OIO No:117/ADC/SRV/O&A/HQ/2026-27
F. No: VIII/10- 30/SVPIA-A/O&A/HQ/2026-27

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

DIN: 20261171MN000002B933

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10- 30/SVPIA-A/O&A/HQ/2026-27
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10- 30/SVPIA-A/O&A/HQ/2026-27 dated 06.08.2026
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**117/ADC/SRV/O&A/HQ/2026-27**
D	आदेशतिथि/ Date of Order-In-Original	:	**23.11.2026**
E	जारीकरनेकीतारीख/ Date of Issue	:	**23.11.2026**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**1 Shri Amit Deepak Pabari,** S/o Shri Deepak Jamnadas Pabari, Vraj Ratna, Plot No. 660, Haridas Nagar, Simpoli Road, Borivali West, Mumbai, Maharashtra – 400092 E mail Id: ***pabari.amit@yahoo.com*** **2) Shri Harish Alumalani,** S/o Late Vasudev Alumalani, House No. 9-A, Foy Sagar Road, Hathikhera, Behind Ganesh Mandir, Raj Colony, Hathi Khera, Ajmer, Rajasthan – 305005

(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:
(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case:

An intelligence developed by the officers of Air Intelligence Unit (AIU), SVPI Airport, Customs Ahmedabad through passenger profiling of SpiceJet Flight No. SG-16 arrived from Dubai to Ahmedabad indicated suspicion of smuggling of contraband by one passenger namely Shri Amit Deepak Pabari (Indian Passport No. Z4989277). Acting upon specific intelligence developed by the officers of the Air Intelligence Unit (AIU), and in the presence of independent panch witnesses, passenger Shri Amit Deepak Pabari (Indian Passport No. Z4989277) who was arriving from Dubai to Ahmedabad by SpiceJet Flight No. SG-16 dated 08.02.2026 was identified at the Green Channel area of Terminal-2, SVPI Airport, Ahmedabad. His identity was verified through his passport and boarding pass bearing seat number 21-C, when he attempted to exit through the Green Channel without making any declaration to the Customs Authorities at SVPI Airport, Ahmedabad. The proceedings relating to his personal search and examination of baggage were conducted by AIU officers in the presence of two independent panch

witnesses and the same were recorded under the Panchnama dated 08/09.02.2026.

2. The AIU officers questioned the passenger whether he was carrying any contraband, dutiable or prohibited goods, to which he denied. He was informed that his personal search and baggage examination would be conducted, and was given the option to be searched before a Magistrate or Gazetted Officer. The passenger consented to be searched before the Superintendent of Customs.

2.1 During personal search in the presence of panch witnesses, the AIU officer noticed unusual weight in the passenger's black colored Louis Vuitton purse/wallet. On examination, of the wallet two gold bars wrapped in silver-coloured plastic pouches and one cut gold bar wrapped in a transparent plastic pouch were found. All three bars bore markings "MWG UAE 10 TOLAS 999.0," with "MELTER ASSAER" inscribed on two uncut bars. On being asked about the reason for concealment of the aforesaid three gold bars, the passenger Shri Amit Deepak Pabari stated that the gold bars had been purchased by him in cash from Dubai with the intention of selling them in India at a higher rate for profit. He admitted that he did not declare the same before Customs authorities at SVPI Airport, Ahmedabad so as to evade payment of applicable Customs duty. He further confirmed that he was not in possession of any bill, invoice, or legitimate documents in respect of the said gold bars, thereby acknowledging that the concealment was deliberate and in violation of the provisions of the Customs Act, 1962.

2.2 Thereafter, the AIU officers examined the mobile phone of passenger Shri Amit Deepak Pabari and noticed suspicious WhatsApp chat conversations with one named "Harish Bhai (Sughi)" relating to concealment of gold. The chats revealed instructions about hiding gold in underwear fabric and avoiding detection at Ahmedabad Airport. Acting on this evidence, the officers directed the passenger to hand over the underwear he was wearing, which was found to have abnormal weight. On examination, it was

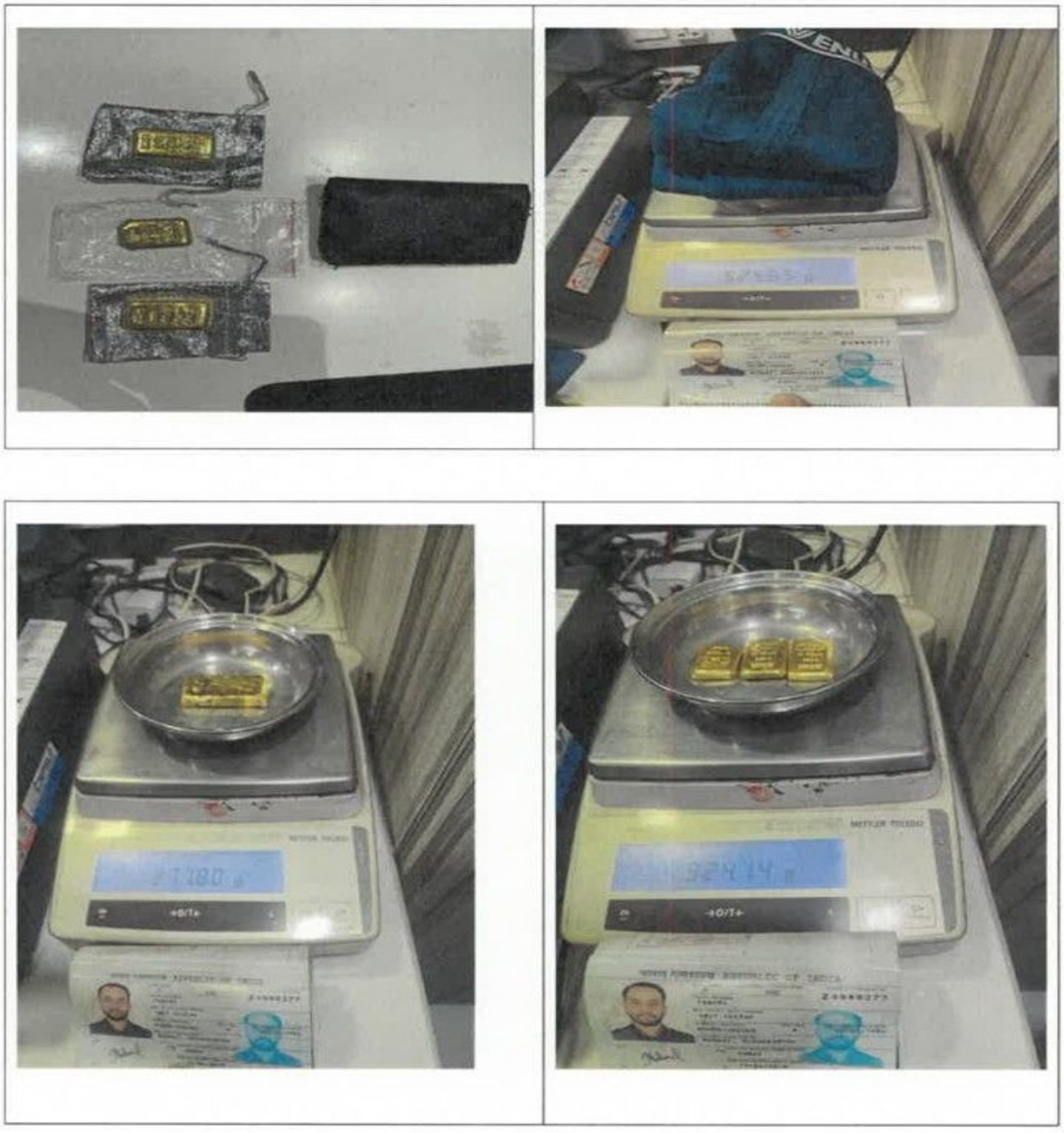
confirmed that gold had been sprayed/pasted in the layers of the fabric. The passenger admitted that he had agreed to carry the gold at the behest of Shri Harish Alumalani, in exchange for airfare. The passenger admitted that the underwear had been handed over to him at Dubai Airport by Shri Vijaykumar Alumalani, brother of Shri Harish Alumalani, and that he had worn the same in the washroom before boarding the flight to Ahmedabad. The officer thereafter took possession of the said underwear for further proceedings.

2.3 Subsequently, the AIU officers asked the passenger to walk through the Door Frame Metal Detector (DFMD) machine. Before passing through the said DFMD machine, the said passenger was asked to remove all the metallic objects he was wearing on his body/clothes. Thereafter, the passenger removed metallic objects from his body/clothes such as mobile phone, wallet, etc. The AIU officers then asked him to pass through the DFMD machine. However, no beep sound was heard indicating nothing suspicious was hidden over his body.

2.4 The officers informed the panch witnesses and the passenger Shri Amit Deepak Pabari that in order to ascertain the exact content, purity, weight and valuation of the recovered gold bars and to extract the gold concealed in the underwear, assistance of a Government Approved Valuer was required. Accordingly, Shri Kartikey Vasantrai Soni, Government Approved Valuer, was contacted and informed him about the recovery of gold bars and gold paste from Shri Amit Deepak Pabari. In response to the same Shri Kartikey Vasantrai Soni, government approved valuer stated that the testing and extraction could only be carried out at his workshop/laboratory.

2.5 Thereafter, the officers, along with the passenger and panch witnesses, proceeded to the premises of Shri Soni at C.G. Road, Ahmedabad, carrying the recovered gold bars, the pocket purse/wallet, and the underwear of passenger. In the presence of all, Shri Soni undertook the

process of burning the underwear and melting the fabric to extract the concealed gold, and thereafter carried out weighment and valuation of all the gold bars. During the proceedings, the AIU officers also took certain photographs and some of them are appended below:



2.6 Shri Soni Kartikey Vasantrai vide certificate No. 828/2025-26 dated 09.02.2026 certified "Two Gold Bars and One Cut Gold Bar (MWG UAE 10 Tolas 999.0 Melter ASSAER) and One Gold Bar (*Derived from Burning of Cloth/Underwear*) totally weighing 601.940 grams (Net Weight)" having purity 999.0/24kt was having **tariff value of Rs. 88,25,449/- and Market value of Rs. 96,06,962/-**. The value of the gold bar has been calculated as

per the Notification No. 19/2026 - Customs (N.T.) dated 06.02.2026 (gold) and Notification No. 08/2026-Customs (N.T.) dated 07.02.2026 (Exchange rate). The details are as below:

Sr. No.	Details of Items	Qty. (Pcs.)	Net Weight in Grams	Purity	Market value (Rs.)	Tariff Value (Rs.)
1	One Gold Bar (Derived from Burning of Cloth/Underwear)	1	277.800	999.0 24Kt	44,33,688	40,73,013
2	Two Gold Bars and One Cut Gold Bar (MWG UAE 10 Tolas 999.0 MELTER ASSAER	3	324.140	999.0 24Kt	51,73,274	47,52,435
	Total	**4**	**601.940**		**96,06,962**	**88,25,449**

SEIZURE OF THE ABOVE GOLD AND PACKING MATERIAL: -

3. The above said gold totally weighing 601.940 grams was smuggled into India by way of concealment in his pocket purse/wallet and Underwear (by spraying/pasted in the layers of its fabric) without declaring before the Customs Authorities with intent to evade the Customs Duty in violation of provisions of Customs Act, 1962. Therefore, the said Gold was falling under the category of smuggled goods and there was a reasonable belief that the same was liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Accordingly, the said gold totally weighing 601.940 grams (Net Weight) having purity 999.0/24kt having tariff value of Rs. 88,25,449/-and Market value of Rs. 96,06,962/-recovered from the passenger was placed under seizure vide Seizure Memo/Order dated 09.02.2026 issued under the provisions of Section 110(1) of the Customs Act, 1962. The Gold was sealed and handed over to the Ware House In-charge, SVPI Airport, Customs Ahmedabad vide Ware House Entry No. 7914 dated 09.02.2026.

3.1 Further, the 'Black coloured Pocket Purse/Wallet of "Louis Vuitton Paris" brand alongwith two different silver colored plastic pouches and one transparent plastic pouch', used for concealment of the aforesaid gold were

also seized under the provisions of the Customs Act, 1962 under reasonable belief that they were used for packing and concealment of the said gold recovered from the passenger. The said Black coloured Pocket Purse/Wallet of "Louis Vuitton Paris" brand alongwith two different silver colored plastic pouches and one transparent plastic pouch' were handed over to the Ware House In-charge, SVPI Airport, Customs Ahmedabad vide Ware House Entry No. 7914A dated 09.02.2026.

