



### प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुरानेहाईकोर्ट केसामने, नवरंगपुरा, अहमदाबाद – 380 009.

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**DIN:20250171MN000000CC93**

#### PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-90/SVPIA-D/O&A/HQ/2024-25
B	कारणबत्ता ओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-90/SVPIA-D/O&A/HQ/2024-25 Dated: 18.06.2024
C	मूल आदेश संख्या/ Order-In-Original No.	: <b>219/ADC/SRV/O&amp;A/2024-25</b>
D	आदेश तिथि/ Date of Order-In-Original	: <b>08.01.2025</b>
E	जारी करने की तारीख/ Date of Issue	: <b>10.01.2025</b>
F	द्वारा पारित/ Passed By	: <b>Shree Ram Vishnoi</b> , Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	: <b>Mrs. Kavita Sirumal Ratnani</b> , A-44, Harijanvas, B/H Vima Hospital, Warasia Colony, Vadodara 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 पता 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, हुड़को 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**

**Mrs. Kavita Sirumal Ratnani** (hereinafter referred to as the said “passenger/ Noticee”), arrived from Abu Dhabi to Ahmedabad on 04.03.2024 by Etihad Flight No. EY-284 (Seat No. 16D) at SVPI Airport, Ahmedabad, residing at (residential address as per passport) A-44, Harijanvas, B/H Vima Hospital, Warasia Colony, Vadodara Gujarat, India holding Indian Passport No. U9159247 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific intelligence from DRI, Kannur, the passenger trying to exit Green Channel without making any declaration to Customs, was intercepted by the Officers of Customs, AIU, SVPIA, Ahmedabad, under Panchnama proceedings dated 04.03.2024 in presence of two independent witnesses for passenger’s personal search and examination of his baggage. The Lady AIU officer informed the passenger that she would be conducting her personal search and detailed examination of her baggage.

Now, the officers put/ place the baggage of the passenger into the Baggage Screening Machine (BSM) for examination/ checking in presence of the Panchas. On examination of hand baggage, the AIU officers noticed unusual dark images indicating objectionable items, in the small hand bag. The officers put/ place the baggage (One Check-in baggage and one hand bag) of the passenger into the Baggage Screening Machine (BSM) and examine the baggage however; the Panchas and officers did not notice any unusual images indicating nothing objectionable is present in the two baggage.

Thereafter, the passenger was asked to pass through the Door Frame Metal Detector placed in the hall in front of Belt No.1 near green channel in the

arrival hall of Terminal-2, SVPI Airport and their checked in and hand bags are scanned through the X-Ray Baggage Inspection machine, but nothing objectionable is observed.

Thereafter, the lady officer asked her again if she is having anything dutiable which is required to be declared to the Customs to which the said passenger denied. Now, in presence of the Panchas, the lady officer interrogates the said passenger and on sustained interrogation and repeated questioning, the passenger confesses that she is carrying two inner vest, containing brown coloured semi solid paste of gold and removes them out. Now, the weight of the Brown Coloured Semi Solid paste of Gold and Substance concealed inside the layer of fabric of two inner vest.

**2.1** The officers informed the Panchas that the two inner vest recovered from Mrs. Kavita Sirumal Ratnani contains semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the Panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad - 380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said two inner vest of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 1045.100 grams (weight inclusive of plastic two inner vest).

The photograph of the same is as under:-

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3. Thereafter, he makes the ash by way of burning the said inner vests, he leads us to the furnace, inside his workshop, where he starts the process of converting the ash of the said semi solid paste into solid gold by putting it into the furnace and upon heating, it turns into liquid material. The said substance in liquid state is taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it becomes yellow coloured solid metal in form of a bar. After testing the said yellow coloured metal, the Government Approved Valuer vide its report No. 1458/2023-24 dated 04.03.2024 confirms that it is pure gold. After completion of the procedure, the Government Approved Valuer informs that one gold bar, totally weighing 565.310 Grams having purity 999.0/24kt is derived from 1045.100 grams of inner vests wherein semi solid paste of gold and chemical mix is spread in the stitched layer is recovered from the pax.



