



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद –380009.
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DIN No. 20250471MN0000222FCA

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-197/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-197/SVPIA-B/O&A/HQ/2024-25 dated: 27.11.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	14/ADC/SRV/O&A/2025-26
D	आदेशतिथि/ Date of Order-In-Original	:	24.04.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	24.04.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Mohin Jafar Thaim, Bandar Road, Salaya, Devbhumi, Dwarka, Gujarat- 361310
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंजिल, 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 ड्रूटी 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: -

Shri Mohin Jafar Thaim (hereinafter referred to as the said “person/Noticee”) residing at Bandar Road, Salaya, Devbhumi, Dwarka,

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Gujarat-361310, aged 26 years & DOB: 14.08.1998, holding passport bearing No. R4020105 travelled from Abu Dhabi to Ahmedabad on 18.06.2024 by Indigo Flight No. 6E 1432 (Seat No. 29F) at SVP I Airport, Ahmedabad. On the basis of passenger profiling one passenger who arrived by Indigo Flight No. 6E1432 and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 18.06.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2. Whereas, on being asked about his identity by the AIU officers, the passenger identified himself as Shri Mohin Jafar Thaim aged 26 years and shown his Passport, which is an Indian Passport bearing No. R4020105. The said passenger informed the officers that he has travelled by Indigo Flight No. 6E1432 from Abu Dhabi to Ahmedabad on 18.06.2024 and shown his Boarding Pass Bearing Seat No.29F.

2.1 The AIU Officers asked the said Passenger in presence of the panchas, if he has anything dutiable or restricted/prohibited items to declare before the Customs, in reply to which he denied. The AIU Officer informed the passenger that he along with his accompanied officers will be conducting his personal search and detailed examination of his baggage. Here, the AIU Officers offered their personal search to which the passenger politely declined. Further, the AIU Officers asked the passenger whether he want to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave his consent to be searched in front of the Superintendent of Customs. The AIU Officers asked Shri Mohin Jafar Thaim to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/clothes. The passenger removed all the metallic objects such as mobile, belt, jewellery etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound heard indicating there is nothing objectionable/metallic substance on his body/clothes.

2.2 The officers of AIU, the said passenger and the Panchas moved to the AIU office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad alongwith the baggage of the passenger. During frisking, the passenger Shri Mohin Jafar Thaim is examined

