal the gold, which had a purity of 999.0/24Kt and a market value of ₹38,90,000, from customs officials. These acts violated multiple provisions under the Foreign Trade Policy 2015-20, the Baggage Rules 2016, and relevant Customs Notifications, rendering the gold liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962, and exposing Shri Imran Haji Mohammed Hotelwala to penalties under Sections 112(a), 112(b) and Section 117 of the Customs Act, 1962, in addition to failing to fulfill obligations under Section 123. Overall, the evidence suggests that he knowingly and intentionally participated in the illegal import of gold without declaration, thereby committing serious violations of the Customs Act, 1962.

16.10 I further find that, by the above acts of commission and omission **Shri Arif Kazi** functioned as the mastermind and orchestrator of a gold smuggling syndicate operating through SVPI Airport, Ahmedabad, directing and coordinating the activities of insiders and carriers to evade Customs detection. He managed all logistics, provided step-by-step instructions for covert identification such as footwear recognition, maintained clandestine communications with Shri Rakeshkumar Pandey by supplying phones and SIM cards, and instructed deletion of WhatsApp messages and device swaps to avoid traceability. He oversaw the handover of gold, arranged its onward delivery outside the airport, and offered financial incentives to the receivers, demonstrating full knowledge and active abetment of the smuggling operation. Evidence from the statements of Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala confirms that the smuggling of two gold Kadas weighing 400 grams was carried out entirely under his direction. By masterminding and benefiting from this illegal operation, Shri Arif Kazi knowingly violated provisions of the Foreign Trade Policy 2023, Baggage Rules 2016, the Customs Act, and Customs Notifications, rendering the smuggled gold liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962, and exposing himself to penalties under Sections 112(a), 112(b) and Section 117 of the Customs Act, 1962.

16.11 I find that, by the above acts of commission and omission **Shri Rajubhai urf Raju Bangali**, based in Dubai, acted as the overseas recruiter and key abettor in the smuggling of gold into India, initiating the supply chain and coordinating with carriers such as Shri Imran Haji Mohammed Hotelwala. He provided the gold, planned delivery logistics in India, issued instructions for covert handovers using coded signals in airport toilets, and promised financial incentives to ensure compliance, demonstrating deliberate involvement in the illegal operation. Despite the investigation, Shri Rajubhai remained absent, neither cooperating with authorities nor coming forward to prove his innocence, suggesting premeditated

evasion. Evidence indicates that he orchestrated the smuggling of two foreign-origin gold Kadas through Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala via SVPI Airport, Ahmedabad. His actions violated provisions of the Foreign Trade Policy 2015-20, Baggage Rules 2016, and relevant Customs Notifications, making the seized gold liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962, and rendering him personally liable for penalties under Sections 112(a), 112(b) and Section 117 of the Customs Act, 1962. Additionally, his failure to participate in the investigation constitutes a breach of Section 123 of the Customs Act, 1962, further confirming his role in the smuggling syndicate and the illegality of the operation.

17. I perused the facts presented before me. The question that needs to be addressed in the instant case are within the jurisdiction of Customs Act, 1962 and allied laws. I, therefore, proceed to decide the case on the basis of evidence and documents available on record. In the instant case, I find that the main issues to be decided are whether:

- i. The Two (02) Gold Kadas totally weighing 400.00 grams** having purity of 999.0/24Kt. and Market Value of Rs.38,90,000/- which were seized on 14.05.2025 under Section 110 of the Customs Act, 1962 are liable for confiscation under Section 111(d) and 111(l) of the Customs Act, 1962 also read with Section 123 of the Custom Act,1962 or not;
- ii. The Black-Coloured Pouch** believed to be used for concealing the above said Two (02) gold Kadas totally weighing 400.00 grams having purity of 999.0/24Kt. is liable for confiscation under Section 119 of the Customs Act, 1962 or not;
- iii.** Penalties liable to be imposed upon them under Section 112(a) & 112(b) and Section 117 of the Customs Act, 1962 or not.

18. In the instant case, the principal issue for determination is whether the Two (02) Gold Kadas totally weighing 400.00 grams and having purity of 999.0/24Kt. and Market Value of ₹38,90,000/- (Rupees Thirty-Eight Lakhs Ninety Thousand Only) and a Tariff Value of ₹36,41,008/- (Rupees Thirty-Six Lakhs Fourty One Thousand and Eight Only), seized vide Seizure Memo/Order dated 14.05.2025 under Panchnama Proceedings dated 14.05.2025 on a reasonable belief, are liable to confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as “the Act”). The further issue to be decided is whether the **Black-Coloured Pouch** believed to be used for concealing the above said Two (02) gold Kadas, is liable for confiscation under Section 119 of the Customs Act, 1962 and the Notices No. 01 to 04 concerned are liable for penal action under the provisions of Section 112 and Section 117 of the Act.

19. I find that Panchnama has drawn out the fact that based on specific intelligence, the Directorate of Revenue Intelligence (DRI), Ahmedabad, conducted surveillance at Sardar Vallabhbhai Patel International Airport on 13.05.2025 and intercepted an Immigration Officer, Shri Rakeshkumar Pandey, outside the men’s toilet before the immigration counter after the arrival of a passenger from Dubai on SpiceJet Flight SG16. Shri Pandey, a Security Assistant with the Bureau of Immigration, was found carrying a black pouch in his pocket containing **Two Gold Kadas**, which he admitted had been handed to him by a passenger inside the toilet. Simultaneously, the passenger, Shri Imran Haji Mohammed Hotelwala, was intercepted after immigration and denied carrying any dutiable goods; however, upon confrontation, he admitted that he had brought the Gold Kadas from Dubai and handed it over to Shri Pandey in the toilet using a pre-arranged identification

method involving showing his shoes, as instructed by the person who supplied him the Gold Kadas.

20. It is on record that the Government Approved Valuer Mr. Kartikey Vasantrai Soni, submitted Valuation Report vide **Certificate No. 166/2025-26 dated 14.05.2025** that the **Two Metallic Kadas** were 999.0/24Kt. pure gold and weighing 400 grams in total, with a Market Value of ₹38,90,000/- (Rupees Thirty-Eight Lakhs Ninety Thousand Only) and a Tariff Value of ₹36,41,008/- (Rupees Thirty-Six Lakhs Fourty One Thousand and Eight Only).

21. Defence Reply: I find that the Noticee Shri Rakeshkumar Pandey submitted his defence reply on 21.02.2026 and stated that the allegations made against him were false and baseless. He stated that he was a government employee working as a Security Assistant with the Bureau of Immigration at SVPI Airport, Ahmedabad, and had been performing his duties honestly, sincerely, and diligently with an unblemished service record, and that he had never been involved in any illegal or unlawful activity.

He further submitted that the panchnama and the statement recorded under Section 108 of the Customs Act, 1962 had been obtained under fear and duress of arrest and were not voluntary in nature. He stated that the statement had been typed by the officers themselves, that he had been asked only general questions regarding his family, and that he had been forced to sign the typed English statement under threat of being sent to jail without being allowed to read, understand, or write the statement in his own handwriting or language. He contended that such a statement could not be relied upon in law and referred to Section 138B of the Customs Act, 1962, explaining that statements recorded during inquiry would be relevant only under specific circumstances and subject to certain legal conditions. He also relied on the judgment of the Hon'ble Supreme Court in the case of Noor Aga v. State of Punjab, stating that confessional statements were considered weak evidence and could not be relied upon without independent corroboration.

He further submitted that Article 20(3) of the Constitution of India protected individuals from self-incrimination and prohibited compelling an accused person to be a witness against himself. The noticee further stated that he had been falsely implicated merely on assumptions and presumptions without any independent or legally admissible evidence and that at the relevant time he had been performing his official duties and had entered the washroom area only as part of his routine movement within the airport premises. He categorically denied having any intention to receive, conceal, or assist in smuggling any contraband goods and stated that he had no acquaintance, connection, or conspiracy with the passenger Shri Imran Haji Mohammed Hotelwala or any other person allegedly involved in the offence, nor did he have any knowledge of the alleged gold or contraband items.