**4.** Now, the Government Approved Valuer, in presence of Panchas, the passenger and the AIU Officer starts testing and valuation of the said golden coloured bar. After testing and valuation, the Govt. Approved Valuer confirms that it is 24 Kt. gold having purity 999.0. Now, the Govt. Approved Valuer summarizes that the said gold bar is made up of 24 Kt. gold having purity 999.0 weighing **565.310** Grams having market value of **Rs.37,02,215/-** (Rupees Thirty Seven Lakhs Two Thousand Two Hundred Fifteen only) and having tariff value of **Rs.31,01,890/-** (Rupees Thirty One Lakhs One Thousand Eight Hundred Ninety only). The value of the gold bar has been calculated as per the Notification No. 16/2024-Customs (N.T.) dated 29.02.2024 (gold) and Notification No. 13/2024-Customs (N.T.) dated 04.03.2024 (exchange rate). He submits his valuation report to the AIU Officer. The Panchas and the said passenger put dated signature on the said valuation report.

The details of the Valuation of the said gold bar is tabulated in below table:

Sl. No	Details of Items	PCS	Gross Weight In Gram	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold bar derived from 1045.100 Grams of two inner vests containing gold paste and chemical mix recovered from Mrs. Kavita Sirumal Ratnani							
1.	Gold Bar	1	1045.100	565.310	999.0 24Kt.	37,02,215	31,01,890

**5.** Mrs. Kavita Sirumal Ratnani is aged 45years (DOB-03.11.1978), W/o Mr. Sirumal Hotchand Ratnani address (as per Passport): A-44, Harijanvas, B/H Vima Hospital, Warasia Colony, Vadodara Gujarat, India. On being asked by the AIU officer, in the presence of the Panchas, the passenger Mrs. Kavita Sirumal Ratnani produces the identity proof documents which are as under:-

- (i) Copy of Passport No. U9159247 issued at Ahmedabad on 09.03.2021 and valid up to 08.03.2031.
- (ii) Boarding pass of Etihad Flight No. EY-284 from Abu Dhabi to Ahmedabad dated 03.03.2024 having seat No. 16D.

**6.** Accordingly, the said one gold bar having purity 999.0/24 Kt. weighing 565.310 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Mrs. Kavita Sirumal Ratnani was seized vide Panchnama dated 04.03.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Custom duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

**6.1** A statement of Mrs. Kavita Sirumal Ratnani was recorded on 04.03.2024, under Section 108 of the Customs Act, 1962, wherein she inter alia stated that:-

- (i) She has visited abroad two times;
- (ii) while returning to India by EY-284 via ETIHAD airlines that time some unknown person given to her two inner vest and instructed to handover in India to some unknown person and he will give her Rs. 10,000/- for this work.
- (iii) the gold recovered from her possession is not her and not purchased by her;
- (iv) She had been present during the entire course of the Panchnama dated 04.03.2024 and he confirmed the events narrated in the said Panchnama drawn on 04.03.2024 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) smuggling of gold without payment of Custom duty is an offence; she is well aware of the gold concealed form of chemical mix in semi-solid form in her two inner vest but she did not make any declarations in this regard with an intention to smuggle the same without payment of Custom duty.

**7.** The above said gold bar weighing 565.310 grams recovered from passenger, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of

semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the said gold bar weighing 565.310 grams is attempted to be smuggled by the passenger, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 565.310 grams derived from the above said semi solid gold paste with chemical mix weighing 1045.100 grams along with its packing material used to conceal the semi solid gold paste concealed in in two inner vest, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 04.03.2024.