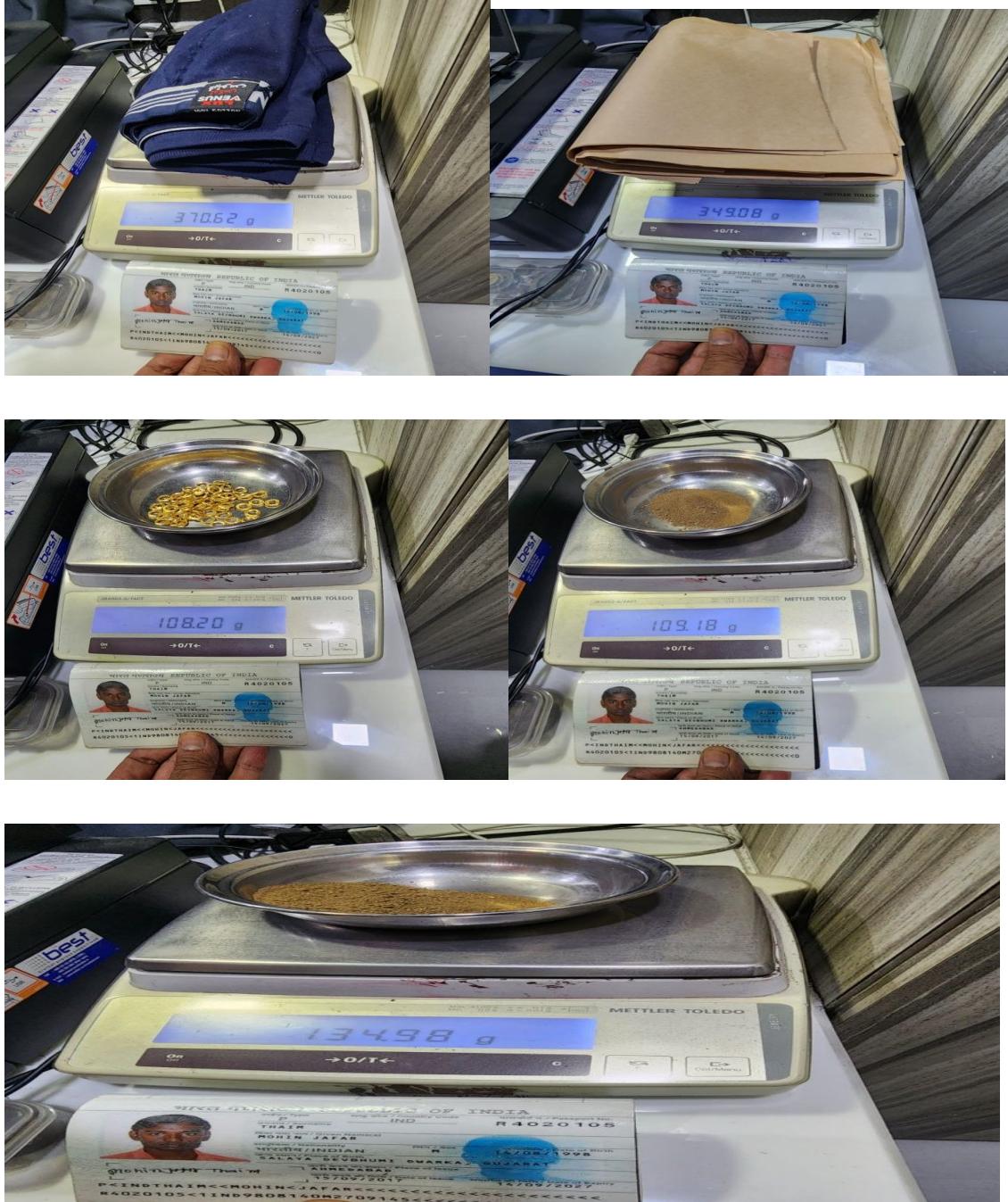
thoroughly by the AIU officer. The AIU officers ask the said passenger to change all his clothes. During examination of his clothes, the officers in presence of the panchas find that the underwear of the passenger is unusually heavy. On further examination it is found that the said underwear has two layers stitched. The officer in presence of the panchas and the passenger cut the stitched layer and open it, wherein **a yellow paste like substance is found spread between the two layers of the said underwear**. On being asked, the passenger Shri Mohin Jafar Thaim tell the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix. The officers started to check his baggage thoroughly and found **some clothes with metallic buttons and packets of biscuits, chocolates, crockery and glass made items which were suspicious in nature**. On detailed checking officers found **the corrugated papers with two layers containing gold dust and the same is confirmed by the passenger and gold ring is concealed in all the metallic press buttons** which all taken out by the AIU officers.

2.3 Thereafter, the AIU officer called the Government Approved Valuer and informed him that **a yellow coloured paste like substance from passenger's underwear, corrugated paper containing gold dust and gold ring recovered from the metallic buttons** have been detected and the passenger has informed that the said yellow paste is semi solid paste of gold and chemical mix and hence, he needs to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informed the AIU officer that the testing of the said material is only possible at his workshop as gold has to be extracted from such semi solid paste, gold ring & gold dust form by melting it and also informs the address of his workshop.