STATEMENT OF PASSENGER SHRI AMIT DEEPAK PABARI:

4. Statement of Shri Amit Deepak Pabari, son of Shri Deepak Jamnadas Pabari, holding Indian Passport No. Z4989277, was recorded on 09.02.2026 under Section 108 of the Customs Act, 1962 before Superintendent of Customs (AIU), SVPI Airport, Ahmedabad. He inter alia stated and admitted:

- He admitted his presence during Panchnama dated 08/09.02.2026 and confirmed its correctness by putting his dated signature on it.
- He confessed that two gold bars and one cut gold bar (324.14 grams) concealed in his Louis Vuitton wallet, and one gold bar (277.800 grams) extracted from paste concealed in his underwear fabric, together weighing 601.940 grams of 999.0/24Kt purity, were carried by him without declaration.
- He admitted that the underwear with concealed gold was handed over to him at Dubai Airport by Shri Vijaykumar Alumalani, brother of Shri Harish Alumalani, who had offered him airfare and Rs. 12,000/- for carrying the gold.
- He further admitted that the wallet-concealed gold was purchased in cash from M/s Tora, Gold Souk, Dubai, using money received from an Iraqi client.
- The accused stated that the underwear duly sprayed/pasted with gold, which was handed over to him by Shri Vijaykumar Alumalani at Dubai Airport, was to be delivered to one Shri Vimal Kumar Sharma alias Maharaj ji at Hotel Krishna, near Ahmedabad Airport. He explained that after clearing Customs at SVPI Airport, Ahmedabad, he was to book a room at the said hotel and inform Shri Harish

Alumalani, who would then send Shri Vimal Kumar Sharma to collect the gold. However, this delivery did not materialize as he was intercepted by AIU officers. As regards the two gold bars and one cut gold bar recovered from his wallet, he admitted that these were intended to be sold in Mumbai to buyers who could offer him higher profit margins.

- The accused was shown printouts of WhatsApp chat conversations retrieved from his seized mobile phone (Samsung Galaxy Z Fold5). He confirmed that the chats were held with Shri Harish Alumalani (mobile no. +971551816353) and admitted that he had provided his underwear size to Harish on 06.02.2026. He further acknowledged that Harish had instructed him to be cautious while arriving at Ahmedabad Airport with gold concealed in the underwear. He put his dated signature on the printouts in token of having perused and accepted the contents of the chats.
- On being asked whether he had declared the said gold before Customs Authorities at SVPI Airport, Ahmedabad on 08.02.2026, the accused categorically admitted that he had not made any declaration. He explained that he followed the instructions of Shri Harish Alumalani and deliberately opted for the Green Channel with intent to evade payment of Customs duty. He further admitted that he himself wanted to earn profit by saving Customs duty and was fully aware that smuggling of gold without declaration is an offence under the Customs Act, 1962.
- He confirmed perusal of Valuation Certificate No. 828/2025-26 dated 09.02.2026.
- He stated that he has never been arrested in any smuggling case earlier.

5. ARREST OF THE ACCUSED PASSENGER :

Shri Amit Deepak Pabari (Indian Passport No. Z4989277) arrived at SVPI Airport, Ahmedabad on 08.02.2026 from Dubai (DXB) by SpiceJet Flight No. SG-16. On examination, it was found that the passenger had attempted to smuggle gold weighing 601.940 grams of purity 999.0/24Kt, having market value Rs. 96,06,962/- and tariff value Rs. 88,25,449/-, by concealing the same in his underwear and pocket purse/wallet. The passenger did not declare the said gold to Customs and attempted to exit through the Green Channel, thereby intending to evade payment of Customs duty. Accordingly, the act of smuggling committed by the passenger constitutes an offence punishable under Section 135(1)(a) & (b) of the Customs Act, 1962. Based on the authorisation for arrest dated 09.02.2026 issued by the competent authority, Shri Amit Deepak Pabari was arrested on 09.02.2026. He was thereafter offered bail and was released on bail subject to certain conditions imposed by the competent authority.

6. FURTHER INVESTIGATION IN THIS CASE

6.1 During further investigation, it was revealed that Mobile No. 8619477903 (pertaining to Shri Harish Alumalani) was found in the name of Shri Harish Alumalani having address as House No. 9-A, Foy Sagar Road, Hathikhera, Behind Ganesh Mandir, Raj Colony, Hathi Khera, Ajmer, Rajasthan – 305005.

6.2 Summons dated 17.06.2026 requiring appearance on 25.06.2026, and summons dated 22.07.2026 requiring appearance on 31.07.2026, were duly issued to Shri Harish Alumalani for the purpose of recording his statement and carrying out further investigation. However, despite service of the said summons, Shri Harish Alumalani failed to appear on both occasions and did not tender his statement, thereby obstructing the investigation process.

7. LEGAL PROVISIONS:

7.1 According to the Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification 31/2016 (NT) dated 01.03.2016, all passengers who come to India and have anything to declare or are

carrying dutiable or prohibited goods shall declare their accompanied baggage under Section 77 of the Customs Act, 1962.

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

7.3 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-2020 as amended vide Para 2.27 (a) of the Foreign Trade Policy 2023, 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 specified in the 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 4.40 of Chapter-4 of Foreign Trade Policy 2023 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:

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

7.3.2 As per Section 3(3) of the Foreign Trade (Development and

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

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

7.3.4 **Para 2.26 (a) of the Foreign Trade Policy 2015-20 read with Para 2.27(a) of Foreign Trade Policy 2023**:
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.

7.3.5 Para 4.41 of the Foreign Trade Policy 2015-2020 read with Para 4.40 of the Foreign Trade Policy 2023:
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.

7.4 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.

7.5 BAGGAGE RULES, 2026–

7.5.1. As per Rule 5 of the Baggage Rules, 2026, "A resident or tourist of Indian origin residing abroad for more than one year, on return to India shall be allowed duty free clearance of jewellery upto a weight of **forty grams**, if brought by a female passenger or **twenty grams** if brought by a passenger other than a female passenger in bona fide baggage.".

7.5.2. 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, 2023 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.

7.6 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 5thJanuary, 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). Silver dore can be imported by refineries against a license with AU condition.	No change in existing Policy Condition
71069190	Unwrought: Others			
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).

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

7.7 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, smuggling of "Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 Melter ASSAER) and One Gold Bar (Derived from Burning of Cloth/Underwear) totally weighing 601.940 grams (Net Weight)" having purity 999.0/24kt having tariff value of Rs. 88,25,449/-and Market value of Rs. 96,06,962/-, was brought to India as found concealed in the pocket purse/wallet and Underwear (by spraying/pasted in the layers of its fabric) of the passenger without declaring before the Customs Authorities 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.

7.8. Therefore, it appeared 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.

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

12.1

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7.10 As per Section 2(22), of Customs Act, 1962 definition of 'goods'

includes-

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

7.11 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.*

7.12 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.

7.13 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.*	

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

> **Section 111. Confiscation of improperly imported goods, etc. -**
> *The following goods brought from a place outside India shall be liable to confiscation: -*
> *(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
> *(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
> *(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;]*

7.15. 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,*

7.16. Section 119: Confiscation of goods used for concealing smuggled goods:

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

7.17. From all the above paras, it appeared that during the period relevant to this case, import of gold in any form (gold having purity above 22 carat) was restricted as per DGFT Notification and import was permitted only by nominated agencies. It clearly appeared 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 fulfilment of certain conditions.

8. VIOLATION AND CONTRAVENTION OF THE VARIOUS PROVISIONS:

8.1. From the investigation conducted in the case, it appears that the aforesaid gold bar was imported into India in violation of the provisions of the Baggage Rules, 2026, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, "Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 Melter ASSAER) and One Gold Bar (Derived from Burning of Cloth/Underwear) totally weighing 601.940 grams (Net Weight)" having purity 999.0/24kt having tariff value of Rs. 88,25,449/-and Market value of Rs. 96,06,962/-, was found concealed the pocket purse/wallet and Underwear (by spraying/pasted in the layers of its fabric) of the passenger. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules, 2026 and for these reasons alone it cannot be considered as a Bonafide Baggage under the Customs Baggage Rules, 2026.

8.2. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper Officer. In the instant case, the passenger had neither filed any such declaration, nor declared "Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 Melter ASSAER) and One Gold Bar (Derived from Burning of Cloth/Underwear) totally weighing 601.940 grams (Net Weight)" because of malafide intention and thereby contravened the provisions of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold totally weighing 601.940 grams (Net Weight) recovered from the

passenger, was attempted to be smuggled into India with an intention to clear the same without discharging the Customs Duty payable thereon. It, therefore, appears that the said gold totally weighing 601.940 grams (Net Weight) having purity 999.0/24kt is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

8.3. The seized goods, i.e. "Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 Melter ASSAER) and One Gold Bar (Derived from Burning of Cloth/Underwear) totally weighing 601.940 grams (Net Weight)" having purity 999.0/24kt having tariff value of Rs. 88,25,449/-and Market value of Rs. 96,06,962/-, found concealed inside the pocket purse/wallet and Underwear (by spraying/pasted in the layers of its fabric) of the passenger attempted to be smuggled into India without declaring before the Customs Authorities in violation of the provisions of the Customs Act, 1962 & FTP and Custom Baggage Rules in as much as no declaration was made under Section 77 of the Customs Act, 1962 in this case. Further, the said gold does not also appear to be allowed to be imported by the passenger keeping the restrictions on such import under the provisions of FTP and Customs Act, 1962. Hence, it appears that the said gold was 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 to confiscation under the provisions of Section 111(d) and (l) of the Customs Act, 1962.

8.4. In the instant case, "Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 Melter ASSAER) and One Gold Bar (Derived from Burning of Cloth/Underwear) totally weighing 601.940 grams (Net Weight)" having purity 999.0/24kt having tariff value of Rs. 88,25,449/-and Market value of Rs. 96,06,962/-,was brought to India as found concealed in the pocket purse/wallet and Underwear (by spraying/pasted in the layers of its fabric) of the passenger had been illegally smuggled into India without declaring before the Customs Authorities in violation of the provisions of the Customs

Act, 1962 & FTP and Custom Baggage Rules,2026. The said gold does not appear to be allowed to import by the passenger and aforesaid persons keeping the restrictions on such import under the provisions of FTP and Customs Act, 1962. Hence, it appears that the said gold had been 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 to confiscation under the provisions of Section 111(d) and (l) of the Customs Act, 1962.

8.5. Also, the passenger has failed to discharge their 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 rendered themselves liable for penal action under the Customs Act, 1962.

8.6. Further, the Black coloured Pocket Purse/Wallet of "Louis Vuitton Paris" brand alongwith two different silver colored plastic pouches and one transparent plastic pouch used for concealing the above said is believed to be used for concealment is liable to confiscation under Section 119 of the Customs Act, 1962.

9. ROLE OF SHRI AMIT DEEPAK PABARI IN THE ABOVE SMUGGLING OF GOLD:

9.1 From the evidences gathered during investigation, both oral and documentary, available on record, it appears that Shri Amit Deepak Pabari had attempted to smuggle gold totally weighing 601.940 grams into India by way of concealment in his pocket purse/wallet and Underwear (by spraying/pasted in the layers of its fabric) without declaring before the Customs Authorities with intent to evade the Customs Duty, and having market value of Rs. 96,06,962/- and tariff value of Rs. 88,25,449/-, which was recovered from his possession after his arrival from Dubai by

SpiceJet Flight No. SG-16 on 08.02.2026 at Terminal-2 of SVPI Airport, Ahmedabad. The said passenger had knowingly and intentionally carried and concealed the aforementioned gold with a deliberate intention to evade payment of Customs duty and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. He had attempted to clear the said gold illicitly by crossing the Green Channel without declaration before Customs authorities. Therefore, the improperly imported gold carried by Shri Amit Deepak Pabari by way of concealment and without declaration before Customs authorities cannot be treated as bona fide baggage or personal effects. Shri Amit Deepak Pabari has thus contravened the provisions of Foreign Trade Policy, 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as amended.

9.2 Shri Amit Deepak Pabari, by not declaring the aforesaid gold totally weighing 601.940 grams having purity 999.0/24 Kt., which constituted dutiable and prohibited goods, before the proper officer of Customs on his arrival at SVPI Airport, Ahmedabad, contravened the provisions of Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2016.

9.3 Shri Amit Deepak Pabari, in his statement dated 09.02.2026 recorded under Section 108 of the Customs Act, 1962, admitted that two gold bars and one cut gold bar (324.14 grams) concealed in his Louis Vuitton wallet, and one gold bar (277.800 grams) extracted from his underwear fabric, together weighing 601.940 grams of 999.0/24Kt purity, were carried by him without declaration. He further admitted that he had intentionally crossed the Green Channel without declaring the said gold before Customs authorities with the intention to evade payment of Customs duty.

9.4 Shri Amit Deepak Pabari further stated that the underwear duly sprayed/pasted with gold, was handed over to him by Shri Vijaykumar Alumalani (Brother of Shri Harish Alumalani) at Dubai Airport, was to be delivered to one Shri Vimal Kumar Sharma alias Maharaj ji at Hotel Krishna, near Ahmedabad Airport. He explained that after clearing Customs at SVPI Airport, Ahmedabad, he was to book a room at the said hotel and inform Shri Harish Alumalani, who would then send Shri Vimal Kumar Sharma to collect the gold. However, this delivery did not materialize as he was intercepted by AIU officers. As regards the two gold bars and one cut gold bar recovered from his wallet, he admitted that these were intended He admitted that these were intended for sale in Mumbai to buyers offering higher profit margins.

9.5 From the above facts and evidences, it appears that Shri Amit Deepak Pabari had executed the smuggling operation with full knowledge and prior preparation. The manner in which the gold bar was concealed in the pocket purse/wallet and in his Underwear in Paste Form, clearly establishes conscious possession, deliberate concealment and intention to smuggle the said gold into India without payment of Customs duty. These acts were undertaken knowingly and intentionally despite being aware that such import and concealment were illegal, unauthorized and unsupported by valid documents.

