

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहलीमजिल, पुरानेहाइकोर्टक्सामने, नवरंगपुरा, अहमदाबाद – 380009.

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PREAMBLE

A	फाइलसंख्या / File No.	:	VIII/10-265/SVPIA-D/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या—तारीख / Show Cause Notice No. and Date	:	VIII/10-265/SVPIA-D/O&A/HQ/2024-25 dated 20.03.2025
C	मूलआदेशसंख्या / Order-In-Original No.	:	68/ADC/SRV/O&A/2025-26
D	आदेशतिथि / Date of Order-In-Original	:	30.06.2025
E	जारीकरनेकीतारीख / Date of Issue	:	30.06.2025
F	द्वारापारित / Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Mrs. Muskan Anil Lalwani, W/o Mr. Anil Ramchand Lalwani F-45/2, F Ward, Kubernagar, Ahmedabad, Gujarat-382340
(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 डियूटी 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:

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

On the basis of passenger profiling and suspicious movements of passengers by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, intercepted a Female passenger **Mrs. Muskan Anil Lalwani, Aged 39 years (DOB: 30/09/1985), Wife of Mr. Anil Ramchand Lalwani holding an Indian Passport Number No. W8411078, residing at:- F-45/2, F Ward, Kubernagar, Ahmedabad, Gujarat-382340**, arriving from Abu Dhabi (UAE) to SVPI Airport, Ahmedabad by Indigo Flight No. 6E1432 on 10.10.2024 (**Seat No. 23B**) at the arrival Hall of the SVPIA, Ahmedabad, while she was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of her baggage was conducted in presence of two independent witnesses and the proceedings were recorded under the said **Panchnama dated 10.10.2024**.

2. Whereas, the officers of Customs, Air Intelligence Unit (AIU), SVPIA, Ahmedabad had identified the said passenger from her passport and intercepted her along with her checked-in baggage when she was about to exit through the green channel for personal search and examination of her baggage under Panchnama proceedings dated 10.10.2024 in presence of two independent Panch witnesses. Mrs. Muskan Anil Lalwani was carrying one grey colour hand bag/a lady purse. The passenger was asked as to whether she was carrying any dutiable/ restricted/ prohibited goods and whether she wished to declare before Customs Authorities, in reply the passenger Mrs. Muskan Anil Lalwani denied. The officers also offered their search to the passenger, but the passenger denied, having full trust in AIU Officers. She was subject to be checked in the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, she was asked as to whether she wanted to be checked in front of executive magistrate or Superintendent of Customs, in reply the said passenger gave her consent to be searched in front of the Superintendent of Customs. Thereafter, the passenger Mrs. Muskan Anil Lalwani was asked to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building of Airport, after removing all metallic objects from her body/clothes. The passenger readily removed all the metallic substances from her body such as mobile, purse etc. and kept in a tray and placed it on the table. Thereafter, Mrs. Muskan Anil Lalwani was asked to pass through the Door Frame Metal Detector (DFMD). However, no beep sound was generated by the DFMD machine indicating nothing

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

objectionable/metallic substance present on her body/cloths. Thereafter, the AIU officers instructed the passenger to put her entire luggage on the X-Ray Bag Scanning Machine for scanning in presence of the panch witnesses. On examination of baggage of the passenger i.e. grey lady purse, the AIU officers did not notice any unusual image indicating nothing objectionable was present in the baggage. Thereafter, the AIU officers once again asked the passenger if she is carrying any contravened/ Restricted/dutiable goods which she wanted to declare to the customs, but the passenger again replied in negative. Thereafter, on thorough and repeated questioning by the AIU officers and on being asked for personal search, the passenger, Mrs. Muskan Anil Lalwani admitted that she is carrying gold in paste form wrapped in black colour tape concealed in three capsules in her rectum. Thereafter, Mrs. Muskan Anil Lalwani removed three capsules with black colour rubber packing (to give the shape of Capsules) from her rectum and shows it to the AIU officers. The AIU officers found the gold paste wrapped precisely with black tape in 03 capsules concealed in her rectum. The packet/parcel wrapped with black colour tape containing semi solid paste has been handed over to the AIU officers by the passenger. The passenger Mrs. Muskan Anil Lalwani accepted that she carrying gold in paste form wrapped in black colour tape concealed in her rectum, as she wanted to clear it illicitly without declare it to the Customs for the evasion of Customs Duty.