2.4. Thereafter, the panchas along with the passenger and the AIU officer left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer. On reaching the above referred premises, the AIU officer introduced the panchas as well as the passenger to one person namely Shri Kartikey Vasantrai Soni, Government Approved Valuer. The Government approved valuer weighs the underwear, corrugated paper with gold dust and gold ring recovered from Shri Mohin Jafar Thaim and informed that the gross weight of the said items are 879.410 grams. The government approved valuer tell the

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officers in presence of the panchas and the said passenger that first he has to burn the underwear and corrugated paper for making ash of it. Then, he took the underwear and corrugated paper recovered from Shri Mohin Jafar Thaim and started the process of burning it and make ash of it. Photographs of the same areas under:



2.5. Shri. Kartikey Vasantrai Soni, Government Approved Valuer, led the Officers, panchas and the passenger to the furnace, which is nearby his premises. Here, Shri Kartikey Vasantrai Soni started the process of converting the said ash and round gold wires recovered from the metallic buttons into solid gold by putting the said ash and round gold wires into the furnace and upon heating, it turns into liquid material. The said substance in liquid state is taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it

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becomes yellow coloured solid metal in form of a bar. After testing the said yellow coloured metal, the Government Approved Valuer vide its report No.323/2024-25 dated 18.06.2024 confirmed that it is pure gold. After completion of the procedure, Government Approved Valuer informed that 03 Gold bars totally weighing **347.630** Grams having purity 999.0/24kt is derived from **352.360** grams of gold dust/gold paste with ashes of undergarment, corrugated paper and gold rings of press button recovered from the passenger.

2.6 The Government Approved Valuer, in presence of the Officers, panchas, and the passenger tested and evaluated the recovered gold bars from Shri Mohin Jafar Thaim is having net weight of **347.630** Grams, purity 999.0/24kt and having **tariff value of Rs.21,80,308/- (Rupees Twenty-One Lakh Eighty Thousand Three Hundred and Eight only) and Market value of Rs.25,58,557/- (Rupees Twenty-Five Lakh Fifty-Eighty Thousand Five Hundred and Fifty-Seven only)**. The Government Approved Valuer further informed that the value of the gold bar has been calculated as per the Notification No.43/2024-Customs (N.T.) dated 14.06.2024 (gold) and Notification No.40/2024-Customs (N.T.) dated 06.06.2024 (exchange rate). He submitted his valuation report to the AIU Officer and the panchas and the said passenger put their dated signature on the said valuation report.

The details of the Valuation of the said gold bar submitted vide Certificate No. 323/2024-25 dated 18.06.2024 is tabulated in below table:

Sl. No.	Details of Items	PCS	Net Weight In Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar (Derived from Button)	1	107.050	999.0 24 Kt	7,87,888	6,71,409
2.	Gold Bar (Derived from Paper)	1	132.370	999.0 24 Kt	9,74,243	8,30,214
3.	Gold Bar (Derived from Under Garment)	1	108.210	999.0 24 Kt	7,96,426	6,78,684
Total		3	347.630		25,58,557/-	21,80,308/-

2.7 The AIU Officer took the photograph of the said gold bar which is as under:

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3. After completion of the process of the conversion of gold items into gold bars at the workshop, the Officers, Panchas and the passenger came back to the Airport alongwith the extracted gold bars. Thereafter, on being asked by the AIU officers, in the presence of the panchas, the passenger produced the identity proof documents which have verified and confirmed by the AIU Officers. The panchas and the passenger put their dated signatures on the copies of the documents as token of having seen and agreed to the same.

3.1. The Officers in the presence of the panchas and the passenger, scrutinized the following identify proof documents produced the by the passenger and found that Shri Mohin Jafar Thaim S/o Shri Mohin Jafar Thaim, DOB: 14.08.1998 is residing at Bandar Road, Salaya, Devbhumi, Dwarka, Gujarat-361310. The identity proof documents submitted by the passenger which are as under:-

- (i) Copy of Passport No. R4020105 issued at Ahmedabad on 15.09.2017 valid up to 14.09.2027.
- (ii) Boarding pass of Indigo Flight No. 6E 1432, Seat No. 29F from Abu Dhabi to Ahmedabad dated 18.06.2024.

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3.2. The AIU Officers showed the passenger, in presence of the panchas, the passenger's manifest of Indigo Flight No.6E1432, in which name of Shri Mohin Jafar Thaim is mentioned clearly. The Officers, the panchas as well as the passenger put their dated signatures on the copies of all the above-mentioned documents and the passenger's manifest, as a token of having seen and agreed to the same.