He further submitted that the mobile phone allegedly recovered from the washroom did not belong to him, had never been in his possession, and that the SIM card inserted in the device had not been issued in his name nor used by him. He stated that he had no connection or knowledge regarding the said phone and that he had gone to the washroom only for natural purposes and had neither carried nor concealed any such device. He contended that mere recovery of a phone from the washroom did not establish his ownership or involvement and that no independent evidence had been produced to link the device to him. He further submitted that he had been performing his duties in good faith without any criminal intent or mens rea and had no knowledge of any alleged smuggling activity or contraband goods.

He emphasized that mere presence at a location could not establish involvement in an offence without clear and independent evidence and stated that no contraband goods had been recovered from his possession, residence, or control, nor was there any evidence establishing his ownership or control over the alleged gold. He further submitted that he had no claim over the gold under seizure and therefore no penalty could be imposed upon him under Section 112 of the Customs Act, 1962, as he had neither acquired possession of nor been concerned with carrying, removing, depositing, harbouring, keeping, concealing, selling, purchasing, or otherwise dealing with any goods liable to confiscation under Sections 111 of the Act. Accordingly, he submitted that the penalty proposed under Sections 112 of the Customs Act, 1962 was unjustified and liable to be set aside, and he prayed that the proceedings initiated against him be dropped.

22. From the above defence submission, I find that the noticee Shri Rakeshkumar Pandey has raised a series of defenses to contest the Show Cause Notice. The main contests are as under: -

➤ **Allegations and Defence:**

The noticee has denied all allegations made against him in the Show Cause Notice. He contends that he was falsely implicated and that the proceedings are based solely on assumptions without any independent or admissible evidence.

I find that the said allegation is not tenable as on carefully going through the evidences available on record in the form of statements of Shri Rakeshkumar Pandey and other related persons recorded under Section 108 of the Customs Act, 1962 etc. I find that Shri Rakeshkumar Pandey became instrumental in facilitating the syndicate indulged in gold smuggling and there by concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad and had knowingly violated the various provisions of Foreign Trade Policy 2023, Baggage Rules, 2016, Customs Notifications, etc.

➤ **Statements Recorded under Section 108:**

Shri Pandey submitted that the statements recorded under Section 108 of the Customs Act, 1962, and the panchnama were obtained under coercion, fear, and threat of arrest. He further stated that the statements were typed by the officers, not explained to him, and he was forced to sign them without understanding the contents, rendering them involuntary and unreliable.

I find that the said facts are nothing but an afterthought. As the noticee has neither made retraction immediately nor have produced any evidence that his statement was recorded under duress. Only at the time of filing reply to the SCN, the noticee have stated the facts of retraction without any evidence. Further, it is time and again held that statement recorded by the Customs Officer is valid. Further, I find that there is no dispute the Gold found from the possession of the noticee and onus is on the noticee to prove that the gold was not smuggled. To fortify my said stand, I rely on the decision of Hon'ble Allahabad High Court rendered in case of Commissioner of Customs, C.G.O. Vs. Sonam International reported in 2012 (275) ELT 326 (All.). Relevant Paras of the decision are reproduced as under:

“96. *In one other case reported in AIR 1965 SC 476 = 2008 (228) E.L.T. 8 (S.C.), Hukma v. State of Rajasthan, Hon'ble Supreme Court ruled that once it is found in consequence of Section 178A of the Sea Custom Act that the person was carrying the gold, the circumstances under which the gold was discovered, the manner in which he was carrying smuggled gold, the considerable quantity of the gold that*

was being carried namely, blocks and bars in which the major portion of the gold was found and expected to recover gold it may be inferred that the accused was evading the prohibition. The circumstances should be taken up cumulatively.

97. In the case of *Kewal Krishan v. State of Punjab* reported in AIR 1967 SC 737 = 1993 (67) E.L.T. 17 (S.C.) their lordship's held that when goods are seized with reasonable belief that they are smuggled one then onus proving that they are not smuggled goods i.e. not of foreign origin on which duty was not paid shall be on the person on whose possession the goods are seized. The onus shall not be on the prosecution to show that the goods are not of Indian origin.

In case contention of respondent's counsel is accepted then it will amount to shifting of onus on the prosecution.

98. Their Lordship of Hon'ble Supreme Court in a case reported in 1996 (83) E.L.T. 258 (S.C.). *Naresh J. Sukhawani vs. Union of India* had held as under -

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

100. In the case, *Surjeet Singh Chhabra and Naresh J. Sukhawani (supra)* Hon'ble Supreme Court while interpreting Section 108 and 111 of Customs Act, has held that confessional statement made before the custom officers, retracted, shall be binding since custom officers are not police officers. Accordingly, the statement of Pradeep Pathak cannot be thrown out as baseless only because of retraction at later stage.

101. It shall be relevant to take note of the fact that at no stage, the respondent has either led evidence or tried to rebut the appellant's version that M/s. Anivet Industries, does not have got any manufacturing unit at Nepal and it imports vitamin-E from China, Germany and other countries. No effort was made by the respondent to establish that vitamin-E to the extent of 49% could have been used as animal feed supplement. Rather, it has been submitted that 1-2 gms., is mixed in one tone or more in animal feed."

Further, I rely on the ratio of decision of Hon'ble Supreme Court rendered in case of *Hukma Vs. State of Rajasthan* reported in 2008 (228) EKT 8 (S.C.). Relevant Para of said decision are reproduced as under:

"8. There remains for consideration the last point raised by the learned counsel, [namely, that even if Lal Singh had authority to seize at the place where the seizure was made and s. 178-A of the Sea Customs Act applied, the prosecution had still to prove by further evidence that the accused had the mens rea necessary to constitute the offence. Learned counsel rightly pointed that while s. 178-A has the result of placing the burden of proof that the gold was not smuggled on the accused, it is of no assistance to the prosecution to prove that the accused was carrying the gold knowingly to evade the prohibition which was for the time being in force with respect to the import of gold into India. Once, however, it is found, as it must be found in this case, in consequence of the provisions of s. 178-A (the accused has not tried to discharge the burden that lay on him that the gold was not smuggled) that he was carrying smuggled gold, the circumstances under which the gold was discovered, the manner in which he was carrying the gold, the considerable quantity of the gold that was being carried and the form in which gold was being carried, namely, blocks

and bars in which the major portion of the gold was found, all these circumstances establish beyond a shadow of doubt that accused was carrying the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. Mr. Kapur tried to argue that when gold is carried by persons, they often carry it in this manner in a pouli concealed under trousers. That may well be so. Here, however, there is an additional circumstance that a pointsman of the Railway, not expected to have so much gold in his possession, was carrying the gold which was, as already mentioned in six blocks and 22 bars apart from some small pieces and one pair of murkees. The total quantity was as much as 286 tolas and 11 annas, that is, about three kilograms. When all these circumstances are taken together, it is not possible to accept learned counsel's suggestion that he might be carrying the gold innocently having purchased it from somebody. In our opinion, the High Court has rightly held that all the ingredients of the offence under s. 167(81) of the Sea Customs Act have been established. It may be mentioned that it has not been disputed before us that if we believe the story of the recovery of the gold from the appellant, the circumstances are sufficient to establish that Lal Singh seized the gold in the reasonable belief that these were smuggled goods."

➤ **Legal Provisions and Admissibility:**

He highlighted that under Section 138B of the Customs Act, 1962, statements made before a Gazetted Customs Officer are admissible only upon fulfillment of statutory conditions, including judicial scrutiny. He referred to the Supreme Court judgment in *Noor Aga vs. State of Punjab*, emphasizing that confessional statements are weak evidence and cannot be relied upon mechanically. He also cited Article 20(3) of the Constitution, which protects individuals from being compelled to be witnesses against themselves.