9.6 During the course of interception, Shri Amit Deepak Pabari was specifically enquired by the officers of Air Intelligence Unit, Customs Ahmedabad, whether he intended to declare any dutiable goods before Customs authorities, to which he replied in the negative. He neither declared the said gold bar nor possessed any valid purchase documents or import documents in respect thereof. Further, he admitted that he had attempted to clear the said gold by crossing the Green Channel without declaration. Hence, Shri Amit Deepak Pabari appears to be the main person involved in the act of smuggling of the said gold into India.

9.7 The act of concealing the gold bar in the Pocket Purse/Wallet and in Underwear in paste form clearly reveals deliberate intention to evade Customs checks and avoid payment of applicable Customs duty, which establishes mens rea on the part of Shri Amit Deepak Pabari. It therefore appears that Shri Amit Deepak Pabari was never inclined to declare the said gold before Customs authorities and had knowingly attempted to smuggle the same into India illegally without declaration and payment of appropriate Customs duty.

9.8 In view of the above, the gold totally weighing 601.940 grams having purity 999.0/24 Kt., recovered from Shri Amit Deepak Pabari and attempted to be smuggled into India by way of concealment and without declaration before Customs authorities with intent to evade Customs duty and circumvent the restrictions and prohibitions imposed on import of gold, is liable for confiscation under Section 111(d) and 111(l) of the Customs Act, 1962 read with Sections 2(22), 2(33) and 2(39) of the Customs Act, 1962. By his aforesaid acts of omission and commission, Shri Amit Deepak Pabari has also rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962.

9.9 Further, Shri Amit Deepak Pabari knowingly concerned himself in the act of carrying, concealing, keeping and illegally importing the said gold bars and gold paste, which he knew was liable for confiscation under Section 111 of the Customs Act, 1962. He knowingly violated the provisions of the Customs Act, 1962, Foreign Trade Policy 2023, Baggage Rules, 2026 and allied notifications by not filing declaration under Section 77 of the Customs Act, 1962 in respect of the said gold with intent to evade payment of Customs duty and circumvent the restrictions and prohibitions imposed on import of gold. Therefore, Shri Amit Deepak Pabari is liable for penalty under Section 112(b) of the Customs Act, 1962.

9.10 Shri Amit Deepak Pabari has failed to discharge the burden cast

upon him under Section 123 of the Customs Act, 1962 with regard to the licit import, possession and acquisition of the said gold bar. These acts and omissions render the said gold liable for confiscation and also render him liable for penal action under the provisions of the Customs Act, 1962.

9.11 As narrated above, Shri Amit Deepak Pabari neither declared the said gold before Customs authorities nor produced any legitimate purchase document, invoice or import document in support of lawful possession and import of the said gold bar. He failed to provide any evidence regarding licit procurement and lawful import of the said gold. Therefore, for the aforesaid acts of omission and commission, Shri Amit Deepak Pabari has also rendered himself liable to penalty under Section 117 of the Customs Act, 1962.

10. ROLE OF SHRI HARISH ALUMALANI (ALSO REFERRED AS HARISH ALUMALANI) IN THE SMUGGLIUNG OF GOLD

10.1 From the evidences gathered during investigation, available on record, it appears that Shri Harish Alumalani had played an active and vital role in the attempted smuggling of Gold in paste form, weighing 277.800 grams (recovered after extraction from underwear fabric) and having market value of Rs. 44,33,688/- and tariff value of Rs. 40,73,013/-, which was recovered from Shri Amit Deepak Pabari after his arrival from Dubai by SpiceJet Flight No. SG-16 on 08.02.2026 at Terminal-2 of SVPI Airport, Ahmedabad. It is evident from the statement of Shri Amit Deepak Pabari and the WhatsApp chats retrieved from his seized mobile phone that Shri Harish Alumalani was the mastermind behind the smuggling attempt. He instructed Amit Pabari to conceal gold in underwear fabric and to adopt evasive methods while clearing Customs at Ahmedabad Airport. Shri Harish Alumalani had knowingly and intentionally facilitated the illegal import of the said gold into India with a deliberate intention to evade payment of Customs duty and to

circumvent the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations.

10.2 Shri Amit Deepak Pabari, in his statement dated 09.02.2026 recorded under Section 108 of the Customs Act, 1962, categorically admitted that the underwear containing concealed gold was handed over to him at Dubai Airport by Shri Vijaykumar Alumalani, brother of Shri Harish Alumalani, and that this was done at the behest of Harish. Shri Amit Deepak Pabari further admitted that he had attempted to clear the same without declaration before Customs authorities.

10.3 The WhatsApp chats clearly establish that Harish directed Amit to provide his underwear size and assured him of arrangements for concealment. Harish also cautioned Amit to be careful while arriving at Ahmedabad Airport, thereby evidencing his active involvement. Thus, Shri Harish Alumalani appears to have coordinated and supervised the entire movement of the smuggled gold from Dubai till its attempted clearance in India.

10.4 Investigation further revealed that Shri Amit Pabari admitted that Harish had promised him airfare and Rs. 12,000/- for carrying the gold, thereby establishing that Harish financed and facilitated the smuggling operation. The delivery plan, as narrated by Amit, was that after clearing Customs, he was to book a room at Hotel Krishna near Ahmedabad Airport and inform Harish, who would then send Shri Vimal Kumar Sharma alias Maharaj ji to collect the gold. This shows Harish's role in organizing the downstream delivery network. The investigation revealed that the mobile number 8619477903 belongs to Shri Harish Alumalani, confirming his identity and link to the seized WhatsApp chats. Thus, Shri Harish Alumalani appears to be the actual person behind procurement, financing and attempted smuggling of the said gold.

10.5 Summons dated 17.06.2026 and 22.07.2026 were duly issued to Harish for recording his statement. However, he failed to appear on both occasions, thereby obstructing the investigation process and reinforcing his culpability. His non-cooperation and deliberate non-compliance with the lawful summons issued during the course of investigation further indicate his conscious involvement in the smuggling activities under investigation.

10.6 From the above facts and evidences, it appears that Shri Harish Alumalani had knowingly concerned himself in the procurement, financing, transportation and attempted smuggling of the said gold into India through Shri Amit Deepak Pabari, fully knowing that the said gold was liable for confiscation under the provisions of the Customs Act, 1962. The acts committed by Shri Harish Alumalani clearly reveal deliberate involvement, active connivance and conscious knowledge in the smuggling operation undertaken for evasion of Customs duty.

10.7 By instructing Shri Amit Deepak Pabari to collect and illegally carry the gold into India (in paste form concealed in underwear) without declaration before Customs authorities, Shri Harish Alumalani appears to have abetted and facilitated the attempted smuggling of the said gold in contravention of the provisions of the Customs Act, 1962, Foreign Trade Policy 2023, Baggage Rules, 2026 and allied notifications. The said gold therefore appears liable for confiscation under Section 111(d) and 111(l) of the Customs Act, 1962 read with Sections 2(22), 2(33) and 2(39) of the Customs Act, 1962.

10.8 Shri Harish Alumalani appears to have knowingly concerned himself in carrying, keeping, concealing, dealing with and facilitating illegal import of the said gold, which he knew or had reason to believe was liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, by his aforesaid acts of omission and commission, Shri Harish Alumalani has rendered himself liable to penalty under Section

112(a) and Section 112(b) of the Customs Act, 1962.

10.9 Further, Shri Harish Alumalani did not appear before the Superintendent, Customs in response to two summonses issued to him and he also failed to produce any licit import documents, lawful purchase documents or evidence regarding legal procurement and import of the said gold bar. The manner in which the said gold was handed over and attempted to be smuggled into India through concealment (Paste Form in underwear) clearly establishes mens rea on the part of Shri Harish Alumalani. Therefore, for the aforesaid acts of omission and commission, Shri Harish Alumalani has also rendered himself liable to penalty under Section 117 of the Customs Act, 1962.

11. In view of the above, it appears that "Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 Melter ASSAER) and One Gold Bar (Derived from Burning of Cloth/Underwear) totally weighing 601.940 grams (Net Weight)" having purity 999.0/24kt having tariff value of Rs. 88,25,449/-and Market value of Rs. 96,06,962/-, recovered from Shri Amit Deepak Pabari, who had arrived from Dubai by SpiceJet Flight No. SG-16 at Terminal-2 of SVPI Airport, Ahmedabad on 08.02.2026 and placed under seizure vide Panchnama proceedings dated 08/09.02.2026 and Seizure Memo/Order dated 09.02.2026, is liable for confiscation under the provisions of Section 111(d) and 111(l) of the Customs Act, 1962. Further, the black coloured Pocket Purse/Wallet of "Louis Vuitton Paris" brand alongwith two different silver colored plastic pouches and one transparent plastic pouch, used for concealment of the said smuggled gold are also liable for confiscation under Section 119 of the Customs Act, 1962. Further, Shri Amit Deepak Pabari was found involved in the smuggling of the said gold in contravention of the provisions of the Customs Act, 1962, Foreign Trade Policy 2023, Baggage Rules, 2026 and allied notifications and therefore appears liable for penalty under Sections 112(a), 112(b) and 117 of the Customs Act, 1962 for the acts of omission and commission discussed herein above.

12. Accordingly, a Show Cause Notice No. VIII/10-30/SVPIA-A/O&A/HQ/2026-27 dated 06.08.2026 was issued to **i) Shri Amit Deepak Pabari and ii) Shri Harish Alumalani, S/o Late Vasudev Alumalani**, as to why:

(i) Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 MELTER ASSAER) along with One Gold Bar derived from paste concealed in underwear, totally **weighing 601.940 grams** (Net Weight) of purity 999.0/24Kt, having tariff value of **Rs. 88,25,449/- and market value of Rs. 96,06,962/-**, were attempted to be smuggled into India through SVPI Airport, Ahmedabad by passenger Shri Amit Deepak Pabari, who arrived from Dubai to Ahmedabad by SpiceJet Flight No. SG-16 at Terminal-2, SVPI Airport, Ahmedabad by way of concealment in his pocket purse/wallet and underwear (by spraying/pasting in the layers of its fabric) without declaration before the Customs Authorities and was placed under seizure vide Panchnama proceedings dated 08/09.02.2026 and Seizure Memo/Order dated 09.02.2026 and is liable to confiscation under the provisions of Section 111(d) and 111(l) of the Customs Act, 1962;

(ii) The black coloured Pocket Purse/Wallet of "Louis Vuitton Paris" brand alongwith two different silver colored plastic pouches and one transparent plastic pouch, used for concealment of the aforesaid gold bar seized vide seizure memo dated 09.02.2026, should not be confiscated under the provision of Section 119 of the Customs Act, 1962

(iii) Penalty should not be imposed upon **Shri Amit Deepak Pabari** under the provisions of Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

(iv) Penalty should not be imposed upon **Shri Amit Deepak Pabari** under the provisions of Sections 117 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

(v) Penalty should not be imposed separately upon **Shri Harish Alumalani** under the provisions of Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

(vi) Penalty should not be imposed separately upon Shri Harish Alumalani under the provisions of Sections 117 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

13. Defense Reply of Noticee No. 1 i.e **Shri Amit Deepak Pabari** – The Noticee, through his Advocate and Authorized Representative, submitted a detailed reply to the Show Cause Notice (SCN) vide a letter dated 21.10.2026. In his submission, the Noticee confirmed receipt of the SCN via his email ID (pabari.amit@yahoo.com) on 06.08.2026. He stated that he did not accept the contents of the SCN, asserting that it contained incorrect facts merely to demonstrate the performance of the Customs officers. Except for the facts expressly and specifically admitted, all remaining allegations and statements were denied.

He submitted that he is an Indian resident residing at Vraj Ratna, Flat No. 660, Haridas Nagar, Shimpoli Road, Borivali (West), Mumbai - 400092. He further stated that he has been residing in Dubai since 2004, where he is engaged in the building materials business under the firm name M/s. Arch Gen Building Materials Trading LLC. He submitted that on 08.02.2026, he travelled from Dubai to Ahmedabad on SpiceJet Flight No. SG-16. During this trip, he was carrying gold purchased out of his personal savings, weighing 324.140 grams (999.0 purity / 24kt), consisting of two gold bars and one cut gold bar (MWG UAE, 10 Tolas). He stated that this gold was intended as gifts for his relatives and friends. He further submitted that he had purchased the said bars in cash from Tora Bullion Jewellery (Email: info@toragold.com, Mobile: +971542891916) under Sales Invoice No. HO-287630, a copy of which was enclosed with his reply.

He submitted that Shri Harish Alumalani, a friend of his residing in Ajmer, Rajasthan having Mobile numbers as +918619477903 and +971551816353), and his brother, Shri Vijaykumar Alumalani having Mobile numbers as +919571205440 and +971558895224. He stated that Shri Harish Alumalani had contacted him over the phone to ask if he could deliver an item to Ahmedabad on his behalf. In exchange, he offered to cover the Noticee's round-trip airfare between Dubai and Ahmedabad and pay him Rs.12,000/- in cash. He further submitted that Shri Harish Alumalani inquired about his underwear size via a WhatsApp message on 06.02.2026. Since Shri Harish Alumalani was bearing his travel expenses, he agreed to the proposal without fully understanding the underlying situation.

