



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद-380009.
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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-188/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-188/SVPIA-A/O&A/HQ/2024-25 dated: 08.08.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	285/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	20.03.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	20.03.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi , Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Safvan Salim Chhabu , Navi Nagri-Bundar Road, Kavi Tal. Jambusar, Bharuch, Pin 392170, Gujarat, India
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हड्डको 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 इयूटी 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: -

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Shri Safvan Salim Chhabu, hereinafter referred to as the said "passenger/ Noticee"), residing at Navi Nagri-Bundar Road, Kavi Tal. Jambusar, Bharuch, Pin 392170, Gujarat, India (as per Passport), holding an Indian Passport No. R6149943 arrived from Jeddah to Ahmedabad by Etihad Airways Flight No. EY 286 (Seat No:24F) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific Input Shri Safvan Salim Chhabu S/o- Shri Salim Abbas Chhabu, who arrived by Indigo Airways Flight No. 6E1478 (Seat No. 13C) on 19.03.2024 from Dubai to Ahmedabad at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad was intercepted by the officers of DRI, AZU, Ahmedabad/ Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad when he was trying to exit through Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad. Accordingly, two independent panchas were called for passenger's personal search and examination of his baggages under Panchnama proceedings dated 19.03.2024.

2. In presence of the panchas on being asked about his identity by the DRI/ AIU officers, the passenger identified himself as Shri Safvan Salim Chhabu and showed his Indian Passport bearing No. R6149943 and that he had travelled from Dubai to Ahmedabad on 19.03.2024 having Boarding Pass which showed that he has arrived by Etihad Indigo Airways Flight No. 6E1478 (Seat No. 13C) on 19.03.2024 from Dubai to Ahmedabad at SVPI Airport, Ahmedabad. The DRI/AIU officers asked Shri Safvan Salim Chhabu if he has anything to declare, in reply to which he denied. The DRI/AIU officers informed the passenger that he along with his accompanied officers would be conducting his personal search and detailed examination of his baggage. Thereafter, the DRI/AIU officers asked the passenger whether he wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave his consent for personal search in front of the Superintendent of Customs.

2.1 In presence of two independent panchas the DRI/AIU officers asked the said passenger to pass through the Door Frame Metal

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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 etc. and kept in a plastic tray and passed through the DFMD Machine, however, no beep sound was heard indicating that there was nothing objectionable/ metallic substance on his body/ clothes. Thereafter, the said passenger, the Panchas and the officers of DRI/ AIU moved to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The DRI/AIU officers checked the baggage of the passenger, however nothing objectionable was found. The officers again asked the said passenger if he is having anything dutiable which is required to be declared to the Customs to which the passenger denied.