I find that the said allegation is baseless as the noticee has neither made retraction immediately nor have produced any evidence to prove that that his statement was recorded under threat, duress or promise. The retraction made only at the time of filing reply to the Show Cause Notice. To negate this allegation, I rely on the ratio of decision of Hon'ble Gujarat High Court rendered in case of Principal Commissioner of Customs Vs. Kishan Manjibhai Gadhesariya reported in 2023 (2) Centax 63 (Guj). Relevant Paras are reproduced as under:

"43. The Supreme Court, while interpreting Sections 107 and 108 respectively of the Customs Act, held in *Romesh Chandra Mehta vs. State of West Bengal* 1968 taxmann.com 3/[1969] 2 SCR 461, that any statement made by a person against whom an enquiry is made by a Customs Officer is not a statement made by a person accused of an offence, but he being an officer concerned or the person in authority, Section 24 of the Indian Evidence Act would be attracted and which provides that a confession made by an accused is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against accused persons, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

44. In *D. Bhoormall's case* (supra), while examining the provisions of Sections 167(8) and 178A of the Sea Customs Act, the Supreme Court held:

"33. Another point to be noted is that the incidence, extent and nature of the burden of proof for proceedings for confiscation under the first part of the entry in the 3rd column of clause (8) of Section 167, may not be the same as in proceedings when the imposition of the other kind of penalty under the second part of the entry is contemplated. We have already alluded to this aspect of the matter. It will be

sufficient to reiterate that the penalty of confiscation is a penalty in rem which is enforced against the goods and the second kind of penalty is one in personam which is enforced against the person concerned in the smuggling of the goods. In the case of the former, therefore, it is not necessary for the Customs authorities to prove that any particular person is concerned with their illicit importation or exportation. It is enough if the Department furnishes prima facie proof of the goods being smuggled stocks. In the case of the latter penalty, the Department has to prove further that the person proceeded against was concerned in the smuggling."

45. In *K.T.M.S. Mohd. v. Union of India* [1992] 3 SCC 178, the Court made a distinction between the provisions of the FERA and the Income-tax Act held in para 31 as follows:

"31. Leave apart, even if the officers of the Enforcement intend to take action against the deponent of a statement on the basis of his inculpatory statement which has been subsequently repudiated, the officer concerned must take both the statements together, give a finding about the nature of the repudiation and then act upon the earlier inculpatory one. If on the other hand, the officer concerned bisects the two statements and make use of the inculpatory statement alone conveniently bypassing the other, such a stand cannot be a legally permissible because admissibility, reliability and the evidentiary value of the statement of the inculpatory statement depend on the bench mark of the provisions of the Evidence Act and the general criminal law."

46. Holding in categorical terms that Section 24 of the Indian Evidence Act shall apply, it was held:

"But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated."

47. The Court then held in para 25 that the initial burden to prove that the confession was voluntary in nature, would be on the department. The special or peculiar knowledge of the person proceeded against would not relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue.

48. In *Vinod Solanki v. Union of India*, 2009 (233) E.L.T. 157 (S.C.) = 2009 (13) S.T.R. 337 (S.C.), the Supreme Court considered the effect of retraction of the statement in proceedings of penalty under Foreign Exchange Regulation Act, 1973. The Supreme Court held that indisputably a confession made by an accused would come within the purview of Section 24 of the Indian Evidence Act, 1872. The proceedings under the Act are quasi criminal in nature. Section 50 of the Act is penal provision. It

prescribes that in the event of contravention of any of the provisions of the Act or the Rules, directions or order penalty in exceeding 5 times of the amount of value involved in any such contravention may be imposed. Section 71 of the Act provides for burden of proof in certain cases. Sub-section (2) of Section 71 provides for burden of proof that foreign exchange acquired by such person, has been used for the purpose for which permission to acquire was granted, shall be on such person. The Act as Special Act confers various powers under the authorities. Even if salutary principle 'mens rea' and 'actus reus' in the proceedings under the Act may not be held to be applicable, it is now a settled principle that presumption of innocence as contained in Article 14(2) of the International Covenant on civil and political rights is a human right, although per se it may not be treated to be a fundamental right within the meaning of Article 21 of the Constitution of India. Sub-section (2) of Section 71 places burden of proof upon an accused or proceedee only when the foreign exchange acquired has been used for the purpose for which permission to acquire it was granted and not for mere possession thereof. The Parliament advisedly did not make any provision placing the burden of proof on the accused/proceedee.

49. In para 22 the Supreme Court said:

"22. It is a trite law that evidence brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the Court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded." [See *Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras*, MANU/SC/0403/1999: (1999) 6 SCC 1].

50. In *K.I. Pavunny vs. Assistant Collector (HQ)*, CCE 1997 (90) E.L.T. 241 (SC)/ [1997] 3 SCC 721, it was held that a person suspected by a Customs Officer is not an accused at that stage. He becomes an accused only when summons are issued by a competent Court/Magistrate pursuant to a complaint lodged by the competent Customs Officer. His statement recorded under section 108 or during confiscation proceedings is not that of an accused within the meaning of Section 24 of the Evidence Act. The Customs Officer in such case although not police officer, is an authority within the meaning of Section 24 of the Evidence Act. The evidence is admissible under section 135 of the Customs Act, although subsequently retracted, if on facts found voluntary and truthful. Only in such case it can form exclusive basis for conviction. It is, however, a rule of prudence and practice that the Court seeks assurance from other facts and circumstances to corroborate retraction of confession. The Supreme Court held that object of the Act in empowering the Customs Officer to record evidence under section 108 is to collect information of the contravention of the provisions of the Act or concealment of the contraband, to avoid or avoidance of the duty of excise so as to enable them to collect the evidence of the proof of contravention of the provisions of the Act for initiating proceedings for further action of confiscation of the contraband or imposition of penalty. By virtue of authority of law the officer exercises the power under the Act is an authority, within the meaning of Section 24 of the Evidence Act.

51. There is no prohibition under the Evidence Act to rely upon retracted confession to prove the prosecution case so as to make the same the basis for conviction of the accused. The practice and prudence require that the Court could examine the evidence adduced by the prosecution to find out whether there were any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained on the confessional statement. The Court is required to examine whether the confessional statement was voluntary; in other words, whether it was not obtained by threat, duress or promise. If the Court

is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base the conviction. However, prudence and practice require that the Court would seek assurance getting corroboration from other evidence adduced by the prosecution.

95. The veracity of the facts admitted in the statements dated 21-4-2009, 29-4-2009, 24-6-2009 and 27-6-2009 respectively by Sanjay also find support from the statements of others/accomplices and the evidence which were found pursuant thereto, during the investigation. Although the said statements later came to be retracted by subsequent statement recorded on 4-7-2009 before the JMFC in the Criminal Proceedings under the NDPS Act, 1985, yet, the statements recorded under section 108 have evidentiary value and constitute substantive evidence. A belated retraction after considerable length of time would not have the same efficacy in law as the retraction made at the earlier point of time from the day of the statement.”

➤ **Denial of Involvement in Smuggling:**

The noticee submitted that he was performing his official duties and entered the washroom only for natural purposes. He denied any intention to receive, conceal, or assist in smuggling goods, had no connection with the passenger involved, and had no knowledge of or possession of the mobile phone, SIM card, or gold allegedly recovered.

I find that the said allegation is not tenable as noticee himself in his statement dated **14.05.2025**, Shri Rakeshkumar Pandey had admitted that, at the instruction of Mr. Arif Kazi, he collected a pouch containing Gold Kadas from a passenger inside a toilet compartment before the immigration counter, using footwear as an identification code based on a photograph sent to him in advance. After receiving the pouch and keeping it in his pocket without opening it, he confirmed receipt to Mr. Kazi via WhatsApp by sending a thumbs-up emoji. He further stated that he had met Mr. Kazi about a year earlier, who had proposed a scheme of sending gold through passengers for collection inside the airport in return for ₹6,000 per delivery, and had provided him with mobile phones and SIM cards for communication, which were replaced periodically. He also stated that he did not recall the exact dates of previous instances when he had collected gold from passengers arranged by Mr. Kazi.