He submitted that on 08.02.2026, Shri Vijaykumar Alumalani met him at the Dubai Airport and handed over a packet. Shri Vijaykumar Alumalani instructed him to change into the provided underwear in the restroom and exit through the Green Channel at the Ahmedabad Airport. He explained that the underwear contained concealed gold and threatened to implicate him in a smuggling case in Dubai if he failed to transport it to Ahmedabad. Out of fear, he accepted the packet. Shri Vijaykumar Alumalani assured him that everything would be clear at the Ahmedabad Airport, and accordingly, he wore the said underwear.

He submitted that he was intercepted by AIU officers while attempting to exit through the Green Channel. Upon a personal and luggage search, two gold bars and one cut gold bar (MWG UAE, 10 Tolas, weighing 324.140 grams) were recovered from his bag. Additionally, a gold bar weighing 277.800 grams was recovered, which was yielded from the gold paste contained inside the underwear given by Shri Vijaykumar Alumalani. He admitted that the gold weighing 324.140 grams belonged to him, even though he did not possess the physical invoice at the time of interception. However, he maintained that he had no knowledge of the 277.800 grams of gold handed over to him in paste form inside the underwear.

He asserted that he is innocent, has never previously been detained in connection with any criminal offence, and has no pending cases against him. He stated that he committed the act strictly under the fear and threats

exerted by Shri Vijaykumar Alumalani. He reiterated that he had purchased the 324.140 grams of gold using savings accumulated since 2004 while working hard in Dubai, and therefore requested its return as his financial situation had become precarious. He admitted that he had not made a formal declaration regarding the gold in his possession and had signed the documents without objection when instructed by the officers. He also presented WhatsApp chats to the officers containing information regarding the gold paste concealed in his underwear.

Finally, he stated that he has submitted the invoice copy for the 324.140 grams of gold with this reply and has also filed a separate application under Section 110 of the Customs Act, 1962, to reclaim it. He requested the Adjudicating Authority to consider his submission, close the case against him, and return the gold owned by him.

Upon perusal of the written submission, it is observed that in Paragraph 5, the noticee submitted that the said gold was purchased in cash from Tora Bullion Jewellery under Sales Invoice No. HO-287630, and stated that a copy of the said invoice was enclosed with the reply. However, upon verification, no copy of the said sales invoice was found annexed to the written submission. Accordingly, vide email dated 17.11.2026, the noticee was asked to furnish the same. In compliance with the said email dated 17.11.2026, the noticee has forwarded a copy of the purported invoice.

13.1 Defense Reply of Noticee No. 2 i.e **Shri Harish Alumalani**:- The Noticee, Shri Harish Alumalani, submitted his written defense reply vide a letter dated 10.09.2026, wherein he categorically denied each and every allegation, averment, and inference contained in the Show Cause Notice (SCN), except for what was specifically admitted therein. He submitted that the proposed penal action against him was founded primarily upon the statement of Shri Amit Deepak Pabari and certain WhatsApp communications purportedly recovered from the latter's mobile phone. He argued that in the absence of independent and reliable corroboration, these elements failed to establish his conscious or intentional involvement in the alleged smuggling of gold. He specifically submitted that he was neither intercepted nor apprehended at SVPIA, Ahmedabad, and that no gold or

other incriminating material was recovered from his possession. Consequently, he contended that the Department was under a legal obligation to establish his precise act, omission, knowledge, intention, or participation through cogent, credible, and legally sustainable evidence before imposing any penalty under the Customs Act, 1962.

He categorically denied having instructed Shri Amit Deepak Pabari to carry any gold from Dubai to India, whether concealed in an underwear or otherwise. He submitted that he had not procured, purchased, financed, supplied, arranged, or caused to be arranged the alleged gold recovered. He further denied supplying or arranging any specially prepared underwear or any other article for the concealment of gold. He stated that he had neither borne the airfare of Shri Amit Deepak Pabari nor agreed to pay him an amount of Rs.12,000 for carrying the alleged gold.

He contended that no independent documentary evidence had been produced by the Customs Department to establish any payment or financial transaction allegedly made by him. He pointed out that no bank transactions, UPI transactions, cash payments, ticket payment records, receipts, invoices, or other contemporaneous financial materials were produced in the SCN to establish that he financed the alleged journey or activity. He argued that without such evidence, the allegation of financing remained uncorroborated and could not, by itself, establish his involvement.

He further drew attention to the Department's own case records, wherein Shri Amit Deepak Pabari had stated that the said gold was purchased by him from a shop at the Gold Souk in Dubai using money allegedly received from his client. He noted that no independent evidence had been produced by the Department to establish that the aforesaid quantity of gold was purchased by him.

He denied that the mobile number +971551816353, referenced in the SCN in connection with the alleged WhatsApp conversations, belonged to him, was registered in his name, or was operated or controlled by him. He argued that the Department had failed to produce any reliable documentary evidence, subscriber details, SIM registration records, telecom service

provider certificates, subscriber ownership records, or any other official record establishing his ownership of the said mobile number.

He emphasized that this issue was of fundamental importance because the alleged WhatsApp conversations could have evidentiary relevance against him only if the Department first established that the mobile number or account from which the communication originated was actually attributable to him. He argued that the mere fact that the said number was saved in the mobile phone of Shri Amit Deepak Pabari under the name "Harish Bhai (Sughi)" did not establish that the number belonged to or was operated by him. He submitted that a contact name appearing in another person's mobile phone is merely an entry created by that phone's user; such an entry does not constitute an official identification document and cannot, by itself, establish the identity of the actual subscriber or user. Without such evidence, it could not be presumed that the number belonged to him, and he therefore denied operating the WhatsApp account relied upon in the SCN.

He added that there was no independent documentary evidence conclusively connecting him with the alleged recipient of the seized gold. He submitted that any allegation made by a co-accused against another person, particularly when relied upon to impose a monetary penalty, requires careful scrutiny and independent corroboration. In view of the above, he prayed that the proceedings initiated against him under the SCN be dropped, the proposed penalty be waived, and such an order be passed as may be deemed fit, proper, and just under the facts and circumstances of the case.

Personal Hearing:-

14. Opportunities for a personal hearing (PH) were granted to both the Noticees on 28.09.2026, 09.10.2026, and 21.10.2026. The personal hearing intimation letters were duly dispatched to both Noticees at their recorded addresses, and copies of the same were also sent to their provided email IDs. In response to the personal hearing letters, Noticee No. 2, Shri Harish Alumalani, failed to appear or represent his case on any of the scheduled dates.

As regards Noticee No. 1, Shri Amit Deepak Pabari, his Authorized Representative vide a letter dated 28.09.2026 requested an adjournment. Accordingly, the personal hearing was rescheduled for 09.10.2026. On the said date, the Authorized Representative again sought an adjournment, citing the need for additional time to prepare their defense reply. Consequently, a fresh personal hearing was scheduled for 21.10.2026. However, the Noticee once again requested an adjournment, and a final personal hearing date was fixed for 29.10.2026. On 29.10.2026, neither the Noticee nor his Authorized Representative appeared for the hearing, nor was any further request for adjournment received via letter or email.

In the instant case, the Noticees have been granted ample and sufficient opportunities of being heard on four separate occasions, but they have failed to appear. In view of the above, it is evident that the Noticees are indifferent to the ongoing adjudication proceedings and have nothing further to submit in their defense. I am, therefore, of the opinion that sufficient opportunities have been afforded to both Noticees in strict accordance with the principles of natural justice, and there is no prudence in keeping the matter in abeyance indefinitely. Accordingly, I proceed to decide the matter on merits based on the facts and evidence available on record.

Discussion and Findings:

15. I have carefully gone through the case records, the Show Cause Notice, the documents relied upon therein, the statements of the noticees and written submission made by both the noticees. Further, sufficient opportunities of being heard were provided to both noticees in accordance with the principles of natural justice.

16. I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to Shri Amit Deepak Pabari and Shri Harish Alumalani but they did not participate in the adjudication

proceedings inspite of the fact that service of letters for personal hearings was also done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: —

a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

d) by making it available on the common portal;

e) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;

f) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticee through post as well as on their provided mail id, but they did not respond as if they did not have anything to submit in their defense.

16.1. I find that Shri Amit Deepak Pabari and Shri Harish Alumalani have failed to appear for Personal Hearing, inspite of being given opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to

proceed with the adjudication proceedings ex-parte in terms of merit of the case.

16.2. With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws:

16.2.1. Hon'ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs & C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.) has held that:

> 19. No doubt hearing includes written submissions and personal hearing as well but the principle of *Audi Alteram Partem* does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.
>
> 21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another* v. *M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

16.2.2. Hon'ble Tribunal of Mumbai in the case of Sumit Wool Processors v. CC, Nhava Sheva reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai) has observed as under:

> "8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an *alibi* to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

16.2.3. Hon'ble High Court of Delhi in the case of Saketh India Ltd Vs. Union of India reported in 2002 (143) ELT 274 (Del), 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. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant inspite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

16.2.4. The Hon'ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner of Central Excise, Ahmedabad-II reported in 2004 (171) ELT 412 (Tri. Mumbai) has held that:

> "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."

16.2.5. The Hon'ble Supreme Court in the case of Jethmal Vs. Union of India reported in 1999 (110) ELT 379 (S.C.) has held 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.

16.2.6. Hon'ble Delhi Tribunal in the case of Commissioner of C.Ex. Vs. Pee Iron & Steel Co. (P) Ltd. reported in as 2012 (286) E.L.T. 79 (Tri. – Del) [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)]** has observed that:

> "9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed *ex parte* order against the respondent."

In view of the discussion held in Para 16 to 16.2.6. above, in case of Noticees i.e. **Shri Amit Deepak Pabari and Shri Harish Alumalani**, I proceed to adjudicate the Show Cause Notice No. VIII/10-30/SVPIA-A/O&A/HQ/2026-27 dated 06.08.2026 ex parte on the basis of record available in file and their written submissions.

17. In the instant case, I find that the main issue to be decided is whether One Gold Bar (Derived from Burning of Cloth/Underwear) and Two Gold Bars and One Cut Gold Bar (MWG UAE 10 Tolas 999.0 MELTER ASSAER) total weighing **601.940 (277.800+ 324.140)** grams of 999.0/24Kt, found concealed by the noticee Shri Amit Deepak Pabari having **tariff value of Rs. 88,25,449/-** and Market Value of **Rs. 96,06,962/-**, seized vide Seizure

Memo/Order under Panchnama proceedings both dated 08/09.02.2026, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee **Shri Amit Deepak Pabari and Shri Harish Alumalani** are liable for penal action under the provisions of Section 112 and Section 117 of the Act or otherwise.

18. Before discussing the allegations levelled in the impugned Show Cause Notice (SCN), it is imperative to address the fact that none of noticee contested the facts of the statement tendered by Shri Amit Deepak Pabari. The noticee, Shri Amit Deepak Pabari in his written reply submitted that except for the facts expressely and specifically admitted by him, the remaining allegation and the statement contained in Show Cause Notice are incorrect and not admitted by him.

In this regard, I find that Shri Amit Deepak Pabari had explicitly admitted in his statement dated 09.02.2026 that he was tendering it voluntarily, as per his own narration, and without any inducement, threat, coercion, or improper means. Furthermore, the said statement was explained to him in Hindi, also and after verifying the correctness of the recorded facts, he appended his dated signature in a full and conscious state of mind. The Latin maxim *"Verba volant, scripta manent"* meaning *"spoken words may fly away, but written words remain"* is aptly applicable here. He further confirmed the correctness of the contents of the Panchnama dated 08/09.02.2026, accepting that he was present throughout the entire proceeding and had signed the documents after verifying their accuracy.

I find that Shri Amit Deepak Pabari has failed to furnish any credible documentary evidence to substantiate his allegations of incorrectness of statement. The law presumes a statement made under Section 108 to be voluntary unless compelling evidence to the contrary is presented. I find that, during the recording of his statement, Shri Amit Deepak Pabari

provided detailed, specific, and personal information that could only have emanated from his personal knowledge, strongly indicating that the statement was made voluntarily. There is nothing on record to cast the slightest doubt on the voluntary nature of the statement dated 09.02.2026. The detailed, sequential admissions made by the noticee are fully supported by the contemporaneous Panchnama, which records the actual physical recovery of the undeclared gold in the presence of independent witnesses. The offence committed is admitted by the noticee in his statement recorded on 09.02.2026 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. 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) 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."***

(v) 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, misdeclared or undervalued.

(vi) 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 "ln 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."

(vii) 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.

(viii) 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)

(ix) 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**.

19. I find that every procedure executed by the officers during the Panchnama proceedings was meticulously documented and conducted in the presence of independent *panchas* as well as the noticee himself. The Panchnama explicitly records that the officers questioned the noticee regarding whether he intended to declare any goods before the Customs authorities. In response, the noticee denied possessing any items requiring declaration, and the gold comprising two gold bars and one cut gold bar

(*MWG UAE 10 Tolas 999.0 MELTER ASSAER*), along with one gold bar derived from burning the cloth/underwear, was recovered only upon the personal search of Shri Amit Deepak Pabari. I further find that the noticee specifically admitted in his voluntary statement that he had no purchase bill for the three gold bars, stating that they were purchased in cash in Dubai. Regarding the gold in paste form concealed in his underwear, he admitted and confirmed that the said underwear was handed over to him in Dubai by Shri Vijaykumar Anumalani/Alumalani on the instructions of Shri Harish Alumalani, and that in return for carrying the same, he was to receive Rs. 12,000/- along with his to-and-fro airfare.