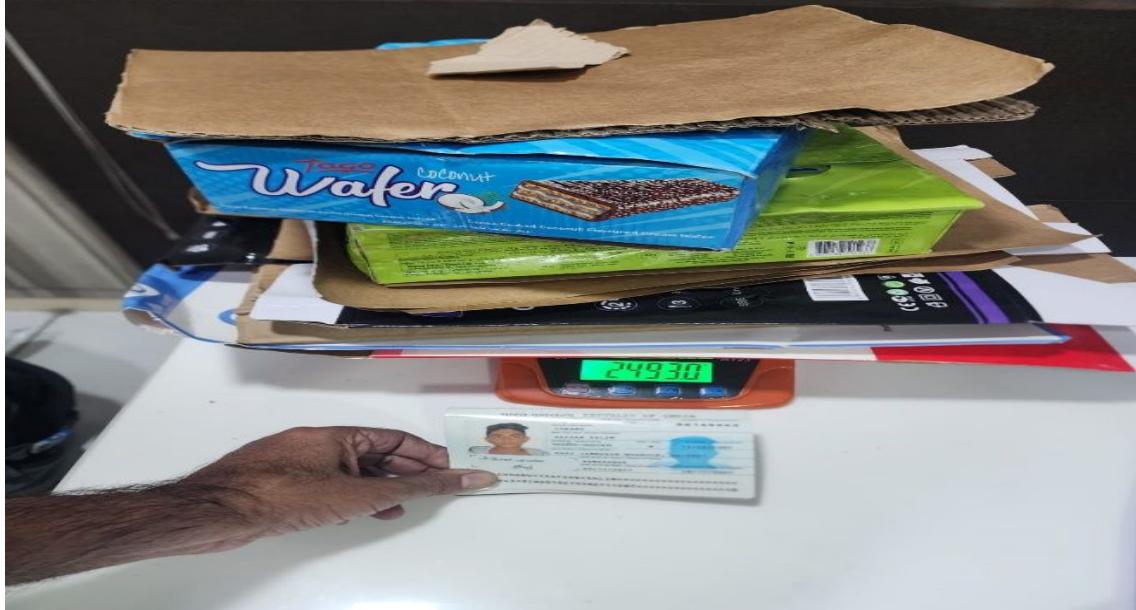
2.2 In presence of the Panchas, the AIU Officers questioned and interrogated the said passenger and even after sustained interrogation, the passenger didn't confess anything. The officers of DRI/AIU also checked his baggage thoroughly but nothing objectionable was noticed. The said baggages are now scanned in the X-ray Bag Scanning Machine (BSM) installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad while scanning the all the baggage some suspicious/ objectionable x-ray image noticed in purple coloured trolley bag. The officer of AIU asked the passenger about the suspicious x-ray image, but he did not give any answer. Then, the officers of the AIU asked to open the purple-coloured trolley bag, while he opened the bag it is found that there is chocolates boxes and make-up boxes were inside the bag. Therefore, officers have doubted that there must be something in it. Now the officers checked his baggage thoroughly and found that the chocolate boxes and make-up boxes (corrugated boxes) were slightly moist. Hence, the officer took the passenger and his baggage in the AIU office, and tear one paper sheets and noticed the corrugated boxes were heavier than it can be. The officer got full doubt that he was carrying gold or other valuable item which is hiding, so the AIU officers again and again asked the passenger whether he is carrying something dutiable but the passenger deny. Now it became necessary to confirm the same boxes pasted/painted gold or not.

2.3 Thereafter, the Customs officer called the Government Approved Valuer and informs him that at SVPI Airport, found corrugated boxes having painted gold or not which had been recovered from a male passenger and the passenger has not accepted that the said items are of gold. Hence, the Govt. Approved Valuer needs to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the DRI/AIU officers that the testing of the said material is only possible at his workshop as gold has to be extracted from such semi solid/paste form by melting it and also informed the address of his workshop. Thereafter the panchas along with the passenger and the DRI/AIU officers left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer located at Shree Ambica Touch, Gold Sook Complex, Near Iscon Arcade, C.G. Road, Ahmedabad.

2.4 On reaching the above referred premises, the DRI/AIU officers introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. In presence of the panchas, after weighing the said items Viz. boxes of the chocolates and make-up on his weighing scale, Shri Kartikey Vasantrai Soni informed that the said the gross weight of the said items weighing 2493.0 grams and after completion of the burning procedure 340.78 grams ash with gold dust. Government Approved Valuer then started procedure of melting. After melting the ash and gold dust turned into liquid which he poured in mould for solid form(bars) and informed that the it is pure gold and the two gold bars having total weight of **304.220 grams** and are of purity of 999.0/24kt.

2.5 In presence of the panchas, the AIU officers took the photograph of the said boxes and bars are as under:

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After testing and valuation, the Govt. Approved Valuer confirms issued Certificate No. 1560/2023-24, dtd. 19.03.2024 that the two bars are of 24 Kt. gold having purity 999.0. Now, the Govt. Approved Valuer summarizes the said details as under;

Sr. No.	Item particulars	Net Weight (in Grams)	Market Value (In Rs.)	Tariff Value (In Rs.)
1.	Two Gold Bars (derived from ash and gold dust of corrugated box)- purity 999.0/24 Kt.	304.220 grams.	20,53,181/-	17,73,298/-
	TOTAL	304.220 grams.	20,53,181/-	17,73,298/-

Further, the Govt. Approved Valuer informed that the total Market Value of the said recovered gold is Rs.20,53,181/- (Rupees

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Twenty Lakhs, Fifty-Three Thousand, One Hundred Eighty-One Only) and Tariff Value is Rs.17,73,298/- (Rupees Seventeen Lakhs, Seventy-Three Thousand Two Hundred Ninety-Eight only), which has been calculated as per the Notification No. 22/2024-Customs (N.T.) DTD. 15-03-2024 (Gold) and Notification No. 18/2024-Customs (N.T.) dtd. 07-03-2024 (exchange Rate). The Govt. Approved Valuer submitted his valuation report to the AIU Officers which is annexed as Annexure-A to the Panchnama.