In his statement dated **26.05.2025** Shri Rakeshkumar Pandey stated that chat and call log data extracted from the Redmi A3x mobile phone (Model No. 24048RN6CI, IMEI Nos. 866882075703763/01 and 866882075703771/01) containing SIM number 917624027464, recovered from him, reflected his communication with Mr. Arif Kazi. The chats showed his number saved as “Khavjausman” and Mr. Arif Kazi’s number as “aaaa.” He admitted that he used the said phone and SIM, which had been provided by Mr. Arif Kazi. He further stated that Mr. Kazi used to call him from mobile numbers +971 56 363 7928 and +91 9978671640 to instruct him to collect gold from passengers in the toilet compartment before the immigration counter, conceal it in his clothing, and deliver it outside the airport at locations specified by Mr. Kazi without the knowledge of Customs officers. He also stated that prior to executing the plan, they would discuss the details over phone, and that the chats exchanged between them pertained to gold smuggling activities.

In his statement dated **30.10.2025**, Shri Rakeshkumar Pandey stated that he came to know Shri Imran Haji Hotelwala only after the incident in the present case and that he did not know any person named Rajubhai in connection with it. He confirmed that his chats with Shri Arif Kazi (WhatsApp ID

aaaa97971563637928@s.whatsapp.net and mobile number 9978671640) related to the delivery of two gold kadas weighing 400 grams on 13.05.2025, and that he used to identify the carrier through photographs of the passenger's legs sent by Shri Arif Kazi. He stated that the image "IMG-20250513-WA000" showing the passenger's legs and shoes was sent at 17:31 hrs on 13.05.2025; that three airplane emojis sent at 23:38 hrs indicated the flight's arrival at Ahmedabad; and that the message "3" at 23:50 hrs signified that the passenger had reached or was reaching toilet number 3 near the Immigration Arrival area. He could not recall the deleted message at 23:57 hrs but stated that the message "Cheli toilet" at 23:57 hrs indicated the last toilet. He further stated that the "??" message at 00:01 hrs was Shri Arif Kazi seeking an update, and that he responded from inside the toilet with a thumbs-up emoji to confirm that he had collected the gold.

I also find that Shri Imran Haji Mohammed Hotelwala stated in his statement dated 14.05.2025 and 06.11.2025 that he received two gold kadas weighing 400 grams from Raju Bhai in Dubai, who promised payment for their delivery. Following instructions, he handed the gold over in the men's toilet before the immigration counter at SVPI Airport, Ahmedabad, identifying the recipient by a pre-arranged signal. He confirmed these facts in the Panchnama dated 14.05.2025. Later, he revealed that he was recruited by Shri Arif Kazi, who arranged his travel and paid him to carry goods from Dubai to Ahmedabad. On 13-14 May 2025, he was instructed by Kazi to deliver the gold to an immigration officer, completing the handover as directed.

➤ **Seized Gold and Penalty:**

Shri Pandey contended that he has no claim over the gold under seizure and was not involved in possessing, carrying, removing, depositing, concealing, selling, or otherwise dealing with it. Therefore, he argued that the penalty proposed under Section 112 of the Customs Act, 1962 was unjustified and requested that the proceedings against him be dropped.

I find that questioning the applicability of the legal provisions alleged in the impugned Show Cause Notice is not tenable as it is an undisputed facts that based on the intelligence developed by the DRI, the noticee was intercepted wearing a Bureau of Immigration (BOI) uniform just outside the toilet gate, who identified himself as Shri Rakeshkumar Pandey, Security Assistant, BOI and handed over a black pouch from his inner pant pocket, stating that it had been given to him by a passenger in the toilet. Upon opening the pouch, the DRI officer found two metallic Kadas that appeared to be gold. When informed that a thorough personal search was necessary, Shri Pandey consented, and the search was conducted in the presence of the Superintendent of Customs (Gazetted Officer) at the airport. The noticee failed to produce any evidence of its legal possession. I find the ratio of decision of Hon'ble Delhi Tribunal rendered in the case of Rakesh Luthra Vs. Commr. of Cus. (Air Port & General), New Delhi reported in 2024 (387) ELT 691 (Tri. Del) is squarely applicable to the present case. Relevant Para is reproduced as under:

"8.1 *In the instant case, it is on record that the four passengers had gone to Bangkok on 5-6-2019 and had returned on 8-6-2019. Therefore, the appellants did not satisfy the requirements of the aforesaid notification in order to be eligible to import the gold legally. It is also on record that the appellants were intercepted near the exit gate. The argument that they were prevented from making the declaration is clearly an afterthought. The gold was recovered from their person. It is also noted that the appellants, in their respective statements have accepted that there were aware of the Customs procedures for passenger clearance, and that Gold was dutiable. Consequently, the argument that there is no concealment or attempt to*

smuggle cannot be accepted. As regards the argument of the appellants that Gold is not a prohibited item, we note that the High Court of Gujarat in the case *Bhargavraj Rameshkumar Mehta v. Union of India* [2018 (361) E.L.T. 260 (Guj.)] held that attempt to smuggle by concealing the same, and breaching the condition for the import of such goods would make them 'prohibited goods' in terms of Section 2(33) of the Customs Act, 1962. The relevant paras of the aforesaid decision is reproduced hereinbelow:

We may recall, the contention of the "15. Counsel for the petitioner in this respect was that the gold at the relevant time was freely importable. Import of gold was not prohibited. Case of the petitioner would therefore, fall under clause (ii) of Section 112 and penalty not exceeding 10% of the duty sought to be evaded would be the maximum penalty imposable. Such contention shall have to be examined in the light of the statutory provisions noted above. As noted, Section 111 of the Act provides for various eventualities in which the goods brought from a place outside India would be liable for confiscation. As per clause (d) of Section 111, goods which are imported or attempted to be imported or are brought within the Customs quarters for import contrary to any prohibition imposed by or under the Act or any other law for the time being in force, would be liable for confiscation. Similarly, for dutiable or prohibited goods found concealed in any manner in any conveyance would also be liable to confiscation. As per Section 2(39) the term 'smuggling' would mean in relation to any goods, any act or omission which will render such goods liable to confiscation under Section 111 or Section 113. Thus, clearly Section 111 of the Customs Act prohibits any attempt at concealment of goods and bringing the same within the territory of India without declaration and payment of prescribed duty. Term 'prohibited goods' as defined under Section 2(33) means any goods, the import or export of which is subject to any prohibition under the 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. This definition therefore, comes in two parts. The first part of the definition explains the term 'prohibited goods' as to mean those goods, import or export of which is subject to any prohibition under the law. The second part is exclusionary in nature and excludes from the term 'prohibited goods', in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. From the definition of term 'prohibited goods', in case of goods, import of which is permitted would be excluded subject to satisfaction of the condition that conditions for export have been complied with. By necessary implication therefore in case of goods, import of which is conditional, would fall within the definition of prohibited goods if such conditions are not complied with.

Further clarity in this respect would be available when one refers to the term 'dutiable goods' as to mean any goods which are chargeable to duty and on which duty has not been paid. We refer to this definition since Section 112 makes the distinction in respect of goods in respect of which any prohibition is imposed and dutiable goods other than prohibited goods. When clause (ii) of Section 112 therefore, refers to dutiable goods other than prohibited goods, it shall necessarily have the reference to the goods, import of which is not prohibited or of which import is permissible subject to fulfilment of conditions and such conditions have been complied with. Condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions. When clearly the goods are sought to be brought within the territory of India concealed in some other goods which may be carrying no duty or lesser duty, there is clear breach of conditions of import of goods though per se import of goods may not be prohibited."