2.1. Thereafter, the Customs officers called the Government Approved Valuer and informed him that 03 capsules covered with black rubber have been recovered from one passenger and the passenger **Mrs. Muskan Anil Lalwani** had informed that it was gold in paste form and hence, he is required to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informed the officers that the testing of the material is possible only at his workshop as gold has to be extracted from semi-solid paste form by melting it and also informs the address of his workshop. Thereafter, AIU officers along with the passenger leave the Airport premises in a government vehicle at around 10:30 AM on 10.10.2024 and reach at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G.Road, Ahmedabad-380006. On reaching the above referred premises, the officer introduces the panchas, as well as the passenger to one person namely Mr. Kartikey Vasantrai Soni, Government Approved Valuer. Mr. Kartikey Vasantrai Soni, Government Approved

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

Valuer in our presence, starts the detailed examination of the paste recovered from the said passenger. After examining and weighing the said paste on his weighing scale, Mr. Kartikey Vasantrai Soni provides preliminary verification report of semi solid substance in the form of Annexure-A. After examining and weighing the said paste on his weighing scale, Mr. Kartikey Vasantrai Soni informs that the paste wrapped with black Tape contain semi solid substance consisting of Gold & chemical mix having Gross weight **537.180 grams**. The photograph of the same is as:-



2.2 Thereafter, the Government approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Mr. Kartikey Vasantrai Soni started the process of converting the semi solid material concealed in the rectum of the passenger into solid gold. The semi solid substance consisting of Gold and Chemical mix put into the furnace and upon heating, the semi solid substance turned into mixture of gold like material weighing 500.890 grams. The said substance consisting of gold was tested by the valuer for the gold component by putting in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that 01 Gold bar weighing 500.890 grams having purity 999.0/24 Kt. was derived from 537.180 grams paste concealed in the rectum of the passenger.

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25



(Gold Bar retrieved from Three Capsules containing Gold in paste form recovered from Mrs. Muskan Anil Lalwani concealed in her rectum)

3. After testing the said derived bar, the Government Approved Valuer confirmed that it is pure gold and Shri Kartikey Vasantrai Soni issued a Certificate, vide Certificate No. 1029/2024-25 dated 10.10.2024, wherein it is certified that the gold bar is having purity 999.0/24kt, weighing 500.890 grams. The valuation provided by the said Govt. Approved Valuer is summarized as under:

Sr. No	Item particular s	PCS	Gross Weight (in grams)	Net Weight (in grams)	Purity	Market Value (In Rs.)	Tariff Value (In Rs.)
1.	Gold bar	1	537.180	500.890	999.0/24k t	38,65,368	36,18,685
TOTAL		1	537.180	500.890		38,65,368	36,18,685

3.1 Further, the Govt. Approved Valuer informs that the total Market Value of the said gold bar having purity 999.00 24 Kt is Rs. 38,65,368/- (Rupees Thirty Eight Lakh Sixty Five Thousand Three Hundred Sixty Eight only) and Tariff Value as Rs. 36,18,685/- (Rupees Thirty Six Lakh Eighteen Thousand Six Hundred Eighty Five only), which has been calculated as per the Notification No. 64/2024-Customs (N.T.) dated 30/09/2024 (Gold Tariff) and Notification No. 45/2024-Customs (N.T.) dated 20/06/2024 (Exchange Rate). The calculation of total Market value based on the unit Market value of gold@77170 per 10 gram (999.0/24kt)

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

& the calculation of total Tariff value based on the Tariff value of gold prevailing at the time of valuation @72245.10 per 10 gram (999.0/24kt). He submits his valuation report to the AIU Officers. The details of quantity, purity, Tariff Value and Market Value are as detailed in below table.