2.6 Thereafter, on completion of the proceedings of the extraction of gold at the workshop the panchas, DRI/AIU officers and the passengers came back to the Airport in government vehicle along with the extracted gold bars. In presence of the panchas asked the passenger Shri Safvan Salim Chhabu to produce the identity proof documents and accordingly the passenger produced the same as under:-

1. Boarding Pass, in original, from Dubai to Ahmedabad/AMD of Indigo Flight 6E1478(Seat No.13C) dated 19.03.2024.
2. Photocopy of stamped pages of Indian Passport No. R6149943 issued on 29.11.2017 and valid up to 28.11.2027.
3. The DRI/ AIU Officers informed the panchas as well as the passenger, that the gold bars of 24Kt. with purity 999.0 weighing 304.220 grams derived from ash and gold dust of corrugated box having the Market Value of the said recovered gold is Rs.20,53,181/- (Rupees Twenty Lakhs, Fifty-Three Thousand, One Hundred Eighty-One Only) and Tariff Value is Rs.17,73,298/- (Rupees Seventeen Lakhs, Seventy Three Thousand Two hundred Ninety Eight only), recovered from the above said passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962. Thus, the DRI/ AIU officers informed that they have a reasonable belief that the above said gold is being attempted to be smuggled by Shri Safvan Salim Chhabu and is liable for confiscation as per the provisions of the Customs Act, 1962 and hence the same was placed under seizure. The officers, then, in presence of the panchas and in the presence of the said passenger placed the said 24 kt. gold bars of 999.0 purity weighing 304.220 grams recovered from

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Shri Safvan Salim Chhabu 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.

4. The copies of travelling documents and identity proof documents mentioned above have been taken into possession for further investigation of the case and the panchas as well as the passenger put their dated signatures on copies of all the above-mentioned travelling documents and the passenger manifest, as a token of having seen and agreed to the same.
5. A Statement of Shri Safvan Salim Chhabu, residing at Navi Nagri-Bundar Road, Kavi Tal. Jambusar, Bharuch, Pin 392170, Gujarat, India (as per Passport), holding an Indian Passport Number No. R6149943 was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 19.03.2024, wherein he *inter alia* stated that he went to Dubai on 15.03.2024 from Surat Airport; that the to and fro tickets were booked by Mr. Azharbhai who had given him two trolley bags one in purple coloured and one backpack and instructed him to hand over the same in India; that person who handed over the gold in Dubai; that he had intentionally not declared the seized items (derived from ash and gold dust of corrugated box) before the Customs Authorities on his arrival at SVP International Airport Ahmedabad; that he wanted to clear it illicitly and evade payment of Customs Duty. On being asked he stated that he is fully aware that clearing gold illicitly without payment of customs duty is an offence, under the provisions of the Customs Act, 1962 and Regulations; that he agreed that he had evaded Customs duty on total **304.220 grams** of 24Kt, with purity 999.0 involving Market Value of the said recovered gold is Rs.20,53,181/- (Rupees Twenty Lakhs, Fifty Three Thousand, One Hundred Eighty-One Only) and Tariff Value is Rs.17,73,298/- (Rupees Seventeen Lakhs, Seventy Three Thousand Two hundred Ninety-Eight only), which was recovered from ash and gold dust of corrugated box.