4. The AIU Officers inform the panchas as well as the passenger Shri Mohin Jafar Thaim that the recovered Gold bars are of 24Kt. with purity 999.0 **weighing 347.630 Grams and having tariff value of Rs.21,80,308/- and Market value of Rs. 25,58,557/-**. The value of the gold bar has been calculated as per the Notification No. 43/2024-Customs (N.T.) dated 14.06.2024 (gold) and Notification No. 40/2024-Customs (N.T.) dated 06.06.2024 (exchange rate), recovered from the above said passenger is attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the AIU officer informs that they have a reasonable belief that the above said Gold is being attempted to be smuggled by Shri Mohin Jafar Thaim is liable for confiscation as per the provisions of Customs Act, 1962; hence, the said gold bar along with packing material are being placed under seizure, vide Seizure Memo dtd. 18.06.2024, issued from F.No. VIII/10-44/AIU/B/2024-25, under Section 110 (1) & (3) of Customs Act, 1962.

4.1. The AIU Officers, then, in presence of the panchas and the said passenger Shri Mohin Jafar Thaim, placed the 24 Kt. gold bar of 999.0 purity weighing **347.630** grams recovered from the passenger in one transparent plastic box and after placing the packing list on the same, tied it with white thread and seals it with the Customs lac seal in such a manner that same cannot be opened without tempering the Customs lac seal.

5. The Officers, the panchas as well as the passengers put their dated signature on the packing lists placed over the boxes as a token of having packed and sealed in the presence of the Officers, Panchas and passenger, Shri Mohin Jafar Thaim. The said sealed transparent plastic container containing gold bar along with the packing materials are handed over to the Ware House In charge, SVPI Airport, Ahmedabad

vide Ware House Entry No. **6492 dated 18.06.2024**. The AIU Officers thereafter informed the passenger in presence of panchas that the copies of travelling documents and identity proof documents mentioned above duly signed by the Officers, the panchas, and the passenger Shri Mohin Jafar Thaim have been taken into possession for further investigation.

6. A Statement of Shri Mohin Jafar Thaim, was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 18.06.2024, wherein he explained as under:-

- His name and address stated above is true and correct. He is working as a seamen in Salaya, Gujarat. He Studied up to 6th class.
- There are six members in his family i.e My Mother, Father and two Brothers and one sister. His monthly income is Rs.20,000/- per month.
- He travelled to UAE on 06.03.2024 for the purpose of job. He came back on 18.06.2024 by Indigo Flight No. 6E 1432 from Abu Dhabi to Ahmedabad. His friend Hajibhai arranged his tickets.
- He stated that Hajibhai gave him all these items in Abu Dhabi to wear and to carry with him during travelling to India. One person was supposed to receive the said gold from him in Ahmedabad but He don't know that person.
- On arrival at Green channel of SVPI Airport at Ahmedabad at around 06:05 am on 18.06.2024, He was intercepted by the Customs Officers when He tried to exit through the green channel with his check-in baggage and hand baggage. During the examination of his clothes/body and his baggage by the Customs Officers in the presence of two independent panchas, the officers recovered all the items mentioned in the panchnama dated 18.06.2024 from himself. On further examination the underwear consisting of Semi Solid Paste comprising of Gold and chemical mix, corrugated paper with gold dust and gold ring in metallic press buttons were also recovered.
- Thereafter, He admitted that all these items were containing gold or made up from the gold. **The 03 gold bars derived from the said gold paste had weight of 347.630 grams, tariff value of Rs. 21,80,308/- and market value of Rs.25,58,557/-**, was recovered from him, which was hidden by him. The said 03 gold bars were seized by the officers under Panchnama dated 18.06.2024 under the provision of Customs Act, 1962. He stated that he was present during the entire course of the Panchnama and he confirmed the events narrated in the said panchnama drawn on 18.06.2024 at Terminal-2, SVPI Airport, Ahmedabad. In

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token of its correctness he have put his dated signature on the last page of the said Panchnama.