Valuation Certificate No. and date	Details of items	Total Weight of paste recovered from pax (In Grams)	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1029/2024-25 dated 10.10.2024	01 Gold Bar	537.180	500.890	999.00/ 24 KT	38,65,368/-	36,18,685/-

Thereafter, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the proceedings of the extraction of gold at the workshop, along with the extracted gold bar on 10.10.2024.

Seizure of the above gold bar:

4. The said 01 gold bar totally weighing 537.180 grams, net weighing 500.890 grams was attempted to be smuggled into India without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said gold Bar totally weighing 537.180 grams, net weighing 500.890 grams having purity 24 KT/999.0 & having market value of Rs.38,65,368/- (Rupees Thirty-Eight Lakh Sixty-Five Thousand Three Hundred Sixty-Eight only) and Tariff Value is Rs. 36,18,685/- (Rupees Thirty-Six Lakh Eighteen Thousand Six Hundred Eighty-Five only), were placed under seizure vide order dated 10.10.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold bar is liable for confiscation under Section 111 of the Customs Act, 1962.

5. Statement of Mrs. Muskan Anil Lalwani:

Statement of Mrs. Muskan Anil Lalwani was recorded on 10.10.2024 wherein she inter alia stated as under:

5.1 She gave her personal details like name, address, profession, family details and education etc. Her date of birth is 30/09/1985. She studied

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

upto 10th standard, she can read, write and understand English and Hindi languages.

5.2 She was residing with her husband Mr. Anil Ramchand Lalwani and her 15-year-old daughter & 07-year-old son at above stated address. Her daughter is studying in 9th standard & son studying in 1st standard. Her husband has printing press at Kubernagar, Ahmedabad and his monthly income is Rs. 22,000/- per month and she is doing business of dress materials selling from home and earn almost Rs. 8000/- per month.

5.3 She used to travel to Dubai once in 45 days for her business i.e. selling dress materials. She purchased dress materials from Ahmedabad and sell the same to different traders at Dubai. She departed to Dubai on 08.10.2024 from Ahmedabad and returned back on 10.10.2024. The to and from flight tickets were booked by son of her Aunty Shri Anil Bhatiya (Mob No. 9767407300) and the payment was also made by him.

5.4 She has purchased the said Gold in paste form from a Gold shop in Dubai as stated in the Panchnama proceedings on 10.10.2024 at SVIP Airport, Ahmedabad. She stated that the money for purchase of Gold was arranged by selling her old gold ornaments that she received in her marriage and for the rest amount; she took loan from her family members. Further, she stated that as per her knowledge, approx. 25,00,000/- were paid for the purchase of said gold and she don't have any copy of the purchase bill/invoice. She stated that she purchased the said Gold for selling to somebody else for earning money but had not decided to whom the said Gold would be sold.

5.5 She further stated that the decision to smuggle gold was taken by her own. She was well aware of the provisions of Customs Act and she knows the smuggling of Gold is punishable offence. **Also, she has indulged in gold smuggling activity in the past and a case was booked against her on 14.09.2022 for hiding the gold in the same manner i.e. 'concealment of gold in rectum' at SVPIA Airport.**

5.6 She also confirmed that the facts narrated in the Panchnama dated 10.10.2024 were true and correct.

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of The Baggage Rules, 1998, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 03 gold capsules (one Gold bar) totally weighing 537.180 grams, net weighing 500.890 grams having purity 24 KT/999.0 were recovered from the rectum of **Mrs. Muskan Anil Lalwani** who had arrived from Abu Dhabi (UAE) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E1432 on 10.10.2024 (**Seat No. 23B**) at T-2 of SVPIA Ahmedabad on 10.10.2024. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules, and for these reasons alone it cannot be considered as a bonafide baggage under the Customs Baggage Rules 1998. According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper officer. In the instant case, the passenger had not declared the said gold items totally weighing 537.180 grams, net weighing 500.890 grams having purity 24 KT/999.0 because of malafide intention and thereby contravened the provision of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 537.180 grams, net weighing 500.890 grams having purity 24 KT/999.0 recovered from **Mrs. Muskan Anil Lalwani**, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 537.180 grams, net weighing 500.890 grams having purity 24 KT/999.0 is liable for confiscation under the provision of Section 111 of the Customs Act, 1962. Consequently, the said gold items totally weighing 537.180 grams, net weighing 500.890 grams having purity 24 KT/999.0 recovered from the rectum of **Mrs. Muskan Anil Lalwani** who had arrived from Abu Dhabi (UAE) to SVPI Airport, Ahmedabad, Indigo Flight No. 6E1432 on 10.10.2024 (**Seat No. 23B**) at T-2 of SVPIA Ahmedabad on 10.10.2024 were placed under seizure vide Panchanama dated 10.10.2024 and Seizure order dated 10.10.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