6. The above said gold bars with a net weight of **304.220 grams** having purity of 999.0/24 Kt. involving Tariff Value is Rs.17,73,298/-

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(Rupees Seventeen Lakhs, Seventy Three Thousand Two hundred Ninety-eight only) and Market Value of Rs.20,53,181/- (Rupees Twenty Lakhs, Fifty Three Thousand, One Hundred Eighty-One Only) recovered from the said passenger which was attempted to be smuggled into India with an intent to evade payment of Customs duty by of concealment of the gold in ash and gold dust of corrugated box form, which was in clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bars totally weighing 304.220 grams which was attempted to be smuggled by Shri Safvan Salim Chhabu, is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, hence, the above said two gold bars weighing 304.220 grams were placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 19.03.2024, issued from F. No. VIII/10-371/AIU/A/2023-24, 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 79. Bona fide baggage exempted from duty.** -

(1) *The proper officer may, subject to any rules made under sub-section (2), pass free of duty –*

(a) *any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;*

(b) *any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.*

V) 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:"*

VI) 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;"

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.

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

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

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to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

CONTRAVICTION 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 had improperly imported gold bars weighing 304.220 grams having purity 999.0/24 Kt. by concealing in ash and gold dust of corrugated box form in his underwear, totally weighing 304.220 grams and involving Tariff Value of Rs.17,73,298/- (Rupees Seventeen Lakhs, Seventy-Three Thousand Two Hundred Ninety-Eight only) and Market Value of Rs.20,53,181/- (Rupees Twenty Lakhs, Fifty-Three Thousand, One Hundred Eighty-One Only). The said gold was concealed in ash and gold dust of corrugated box form in his underwear and not declared to the Customs. The passenger opted not to declare before Customs and denied for any declaration even though he was repeatedly suggested to declare if anything dutiable/ prohibited/ restricted are in his possession with 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 304.220 grams of gold bars of purity 999.0/24 Kt. by the passenger by way of concealment of ash and gold dust of corrugated box form without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects as per Section 79 of the Customs Act, 1962. 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.

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(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 the Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold by the passenger, Shri Safvan Salim Chhabu, found concealed in ash and gold dust of corrugated box form, without declaring it to the Customs and now converted into gold bars 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 the Customs Act, 1962.

(d) Shri Safvan Salim Chhabu, 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 the Customs Act 1962, the burden of proving that the gold bars weighing 304.220 Grams having purity 999.0/24 Kt. and involving Tariff Value is Rs.17,73,298/- (Rupees Seventeen Lakhs, Seventy-Three Thousand Two Hundred Ninety-Eight only) and Market Value of Rs.20,53,181/- (Rupees Twenty Lakhs, Fifty Three Thousand, One Hundred Eighty-One Only), which was concealed in ash and gold dust of corrugated box form in his underwear by the passenger, totally weighing 304.220 Grams without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee Shri Safvan Salim Chhabu.

09. Accordingly, a Show Cause Notice F.No. VIII/10-188/SVPIA-A/O&A/HQ/2024-25 dated 08.08.2024 was issued to **Shri Safvan Salim Chhabu**, residing at Navi Nagri-Bundar Road, Kavi Tal. Jambusar, Bharuch, Pin 392170, Gujarat, India, holding an Indian Passport No. R6149943, as to why:

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(i) Two Gold Bars totally weighing **304.220 grams** having purity 999.0/24 Kt. and involving Tariff Value of **Rs.17,73,298/-** (Rupees Seventeen Lakhs, Seventy-Three Thousand Two hundred Ninety-Eight only) and Market Value of **Rs.20,53,181/-** (Rupees Twenty Lakhs, Fifty Three Thousand, One Hundred Eighty One Only), derived from ash and gold dust of corrugated box form was placed under seizure under Panchnama proceedings dated 19.03.2024 and Seizure Order dated 19.03.2024, 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 material i.e. strip and white coloured adhesive tape, used for packing and concealment of the above-mentioned gold which was attempted to be smuggled into India in violation of Section 77, Section 132 and Section 135, of the Customs Act, 1962, seized under panchnama dated 19.03.2024 and Seizure memo order dated 19.03.2024, should not be confiscated under Section 119 of the Customs Act, 1962; and

(iii) Penalty should not be imposed upon the passenger Shri Safvan Salim Chhabu holding Indian Passport No. R6149943 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 20.01.2025, 07.02.2025 & 18.02.2025 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;