- He further stated that he was aware that smuggling of gold without payment of Customs duty is an offence. He was aware of the concealed gold **in his undergarments, corrugated paper with gold dust and gold ring in metallic press buttons**, but he did not make any declarations in this regard to evade the Customs duty. He confirmed the recovery of 347.630 grams, tariff value of Rs. 21,80,308/- and market value of Rs.25,58,557/- having purity 999.0/24 KT derived as narrated under the Panchnama dated 18.06.2024. He have opted for green channel so that he can attempt to smuggle the gold without paying customs duty.
- He had perused the said panchnama dated 18.06.2024 drawn at Terminal-2 of SVPI Airport, Ahmedabad and that he was present during the entire course of the said panchnama and he agreed with the contents of the said panchnama. Also stated that he had given his statement voluntarily and willingly without any threat, coercion or duress and no religious sentiments are hurt during the statement.

6.1. The above said 03 gold bars of **347.630** grams having 999.0/24 Kt. purity and having **tariff value of Rs.21,80,308/- and market value of Rs.25,58,557/-**, recovered from the passenger, which were attempted to be smuggled into India with an intent to evade payment of Customs duty, was a clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the said 03 Gold bars net weighing **347.630** Grams attempted to be smuggled by Shri Mohin Jafar Thaim, is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; and hence placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 18.06.2024, issued from F.No. VIII/10-44/AIU/B/2024-25, under Section 110 (1) & (3) of Customs Act, 1962.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) **Section 2 - Definitions.**—*In this Act, unless the context otherwise requires,—*

(22) “goods” includes—

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

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(39) "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;"

II) Section 11A – Definitions -In this Chapter, unless the context otherwise requires,

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) "Section 77 – Declaration by owner of baggage.—The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

IV) "Section 110 – Seizure of goods, documents and things.— (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"

V) "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;

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

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

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

(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;"

VI) **“Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation.”**

VII) **“Section 112 – Penalty for improper importation of goods, etc.–Any person,-**

(a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
 (b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) **“Section 3(2) - The Central Government may also, by Order published in the Official Gazette, 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.”**

II) **“Section 3(3) - 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.”**

III) **“Section 11(1) - 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.”**

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) **Regulation 3 (as amended) - All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.**

Contravention and violation of laws:

8. It therefore appears that:

(a) The passenger had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The passenger, Shri Mohin Jafar Thaim, had improperly imported 03 gold bars weighing **347.630** Grams having purity 999.0/24 Kt., concealed **in his undergarments, corrugated paper with gold dust and gold ring in metallic press buttons,**

having gross weight of Gold Bar of **352.360** Grams and net weight of **347.630** Grams, **tariff value of Rs.21,80,308/- (Rupees Twenty-One Lakh Eighty Thousand Three Hundred and Eight only) and Market value of Rs.25,58,557/- (Rupees Twenty-Five Lakh Fifty-Eighty Thousand Five Hundred and Fifty-Seven only)**, not declared to the Customs with a deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported **347.630** Grams of gold bar of purity 999.0/24 Kt. by the person without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- (b)** By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c)** The improperly imported gold bar by Shri Mohin Jafar Thaim, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (d)** Shri Mohin Jafar Thaim, by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (e)** As per Section 123 of Customs Act 1962, the burden of proving that the gold bar weighing **347.630** Grams, involving **tariff value of Rs.21,80,308/- (Rupees Twenty-One Lakh Eighty Thousand Three Hundred and Eight only) and Market value of Rs.25,58,557/- (Rupees Twenty-Five Lakh Fifty-**

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Eighty Thousand Five Hundred and Fifty-Seven only), without declaring it to the Customs, are not smuggled goods, is upon the person and Noticee, Shri Mohin Jafar Thaim.