Summation:

6. The aforementioned proceedings indicates that **Mrs. Muskan Anil Lalwani** had attempted to smuggle the aforesaid gold into India and

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

thereby rendered the aforesaid gold having Market value of Rs. 38,65,368/- (Rupees Thirty Eight Lakh Sixty Five Thousand Three Hundred Sixty Eight only) and Tariff Value Rs. 36,18,685/- (Rupees Thirty Six Lakh Eighteen Thousand Six Hundred Eighty Five only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under Seizure vide Seizure Memo/Order dated 10.10.2024 under Section 110(1) and 110(3) of the Customs Act, 1962

6.1 The following documents produced by **Mrs. Muskan Anil Lalwani** were withdrawn under Panchnama dated 10.10.2024: -

- a)** Copy of Passport No. W8411078 issued at Ahmedabad on 18.11.2022 valid upto 17.11.2032 (Old Passport No. U1260358)
- b)** Boarding pass of Indigo Airline Flight No. 6E-1432 from Abu Dhabi to Ahmedabad dated 10.10.2024 having Seat No. 23B and passenger manifest of Indigo Flight No. 6E-1432 dated 10.10.2024 in which name of Mrs. Muskan Anil Lalwani reflected at Sequence No. 81.

7. Legal provisions relevant to the case:

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

- 7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, as amended only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "Eligible Passenger" means passenger of Indian Origin or a passenger holding valid passport issued under the Passport Act, 1967, who is coming to India after a period of not less than 6 months of stay abroad.
- 7.2 As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

- 7.3 As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- 7.4 As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

The Customs Act, 1962:

- 7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
 - (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property;
- 7.7 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- 7.8 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- 7.9 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

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

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

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

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

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

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

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

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

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

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

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

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

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

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods

required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

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

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

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

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

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

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

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

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

7.14 As per Section 123 of Customs Act 1962,

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

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

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

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

(b) in any other case, on the person, if any, who claims to be

the owner of the goods so seized.

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

7.15 All dutiable goods imported into India by a passenger in his baggage are classified under CTH 9803.

Customs Baggage Rules and Regulations:

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

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

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

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

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

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

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

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

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of the arrival in India declaring his/her intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before the clearance from customs.

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

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

Contravention and violation of law:

8. It therefore appears that:

(i) **Mrs. Muskan Anil Lalwani** had attempted to smuggle/improperly import 03 Gold capsules (1 gold bar) totally weighing 537.180 grams, net weighing 500.890 grams having purity 24 KT/999.0 and having Market value of Rs. 38,65,368/- (Rupees Thirty Eight Lakh Sixty Five Thousand Three Hundred Sixty Eight only) and Tariff Value is Rs. 36,18,685/- (Rupees Thirty Six Lakh Eighteen Thousand Six Hundred Eighty Five only), derived from her rectum in form of 03 gold capsules, 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. **Mrs. Muskan Anil Lalwani** had knowingly and intentionally smuggled the said gold in her rectum on her arrival from Abu Dhabi (UAE) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E1432 dated 10.10.2024 **Seat No. 23B** at Terminal-2, SVPIA Ahmedabad on 10.10.2024 with an intent to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by **Mrs. Muskan Anil Lalwani**, by way of concealment in her rectum and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. **Mrs. Muskan Anil Lalwani** has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as amended.