## **8. 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) Section11A – Definitions** -*In this Chapter, unless the context otherwise requires,*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**I) "Section 3(2) - The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."**

**II) "Section 3(3) - All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."**

**III) "Section 11(1) - No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."**

**C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:**

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

**Contravention and violation of laws:**

**9. It therefore appears that:**

- (a) The passenger Mrs. Kavita Sirumal Ratnani had dealt with and knowingly indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 565.310 Grams derived from semi-solid substance mixed with chemical**

is consisting of Gold and is having purity 999.0/24kt and market value of Rs.37,02,215/- (Rupees Thirty-Seven Lakhs Two Thousand Two Hundred Fifteen only) and having tariff value of Rs.31,01,890/- (Rupees Thirty-One Lakhs One Thousand Eight Hundred Ninety only). The said semi solid gold paste was concealed in two inner vest in underwear containing gold and chemical mix in semi-solid paste form and not declared to the Customs. The passenger opted green channel to exit the Airport 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. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 565.310 grams of purity 999.0/24 Kt. by Mrs. Kavita Sirumal Ratnani by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- (b)** By not declaring the value, quantity and description of the goods imported by her, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c)** The improperly imported gold by the passenger, found concealed in two inner vest in underwear containing gold and chemical mix in semi-solid paste form 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 the Customs Act, 1962.

- (d) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- (e) Mrs. Kavita Sirumal Ratnani by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.
- (f) As per Section 123 of the Customs Act, 1962, the burden of proving that the gold bar weighing 565.310 Grams derived from semi-solid substance mixed with chemical is consisting of Gold and is having purity 999.0/24kt and market value of Rs.37,02,215/- (Rupees Thirty Seven Lakhs Two Thousand Two Hundred Fifteen only) and having tariff value of Rs.31,01,890/- (Rupees Thirty One Lakhs One Thousand Eight Hundred Ninety only). The said semi solid gold paste was concealed in two inner vest in underwear containing gold and chemical mix in semi-solid paste form, without declaring it to the Customs, is not smuggled goods, is upon the passenger.

**10.** Therefore, Show cause notice F. No: VIII/10-90/SVPIA-D/O&A/HQ/2024-25 dated 18.06.2024 has been issued to **Mrs. Kavita Sirumal Ratnani**, residing at residential address as per passport is As A-44, Harijanvas, B/H Vima Hospital, Warasia Colony, Vadodara Gujarat, India. Indian Passport No. U9159247 as to why:

- (i) One Gold Bar weighing **565.310** grams having purity 999.0/ 24kt, market value of **Rs.37,02,215/-** (Rupees Thirty Seven Lakhs Two Thousand Two Hundred Fifteen only) and having tariff value of **Rs.31,01,890/-** (Rupees Thirty One Lakhs One Thousand Eight Hundred Ninety only) derived from semi solid gold paste concealed in two inner vest containing gold and chemical mix in semi-solid paste form by the passenger and placed under seizure under

Panchnama proceedings dated 04.03.2024 and Seizure Memo Order dated 04.03.2024, 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) Underwear used for concealment of the said gold bar in the form semi solid gold paste concealed in two inner vests in underwear containing gold and chemical mix in semi-solid paste form, seized under Panchnama dated 04.03.2024, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

### **Defense Reply and Personal Hearing:**

**11.** Mrs. Kavita Sirumal Ratnani relied to the Show Cause Notice through her written submission dated 10.12.2024, wherein she denies the allegation as framed in the SCN. She submitted that she had brought the gold in semi-solid paste form weighing 1045.100 grams hidden in her inner vest for safety purpose, from which a gold bar was derived having Net weight of 565.310 grams of 24Kt valued at Rs. 31,01,890/- (tariff value). The SCN issued against her was based on panchnama and self-incriminating statements the content of which were never known or disclosed to her. The panchnama which gives a narration of events, was far away from truth and calls for a serious indulgence of the adjudicating authority before arriving at a fair and judicious decision. She submitted that she was apprehended by the customs officers as on disembarked from the airplane and was never allowed to make the true declaration of her baggage and dutiable goods before the customs officer in baggage hall and the true fact is that she made a voluntary declaration to the customs officers about the dutiable goods carried by her which included the gold item. He submitted that instruction as stipulated under Circular No. 09/2001-Cus dated 22.02.2001 was not followed.