09. Accordingly, a Show Cause Notice vide F.No. VIII/10-197/SVPIA-B/O&A/HQ/2024-25 dated 27.11.2024 was issued to Shri Mohin Jafar Thaim, (holding passport number No. R4020105) residing at Bandar Road, Salaya, Devbhumi, Dwarka, Gujarat-361310, as to why:

- (i) The 03 Gold Bars weighing **347.630** Grams, involving **tariff value of Rs.21,80,308/- (Rupees Twenty-One Lakh Eighty Thousand Three Hundred and Eight only) and Market value of Rs.25,58,557/- (Rupees Twenty-Five Lakh Fifty-Eighty Thousand Five Hundred and Fifty-Seven only)**, recovered from the Passenger who carried **in his undergarments, corrugated paper with gold dust and gold ring in metallic press buttons**, which has been placed under seizure under panchnama proceedings dated 18.06.2024 and Seizure Memo Order dated 18.06.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) The packing materials under seizure on the reasonable belief that the same was used for packing and concealment of the above-mentioned gold which were attempted to be smuggled into India in violation of Section 135, of the Customs Act, 1962, under panchnama dated 18.06.2024 and seized under subsequent Seizure memo order dated 18.06.2024, should not be confiscated under Section 119 of the Customs Act, 1962 and
- (iii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

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

11. The noticee was given opportunity for personal hearing on 28.02.2025, 17.03.2025 & 04.04.2025 but he failed to appear and represent his case. In the instant case, the noticee has been granted

sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

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

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

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

“7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

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

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

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

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

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

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

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

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

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

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

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

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

Discussion and Findings:

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

13. In the instant case, I find that the main issue to be decided is whether the **347.630 grams** of 03 gold bars, derived from gold paste, gold dust and gold rings concealed **in his undergarments, corrugated paper with gold dust and gold ring in metallic press buttons**, having tariff value of **Rs.21,80,308/-** and market value is **Rs.25,58,557/-** seized vide Seizure Memo/Order under Panchnama proceedings both dated 18.06.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the panchnama dated 18.06.2024 clearly draws out the fact that the noticee, who arrived from Abu Dhabi in Flight No. 6E1432 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on the basis of passenger profiling and suspicious movement, while noticee was attempting to exit through green channel without making any declaration to the Customs. The officers informed him that a detailed examination/search of his luggage as well as his personal search was required to be conducted. The officer asked the noticee to pass through the DFMD (Door Frame Metal Detector) after removing all metallic objects from his body/ clothes, while the noticee passed through the Door Frame Metal Detector (DFMD) Machine no beep sound was heard which indicated there was no objectionable/dutiable substance on his body/clothes. During frisking, the passenger Shri Mohin Jafar Thaim is examined thoroughly by the AIU officer. The AIU officers ask the said passenger to change all his clothes. During examination of his clothes, the officers in presence of the panchas find that the underwear of the passenger is unusually heavy. On further examination it is found that the said underwear has two layers stitched. The officer in presence of the panchas and the passenger cut the stitched layer and open it, wherein **a yellow paste like substance is found spread between the two layers of the said underwear**. On being asked, the passenger Shri Mohin Jafar Thaim tell the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix. The officers started to check his baggage thoroughly and found **some clothes with metallic buttons and packets of biscuits, chocolates, crockery and glass made items which were suspicious in nature**. On detailed

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checking officers found **the corrugated papers with two layers containing gold dust and the same is confirmed by the passenger and gold ring is concealed in all the metallic press buttons** which all taken out by the AIU officers.

14.1 It is also on the record that the Government Approved valuer Shri Kartikey Vasantrai Soni weighs the underwear, corrugated paper with gold dust and gold ring recovered from Shri Mohin Jafar Thaim and informed that the gross weight of the said items are 879.410 grams and after completion of the extraction process, the Government Approved Valuer Shri Kartikey Vasantrai Soni informed that 03 gold bars total weighing **347.630 grams** having purity of 999.00 (24Kt.) derived from the said gold paste concealed in underwear, gold rings concealed in metallic press buttons and from gold dust concealed in corrugated papers of packets of biscuits, chocolates, crockery and glass made items and submitted his valuation report vide certificate No. 323/2024-25 dated 18.06.2024, wherein he mentioned that the gold bars are of pure gold having purity 999.0/24kt and having total Market Value of the said recovered gold bars are **Rs.25,58,557/- and Tariff Value is Rs.21,80,308/-**. The value of the gold bar has been calculated as per the Notification No. 43/2024-Customs (N.T.) dated 14.06.2024 (gold) and Notification No.40/2024-Customs (N.T.) dated 06.06.2024 (exchange rate).