(ii) **Mrs. Muskan Anil Lalwani**, by not declaring the gold concealed in her rectum, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

(iii) The improperly imported/smuggled gold by **Mrs. Muskan Anil Lalwani**, concealed gold in her rectum before arriving from Abu Dhabi (UAE) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E1432 dated 10.10.2024 **Seat No. 23B** at Terminal -2, SVPIA

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

Ahmedabad on 10.10.2024, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

- (iv) **Mrs. Muskan Anil Lalwani**, by the above-described acts of omission/commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.
- (v) As per Section 123 of Customs Act 1962, the burden of proving that the said Gold items totally weighing 500.890 grams which was recovered from the rectum of **Mrs. Muskan Anil Lalwani** who arrived from Abu Dhabi (UAE) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E1432 dated 10.10.2024 **Seat No. 23B** at Terminal -2, SVPIA Ahmedabad on 10.10.2024 are not smuggled goods, is upon Mrs. Muskan Anil Lalwani, who is the Noticee in this case.

9. Accordingly, a Show Cause Notice was issued to **Mrs. Muskan Anil Lalwani**, Aged 39 years (DOB: 30/09/1985), Wife of Mr. Anil Ramchand Lalwani holding an Indian Passport Number No. W8411078, residing at:- F-45/2, F Ward, Kubernagar, Ahmedabad, Gujarat-382340, as to why:

- (i) The 01 Gold Bar weighing **500.890 Grams** having purity 24KT /999.0 and having Market value of **Rs. 38,65,368/-** (Rupees Thirty Eight Lakh Sixty Five Thousand Three Hundred Sixty Eight Only) and Tariff Value is **Rs. 36,18,685/-** (Rupees Thirty Six Lakh Eighteen Thousand Six Hundred Eighty Five only) derived from the gold paste in form of 03 capsules concealed in rectum by **Mrs. Muskan Anil Lalwani**, who arrived from Abu Dhabi (UAE) to SVPI Airport, Ahmedabad, by Indigo Flight No. 6E1432 (Seat No. 23B) at Terminal-2, SVPIA Ahmedabad on 10.10.2024, placed under seizure under panchnama proceedings dated 10.10.2024 and Seizure Memo Order dated 10.10.2024, should not be confiscated under the

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon the **Mrs. Muskan Anil Lalwani**, under Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

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

11. The noticee was given opportunity for personal hearing on 05.05.2025, 16.05.2025 & 02.06.2025 but she failed to appear and represent her case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person or through virtual mode for three times but she failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and she do not have anything to say in her defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

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

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

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

“7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

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

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

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

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

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

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

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

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

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

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

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

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

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

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

Discussion and Findings:

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

13. In the instant case, I find that the main issue to be decided is whether the **500.890** grams of gold bar, derived from semi solid gold paste in form of 03 Capsules containing gold and chemical mix concealed in her rectum, having **tariff value of Rs.36,18,685/-** and market value is **Rs.38,65,368/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 10.10.2024, 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 10.10.2024 clearly draws out the fact that the noticee, who arrived from Abu Dhabi (UAE) in Indigo Flight No. 6E1432 was intercepted by Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on the basis of passenger profiling and suspicious movement, when she was trying to exit through green channel of the Arrival Hall of Terminal 2 of SVPI Airport, without making any declaration to the Customs. The officers then asked whether she was carrying any dutiable/ restricted/ prohibited goods and whether she wished to declare before Customs Authorities, in reply the noticee Mrs. Muskan Anil Lalwani denied. Thereafter, the noticee was asked to pass through the DFMD Machine after removing all metallic objects from her 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 her body/clothes. Thereafter, the AIU officers instructed the noticee to put her entire luggage on the X-