8.2 Further, in the case at hand, the facts are the appellants were carrying gold in their person and were intercepted near the exit gate of the Customs Baggage Hall, which clearly establishes their intention to smuggle the Gold. In this regard, we note that the Supreme Court in the case of *Om Prakash Bhatia v. Commissioner of Customs, Delhi* reported in [2003 (155) E.L.T. 423 (S.C.) = 2003 taxmann.com 482 (S.C.)] and in case of *Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others* reported in [1983 (13) E.L.T. 1439 (S.C.)] held that smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of Section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation under Section 111 of the Act, and clause (b) to Section 111 of the Act covers the persons involved.

10. We now take up the appeal filed by the Department wherein the adjudicating authority had in the impugned order had permitted redemption of gold on payment of fine to appellant Rakesh Luthra, and permission to re-export the gold to 2 other appellants Sonia and Mamik Luthra, and have prayed for absolute confiscation of the gold. We note that all the four appellants collectively brought 5218 grams of gold (in the form of bars, not in the form of ornaments) from Bangkok. It is also established that all the appellants attempted to smuggle the gold with an intention to evade Customs Duty by not declaring the non-bona fide baggage which was commercial in nature. It is also established that the appellants were 'ineligible passengers' to import gold in terms of Notification No. 50/2017-Cus., dated 30-6-2017 and also provisions of Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Exemption from Application of Rules in Certain Cases) Rules, 1993 and Foreign Trade Policy, 2015-20. We also note that Section 80 of Customs Act, 1962 provides for 'temporary detention of baggage', which is applicable in respect of only those goods for which a true declaration has been made under Section 77. Under Section 80, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India. In the instant case, though the appellants had not declared the gold and the fact remains that the passengers were intercepted by the officers of customs at the exit gate. This clearly establishes the intent was to walk away with the gold without payment of duty that was lawfully due to the Government. This is also corroborated by their statements that similar modus operandi was adopted when they had returned from Dubai. In this regard, the decision of the High Court of Gujarat in the case *Bhargavraj Rameshkumar Mehta v. Union of India* (supra) held that attempt to smuggle by concealing the same, and breaching the condition for the import of such goods would make them 'prohibited goods' in terms of Section 2(33) of the Customs Act, 1962. Once it is established that the goods are prohibited, then there cannot be an option for either redemption or re-export, and such goods are liable for absolute confiscation. In this context, we note that the Tribunal in the case of *Sunny Kakkar v. Principal Commissioner of Customs (Preventive), New Delhi* [2023 (385) E.L.T. 258 (Tri. - Del.) = (2023) 5 Centax 261 (Tri. - Del.)] upheld the absolute confiscation of Gold. The relevant paras of this decision is reproduced hereinafter:

As per Section 2(39) "smuggling", in relation to any goods, '32. means any act or omission which will render such goods liable to confiscation under section 111 or section 113. Therefore, if the gold bars in dispute are held liable for confiscation under section 111, they will fall under the category of smuggled gold as per Section 2(39). Another important section in this regard is Section 123 which reads as follows:

Section 123 - Burden of proof in certain cases. Where any goods to - (1) 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.

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

Section 123 shifts the burden of proof from the Department to the person from whom the goods have been seized in respect to gold and certain other goods which are notified. Undisputedly, the bars in question were of gold and they had foreign markings and were packed in a bag with the address of the jeweller in Dubai. The bars were examined by an expert and were held to be foreign origin gold of 995 purity. All these gave the officers reasonable belief that the gold bars were of foreign origin. Since import of gold is restricted, if foreign origin gold bars were legally imported it was incumbent upon the importer and any other person to whom they may have been sold to show documents that the gold was legally imported. This responsibility is cast upon the appellant as per Section 123. The gold was seized and after its assessment, statements of the appellant were recorded in which he explained that he procured the gold from one Shri Harish of Dubai who told him that Shri Ahadees would contact him and give him the gold bars and accordingly, he was waiting at Rajeev Chowk Metro Station whether transaction took place. He had, at no point of time, produced any document to show that the gold was legally imported. According to his statement, the arrangement which he had with Shri Harish was that he would send gold through one of his persons (Shri Ahadees in this case) and after selling the gold he would pay Shri Harish. At the time of receiving the gold he would pay only some amount to the person handing over the gold. In this case, the amount which he paid in a pink polythene bag was Rs. 5,45,000/- to Shri Ahadees. These statements were corroborated by the statement of Shri Ahadees. Neither Shri Ahadees nor the appellant have at any point of time produced any document to show that the gold was legally imported by them or that it was purchased by them from somebody who had legally imported it.

Learned Counsel for the appellant submitted that on 8-12-2015 the appellant had retracted his statement and, therefore, it cannot be relied upon. We have gone through the statements made before the Learned CMM by the appellant in his application for bail which is at pages 109 to 112 of the appeal book. The application only states that the statement was not made by the appellant. However, there is nothing in the statement made before the Learned CMM explaining the nature of the gold seized from the appellant. In the absence of any other explanation, the statements made by the appellant and Shri Ahadees before the officer must be accepted as correct. These statements corroborate each other and with the panchnama. The cross-examination of Shri Ahadees by the learned counsel for the appellant also confirm the facts pertaining to this seizure and also that on previous two occasions smuggled gold was transacted between the appellant and Shri Ahadees. The mobile phone recovered from the appellant and which was used to communicate with Shri Ahadees was also obtained in the name of Shri Kaskyrbayev a Kazakhi national who was not even in India at the time the SIM card was issued which corroborates the clandestine nature of the transaction in the confiscated gold.'

10.1 As per the facts of the case, the seizure of gold from the appellants, as recorded in the panchnama and admitted in their respective statements is undisputed. It is also established that the gold was of foreign origin. It is also established that the appellants were attempting to smuggle the gold without payment of duty. We also

note that legal import of gold is governed by certain conditions which the appellant do not fulfil. Therefore, we are of the considered opinion that the gold recovered from the appellants is liable for absolute confiscation.”

23. Role Played By the Noticees: I find from the Statements of the Noticees, Panchnama and other evidences available with records, the noticees Played Role in the case as under-

23.1 Shri Imran Haji Mohammed Hotelwala was actively involved in the smuggling of gold into India from Dubai and played a crucial role as a carrier in the illicit operation. Evidence on record establishes that he knowingly transported foreign-origin gold into India at the behest of the smuggling syndicate, in consideration of a promised financial incentive.

It is brought out that Shri Imran Haji Mohammed Hotelwala received two gold kadas, collectively weighing approximately 400 grams, from an individual known as Rajubhai in Deira, Dubai, prior to his departure for India. He carried the said gold into India without declaration and with full knowledge of its illicit nature.

Upon arrival at Sardar Vallabhbhai Patel International Airport (SVPI Airport), Ahmedabad, Shri Imran Haji Mohammed Hotelwala executed a pre-planned covert handover of the smuggled gold to Shri Rakeshkumar Pandey within the airport premises. The exchange took place inside the men's washroom near the immigration counter, using pre-arranged identification methods such as knocking on the partition and displaying footwear for recognition. Such conduct clearly demonstrates prior planning, coordination, and deliberate intent to evade detection by Customs authorities.

Further, it is on record that when specifically questioned by officers of the Directorate of Revenue Intelligence (DRI) regarding possession of any dutiable goods, Shri Imran Haji Mohammed Hotelwala categorically denied carrying any such items. This false declaration was made with full knowledge of the facts and with the intention to evade payment of applicable customs duty.

The gold in question, having a purity of 999.0/24 Kt and valued at ₹38,90,000, was thus illegally imported into India without declaration and without payment of duty, in contravention of the provisions of the Customs Act, 1962, the Foreign Trade Policy 2015–20, and the Baggage Rules, 2016.