Furthermore, in his voluntary statement dated 09.02.2026, the noticee explicitly admitted that he had travelled from Dubai to Ahmedabad on SpiceJet Flight No. SG-166 on 08.02.2026 while carrying the said gold items. He conceded that the gold bars, weighing 324.140 grams with a purity of 999.0 (24kt), were purchased by him from M/s Tora Bullion Jewellery under Sales Invoice No. HO-287630 by making payment in cash. He further admitted to carrying the gold without a purchase invoice and claimed that the funds used to purchase the same were arranged in cash from one of his clients, with the intention of selling the gold in India to earn a profit. He categorically admitted that he did not declare the items before the Customs authorities, doing so with the explicit intent to evade the applicable customs duty.

20. Now, I proceed to decide whether the goods namely, 02 gold bars and 01 cut gold bar total weighing 324.140 grams and 01 derived gold bar weighing 277.800 grams brought into India by the noticee, Shri Amit Deepak Pabari, without declaration as envisaged under Section 77 of the Customs Act, 1962, read with the Baggage Rules, 2026, and in contravention of the Foreign Trade Policy (FTP) 2023 and the rules made thereunder have acquired the nature of "prohibited goods" or otherwise.

In this regard, I note that Section 2(33) of the Customs Act, 1962 defines 'prohibited goods' as '*any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in*

force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with'. The said definition implies that in cases where the conditions applicable for import of goods are not complied with, such goods would fall under the category of 'prohibited goods'. In the instant case, the gold has not been brought in India by a nominated agency notified by the RBI or DGFT, as the case maybe and as such the same would be covered under the category of 'prohibited goods'. My above finding is aptly supported by the case law of **Om Prakash Bhatia reported at 2003 (155) ELT 423 (SC)** wherein it has been held by the Hon'ble Supreme Court as under:

> *From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with.* ***This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods.*** *This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2).* ***Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*** *This is also made clear by this Court in Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negatived the said contention and held thus:-*
> *'…What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial.* ***Any restriction on import or export is to an extent a prohibition.*** *The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues."*

The above judgment has been followed by the Hon'ble High Court of Gujarat in the case of **Bhargavraj Rameshkumar Mehta reported at 2018 (361) ELT 260 (Guj)** wherein it has been observed as under:

> ***15.****We may recall, the contention of the 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.***
>
> ***16.*** *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 therefor, 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.*

Further, in case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court has summarized the position on the issue, specifically in respect of gold, as under:

> *"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."*

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods"*. Relying on the ratio of the judgments cited above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods" within the meaning assigned to the term under Section 2(33) of the Customs Act, 1962.

21. In his written submission, the noticee contended that he had purchased the said gold weighing 324.140 grams in the form of bars from M/s Tora Bullion Jewellery, Dubai, under Sales Invoice No. HO-287630 dated 08.02.2026, and stated that a copy of the same was enclosed with the reply; however, as no such document was found annexed, the noticee was directed vide email dated 17.11.2026 to furnish the same, in compliance with which a copy of the purported invoice was forwarded. Upon scrutiny of the said purported invoice for AED 190,677.00, it is found to suffer from glaring factual and regulatory discrepancies, namely: (i) the header bears the title "Metal Sales Fixed" instead of "Tax Invoice," whereas a "Metal Sales

Fixed" receipt merely serves as a commercial binding slip to lock in the gold price prior to payment or physical delivery and does not constitute a valid tax invoice evidencing completed sale and delivery; (ii) Serial No. 2 describes a gold piece weighing 90.88 grams as a "TTB Ten Tola Bar," whereas a standard Ten Tola Bar universally weighs 116.64 grams (as reflected in Serial No. 1 for 2 TTBs weighing 233.28 grams), and moreover, at the time of interception, a cut gold bar was recovered alongside the two TT gold bars, which finds no mention in the said document and has instead been misdescribed as a "TTB Ten Tola Bar"; (iii) the document is completely devoid of mandatory UAE statutory particulars, including the supplier's 15-digit Tax Registration Number (TRN), physical business address, and the buyer's passport or Emirates ID details required under UAE regulations for cash transactions; and (iv) the document bears no official stamp, seal, or signatures in the designated spaces for the customer, checker, or authorised signatory. In view of these manifest anomalies, the purported Sales Invoice No. HO-287630 is clearly a fictitious document prepared as an afterthought and is hereby rejected as non-genuine. Consequently, the noticee has miserably failed to discharge the statutory burden of proof cast upon him under Section 123 of the Customs Act, 1962, to establish that the impugned gold is not smuggled goods, rendering his defense unsubstantiated and untenable. For ease of reference, I hereby produced the said copy of invoice: -

TORA BULLION JEWELLERY
Tora Bullion Jewellery
Email : info@toragold.com
Phone : +971542891916

METAL SALES FIXED

PARTY COPY

AD0003 - AMIT DEEPAK
Address :
P.B. No :
Tel. : 0551703676

SAL NO	: HO - 287630
Date	: 08/02/2026
Payment Terms	: Cash
Salesman	:
Metal Rate	: 4,968.00 / GOZ

Page 1 of 1

No.	Stock Description	Gross Wt.	Purity	Pure Wt.	Making (AED) Rate	Making (AED) Amount	VAT %	Total Amt (AED)
1	TTB Ten Tola Bar	233.28	0.999000	233.05	0.00	0.00	0.00	137,220.00
2	TTB Ten Tola Bar	90.88	0.999000	90.79	0.00	0.00	0.00	53,457.00
(2 Items)		324.16		323.84		0.00		190,677.00

GOLD VALUE FIXED @ 4,968.00 / GOZ (AED)	190,677.00
Total Taxable Amt(AED)	0.00
VAT Amount (AED)	0.00
Total Amount (AED)	190,677.00
Total Party Amount (AED)	190,677.00

Your account has been updated with :

AED 190,677.00 DEBITED — *One Hundred Ninety Thousand Six Hundred Seventy Seven United Arab Emirates Dirham Only*

2 TTB SOLD @ 68610,
90.88GM *999 SOLD @ 588.22 -R

Confirmed for & on behalf of

AMIT DEEPAK — Tora Bullion Jewellery

CUSTOMER'S SIGNATURE — CHECKED BY — AUTHORISED SIGNATORY

22. In his written submission, Shri Amit Deepak Pabari has explicitly admitted that he was intercepted by the AIU officers while exiting through the Green Channel with his luggage without making any declaration before

the Customs authorities. He confirmed that two gold bars and one cut gold bar (*MWG UAE 10 Tolas*, weighing 324.140 grams) were recovered during the search of his person and belongings which, as recorded in the Panchnama, were found concealed inside his black 'Louis Vuitton Paris' pocket purse/wallet and that an additional 277.800 grams of gold was extracted upon testing from the gold paste concealed in the layers of the underwear he was wearing. He further admitted that this underwear had been handed over to him at Dubai Airport by Shri Vijaykumar Anumalani/Alumalani on the instructions of Shri Harish Alumalani, who had contacted him on WhatsApp on 06.02.2026 to ask for his underwear size and offered him round-trip airfare along with Rs. 12,000/- in cash. Moreover, while claiming ownership of the 324.140 grams of gold and belatedly submitting a copy of Sales Invoice No. HO-287630 issued by *Tora Bullion Jewellery*, he explicitly confirmed that he was not in possession of any physical purchase invoice at the time of interception. Crucially, in Paragraph (8) of his written submission, he also admitted that he signed the Panchnama and other procedural documents without any objection or protest, which conclusively establishes that the facts recorded in the Panchnama and his voluntary statement dated 09.02.2026 under Section 108 of the Customs Act, 1962, are true, accurate, and binding.

22.1 I find that as per Paragraph 2.27 of the Foreign Trade Policy (FTP) 2023, bona fide household goods and personal effects may be imported as part of a passenger's baggage subject to the limits, terms, and conditions prescribed under the Baggage Rules, 2016, notified by the Ministry of Finance. Furthermore, in terms of EXIM Code 98030000 under the statutory ITC (HS) Classification of Export and Import Items, as amended from time to time, the import of all dutiable articles by a passenger in their baggage is 'Restricted' and subject to the fulfillment of conditions imposed under the Customs Act, 1962, and the Baggage Rules, 2026.

Further, as per the Notification No. 12/2012-Cus dated 17.03.2012 (S.I-321) and Notification No. 50/2017-Cus dated 30.06.2017, which was

subsequently amended vide Notification No. 45/2025-Cus dated 24.10.2025, wherein it is mentioned that Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger and gold in any form including tola bars and ornaments are allowed to be imported upon payment of applicable rate of duty as the case may be subject to conditions prescribed. As per the prescribed condition the duty is to be paid in convertible foreign currency, on the total quantity of gold so imported not exceeding 1 kg only when gold is carried by the "eligible passenger" at the time of his arrival in India or imported by him within 15 days of his arrival in India. It has also been explained for purpose of the notifications, *"eligible passengers" means a passenger of India origin or a passenger holding a valid passport issued under Passport Act, 1967 who is coming to India after a period of not less than six months of stay abroad and short visits, if any made by the eligible passenger during the aforesaid period of 06 months shall be ignored, if the total duration of such stay does not exceeds 30 days and such passenger have not availed of the exemption under this notification.*

22.2 Additionally, as per Notification no. 49/2015-2020 dated 05.01.2022 (FTP), gold in any form includes gold in any form above 22 carats under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is **restricted**. Further, I find that as per Rule 6 of the erstwhile Baggage Rules, 2026, an eligible passenger residing abroad for more than one year was allowed duty-free clearance of Jewellery in their bona fide baggage up to a weight of 20 grams for a gentleman passenger, and 40 grams for a lady passenger. Further, the Board has also issued instructions for compliance by "eligible passenger" and for avoiding such duty concession being misused by the unscrupulous elements vide Circular No. 06/2014-Cus dated 06.03.2014.

22.3 A combined reading of the aforementioned provisions under the Foreign Trade regulations, the Customs Act, 1962, and the notifications

issued thereunder clearly indicates that the import of gold, including gold Jewellery, through passenger baggage is restricted. Specific mandatory conditions are imposed on such imports, requiring the passenger to be of Indian origin or an Indian passport holder with a minimum stay abroad of six months. Only passengers satisfying these strict criteria may import gold as part of their bona fide personal baggage, which must be declared to Customs upon arrival, followed by the payment of the applicable duty in convertible foreign exchange. These conditions constitute absolute restrictions on the import of gold through passenger baggage.

In the present case, the noticee brought a gold item with a total weight of 601.940 grams, which far exceeds the permissible limits. Moreover, special weight-based allowances are exclusively reserved for passengers who have resided abroad for a continuous period exceeding one year. The noticee completely fails to satisfy the definition of an "eligible passenger." His passport details reveal a short-duration journey; he departed for Dubai on 12.10.2025 and returned to India on 08.02.2026, marking a period of less than four months. Furthermore, the noticee failed to declare the item before Customs upon arrival, which is an indispensable prerequisite for the lawful import of gold, a fact he explicitly admitted in his voluntary statement as well as in his written submission. This is a clear case of non-declaration with a deliberate intent to smuggle gold. Accordingly, there is sufficient evidence to establish that the noticee was in possession of two gold bars, one cut gold bar, and one derived gold bar of 999.0/24Kt purity, totally weighing **601.940 grams**, with a Market Value of **Rs. 96,06,962/-** and a Tariff Value of **Rs. 88,25,449/-**. He actively concealed these items in his pocket purse/wallet and in paste form in his underwear, and failed to declare them before the Customs authorities upon his arrival at SVPI Airport, Ahmedabad. Thus, the charge of smuggling in respect of the gold items recovered from his possession, which were kept undeclared with the intent to evade Customs duty, stands conclusively proved.

Consequently, it is established that the noticee has violated Section

77 and Section 79 of the Customs Act, 1962, by importing/smuggling gold that was not for bona fide use, thereby also violating Rule 11 of the Foreign Trade (Regulation) Rules, 1993, as amended, and Paragraph 2.27 of the Foreign Trade Policy 2023. Furthermore, under Section 123 of the Customs Act, 1962, gold is a notified item. When goods notified thereunder are seized under the Act on the reasonable belief that they are smuggled, the burden of proving that they are not smuggled rests squarely on the person from whose possession the goods were seized. In his deposition before the AIU officers, the noticee admitted that he did not possess a purchase invoice for the three gold bars recovered from his pocket wallet. Regarding the gold bar derived from the gold paste concealed in his underwear, he explicitly admitted that he was carrying the same for Shri Harish Alumalani for personal enrichment, having been promised Rs. 12,000/- in cash along with his round-trip ticket fares by Shri Harish Alumalani although in his written submission, he claimed as an afterthought that he agreed to carry the gold-pasted underwear out of fear after Shri Vijaykumar Alumalani threatened to implicate him in a smuggling case.

I find that, Paragraph 3 of Circular No. 06/2014-Cus dated 06.03.2014 explicitly mandates that:

"in case of gold in any other form, including ornaments, the eligible passenger must be asked to declare item wise inventory of the ornaments being imported. This inventory, duly signed and duly certified by the eligible passenger and assessing officer, should be attached with the baggage receipt."