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

Ray Bag Scanning Machine for scanning in presence of the panch witnesses. On examination of baggage of the noticee i.e. grey lady purse, the AIU officers did not notice any unusual image indicating nothing objectionable was present in the baggage. Thereafter, the AIU officers once again asked the noticee if she was carrying any contravened/ Restricted/dutiable goods which she wanted to declare to the customs, but the noticee again replied in negative. Thereafter, on thorough and repeated questioning by the AIU officers and on being asked for personal search, the noticee, Mrs. Muskan Anil Lalwani admitted that she was carrying gold in paste form wrapped in black colour tape concealed in three capsules in her rectum. Thereafter, Mrs. Muskan Anil Lalwani removed three capsules with black colour rubber packing (to give the shape of Capsules) from her rectum and shows it to the AIU officers. The AIU officers found the gold paste wrapped precisely with black tape in 03 capsules concealed in her rectum. The packet/parcel wrapped with black colour tape containing semi solid paste has been handed over to the AIU officers by the noticee. The noticee Mrs. Muskan Anil Lalwani accepted that she carrying gold in paste form wrapped in black colour tape concealed in her rectum, as she wanted to clear it illicitly without declare it to the Customs for the evasion of Customs Duty. It is on record that the noticee had admitted that she was carrying the capsules containing gold in paste form concealed in her rectum, with intent to smuggle into India without declaring before Customs Officers. It is also on record that Government approved Valuer had tested and converted said capsules in Gold Bar with certification that the gold was of 24 kt and 999.0 purity, weighing 500.890 Grams. The Tariff Value of said gold bar weighing 500.890 grams having purity 999.0/24 Kt. derived from 537.180 grams of 03 Capsules containing semi solid paste consisting of gold and chemical mix concealed in rectum, having Tariff value of Rs. **36,18,685/-** and market Value of **Rs.38,65,368/-** which was placed under seizure under Panchnama dated 10.10.2024, in the presence of the noticee and independent panch witnesses.

15. I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

presence of the panchas as well as the passenger/noticee. In fact, in her statement dated 10.10.2024, she has clearly admitted that she had travelled from Abu Dhabi (UAE) to Ahmedabad by Flight No. 6E1432 carrying gold in form of capsule concealed in her rectum; that she had intentionally not declared the substance containing foreign origin gold before the Customs authorities as she wanted to clear the same illicitly and evade payment of customs duty; that she was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. In her statement, she submitted that the gold was purchased by her from the shop at Dubai, but she has no purchase bill for the same. She further submitted that money for purchase of the said gold was arranged by selling her old ornaments and by taking some loan from friends. ***She also admitted that a case of smuggling of gold was already booked by Customs Officers on 14.09.2022 against her.*** In that case also the manner of concealment was same i.e hiding the gold in form of paste in form of capsules in her rectum. Therefore, it is conclusively proved that the noticee is a habitual offender and actively involved in smuggling of gold.

16. With respect to the prohibition of the goods, it is to submit that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following:-

“Further, Section 2(33) of the Act defines “Prohibited Goods” as under:- Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with. “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 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 the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

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 purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of 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 restriction. Merely because section 3 of import or export (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 Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. **From the said judgment of the Apex Court, it is amply clear that the goods are to be treated as 'prohibited' if there is failure to fulfil the conditions/restrictions imposed by the Government on such import or export. In this case, I find that the noticee had tried to remove the impugned good i.e. 01 gold bar weighing 500.890 grams, by concealment and attempted to clear from the Customs authorities without declaration and without payment of Duty. Accordingly, the good brought by the noticee falls under the ambit of "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

Further, Hon'ble Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I Vs. Samynathan Murugesan [2009 (247) E.L.T 21 (Mad.)] relied on the definition of 'Prohibited goods' given by the Apex

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi [2003 (155) ELT 423(SC)] and has also held as under:-

"in view of meaning of the word "prohibition" as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold the imported gold was 'prohibited goods' since the respondent is not eligible passenger who did not satisfy the conditions"

17. I find that as per paragraph 2.20 of Foreign Trade Policy (FTP) as amended, *bona fide* household goods and personal effects may be imported as a part of passenger's baggage as per the limit, terms and conditions thereof in Baggage Rules, 2016 notified by Ministry of Finance. Further, in terms of EXIM Code 98030000 under ITC (HS) Classification of Export and Import items 2009-2014 as amended, import of all dutiable article by a passenger in the baggage is "Restricted" and subject to fulfilment of conditions imposed under the Customs Act, 1962 and the baggage rules, 2016.