From the above, it is evident that Shri Imran Haji Mohammed Hotelwala acted with clear mens rea, consciously concealing and transporting the smuggled gold and facilitating its clandestine delivery within the airport. His actions directly contributed to the evasion of customs duty and the successful execution of the smuggling operation.

Accordingly, the impugned gold is liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962. Further, Shri Imran Haji Mohammed Hotelwala, by virtue of his active involvement in carrying and delivering the smuggled gold, renders himself liable for penal action under Sections 112(a), 112(b), and 117 of the Customs Act, 1962.

Further, his failure to discharge the burden of proof cast upon him under Section 123 of the Customs Act, 1962, regarding the licit import and possession of the seized gold, reinforces the presumption of smuggling and substantiates his role in the offence.

23.2 Shri Rakeshkumar Pandey, serving as an Immigration Officer at Sardar Vallabhbhai Patel International Airport (SVPI Airport), Ahmedabad, while discharging his official duties, knowingly and deliberately misused his position as

a public servant to facilitate a well-organized gold smuggling syndicate operated by Arif Kazi and his associates.

Evidence on record establishes that Shri Pandey actively participated in the illegal import and clandestine clearance of smuggled gold. In one such instance, he received two gold kadas collectively weighing approximately 400 grams from Shri Imran Haji Mohammed Hotelwala through a pre-arranged covert exchange inside the men's washroom located near the immigration counter. The handover was executed using predetermined identification methods, including recognition of footwear and the use of specific toilet compartments, clearly indicating prior planning and conscious involvement.

Shri Pandey's role was to remove the smuggled gold from the controlled airport area without detection by Customs authorities and to deliver the same to locations as directed by the syndicate leader, Arif Kazi. It is further established that he received monetary and other illegal gratifications, including commissions from previous consignments, in consideration for his continued assistance to the syndicate.

To evade detection and maintain secrecy, Shri Pandey used mobile phones and SIM cards provided by the syndicate, frequently changed devices, and systematically deleted electronic communication, including WhatsApp messages, after completion of each transaction. Such conduct demonstrates deliberate efforts to conceal his illegal activities.

It is evident that Shri Pandey was fully aware that his actions constituted offences under the Customs Act, 1962, and that the gold being handled by him was smuggled into India in violation of the law. His actions clearly establish the presence of mens rea, as he intentionally aided in evasion of applicable customs duties and legal procedures.

The gold in question, having a purity of 999.0/24 Kt and valued at ₹38,90,000, was imported into India without declaration and without payment of applicable customs duty, in contravention of the provisions of the Customs Act, 1962, the Foreign Trade Policy 2023, and the Baggage Rules, 2016.

By virtue of the above acts, Shri Rakeshkumar Pandey, while acting in his capacity as a government servant, abused his official position to facilitate smuggling, thereby rendering the goods liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962. Further, his active involvement in aiding and abetting the smuggling syndicate attracts penal liability under Sections 112(a), 112(b), and 117 of the Customs Act, 1962.

23.3 Shri Arif Kazi was the principal architect, mastermind, and key orchestrator of a well-organized gold smuggling syndicate operating through Sardar Vallabhbhai Patel International Airport (SVPI Airport), Ahmedabad. He exercised overall control and supervision over the entire smuggling operation, systematically coordinating the roles of carrier passengers, intermediaries, and complicit insiders to ensure the successful clandestine import and clearance of gold while evading Customs detection.

Evidence on record establishes that Shri Kazi meticulously planned and managed the logistics of the smuggling activities. He issued precise operational instructions, including the use of covert identification techniques such as recognition of footwear and pre-designated washroom compartments for secure handovers. He maintained continuous and clandestine communication with Shri Rakeshkumar Pandey by providing dedicated mobile phones and SIM cards, thereby ensuring secure and untraceable contact. Further, he instructed the destruction of digital evidence by directing deletion of WhatsApp messages and frequent changes of communication devices to avoid detection by enforcement agencies.

Shri Kazi also supervised and controlled the physical movement of smuggled gold. He arranged for the receipt of gold within the airport premises through trusted intermediaries and ensured its removal and delivery to designated locations outside the airport through complicit individuals. In consideration of such illegal services, he offered and facilitated financial incentives and commissions to the persons involved, thereby sustaining and expanding the smuggling network.

The statements of Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala unequivocally confirm that the smuggling of two gold kadas weighing approximately 400 grams was executed strictly under the instructions, control, and direction of Shri Arif Kazi, leaving no doubt as to his central role in the conspiracy.

It is evident that Shri Kazi had full knowledge that the gold was being illegally imported into India without declaration and without payment of applicable customs duties, in contravention of the provisions of the Customs Act, 1962, the Foreign Trade Policy 2023, and the Baggage Rules, 2016. His actions clearly establish deliberate intent (*mens rea*) to evade legal requirements and to derive unlawful gain from such activities.

By virtue of the above acts, Shri Arif Kazi knowingly masterminded, financed, and abetted the smuggling of gold, thereby rendering the goods liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962. Further, his active involvement in organizing and facilitating the offence attracts penal liability under Sections 112(a), 112(b), and 117 of the Customs Act, 1962.

23.4 Shri Rajubhai, also known as Raju Bangali, presently based in Dubai, acted as an overseas facilitator, recruiter, and key abettor in the organized smuggling of gold into India. He played a pivotal role in initiating and sustaining the supply chain by arranging procurement of foreign-origin gold and coordinating its clandestine movement into India through carrier passengers, including Shri Imran Haji Mohammed Hotelwala.

Evidence on record establishes that Shri Rajubhai was actively involved in planning and executing the logistics of the smuggling operation. He provided the smuggled gold, issued detailed operational instructions for its covert delivery within India, and devised methods to ensure secrecy, including the use of coded signals and pre-arranged identification techniques for handovers in airport washrooms. He further assured and offered financial incentives to carriers and receivers to secure their participation and compliance, thereby demonstrating conscious and deliberate involvement in the illegal activity.

It is further observed that despite being implicated during the course of investigation, Shri Rajubhai deliberately remained absent and failed to cooperate with the investigating authorities. He neither responded to summons nor appeared to present any evidence in his defense, thereby indicating a conscious attempt to evade legal proceedings and suppress material facts.

The statements of co-noticees and other evidences on record clearly indicate that the smuggling of two foreign-origin gold kadas, weighing approximately 400 grams, through Sardar Vallabhbhai Patel International Airport, Ahmedabad, was orchestrated under his direction in coordination with Shri Rakeshkumar Pandey and Shri Imran Haji Mohammed Hotelwala.

From the foregoing, it is evident that Shri Rajubhai had full knowledge that the gold was being imported into India in contravention of the provisions of the Customs Act, 1962, the Foreign Trade Policy 2015–20, and the Baggage Rules, 2016, without declaration and without payment of applicable customs duties. His actions clearly establish the existence of *mens rea*, as he knowingly facilitated and abetted the smuggling operation for unlawful gain.

By virtue of the above acts, Shri Rajubhai has rendered the impugned gold liable for confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962. Further, his active role in abetting and facilitating the offence makes him liable for penal action under Sections 112(a), 112(b), and 117 of the Customs Act, 1962.

Further, his failure to discharge the burden cast upon him under Section 123 of the Customs Act, 1962, by not coming forward to explain the licit acquisition and movement of the seized gold, reinforces the presumption of smuggling and substantiates his involvement in the illicit activities.

24. I find that the statements given by noticees under Section 108 of the Customs Act, 1962, were made voluntarily and carry evidentiary value under the law. In support of my view, I relied on the following judgements:

- i. Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that **evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.**
- ii. Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that **"Statement recorded by a Customs Officer under Section 108 is a valid evidence"**
- iii. In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that **"It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962"**
- iv. **There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion** as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- v. Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that **"Confessional Statement corroborated by the Seized documents admissible even if retracted."**
- vi. In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, mis declared or undervalued.