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

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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 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 304.220 grams of 02 gold bars of 24KT(999.0 purity), having Tariff Value of **Rs.17,73,298/-** and Market Value of **Rs.20,53,181/-** seized vide Seizure Memo/ Order under Panchnama proceedings dated 19.03.2024 derived from ash and gold dust of corrugated boxes of chocolates and make-up boxes (after burning the corrugated boxes), on a reasonable belief that the

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same was liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; Whether, the packing material is liable for confiscation or not under Section 119 of Act and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of specific input that the noticee was intercepted by the DRI and AIU officers when he was trying to exit through green channel without filing any declaration. The DRI/AIU officers under Panchnama proceedings dated 19.03.2024 in presence of two independent witnesses asked the noticee if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. In presence of two independent panchas the DRI/AIU officers asked the said passenger 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 etc. and kept in a plastic tray and passed through the DFMD Machine, however, no beep sound was heard indicating that there was nothing objectionable/ metallic substance on his body/ clothes. The DRI/AIU officers checked the baggage of the passenger, however nothing objectionable was found. The officers again asked the said passenger if he is having anything dutiable which is required to be declared to the Customs to which the passenger denied. The officers of DRI/AIU checked his baggage thoroughly but nothing objectionable was noticed. Thereafter, the said baggages was scanned in the X-ray Bag Scanning Machine (BSM) installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad while scanning some suspicious/ objectionable x-ray image noticed in purple coloured trolley bag. The officer of AIU asked the passenger about the suspicious x-ray image, but he did not give any answer. Then, the officers of the AIU asked to open the purple-coloured trolley bag, while he opened the bag it is found that there were chocolates boxes and make-up boxes were inside the bag. On checking the boxes, the officers found that the chocolate boxes and make-up boxes (corrugated boxes) were slightly moist and tearing the box, it was noticed that the boxes were heavier than usual. Therefore, to confirm the same, Govt. Approved Valuer was called.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said items Viz. boxes of the chocolates and make-up boxes on his weighing scale and informed that the total gross weight of said items was 2493.0 **grams**. After completion of extraction process, the Govt Approved Valuer informed that two gold bars having total weight of **304.220 grams** and are of purity of 999.0/24kt is extracted from ash and gold dust of corrugated boxes of chocolates and make-up boxes (after burning the corrugated boxes). Further, the Govt. Approved Valuer informed that the total Tariff Value of the gold bars were **Rs.17,73,298/-** and Market value was **Rs.20,53,181/-**. The details of the Valuation of the said gold bars are tabulated as below:

Sl. No.	Details of Items	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	02 Gold Bars	304.220	999.0/24 Kt.	20,53,181/-	17,73,298/-

16. Accordingly, the said gold bars having purity 999.0/24 Kt. weighing 304.220 grams, recovered from noticee was seized vide Panchnama dated 19.03.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bars were smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same were liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 304.220 grams of gold bars, having Tariff Value of **Rs.17,73,298/-** and Market value is **Rs.20,53,181/-** carried by the noticee appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the noticee in his statement recorded on 19.03.2024 under Section 108 of the Customs Act, 1962.

17. I also find that the 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 his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the

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Panchas as well as the passenger. In fact, in his statement, he had clearly admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. In his statement, he clearly admitted that while returning from Dubai, Shri Azharbhai handed over him two trolley bag and asked to handed the same in India and for doing that he would get Rs. 8000/-. He admitted that the gold recovered was not belong to him and also not purchased by him. He admitted in his statement that he intentionally done this illegal carrying of gold of 24KT. in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel without declaration so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020. I find that the noticee has tendered his statement under Section 108 of Customs Act, 1962 voluntarily without any threat, coercion or duress and same was typed for him on his request and same was explained to him in Hindi and only after understanding the same, he put his dated signature.

18. Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said derived gold bars, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of

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Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, 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.

19. From the facts discussed above, it is evident that noticee had carried the said gold weighing 304.220 grams in form of corrugated boxes of the chocolates and make-up boxes, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24KT/999.00 purity totally weighing 304.220 grams, 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 concealing the said gold and not declaring the same before the Customs, it is established that the 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.