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, 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 arrival in India or imported by him within 15 days of 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.

18. Further, 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

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

the same is **restricted**. Further, I find that as per Rule 5 of the Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in the bonafide baggage, jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger. 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.

19. A combined reading of the above-mentioned legal provision under the Foreign Trade regulations, Customs Act, 1962 and the notification issued thereunder, clearly indicates that import of gold including gold jewellery through baggage is restricted and condition have been imposed on said import 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 these mandatory conditions can import gold as a part of their bona fide personal baggage and the same has been declared to the Customs at their arrival and pay applicable duty in foreign currency/exchange. I find that these conditions are nothing but restrictions imposed on the import of the gold through passenger baggage. I find that noticee has brought the gold bar having total weight of 500.890 grams which is more than the prescribed limit. Further, the noticee has not declared the same before customs on her arrival which is also an integral condition to import the gold and same had been admitted in her voluntary statement that she wanted to clear the gold items clandestinely without payment of eligible custom duty.

As per the above discussion and ratio of judgment of Hon'ble Supreme Court in case of Om Prakash Bhatia, the goods brought without fulfilling the conditions prescribed as per the Act, acquired the nature of "prohibited goods" and same are liable for Confiscation under Section 111 of Customs Act. Further, Section 2(39) of Customs Act, 1962 defines the word "smuggling", which clearly stated that, "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". The manner in which the said items were being carried/secreted/ concealed/ kept and the motive as revealed in her statement behind dealing with such contraband goods,

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

it appeared that the noticee was actively involved in "smuggling" of foreign origin gold in primary form and therefore, makes the goods, seized from the possession of noticee, liable for confiscation. Therefore, there is no manner of doubt that "imported goods" if they are liable to confiscation under Section 111 are to be termed as "smuggled goods" as well.

20. I find that the noticee has clearly accepted that she had not declared the gold in paste form concealed in her rectum in form of capsules, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on her arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that 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.

21. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 500.890 grams, retrieved from the gold paste in form of capsules concealed by her in rectum, while arriving from Abu Dhabi (UAE) to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 500.890 gms., seized under panchnama dated 10.10.2024 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 capsules having gold and chemical mix concealed in her rectum and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

22. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended and she was tried to exit through Green Channel which shows that the noticee was not willing to declare the said gold paste in form of capsule and trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 500.890 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee does not fall under the ambit of "eligible passenger". The nature of concealment also makes it evident that the noticee was not willing to declare the same and to hoodwink the officers. 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.

23. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

weighing 500.890 gms., retrieved from gold paste concealed in rectum in form of capsules, having total Tariff Value of Rs.36,18,685/- and market Value of Rs.38,65,368/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 10.10.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in rectum and without declaring to the Customs on arrival in India, it is observed that the passenger/noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same to the Customs on her arrival at the Airport. Further, I find that in her statement she claimed that the gold was purchased by her by selling the old gold ornaments and money borrowed from her friend, but she failed to produce the documentary evidences which can prove the legitimate purchase of the said gold viz sale invoice of old jewellery/ornaments, purchase invoices related to gold paste purchased from Dubai, Bank transaction showing purchase of said gold. Further, conversion of gold in paste form by mixing it with some chemical show that the noticee was trying to hoodwink the customs officers. This action of noticee violates customs laws and regulations related to the import and export of goods, as it misrepresents the true nature of the items being imported. The nature of concealment reveals the mindset of the noticee to not only evade duty but smuggle the gold. It also reveals that the act committed by the noticee was conscious and pre-meditated. The test report shows the gold was of very high purity and was in primary form, indicates that gold was of foreign origin and the same was for commercial use. **Further, I find that the noticee is a habitual offender as she was already booked for smuggling of gold in another case on 14.09.2022.** This also strongly suggested the claim of noticee, regarding purchasing of gold by herself from the money received by selling old ornaments and receiving loan from friends, without submitting any documentary evidences, appears not trustworthy and merits no credence. It is proved that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knows or had reasons to believe that the same was liable for 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 her liable for penalty under Section 112 of the Customs Act, 1962.