The Circular further directs that:

"Wherever possible, the field officer, may, inter alia, ascertain the antecedents of such passengers, source for funding for gold as well as duty being paid in the foreign currency, person responsible for booking of tickets etc. so as to prevent the possibility of the misuse of the facility by

unscrupulous elements who may hire such eligible passengers to carry gold for them."

These conditions make it crystal clear that all passengers must declare an item-wise inventory of the gold and provide verifiable proof of the source of funds used for its purchase. Furthermore, under Condition No. 23 of Notification No. 45/2025-Cus dated 24.10.2025 (Sl. No. 194), customs duty must be paid in convertible foreign currency. From his statement dated 09.02.2026, I find that Shri Amit Deepak Pabari was carrying gold far in excess of the prescribed limit, possessed no purchase invoice at the time of interception, and had no convertible foreign exchange with him to pay the applicable duty, which conclusively proves that he never intended to declare the gold and attempted to clear it clandestinely without making any declaration. Moreover, in his written submission as well, he explicitly admitted that he had not made any declaration before the Customs authorities and intended to clear it clandestinely to evade payment of Customs Duty.

23. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighs the said 03 gold bars and informed that the weight of said bars was **324.140** Grams having purity 999.0/24KT which were hidden/concealed by noticee Shri Amit Deepak Pabari in his pocket wallet. Further, the government approved valuer also derived a gold bar weighing **277.800** grams having purity 999.0/24KT from the gold paste sprayed over layers of the underwear worn by Shri Amit Deepak Pabari. The Govt. Approved Valuer further ascertained the total Tariff Value of all the gold bars to the tune of Rs.**88,25,449** and Market value is **Rs.96,06,962/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sr. No.	Details of Items	Qty. (Pcs.)	Net Weight in Grams	Purity	Market value (Rs.)	Tariff Value (Rs.)
1	One Gold Bar (Derived from Burning of	1	277.800	999.0 24Kt	44,33,688	40,73,013

	Cloth/Underwear)					
2	Two Gold Bars and One Cut Gold Bar (MWG UAE 10 Tolas 999.0 MELTER ASSAER	3	324.140	999.0 24Kt	51,73,274	47,52,435
	Total	**4**	**601.940**		**96,06,962**	**88,25,449**

24. I note that for the purpose of customs clearance of arriving international passengers, a structured two-channel system is explicitly prescribed and adopted at international airports. The Green Channel is strictly reserved for passengers who do not have any dutiable or restricted goods, whereas the Red Channel is mandatory for passengers carrying such items. It is incumbent upon all arriving passengers to ensure they file a true and correct declaration of their baggage. In the instant case, the noticee Shri Amit Deepak Pabari failed to file a Baggage Declaration Form and deliberately chose not to declare the gold bars in his possession. This is a direct violation of Section 77 of the Customs Act, 1962, read with the companion Baggage Rules, 2026 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013 (as amended). By deliberately attempting to exit through the Green Channel despite carrying high-value dutiable cargo, the noticee's intention to evade the payment of applicable customs duty is conclusively established. Accordingly, this is a clear case of gold smuggling. By importing gold that was clearly not meant for his bona fide personal use, the noticee has violated the statutory mandates of Section 77 and Section 79 of the Customs Act, 1962. Consequently, this illicit act also constitutes a direct contravention of Rule 11 of the Foreign Trade (Regulation) Rules, 1993, read with Paragraph 2.27 of the Foreign Trade Policy, 2023.

24.1 In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation:-

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

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 45/2025-Customs dated 24.10.2026, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

Serial No. 194 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 23 of the Subject Notification.

Serial No. 194 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 23 of the Subject Notification.

Condition 23 of the said Notification No. 45/2025 dated 24.10.2025, as states that:-
If,-

1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed one kilograms of gold and Ten 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. 194 does not exceed one kilogram and the quantity of silver under Sr. No. 195 does not exceed ten kilograms per eligible passenger; and
(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;
Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.
Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

From the facts of the case available on record, it clearly appears that the conditions stipulated for lawful import of gold were not fulfilled. As per

the statements of Shri Amit Deepak Pabari, recorded under Section 108 of the Customs Act, 1962, he had traveled to Dubai for work, and returned to India before completing the stipulated minimum period of stay required for eligibility under the relevant exemption provisions. I find that well defined and exhaustive conditions and restrictions are imposed on the import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/ premier or star trading houses/SEZ units/EOUs. These conditions function as restrictions on the import of gold, and any failure to comply amounts to a violation of such restrictions. In the present case, it is evident that none of the applicable conditions were satisfied, rendering this a clear case of smuggling. It is pertinent to mention here that the Hon'ble Supreme Court of India, in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] *clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition*. Accordingly, the restrictions imposed on the import of various forms of gold are to be treated as prohibitions to that extent, and any violation of these restrictions renders the goods, in this case, two bar-shaped gold pendants with chains, liable for confiscation under Section 111(d) of the Customs Act, 1962.

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

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

I find that the said gold was not declared by Shri Amit Deepak Pabari to the Customs as required under Section 77 of the Customs Act, 1962, and attempted to pass through the Green Channel. As per the facts of the case available on record and as discussed above, no declaration of the impugned goods, namely gold bars which was found concealed and recovered in manner as described above, was made by the Noticee i.e. Shri Amit Deepak Pabari, in the prescribed declaration form. Furthermore, I find that Shri Amit Deepak Pabari was not eligible to import gold, particularly in such

substantial quantity and without declaration and hence the said goods constitute prohibited goods, and are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

25. In view of the foregoing facts, statutory violations, and uncontroverted evidence, it is conclusively proved that the noticee has rendered the recovered gold, weighing 601.940 grams with a Tariff Value of Rs. 88,25,449/- and an estimated Market Value of Rs. 96,06,962/-, liable to confiscation. Since the goods were imported in direct contravention of the statutory prohibitions and restrictions detailed above, and were intentionally smuggled through the customs checkpoint without a declaration, they are squarely liable to confiscation under the provisions of Sections 111(d), & 111(l) of the Customs Act, 1962. By employing a deceptive modus operandi specifically, concealing 03 gold bars in his pocket wallet and concealed the gold in form of paste by pasting in layers of fabrics of underwear, the noticee demonstrated full awareness that the import of the said goods was illicit and offensive. It is established beyond a shadow of doubt that he knowingly carried, possessed, and actively concealed the gold, and intentionally failed to declare it upon arrival at the international customs airport. The gold improperly imported by the noticee without due process of law and without adhering to the prescribed conditions and procedures of import has thus acquired the character of "prohibited goods" under Section 2(33) of the Act. The noticee deliberately involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner that he knew, or had reason to believe, rendered them liable to confiscation. Consequently, it is proved beyond doubt that the noticee has committed an offence under Section 112 of the Customs Act, 1962, thereby rendering himself liable to a personal penalty under the said section.

26. I find that noticee Shri Amit Deepak Pabari, in his written submission, has claimed that he is an innocent, law-abiding citizen who had never been involved in any criminal offence, and that on 08.02.2026 he was threatened by Shri Vijaykumar Alumalani at Dubai Airport with false implication in a

smuggling case in Dubai. Shri Amit Deepak Pabari further claimed that it was solely out of immediate fear that he agreed to wear and carry the underwear containing gold in paste form handed over to him at the Dubai airport, and that Shri Vijaykumar Alumalani had assured him that everything had been "set" at Ahmedabad Airport.

In this regard, I find that this assertion of coercion and sudden duress at the airport is completely demolished by the contemporaneous digital evidence in the form of WhatsApp chats retrieved from his own seized mobile phone, exchanged between him and Shri Harish Alumalani. Specifically, the said WhatsApp records which Shri Amit Deepak Pabari himself signed in token of their correctness and admitted in his statement recorded under Section 108 of the Customs Act, 1962 establish that he had already accepted the offer of free round-trip airfare and Rs. 12,000/- in cash, and had voluntarily provided his underwear size to Shri Harish Alumalani via WhatsApp on **06.02.2026**, i.e., two days prior to his journey. Furthermore, had Noticee Shri Amit Deepak Pabari genuinely acted under duress or threat in Dubai, he had ample opportunity to alert the Customs officers immediately upon landing at SVPI Airport, Ahmedabad. Instead, he deliberately opted to walk through the Green Channel without making any declaration under Section 77 of the Customs Act, 1962, and even denied carrying any dutiable or prohibited goods when specifically questioned by AIU officers. This clearly proves that the plea of threat and coercion is a fabricated afterthought aimed at evading penal liability.

Contrary to his portrayal of being an unsuspecting victim coerced at the airport, the WhatsApp chats between him and Shri Harish Alumalani saved as *"Harish Bhai (Sughi)"* (Noticee No. 2) span continuously from **May 2024 to February 2026** as indicated in RUD-5 to Show Cause Notice. Far from being an isolated incident, the chats reveal a deeply entrenched, organized smuggling syndicate operating across Dubai, Mumbai, and Ahmedabad, where both Noticees routinely coordinated flight bookings, shared passport copies of multiple carriers (including Noticee No. 1's own family members), tracked real-time airport clearances using coded updates

(*"Dxb all clear"*, *"India all clear"*, *"All clear"*), and settled carrier commissions (*"carring"* / *"VC"* payments in AED and INR).

The Whatsapp Chats further revealed that the method of concealing gold in specially sized undergarments was not a sudden shock sprung upon Noticee No. 1 on 08.02.2026, but an established *modus operandi* of their syndicate. Specifically, on **06.11.2025 at 3:43 PM and 3:49 PM**, immediately after sending a SpiceJet ticket (spicejet.pdf), Shri Harish Alumalani messaged Shri Amit D Pabari: ***"Papa ka underwear ka size bhejo"*** (*"Send Papa's underwear size"*). Similarly, throughout the chat history, Shri Harish Alumalani repeatedly asked for clothing sizes (*"jeans"*, *"shoes"*) and shared QR codes for duty-free liquor pickups for carriers arriving at Ahmedabad Airport. For ease of reference, I hereby attached the relevant extract of chat on 06.11.2025 as:-

06/11/2025, 3:43 pm - Harish Bhai (Sughi): spicejet.pdf (file attached)
06/11/2025, 3:49 pm - Harish Bhai (Sughi): Papa ka underwear ka size bhejo
07/11/2025, 5:48 pm - Harish Bhai (Sughi): <Media omitted>
08/11/2025, 3:49 pm - Amit D. Pabari: Bob AC no.vcf (file attached)
08/11/2025, 3:49 pm - Harish Bhai (Sughi): Name
08/11/2025, 3:49 pm - Amit D. Pabari: Amit Deepak Pabari

The exact sequence of messages leading up to the interception on 08.02.2026 proves willing, active negotiation rather than duress. On **05.02.2026 at 11:43 AM**, Noticee Shri Harish Alumalani asked Noticee Shri Amit D Pabari for his passport (*"Passport bhejo aapka"*), which Noticee Shri Amit D Pabari voluntarily sent at 12:28 PM, receiving his flight ticket (AMIT DEEPAK PABARI.pdf) at 3:52 PM. On **06.02.2026 at 8:56 PM and 8:57 PM** two days prior to travel, Noticee Shri Harish Alumalani explicitly messaged: ***"Aapke underwear ka size batao"***, ***"Order dena hai"***, and ***"M l xl Kaun sa size hai"***.

Even more tellingly, on **07.02.2026 at 8:57 PM and 8:58 PM**, the night before his flight Noticee Shri Amit D Pabari himself voluntarily messaged Noticee Shri Harish Alumalani bargaining over the contraband to be carried: ***"Plz dont give me mob"*** and ***"Incress material no problem but***

no mob" (*"Please don't give me mobile phones; increase the material [i.e gold], no problem, but no mobiles"*). A person who voluntarily asks the mastermind to *"increase the material"* the night before departure cannot by any stretch of imagination claim to have been threatened into smuggling at the airport the next day.

Finally, on **08.02.2026 at 7:44 PM** and **11:33 PM**, Noticee Shri Amit D Pabari dutifully reported ***"Dxb all clear..."*** and ***"Landed.."*** to Noticee Shri Harish Alumalani, adhering strictly to their standard syndicate protocol.

In view of the above incontrovertible digital evidence, Noticee Shri Amit D Pabari's defense of threat, coercion, and first-time innocence is proved to be completely false, fabricated, and an afterthought designed to escape the penal consequences of his deliberate act of smuggling.

27. Once the seized goods are held to be liable for confiscation, the next question before me to decide is whether to allow the release of the impugned goods on Redemption Fine or order for absolute confiscation of the same. The provisions related to redemption of confiscated goods are stipulated in Section 125 of the Customs Act, 1962; sub-section (1) of the said section 125 says that

> *"Option to pay fine in lieu of confiscation. - (1) whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession, or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. It is, amply clear from the said Section that, where the confiscated goods are not prohibited for import or export, the Adjudicating Authority is under obligation to release the same. However, in those cases where the confiscated goods are prohibited for import or export, discretion has been vested in the Adjudicating Authority to decide the issue on the basis of the facts and circumstances involved.*

It is established that the noticee has violated Section 77 and Section 79 of the Customs Act, 1962, by importing/smuggling gold that was not for bona fide use, thereby also violating Rule 11 of the Foreign Trade (Regulation) Rules, 1993, as amended, and Paragraph 2.27 of the Foreign Trade Policy 2023. Also, in light of the landmark judgment of the Hon'ble Supreme Court in Om Prakash Bhatia v. Commissioner of Customs, I find that the said gold carried by Shri Amit Deepak Pabari squarely falls under the definition of "Prohibited Goods". It is a settled position of law, laid down by the Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] *that the option to release 'Prohibited goods' on redemption fine is discretionary*. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that *"that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration.*". Also, Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive."* Also, in a recent judgment the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that *"---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer*."