- vii. The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the

statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. It is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "

- viii. In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

*Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. **As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily.** When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*

- ix. The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

*"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected *brevi manu*. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."*

(emphasis supplied)

- x. Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30.**

25. A combined reading of the above-mentioned legal provisions under the Foreign Trade Policy, the Customs Act, 1962, and the notifications issued thereunder clearly indicates that the import of gold, including gold jewellery, through passenger baggage is restricted. Conditions have been imposed on such import, including that the passenger should be of Indian origin or an Indian passport holder, and should have resided abroad for a minimum period of six months, among others. Only passengers who satisfy these mandatory conditions can import gold as part of their bona fide personal baggage, and the same must be declared to the Customs authorities upon arrival, with applicable duty paid in foreign currency/exchange.

In this connection, I also note the Board's instructions issued vide F. No. 495/6/97-Cus.VI dated 06.05.1996, reiterated in F. No. 495/19/99-Cus.VI dated 11.04.2000, wherein it was clearly stated that the import of goods, including gold in commercial quantities, is not permissible under the Baggage Rules, even on payment of duty. From the above findings and guidelines, it is evident that the noticee does not fall within the ambit of an "eligible passenger" to bring the gold as claimed in his submissions.

Further, the manner of concealment of the gold indicates that the act was not only premeditated but also ingeniously executed. The noticee has admitted to possession, carriage, non-declaration, concealment, and subsequent recovery of the gold. I also find that all procedures conducted during the Panchnama by the officers were properly documented and carried out in the presence of the panchas as well as the passenger/noticee.

26. In view of the non-declaration and the noticee's admission to the carriage and possession of the impugned gold, it is established that the noticee failed to declare the 02 Gold Kadas to the Customs authorities as required under Section 77 of the Customs Act, 1962. It is therefore evident that the noticee intended to evade duty, having not made a true and correct declaration of the dutiable goods in his possession.

Moreover, the noticee violated Sections 77 and 79 of the Customs Act, 1962, in relation to the import/smuggling of gold, which was not intended for bona fide use. Consequently, the noticee also contravened Rule 11 of the Foreign Trade (Regulation) Rules, 1993, and paragraph 2.26 of the Foreign Trade Policy, 2015-20.

Further, as gold is a notified item, when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden of proving that such goods are not smuggled lies on the person from whose possession the goods have been seized, in terms of Section 123 of the Customs Act, 1962.

27. I find that the noticee has clearly admitted that he did not declare the gold, in the form of 02 gold kadas, to the Customs authorities. This is a clear case of non-declaration with the intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee failed to declare the foreign-origin gold before the Customs authorities upon his arrival at Sardar Vallabhbhai Patel International Airport, Ahmedabad.

Therefore, it is a case of smuggling gold without declaration, with the intent to evade payment of Customs duty, which is conclusively proved. Consequently, it is established that the noticee violated Sections 77 and 79 of the Customs Act, 1962, in relation to the import/smuggling of gold which was not for bona fide use, and thereby also contravened Rule 11 of the Foreign Trade (Regulation) Rules, 1993, and paragraph 2.26 of the Foreign Trade Policy, 2015–20.

Further, as gold is a notified item, when such goods are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled, the burden of proof that they are not smuggled lies on the person from whose possession the goods have been seized, in terms of Section 123 of the Customs Act, 1962. In the instant case, the noticee has failed to submit any documentary evidence to discharge this burden.

28. From the facts discussed above, it is evident that the passenger/noticee brought gold of 24Kt. with 999.0 purity, weighing 400.0 grams, in the form of two Gold Kadas, which were concealed by him inside black coloured pouch and handed over to Mr. Rakeshkumar Pandey in the toilet while arriving from Dubai to Ahmedabad. The seizure under the Panchnama dated 14.05.2025 establishes that the noticee acted with the clear intention to smuggle the gold and evade payment of Customs duty. Accordingly, the said gold weighing 400.0 grams is liable for confiscation under the provisions of Sections 111(d) and 111(l) of the Customs Act, 1962.

By secreting the gold inside the Black Coloured Pouch and handed over to Mr. Rakeshkumar Pandey inside the toilet of SVPI Airport and failing to declare it before the Customs authorities, it is conclusively established that the noticee had a deliberate intention to smuggle the gold clandestinely and evade Customs duty. The commission of the above acts brings the impugned goods within the definition of “smuggling” as provided under Section 2(39) of the Customs Act, 1962. It is therefore evident that the noticee knowingly carried the gold and failed to declare it upon his arrival at the Airport.

It is further seen that they involved themselves in carrying, keeping, concealing, and dealing with the impugned goods in a manner which they knew, or had reason to believe, rendered the goods liable to confiscation under the Act. Consequently, it is proved beyond doubt that the passenger/noticee has committed an offence as described under Section 112 of the Customs Act, 1962, making them liable for penalty under the same section.

29. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted, namely, the Green Channel for passengers not carrying dutiable goods, and the Red Channel for passengers carrying dutiable goods. All passengers are required to file a correct declaration of their baggage. I find that the noticee did not file a baggage declaration form and failed to declare the gold in his possession, as required under Section 77 of the Customs Act, 1962, read with the Baggage Rules, 2016, and Regulation 3 of the Customs Baggage Declaration Regulations, 2013, as amended.

Further, the definition of “eligible passenger” is provided under Notification No. 50/2017-Customs, New Delhi, dated 30.06.2017, which defines an “eligible passenger” as a passenger of Indian origin, or a passenger holding a valid passport issued under the Passports Act, 1967, who is returning to India after a period of not less than six months abroad. Short visits made by the eligible passenger during the six-month period are ignored if the total duration of such visits does not exceed thirty days.

I find that the noticee has neither declared the gold before the Customs authorities nor fulfilled the conditions prescribed for an “eligible passenger” under the said Notification. It is also observed that the imports were not for bona fide purposes. Therefore, the gold weighing 400.0 grams, concealed by him and imported without declaration, cannot be treated as bona fide household goods or personal effects. The noticee has thus contravened the provisions of the Foreign Trade Policy, 2015–20, and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, read with Sections 3(2) and 3(3) of the same Act.

30. It is evident from the above discussions that the gold was deliberately concealed and not declared to the Customs authorities with the sole intention of smuggling and evading payment of Customs duty. The records before me show that the passenger/noticee deliberately chose not to declare the prohibited goods and attempted to smuggle the impugned goods.

The 02 Gold Kadas weighing 400.0 grams of 24 KT / 999.0 purity, having a total Market Value of ₹38,90,000/- (Rupees Thirty-Eight Lakhs Ninety Thousand Only) and a Tariff Value of ₹36,41,008/- (Rupees Thirty-Six Lakhs Fourty One Thousand and Eight Only), concealed inside the Black Coloured Pouch, were seized vide Panchnama dated 14.05.2025. The passenger/noticee has clearly admitted that, despite having knowledge of the legal requirement to declare such goods and that such import is an offence under the Customs Act, 1962 and the rules and regulations framed thereunder, he attempted to remove the gold by deliberately not declaring it upon arrival, 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 under Section 112 of the Customs Act, 1962, making him liable for penalty under the provisions of the said section.

In view of the above, I further find that the manner of concealment clearly demonstrates that the noticee attempted to smuggle the seized gold to avoid detection by the Customs authorities. No evidence has been produced to prove licit import of the seized gold at the time of interception. From the SCN, Panchnama, and statements, it is evident that the noticee did not intend to declare the Gold Kadas and tried to remove them clandestinely to evade payment of Customs duty.

It is settled by the judgment of the Hon’ble Supreme Court in *Garg Wollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) ELT 306 (SC)]* that the option to release ‘prohibited goods’ on payment of redemption fine is discretionary. In *Raj Grow Impex (Supra)*, the Hon’ble Supreme Court held that the exercise of discretion must be guided by law, reason, and justice, and based on relevant considerations. The Hon’ble Delhi High Court in *Raju Sharma [2020 (372) ELT 249 (Del.)]* held that the exercise of discretion by judicial or quasi-judicial authorities merits interference only where it is perverse, tainted by patent illegality, or influenced by oblique motive. Further, in orders dated 21.08.2023 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023, the Hon’ble Delhi High Court held that an infraction of a condition for import of goods falls within the ambit of Section 2(33) of the Act, and their redemption and release become subject to the discretionary power of the Adjudicating Officer.