15. I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. In fact, in his statement dated 18.06.2024, he has clearly admitted that he had travelled from Abu Dhabi to Ahmedabad by Flight No. 6E1432 dated 18.06.2024 carrying/concealed the gold in form of gold paste in underwear, in form of rings concealed in metallic press button and in form of gold dust in corrugated papers. He admitted that the said gold items was not purchased by him and was given by a person named Hajibhai who arranged his tickets. Further, I also find that the noticee has failed to submit any purchase invoice and any payment particulars which establishes the gold was not for smuggling. Further, he mentioned that he had intentionally not declared the substance

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containing foreign origin gold before the Customs authorities as he wanted to clear the same illicitly and evade payment of customs duty; that he was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act, 1962 and the Baggage Rules, 2016.

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

17. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 347.630 gms., retrieved/derived from gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper with gold dust and gold ring in metallic press buttons, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 347.630 gms., seized under panchnama dated 18.06.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By secreting the gold in form of gold paste, gold dust and gold rings, in his undergarments, corrugated paper with gold dust and gold ring in metallic press buttons and not declaring the same before the Customs,

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it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

18. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended* and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Further, the noticee has not fulfilled the conditions as prescribed for eligible passenger under Notification No. 50/2017-Cus dated 30.06.2017. Therefore, the said improperly imported gold weighing 347.630 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

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

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

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

Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 41 of the Subject Notification.

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

If,-

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

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

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

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

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

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

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

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the Noticee as the noticee visited Abu Dhabi on 06.03.2024 and returned on 18.06.2024, therefore, the condition of staying more than six months for becoming eligible passenger was not fulfilled in the instant case. *I find that a well-defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling.* It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject gold in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

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

—

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

I find that the said gold in form of gold paste, gold dust and gold rings concealed in his undergarments, gold dust in corrugated paper and gold ring in metallic press buttons and was not declared to the Customs under Section 77 of the Customs Act, 1962 and he passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold in form of gold rings which were found concealed and recovered in manner as described above, was made by the Noticee, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

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

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

In this regard, I find that total 347.630 grams of derived gold bars of foreign origin which was recovered from possession of noticee and admittedly smuggled into India. On test, the gold was found to be of purity of 999.0/24kt. Moreover, I find that the noticee could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Shri Mohin Jafar Thaim, thus failing to discharge his “burden of proof” that the gold was legally imported/possessed. He has also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

Section 77. Declaration by owner of baggage. - The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in

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person of Shri Mohin Jafar Thaim in prescribed declaration form and hence the said gold is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

19. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity weighing 347.630 gms., retrieved/derived from gold concealed in the form of gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold ring in metallic press buttons, having total Tariff Value of Rs.21,80,308/- and market Value of Rs.25,58,557/-, seized vide Seizure Memo/Order dated 18.06.2024 under the Panchnama proceedings dated 18.06.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing gold in the form of gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons and without declaring to the Customs on arrival in India, it is observed that the passenger/noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that he has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. Further, I find that in his voluntarily statement recorded under Section 108 of Customs Act, 1962, he admitted that he did not declare anything to Customs and while coming out of the green channel, he was apprehended by the officials of AIU, SVPIA, Ahmedabad and was found in possession with the gold in form of gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons. It is seen that he has involved himself in carrying, keeping, concealing and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

20. I find that the passenger/noticee has confessed of carrying gold of 24kt having 999.0 purity, weighing 347.630 grams and attempted to remove the said gold by concealing in his undergarments, corrugated paper and gold ring in metallic press buttons and attempted to remove the said gold from the Customs Airport without declaring it to the