It is abundantly clear from the foregoing discussions that the gold was concealed and intentionally withheld from customs declaration with the sole motive of evading customs duty. The records before me establish that the passenger/noticee Shri Amit D Pabari consciously chose not to declare the restricted/prohibited goods and instead opted for the Green Channel for clearance upon arrival from a foreign destination, demonstrating a willful intent to smuggle the impugned goods. Furthermore, the passenger/noticee

explicitly admitted that despite knowing such goods must be declared and that their unauthorized import constitutes an offence under the Customs Act and the rules and regulations framed thereunder, he attempted to clear the gold through concealment and deliberate non-declaration. This act was executed with a clear, willful intent to smuggle the impugned gold into India. Moreover, no credible evidence has been produced to prove the licit import of the seized gold bars. Thus, the noticee, Shri Amit Deepak Pabari, has failed to discharge the burden placed upon him under Section 123 of the Act. Further, from the Show Cause Notice (SCN), Panchnama, and statements on record, I find that the manner of concealment was deliberate and calculated, as the gold was carried in bar form with the clear intention to smuggle it into India and evade the payment of customs duty. Therefore, I hold that the said gold bars totally weighing 601.940 grams, carried undeclared with the intent to clear it illicitly from the airport and evade customs duty, is liable to **absolute confiscation**. In view of the above discussions, findings, judicial pronouncements, the nature of concealment, and the facts of the case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as :-

27.1. 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]

27.2. 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.

27.3. 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).

27.4 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.

27.5. 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".

27.6. 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."

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

28. Considering the facts of the present case before me and the judgements and rulings cited above, the said gold i.e. 02 gold bar, 01 cut gold bar and 01 derived gold bar total weighing 601.940 grams, carried by Shri Amit Deepak Pabari is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold bars weighing 601.940 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), & 111(l) of the Customs Act, 1962. Further, I also hold the black coloured pocket purse/wallet of "Louis Vuitton Paris" alongwith two different silver-coloured pouches and one transparent plastic pouch used for concealment of gold bars would be liable to absolute confiscation under Section 119 of the Customs Act, 1962.**

29. In his written submission, Noticee Shri Amit Deepak Pabari, offered to pay the applicable Customs duty and penalty to reclaim **324.140 grams** of gold, claiming that the said quantity had been legitimately purchased by him out of his personal savings in Dubai. In this regard, I find that the noticee failed to produce any valid credible import document which shows the legitimate purchase, instead, the noticee tried to show legitimate purchase by submitting a purported purchase invoice (Invoice No. HO-287630) which itself suffer from glaring factual and regulatory discrepancies and thereby rejected as fictitious and as afterthought, thereby failing to discharge the statutory burden cast upon him under Section 123 of the Customs Act, 1962.

More fundamentally, the noticee Shri Amit Deepak Pabari intentionally involved himself in smuggling the entire quantity of **601.940 grams of 24-karat gold (999.0 purity)** recovered in the form of two gold bars and one cut gold bar (324.140 grams) concealed in his pocket purse/wallet, and one gold bar (277.800 grams) extracted from gold paste concealed within the layers of his underwear. Given the clandestine concealment, non-declaration at the Green Channel, and contravention of the import restrictions governing gold under the Foreign Trade Policy, 2023 and Baggage Rules, 2026, the seized gold assumes the character of "prohibited goods" under Section 2(33) of the Customs Act, 1962, and does not merit release on payment of duty or redemption fine.

It is an established fact on record that the noticee transported these gold bars from Dubai to Ahmedabad despite having full knowledge and belief that carrying and concealing such gold without declaration constitutes a serious offence under the Customs Act, 1962, and the rules and regulations made thereunder. Furthermore, while determining the liability and quantum of penalty in the instant case, I place reliance on the landmark judgment of the Hon'ble Supreme Court in ***M/s. Hindustan Steel Ltd. vs. State of Orissa*** **[AIR 1970 SC 253]**, wherein it was held that: *"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute"*.

In the present case, far from committing a technical or venial breach, the noticee acted deliberately in defiance of the law by attempting to smuggle **601.940 grams of 24K (999.0 purity) gold** through ingenious concealment. The corroborative documentary and digital evidence on record, alongside his voluntary statement recorded under Section 108 of the Customs Act, 1962, clearly establishes his dual role as a smuggler/carrier (in respect of the 324.140 grams concealed in his wallet) and a

carrier/abettor (in respect of the 277.800 grams concealed in his underwear) at SVPI Airport, Ahmedabad. Thus, it is evident that the noticee Shri Amit Deepak Pabari concerned himself with the carriage, removal, safekeeping, concealment, and dealing of smuggled gold with full knowledge and reason to believe that the same was liable to confiscation under Section 111 of the Customs Act, 1962.

Bringing goods into India in contravention of statutory provisions and omitting to declare them under Section 77 of the Customs Act, 1962, explicitly falls within the ambit of doing or omitting to do an act that renders such goods liable to confiscation, thereby attracting the provisions of Section 112(a) of the Customs Act, 1962. Furthermore, carrying and smuggling goods in an ingeniously concealed manner is squarely covered under Section 112(b) of the Act. Therefore, I find that the noticee is liable to a personal penalty under Section 112(a)(i) and Section 112(b)(i) of the Customs Act, 1962, and I hold accordingly.

30. Having established the liability of Noticee No. 1 (Shri Amit Deepak Pabari) regarding the smuggling of the seized gold, I now proceed to examine the role, culpability, and defence submissions of Noticee No. 2, Shri Harish Alumalani.

The record indicates that the name of Shri Harish Alumalani originally emerged from the initial inculpatory statement dated 09.02.2026 tendered under Section 108 of the Customs Act, 1962, by noticee, Shri Amit Deepak Pabari. From the investigation conducted and the evidence brought on record in the Show Cause Notice, it is evident that Noticee No. 2 Shri Harish Alumalani was the key conspirator and orchestrator behind the smuggling of **277.800 grams of gold** (extracted from gold paste concealed in the underwear worn by Noticee No. 1 Shri Amit Deepak Pabari). In his voluntary statement dated 09.02.2026 recorded under Section 108 of the Customs Act, 1962, Noticee No. 1 explicitly named Shri Harish Alumalani as the mastermind who contacted him via WhatsApp on 06.02.2026, inquired about his underwear size, and induced him to act as a carrier by offering

round-trip airfare along with a monetary remuneration of Rs. 12,000/- in cash. Pursuant to these instructions, the specially prepared underwear containing gold paste was handed over to Noticee Shri Amit D Pabari at Dubai Airport on 08.02.2026 by Shri Vijaykumar Anumalani/Alumalani (brother of Noticee Shri Harish Alumalani), with instructions to deliver the same to Shri Vimal Kumar Sharma alias Maharaj ji at Hotel Krishna, Ahmedabad.

Conversely, in his written reply dated 10.09.2026, Noticee Shri Harish Alumalani contended that he was neither physically present at SVPI Airport, Ahmedabad, at the time of interception nor was any contraband recovered from his direct possession. He further disputed the attribution of the UAE mobile number (+971551816353) used for the WhatsApp communication, arguing that the Department failed to produce telecom subscriber records proving ownership and that merely saving a contact under the name *"Harish Bhai (Sughi)"* in Noticee No. 1's phone does not establish his identity or operation of that account. Consequently, he contended that he cannot be penalized solely on the uncorroborated statement of a co-noticee, particularly when the alleged delivery never materialized.

I find the arguments advanced by Noticee Shri Harish Alumalani to be legally untenable. As a matter of law, in intricate clandestine operations such as the smuggling of gold, a co-noticee's involvement often extends beyond direct possession of the smuggled goods, encompassing various roles such as acting as a facilitator by procuring the goods, arranging transportation, or providing logistical support. Therefore, the mere fact that the contraband was recovered from the physical baggage/person of the passenger, Shri Amit D. Pabari, does not diminish or dilute his deep systemic involvement.

Furthermore, a meticulous scrutiny of the WhatsApp chat logs retrieved from Noticee No. 1's (Shri Amit D Pabari) seized mobile phone duly

signed and authenticated by Noticee Shri Amit Deepak Pabari, completely dismantles his technical plea regarding identity and attribution. The chat history contains multiple self-identifying disclosures made directly by the operator of +971551816353 that conclusively link the account to Noticee Shri Harish Alumalani. For instance, on 11.02.2025 at 5:09 PM (WhatsApp Chat), the user of "Harish Bhai (Sughi)" sent bank transfer details (Emirates NBD IBAN: AE530260000215849664601, Account No.: 0215849664601, Swift Code: EBILAEAD) and explicitly typed his own name as "**Harish alumalani**" in the very next message. Further, on 03.10.2025 at 2:02 PM (Page 15 of RUD-5), the same user explicitly shared a UAE network number, typing: "Du 0551816353", which corresponds directly to +971551816353.

Similarly, 15.01.2026 at 9:04 PM (Page 26 of RUD-5), he shared the contact card of his brother in Dubai, "**[Name] Vijay Dxb [Mobile] +971558895224**", and on 21.01.2026 at 8:40 PM (Page 26 of RUD-5), instructed Noticee No. 1: "**Ye aap Kal viju ko De do evening tak**" ("**Give this to Viju by tomorrow evening**"). This directly corroborates Noticee No. 1's statement under Section 108 that Shri Vijaykumar Alumalani/Anumalani handed over the gold-concealed underwear at Dubai Airport at Harish's behest. In addition, on 08.12.2025 at 12:22 PM and 12:23 PM (Page 23 of RUD-5), Noticee No. 2 shared flight itineraries **(VIMAL KUMAR SHARMA-1.pdf and VIMAL KUMAR SHARMA Ret..pdf) for Shri Vimal Kumar Sharma,** the exact individual named by Noticee No. 1 in his Section 108 statement as the designated collector of the smuggled gold at Hotel Krishna, Ahmedabad.

30.1 Further, Noticee Shri Harish Alumalani has further claimed that there is no independent evidence showing he financed the trip, recruited carriers, or participated in smuggling activities. In this regard, from the digital evidence in form of unbroken 21-month chat trail in RUD-5 (spanning May 2024 to February 2026), I find that the interception on 08.02.2026 was not an isolated event, and that Noticee Shri Harish Alumalani functioned as the central organizer and financier of an established cross-border smuggling syndicate. The chats reveal that Noticee Shri Harish Alumalani recruited

and paid carriers on a fixed commercial basis. On 17.07.2024 at 7:16 PM, 7:17 PM, and 7:24 PM (Page 8 of RUD-5), Noticee Shri Harish explicitly laid down the financial terms to Noticee No. 1: ***"Aaj 17/7/24 se per passenger aapko 650 aed milega + jeans cost jisme airport pickup and drop aapka rahega jeans bhi aapko laker deni padegi***", ***"Agar abu dhbhi passenger hai to 750 milega", and "India me per day passenger exp. 2000 milega with hotel accommodation".*** Earlier, on 14.05.2024 at 7:35 PM (Page 1 of RUD-5), he warned Noticee No. 1 regarding cancelled tickets: ***"Jo bhi nuksan hoga aapki carring me se kaat loonga"*** ("Whatever loss occurs, I will deduct from your carrying charges").

Furthermore, the use of specially tailored undergarments and apparel to smuggle gold was a recurring *modus operandi* orchestrated by Noticee Shri Harish Alumalani, as evidenced on 06.11.2025 at 3:43 PM and 3:49 PM (Page 19 of RUD-5), immediately after sharing a SpiceJet air ticket (spicejet.pdf), Noticee Shri Harish Alumalani instructed Shri Amit D Pabari: ***"Papa ka underwear ka size bhejo"*** ("Send Papa's underwear size") as well as on 29.10.2025 at 5:46 PM and 6:30 PM (Page 18 of RUD-5), when he requested passport copies and directed: ***"Ami ki jeans leke do mahraj ko"***, matching earlier references on 18.05.2024 ***("Manisha ka jeans"***, Page 2 of RUD-5). Across Pages 1 to 28 of RUD-5 i.e Whatsapp Chats, Noticee Shri Harish Alumalani repeatedly booked tickets, collected passport copies, and monitored airport exits for numerous carriers including Deepak Jamnadas Pabari ("Papa"), Raksha Pabari ("Mummy"), Ami Pabari, Manisha Parmar, Jatin, Vinod, Devesh, Kunal, and Vinit. Whenever flights landed, Noticee Shri Harish Alumalani anxiously demanded real-time status updates ***("Any update", "Flight landed", "Be alirt", "Bahar nikale to batao")*** until receiving the syndicate's standard clearance code ***("Dxb all clear", "India all clear", "All clear")***. Shri Harish Alumalani actively tutored carriers on how to evade Customs scrutiny. On 13.10.2025 at 2:52 AM and 2:53 AM (Page 17 of RUD-5), he instructed Shri Amit D Pabari that: ***"Isko kuch nahin maloom hai kaam ke bare mein", "Kuch batana mat", and***

"Bolna aap apne hi kaam se Gaye the india" ("Don't tell them anything about the work; say you went to India for your own personal work").