20. 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 his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013* and he was tried to exit through Green Channel which shows that the noticee was trying to

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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 304.220 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.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 304.220 grams, having Tariff Value of Rs.17,73,298/- and Market Value of Rs.20,53,181/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings dated 19.03.2024 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 corrugated boxes of chocolates and make up boxes concealed in trolley bag, it is observed that the 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 on his arrival at the Customs Airport. 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 is 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 the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

21. I find that the Noticee confessed of carrying the said gold of 304.220 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. 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.

22. 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 record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said 02 gold bars weighing 304.220 grams, having Tariff Value of Rs.17,73,298/- and Market Value of Rs.20,53,181/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings dated 19.03.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said 02 gold bars derived from the derived from ash and gold dust of corrugated boxes of chocolates and make-up boxes (after burning the corrugated boxes) weighing 304.220 grams, by deliberately not declaring the same by him on arrival at airport with the wilful

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intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

23. I further find that the 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 the goods, **non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'**. *This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage.* The said gold bars weighing 304.220 grams, was recovered from his possession and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in corrugated boxes of chocolates and make-up boxes concealed in his trolley bag. 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.

24. In view of the above discussions, 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, it is very clear that the noticee has deliberately concealed the gold in corrugated boxes of chocolates and make-up boxes concealed in trolley bag, with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bars weighing 304.220 grams, carried and undeclared by the Noticee with an

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intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 19.03.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty and for getting monetary benefit. I also find that the noticee did not possesses/submit any purchase bills or other documents which establish that the gold was purchased in legitimate way. In the instant case, without any documents viz. purchase invoice, Bank Statement and other documents, I hold that the gold was not purchased by the noticee in a legitimate way and that too carried by way of concealment in corrugated boxes of chocolates and make-up boxes concealed in trolley bag. ***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.***

25. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

26. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of

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Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

27. Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabars 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).

28. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

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

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

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29. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

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

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

*"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.**"*

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold weighing 304.220 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 02 gold bars weighing 304.220 grams, 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 Customs Act, 1962.**

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32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bars weighing 304.220 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Dubai 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 under it. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-reas on behalf of noticee is established as the noticee concealed the gold in corrugated boxes of chocolates and make-up boxes which shows his malafide intention to evade the detection from the Authority and removing it illicitly without payment of duty. 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." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold bars weighing 304.220 grams having purity of 999.0 and 24kt. Hence, the identity of the goods is 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 noticee 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/noticinge is liable for penal action under Sections 112(a)(i) & 112(b)(i) of the Customs Act, 1962 and I hold accordingly.

33. Accordingly, I pass the following Order:

ORDER

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i) I order **absolute confiscation** of 02 gold bars weighing **304.220** grams having purity of 999.0 (24KT.) derived/recovered from ash and gold dust of corrugated box of chocolates and make-up boxes (Ash and gold dust formed on burning the corrugated boxes), having Market value of **Rs.20,53,181/-** (Rupees Twenty Lakhs, Fifty-Three Thousand, One Hundred Eighty-One Only) and Tariff Value of **Rs.17,73,298/-** (Rupees Seventeen Lakhs, Seventy-Three Thousand Two Hundred Ninety-Eight only), placed under seizure under Panchnama dated 19.03.2024 and seizure memo order dated 19.03.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on **Shri Safvan Salim Chhabu** under the provisions of Section 112(a)(i) & 112(b)(i) of the Customs Act, 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-188/SVPIA-A/O&A/HQ/2024-25 dated 08.08.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-188/SVPIA-A/O&A/HQ/2024-25 Date:20.03.2025

DIN: 20250371MN0000222B70

BY SPEED POST AD

To,
Shri Safvan Salim Chhabu ,
 Navi Nagri-Bundar Road,
 Kavi Tal. Jambusar,
 Bharuch, Pin 392170, Gujarat, India

Copy to:

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

OIO No:285/ADC/SRV/O&A/2024-25
F. No. VIII/10-188/SPVIA-A/O&A/HQ/2024-25

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.