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

21. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. 03 gold bars weighing 347.630 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bars is Rs.25,58,557/- and Tariff Value is Rs.21,80,308/- retrieved/ derived from gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons, were placed under seizure vide panchnama dated 18.06.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, he attempted to remove the gold by concealing in his undergarments, corrugated paper and gold rings in metallic press buttons and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) & 112 (b) of Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

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

23. I find that, the burden of proving that the seized gold bar was not smuggled goods lie on the person who claims to be the owner of the goods so seized or from whose possession the goods were seized. Section 123 of the Customs Act, 1962 stipulates that:-

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

In the instant case, the onus, for proving that the seized gold bars weighing 347.630 grams of foreign origin are not smuggled in nature lie on the noticee from whose possession of impugned goods were seized on 18.06.2024. The gold bars derived from gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons, recovered from noticee and he admitted to have smuggled it into India. The test report also shows that gold bars were found to be purity of 999.00/24Kt. In view of the above discussions, I find that the manner of concealment, in this case clearly of **ingenious in nature** and shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. **Further, the noticee could not produce any licit or valid documents regarding the legal importation/acquisition/possession/transportation of the gold found in his possession.** Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123 and also not declared the same to the Customs in the prescribed Indian Customs Declaration Form. In view of the above discussions, I hold that the gold weighing 347.630 grams of 24Kt./999.0 purity, retrieved/ derived from gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner to evade the customs duty. In the instant case, **I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.**

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

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

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

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

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

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

27. In [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary

Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No.375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

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

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

24.....

25.....

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

29. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in the form of gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons, with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 347.630 grams of 24Kt./999.0 purity in form of gold bars, retrieved/ derived from gold paste, gold dust and

gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons, is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 347.630 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act. I also hold in unequivocal terms that the garment cloths (undergarment), metallic buttons, corrugated paper used to conceal the gold in form of paste, gold dust and gold rings recovered from the noticee, would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.**

30. I further find that the passenger had involved himself in the act of smuggling of gold weighing 347.630 grams of 24Kt./999.0 purity, retrieved from gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons. Further, it is fact that the passenger/noticee has travelled with gold weighing 347.630 grams of 24Kt./999.0 purity, from Abu Dhabi to Ahmedabad despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the noticee has concealed the gold in form of gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons, to avoid the detection and to remove clandestinely without declaring the same and it establishes his malafide intention. Further, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold bars weighing 347.630 grams

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having purity of 999.0 and 24kt. Hence, the identity of the goods are not established and non-declaration at the time of import is considered as an act of omission on his part. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Sections 112(a)(i) & 112(b)(i) of the Customs Act, 1962 and I hold accordingly.

31. Accordingly, I pass the following Order:

ORDER

- i.)** I order absolute confiscation of the 03 gold bars weighing **347.630** grams having Market Value at **Rs.25,58,557/-** (Rupees Twenty-Five Lakh Fifty-Eighty Thousand Five Hundred and Fifty-Seven only) and Tariff Value is **Rs.21,80,308/-** (Rupees Twenty-One Lakh Eighty Thousand Three Hundred and Eight only) derived/retrieved from gold paste, gold dust and gold rings concealed in his undergarments, corrugated paper and gold rings in metallic press buttons, by the passenger/noticee Shri Mohin Jafar Thaim and placed under seizure under panchnama dated 18.06.2024 and seizure memo order dated 18.06.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii.)** I order absolute confiscation of under garment cloth worn by noticee, corrugated paper and metallic buttons used to conceal the gold in form of paste, gold dust and gold rings respectively, under Section 119 of the Customs Act, 1962.
- iii.)** I impose a penalty of **Rs. 6,50,000/-** (Rupees Six Lakh Fifty Thousand Only) on Shri Mohin Jafar Thaim under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

32. Accordingly, the Show Cause Notice No. VIII/10-197/SVPIA-B/O&A/HQ/2024-25 dated 27.11.2024 stands disposed of.

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(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250471MN0000222FCA

By SPEED POST A.D.

To,

Shri Mohin Jafar Thaim,
Bandar Road, Salaya,
Devbhumi, Dwarka, Gujarat-361310

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.