The chats also document continuous high-value cash collections and hawala-style account transfers directed by Noticee Shri Harish Alumalani such as ***"106300 aed Kal morning 12 baje nitin se lena hai"*** (28.09.2025, Page 14), ***"5010 aed mahraj ko De dena"*** (28.10.2025, Page 18), ***"133050 milenge / 130950 ghanshyam ko Dene hai / 2100 aapke"*** (16.11.2025, Page 20), and ***"19000 dalne hai adcb"*** (05.01.2026, Page 25), alongside sending duty-free QR codes to collect liquor bottles upon arrival at Ahmedabad Airport (Pages 16, 24, 27 of RUD-5).

Culminating this well-oiled operation, on 05.02.2026 Noticee Harish Alulmalani procured Shri Amit D Pabari's passport and booked his SpiceJet ticket (Page 28 of RUD-5); on 06.02.2026 at 8:56 PM he asked for his underwear size ***("Aapke underwear ka size batao / Order dena hai / M l xl Kaun sa size hai"***, Page 29 of RUD-5); on 07.02.2026 he negotiated the contraband load ***("Only laptop and bottles from ahemdabad"***, Page 29 of RUD-5); and on 08.02.2026 he arranged for his brother Vijaykumar Alumalani to hand over the gold-impregnated underwear at Dubai Airport.

30.2 Furthermore, Noticee Shri Harish Alumalani willfully evaded two statutory summons issued under Section 108 of the Customs Act, 1962 on 17.06.2026 and 22.07.2026. Had he genuinely played no role in the smuggling operation, he would certainly have appeared before the investigating officers to substantiate his innocence and produce his passport, travel history, and telecom records. Instead, he deliberately abstained from the investigation. Compounding this non-cooperation, Noticee Shri Harish Alumalani also failed to avail himself of three separate opportunities for a personal hearing granted to him in strict adherence to the principles of natural justice vide letters dated 28.09.2026, 09.10.2026, and 21.10.2026. This persistent refusal to join the investigation or defend his contentions during personal hearings fortifies the conclusion that he has no plausible explanation to counter the overwhelming documentary and digital evidence on record.

30.3 It is a well-settled judicial principle that smuggling conspiracies are conceived, planned, and executed in absolute secrecy, and direct ocular evidence of clandestine handovers is seldom available. In adjudication proceedings governed by the standard of preponderance of probabilities, the oral and documentary evidence on record clearly establishes that Shri Amit Deepak Pabari and Shri Harish Alumalani acted in tandem and hatched a criminal conspiracy to smuggle foreign-origin gold from Dubai into India. While Shri Amit Deepak Pabari acted as the carrier-cum-smuggler, Shri Harish Alumalani acted as the principal mastermind and financier. Consequently, any admissions or contemporaneous communications made by either co-conspirator regarding their common design are fully admissible against both. In this regard, I rely upon the judgments of the Hon'ble Supreme Court in *Naresh J. Sukhawani vs. Union of India* [1996 (83) E.L.T. 258 (S.C.)] and *Surjeet Singh Chhabra vs. Union of India* [1997 (89) E.L.T. 646 (S.C.)], wherein it was held that a statement recorded under Section 108 of the Customs Act, 1962 constitutes substantive, admissible evidence that can be relied upon against a co-accused, particularly when corroborated by independent material on record. My findings are further fortified by the judgment of the Hon'ble High Court of Delhi in ***S.K. Jain vs. Commissioner of Customs* [2016 (333) E.L.T. 89 (Del.)]**, wherein it was held:

"In the case at hand, there is a recovery of foreign currency from the co-accused. The relationship of employer and employee has been admitted both by the petitioner and the co-accused. ***The statement of the co-accused and the other documents seized show that the co-accused was acting on the behest of the petitioner.*** *At this stage, the Court will not dissect the evidence against each accused and come to the conclusion that the only evidence against the petitioner is the statement of the co-accused and that being not substantive evidence, no charge can be framed against him.* ***It is well settled that in a case of conspiracy if there is reasonable ground to believe that two or more persons have conspired together to commit an offence then by virtue of Section 10 of the Evidence Act, anything said, done or written by one of such persons in reference to their common intention, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the***

existence of the conspiracy*, as for the purpose of showing that any such person was a party to it."*

As established by the Delhi High Court in S.K. Jain, in cases of conspiracy where reasonable grounds exist to believe individuals conspired to commit an offense, Section 10 of the Evidence Act renders any act, statement, or writing by one party regarding their common intention relevant against all co-conspirators.

30.4 Based on the aforementioned findings, I conclude that Shri Harish Alumalani, in active connivance with the carrier-passenger Shri Amit D Pabari, knowingly acquired possession of and engaged himself in carrying, removing, keeping, concealing, and delivering smuggled gold into India. These illicit activities were systematically undertaken without the knowledge of the customs authorities, without making a valid statutory declaration, and without the payment of applicable customs duty, all with the clear intent to smuggle the impugned goods.

Accordingly, I find and hold that Shri Harish Alumalani was actively involved in and systematically managed the smuggling of the gold bar weighing 277.800 grams into India for personal enrichment. I further find and hold that their joint acts of omission and commission have rendered the smuggled goods liable to absolute confiscation under Sections 111(d) and 111(l) of the Customs Act, 1962. Since I have already held the said goods liable to confiscation under Section 111 of the Act, I further find and hold that the noticee, Shri Harish Alumalani, is squarely liable to a personal penalty under Section 112(b)(i) of the Customs Act, 1962, for his aforementioned acts and omissions.

31. I find that the Show Cause Notice also proposes the imposition of penalties on noticees, namely Shri Amit D Pabari and Shri Harish Alumalani, under Section 117 of the Customs Act, 1962. In this regard, it is pertinent to note that Section 117 of Customs Act, 1962 acts as a residuary provision and 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.

In the instant case, the noticee, Shri Amit D Pabari, has fundamentally failed to fulfill his regulatory obligations. He has failed to produce any legitimate or credible documentation to verify the lawful procurement or ownership of the gold. Because the seized item is gold which is a notified commodity under Section 123 of the Customs Act, 1962 the statutory burden to prove that the goods are not smuggled rests squarely on the person from whose possession they were recovered. Consequently, for his failure to produce the mandatory documentation necessary to substantiate the legitimacy of the transaction and for failing to discharge his statutory duties, I hold that the noticee, Shri Amit D Pabari, has contravened his regulatory obligations, thereby rendering himself liable to a personal penalty under Section 117 of the Customs Act, 1962.

I further note that Shri Harish Alumalani has consistently refused to appear before the investigating officers to establish his innocence, thereby failing to cooperate with the ongoing investigation. Furthermore, he failed to present himself for the personal hearings granted by this Adjudicating Authority. This persistent non-compliance and deliberate failure to adhere to statutory summonses and regulatory processes constitute an independent infraction of his legal duties, thereby rendering Shri Harish Alumalani squarely liable to a personal penalty under Section 117 of the Customs Act, 1962.

32. I also note that the provisions of Section 65B of the erstwhile Indian Evidence Act, 1872 are pari materia with Section 138C(4) of the Customs

Act, 1962. Both provisions lay down essential conditions for the admissibility of electronic records, namely, that the source of the document must be identified, the manner in which it was produced must be clearly described, and it must be accompanied by a certificate issued by a person occupying a responsible official position in relation to the operation of the device or the management of the relevant activities. These statutory safeguards are intended to ensure the authenticity and integrity of digital records relied upon as evidence. In the present case involving the organized smuggling of foreign-origin gold through SVPI Airport, Ahmedabad, digital evidence in the form of WhatsApp chat logs was retrieved and relied upon during the investigation. It is pertinent to note that smartphones being capable of storing, transmitting, and receiving digital content through applications such as WhatsApp, BOTIM, and others, are functionally equivalent to computers for the purposes of Section 65B of the erstwhile Indian Evidence Act, 1872 and Section 138C of the Customs Act, 1962, serving as primary conduits for communication, coordination, and data storage in such illicit operations.

I find that there is nothing on record to suggest, even remotely, that the data in the form of WhatsApp chats retrieved from the seized mobile phone (Samsung Galaxy Z Fold5) of Noticee Shri Amit Deepak Pabari, was tampered with prior to or after its retrieval by the AIU officers. During the course of investigation, Shri Amit Deepak Pabari voluntarily unlocked and provided access to the WhatsApp chats exchanged between him and Noticee Shri Harish Alumalani (saved as "Harish Bhai (Sughi)"), which form a crucial part of the digital evidence in this case. Printouts of these chats were duly perused, accepted, and signed on every page by Shri Amit Deepak Pabari on 09.02.2026 in token of their correctness and authenticity, and their contents were explicitly admitted by him in his voluntary statement recorded under Section 108 of the Customs Act, 1962, thereby satisfying the statutory requirements for admissibility.

I further observe that with the enactment of the Bharatiya Sakshya Adhiniyam, 2023 (which replaced the Indian Evidence Act, 1872), the

admissibility of electronic records continues to be governed by similarly structured and modernized provisions. Section 61 of the said Adhiniyam clearly provides that ***no electronic or digital record shall be denied admissibility solely on the ground that it is an electronic or digital record***, affirming that such records shall, subject to Section 63, have the same legal effect, validity, and enforceability as other documents. Section 63(4) corresponds to the erstwhile Section 65B(4), reiterating the requirement of a certificate identifying the electronic record, describing the manner of its production, and attesting to the integrity of the device, while Section 2(1)(d) (read with the definition of electronic record under Section 2(1)(e)) brings modern communication devices and digital records squarely within the ambit of documentary evidence. In light of the above statutory provisions and factual circumstances and considering the seamless corroboration of this digital evidence with other independent materials on record, such as the Panchnama dated 08/09.02.2026, Valuation Certificate, Seizure Memo, flight travel records, and Noticee Shri Amit D Pabari's voluntary statement under Section 108, I am satisfied that the digital evidence, including the WhatsApp chats, is both legally admissible and wholly reliable. These records not only meet the statutory threshold for admissibility under Section 138C of the Customs Act, 1962 and the Bharatiya Sakshya Adhiniyam, 2023, but also substantively establish the conspiracy, coordination, and complicity between both Noticees in the instant gold smuggling as well as previous smuggling. Accordingly, I hold that the digital evidence gathered during the investigation is admissible and carries decisive probative value.

33. Accordingly, I pass the following Order:

O R D E R

i.) I order **absolute confiscation** of the Two Gold Bars and One cut Gold Bar (MWG UAE 10 Tolas 999.0 MELTER ASSAER) along with One Gold Bar derived from paste concealed in underwear, totally weighing **601.940 grams** (Net Weight) of purity 999.0/24Kt, having tariff value of **Rs. 88,25,449/-** and

market value of **Rs. 96,06,962/-** concealed by the passenger/noticee **Shri Amit Deepak Pabari** and placed under seizure under panchnama dated 08/09.02.2026 and Seizure Memo/Order dated 09.02.2026 under Section 111(d) and 111(l) of the Customs Act, 1962;

ii.) I order **absolute confiscation** of the black coloured Pocket Purse/Wallet of "Louis Vuitton Paris" brand alongwith two different silver colored plastic pouches and one transparent plastic pouch, used for concealment of the aforesaid gold bar seized vide seizure memo dated 09.02.2026 under Section 119 of the Customs Act, 1962;

iii.) I impose a penalty of **Rs. 20,00,000/-** (Rupees Twenty Lakhs Only) on **Shri Amit Deepak Pabari** under the provisions of Section 112(a)(i) & 112(b)(i) of the Customs Act 1962.

iv.) I impose a penalty of **Rs. 10,00,000/-** (Rupees Ten Lakhs Only) on **Shri Harish Alumalani** under the provisions of Section 112(b)(i) of the Customs Act 1962.

v.) I impose a penalty of **Rs. 50,000/-** (Rupees Fifty Thousand Only) on **Shri Amit Deepak Pabari** under the provisions of Section 117 of the Customs Act 1962.

vi.) I impose a penalty of **Rs. 50,000/-** (Rupees Fifty Thousand Only) on **Shri Harish Alumalani** under the provisions of Section 117 of the Customs Act 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-30/SVPIA-A/O&A/HQ/2026-27 dated 06.08.2026 stands disposed of.

Digitally signed by
SHREE RAM VISHNOI
Date: 23-11-2026
17:20:47

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

OIO No:117/ADC/SRV/O&A/HQ/2026-27
F. No: VIII/10- 30/SVPIA-A/O&A/HQ/2026-27

F. No. VIII/10-30/SVPIA-A/O&A/HQ/2026-27 Date:23.11.2026

DIN: 20261171MN000002B933

By SPEED POST A.D.

To,

1 Shri Amit Deepak Pabari,
S/o Shri Deepak Jamnadas Pabari,
Vraj Ratna, Plot No. 660, Haridas Nagar,
Simpoli Road, Borivali West, Mumbai,
Maharashtra – 400092
E mail Id: ***pabari.amit@yahoo.com***

2) Shri Harish Alumalani,
S/o Late Vasudev Alumalani,
House No. 9-A, Foy Sagar Road,
Hathikhera, Behind Ganesh Mandir, Raj Colony,
Hathi Khera, Ajmer, Rajasthan – 305005

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in.
6. Guard File.