Considering the above judicial pronouncements, the nature of concealment, and the facts of the present case, I am not inclined to exercise my discretion to permit redemption of the gold on payment of a redemption fine under Section 125 of the Customs Act, 1962.

31. Further, to support my view, I also relied upon the following judgment which are as: -

31.1 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]

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

31.3 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).

31.4 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.

31.5 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 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”.

31.6 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-rea.”

31.7 The Supreme Court of India in State of Maharashtra vs. 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.**”

32. In the present case, after considering all the facts and submissions, I find that the noticee deliberately violated the law by failing to make the mandatory declaration as required under Section 11 and Section 77 of the Customs Act, 1962, and further contravened para 2.20 of the Foreign Trade Policy read with the Baggage Rules, 2016. A passenger found in possession of gold in bullion form worth Rs.38,90,000/- clearly demonstrates an intention to evade payment of Customs duty and avoid compliance with the legal obligations laid down for import of gold into India under the Customs Act, 1962 and other applicable laws.

The impugned gold was in standard form and was ingeniously concealed inside Black Coloured Pouch and handed over to the noticee Shri Rakeshkumar Pandey inside the toilet, which could be recovered only after detailed checking. The concealment was premeditated, deliberate, and designed to evade detection during routine checks and surveillance.

Accordingly, based on the foregoing discussion and findings, the gold weighing 400.0 grams of 24Kt./ 999.0 purity, in the form of Gold Kadas, found concealed inside the Black Coloured Pouch, is liable to be confiscated absolutely. I therefore hold unequivocally that the gold weighing 400.0 grams of 24Kt./ 999.0 purity, seized under Panchnama, is liable to **absolute confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962.**

33. In regard to the imposition of penalty under Section 112 of the Customs Act, 1962, I find that in the instant case, the principle of *mens-rea* is established beyond doubt from the documentary evidence on record and the discussions above. While deciding the penalty, I also take note of the observations of the Hon’ble Apex Court in *M/s. Hindustan Steel Ltd vs. State of Orissa*, wherein it was held that:

“The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not in cases of technical or venial breach 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.”

Despite having full knowledge and belief that carrying the gold in question constituted an offence under the Customs Act, 1962 and the rules and regulations made thereunder, the noticee attempted to smuggle 400.0 grams of 24Kt./ 999.0 purity gold by concealing it inside Black Coloured Pouch. It is, therefore, evident that the noticee concerned himself with carrying, removing, keeping, concealing, and dealing with the smuggled gold, which he knew, or had reason to believe, was liable for confiscation under Section 111 of the Customs Act, 1962.

The act of bringing into India goods contravening the provisions of the Customs Act and omitting to declare them under Section 77 clearly falls within the scope of Section 112(a), which covers "acts or omissions rendering goods liable to confiscation, or abets the doing or omission of such act." Further, the ingenious manner of concealment adopted by the noticee falls squarely within Section 112(b) of the Customs Act, 1962.

Accordingly, I hold that the noticee **01 to 04** are liable for penalty under **Sections 112(a) and 112(b) of the Customs Act, 1962** and impose the same.

34. Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019. The detailed discussions in the preceding paragraphs clearly prove that the noticee not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the Noticee **01 to 04**.

Thus, the noticees have thereby rendered the said goods liable for confiscation under Section 111(d) and 111(l) of the Customs Act, 1962. I also find that the noticees are liable for penalty under Section 112 and 117 of the Customs Act, 1962 for abovementioned acts of commission and omission.

35. Accordingly, given my above findings, I pass the following Order:

O R D E R

- i) I Order Absolute Confiscation of Two Gold Kadas**, having purity of 999.0/24Kt. total weighing 400.0 Grams, with a Market Value of **₹38,90,000/-**(Rupees Thirty Eight Lakhs Ninety Thousand Only) and a Tariff Value of **₹36,41,008/-**(Rupees Thirty Six Lakhs Fourty One Thousand and Eight Only), placed under seizure under Panchnama Proceedings and Seizure Memo Order both dated 14.05.2025, under the provisions of Section 111(d) and 111(l) of the Customs Act, 1962, read with Section 123 of the Customs Act, 1962;
- ii) I Order Absolute Confiscation of the Black-Coloured Pouch**, which was used for concealment of the above said Two Gold Kadas, placed under seizure under Panchnama Proceedings and Seizure Memo Order both dated 14.05.2025, under the provision of Section 119 of the Customs Act, 1962;

- iii) **I Impose a Penalty of ₹4,00,000/- (Rupees Four Lakhs Only) on Shri Rakeshkumar Pandey** under the provisions of Section 112(a) and Section 112(b) of the Customs Act 1962;
- iv) **I Impose a Penalty of ₹50,000/- (Rupees Fifty Thousand Only) on Shri Rakeshkumar Pandey** under the provisions of Section 117 of the Customs Act 1962;
- v) **I Impose a Penalty of ₹4,00,000/- (Rupees Four Lakhs Only) on Shri Imran Haji Mohammed Hotelwala** under the provisions of Section 112(a) and Section 112(b) of the Customs Act 1962;
- vi) **I Impose a Penalty of ₹50,000/- (Rupees Fifty Thousand Only) on Shri Imran Haji Mohammed Hotelwala** under the provisions of Section 117 of the Customs Act 1962;
- vii) **I Impose a Penalty of ₹4,00,000/- (Rupees Four Lakhs Only) on Shri Mahmadarif Amadmiya Kazi urf Arif Kazi** under the provisions of Section 112(a) and Section 112(b) of the Customs Act 1962;
- viii) **I Impose a Penalty of ₹50,000/- (Rupees Fifty Thousand Only) on Shri Mahmadarif Amadmiya Kazi urf Arif Kazi** under the provisions of Section 117 of the Customs Act 1962;
- ix) **I Impose a Penalty of ₹4,00,000/- (Rupees Four Lakhs Only) on Shri Rajubhai urf Raju Bangali @Dubai** under the provisions of Section 112(a) and Section 112(b) of the Customs Act 1962;
- x) **I Impose a Penalty of ₹50,000/- (Rupees Fifty Thousand Only) on Shri Rajubhai urf Raju Bangali @Dubai** under the provisions of Section 117 of the Customs Act 1962.

36. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-45/2025 dated 11.11.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

DIN: 20260371MN0000444D78

F. No. VIII/10-56/DRI/SVPIA/O&A/HQ/2025-26

Date:23.03.2026

By Speed Post A.D./E-mail /Hand Delivery/Through Notice Board

To,

- (i) **Shri Rakeshkumar Pandey,**
Residing at 18, Aditya Nagar,
Manjipura (part), Kheda, Gujarat-387320
E-mail ID: shivansh88896@gmail.com
- (ii) **Shri Imran Haji Mohammed Hotelwala,**
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(iii) Shri Mahmadarif Amadmiya Kazi urf Arif Kazi,
Residing at 302, 3rd Floor, 2989/4/1,
Lallu Rajjis Wando, Mirzapur,
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E-mail ID: arifkazi927@gmail.com

(iv) Shri Rajubhai urf Raju Bangali @Dubai
(To be served Through Notice Board)

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Additional Director, DRI, AZU, Ahmedabad.
4. The Deputy Commissioner of Customs (TRC), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the web-site.
6. The Additional Director General of Police (Administration), Office of the Director General of Police, "Police Bhavan", Sector-18, Gandhinagar, Gujarat, in respect of the Noticee No. 1, for information and necessary action as deemed fit.
7. Guard File.