24. I find that the passenger/noticee has confessed of carrying gold of 24 kt having 999.0 purity, weighing 500.890 grams and attempted to remove the said gold by concealing the same in her rectum and attempted to remove the said gold without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 as amended and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

25. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to smuggle and 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 clearance after arriving from foreign destination with willful intention to smuggle the impugned goods. One Gold Bar weighing 500.890 grams of 24Kt. / 999.0 purity, having total Market Value of Rs.38,65,368/- and Tariff Value Rs.36,18,685/-, retrieved from the gold paste concealed in rectum, were placed under seizure vide panchnama dated 10.10.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, she attempted to remove the gold by concealing in rectum and by deliberately not declaring the same on her arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112 of Customs

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

26. 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 an eligible passenger to bring or import gold into India in baggage as per the terms and conditions prescribed under Notification No. 50/2017-Customs Dated 30.06.2017 and not fulfil the conditions prescribed under Act. The gold was concealed in rectum in form of capsules 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 noticee.

27. In view of the above discussions, I hold that the derived gold bar weighing 500.890 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, is liable for absolute confiscation. Had she not been intercepted by the Customs officer, the noticee would have gotten away with the gold. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner for extraneous consideration. **In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.**

28. 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

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

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

29. Further I find that in a 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)."

30. 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

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

positive directions to adjudicating authority to exercise option in favour of redemption.

31. 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”.

32. 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.”**

33. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner and nature of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to deceive/hoodwink the customs officers and to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bar. Therefore, the noticee has failed to discharge the burden placed on her in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in her rectum with intention to smuggle the same into India and evade payment of customs duty and mens-rea in the instant case is established beyond doubt. Therefore, the gold weighing 500.890 grams of 24Kt./999.0 purity in form of gold bar, derived from the gold and chemical paste concealed in rectum in form of capsules is therefore, liable to be **confiscated absolutely. I therefore hold in unequivocal terms that the gold weighing 500.890 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.**

34. I further find that the noticee had involved herself in the act of smuggling of gold weighing 500.890 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules. Further, it is fact that the passenger/noticee has travelled with gold weighing 500.890 grams of 24Kt./999.0 purity, retrieved from paste concealed in her rectum, from Abu Dhabi (UAE) to Ahmedabad despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in 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" . Despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold weighing 500.890 grams, having purity 999.0/24Kt by concealment. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same is liable for confiscation under Section 111 of the Customs Act, 1962. Bringing into India goods which

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "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" and covered under Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. Therefore, I find that the noticee is liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

35. Accordingly, I pass the following Order:

ORDER

- i.)** I order absolute confiscation of the One Gold Bar weighing **500.890** grams having Market Value at **Rs.38,65,368/-** (Rupees Thirty Eight Lakh Sixty Five Thousand Three Hundred Sixty Eight Only) and Tariff Value is **Rs.36,18,685/-** (Rupees Thirty Six Lakh Eighteen Thousand Six Hundred Eighty Five only) derived from semi solid gold paste in form of 03 Capsules containing gold and chemical mix concealed in rectum by the passenger/noticee Mrs. Muskan Anil Lalwani and placed under seizure under Panchnama dated 10.10.2024 and seizure memo order dated 10.10.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii.)** I impose a penalty of **Rs. 9,50,000/-** (Rupees Nine Lakh Fifty Thousand Only) on Mrs. Muskan Anil Lalwani 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/10-265/SVPIA-D/O&A/HQ/2024-25 dated 20.03.2025 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

OIO No:68/ADC/SRV/O&A/2025-26
F. No: VIII/10-265/SVPIA-D/O&A/HQ/2024-25

F. No. VIII/10-265/SVPIA-D/O&A/HQ/2024-25 Date:30.06.2025

DIN: 20250671MN000000B4E8

By SPEED POST A.D.

To,

Mrs. Muskan Anil Lalwani,
W/o Mr. Anil Ramchand Lalwani
F-45/2, F Ward, Kubernagar,
Ahmedabad, Gujarat-382340

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.