She submitted that she was not aware of the content of the statement purportedly voluntarily tendered by her as she was not enough educated to read and write English and also, she was not permitted to write her statement in her own handwriting. She submitted that the gold was purchased by her from her personal savings and hardworking earned money from Abu Dhabi and at that time she was having bill for purchasing the same, but prior to declaration she was intercepted and a case was booked alleged of carrying the gold without declaration and to evade the payment of duty. She submitted that, due to ignorance of customs law, she was unable to file the declaration form as she does not know what is written in panchnama as well as statement has been recorded in English. She was forced to sign in fear of arrest, therefore, she simply signed the papers. In support she relied on the judgment of Hon'ble Supreme Court in case of Noor Aga Vs. State of Punjab (2008).

She further, asked for the cross examination of the following person named :-

1. Panch No. 1 Solanki Karan Becharbhai
2. Panch No.2 Jigar Vaghela
3. B.N Doria, Superintendent, AIU Customs, Ahmedabad
4. Ravi Prakash Chowdhury, Superintendent, AIU Customs, Ahmedabad;
5. On dated 04.03.2024, who had recorded the Panchnama as per Customs Act, 1962;
6. Smt. Minaxi B Parmar, Head Havaldar, AIU, Customs, Ahmedabad

She submitted a case law of Hon'ble Supreme Court in case of State of Kerala Vs. Shaduli Grocery Dealer reported in [AIR 1977 SC 1627] wherein Hon'ble Supreme Court held that refusal to summon certain witness for cross examination vitiated the assessment order because the Assessing officer was required to summon such witnesses whose cross examination was relevant for assessment. The said judgment is relied upon by CEGAT in case of Ankleshwari Paper Board Mills Vs. CCE, Baroda reported in [1195(60) ECR 680]

Further, she submitted the case law of CEGAT in matter of V.K Singh Vs. CC reported in [1996 (84) ELT 520], CEGAT decision in matter of Arsh

Casting Private Limited Vs. CCE [1996 (81) ELT 276], Decision in case of Ms./. Asha Jyoti Spinning Vs. CCE, reported in 1995 (60) ECR 584] and other decision namely K.G Gluco Biols Ltd [1996 (64) ECR 398]; GTC Industries Ltd Vs. UOI-[1991 (56) ELT 29 (Bom.)]; Shri H.P Jain Vs, CC-1998(17) ECR765; F.M Potia Vs. Dilip Singhi- 2000(126) ELT 107(Bom.), Sharma Chemicals Vs. CCE- 2001 (42) RLT 631, Mahadev Prasad Saraf Vs. S.K Srivastava-[2000 (126) ELT 32( Calcutta)] and Eros Metal Works Pvt Ltd Vs.CCE- [1989 (43) ELT 361]. All cases lay down the principal that cross examination of witnesses whose statements were relied upon by the department should be allowed.

She submitted that it is right of noticee to cross examine such persons as no reliance could be placed on statements of such persons unless they were allowed to be cross examined and she prayed that personal hearing may kindly be granted; that cross examination of above referred person may be allowed; that notice/summon may be issued, short date may be fixed for cross examination in interest of Natural Justice; that seized gold shall be released on payment of applicable Customs Duty. Additionally, during the PH he submitted a list of Order passed by Adjudicating Authority and Appellate Authority wherein redemption fine was allowed in lieu of confiscation.

**12.** Further a Personal Hearing was granted on 14.11.2024, 28.11.2024, 16.12.2024. However, in respect to PH dated 16.12.2024, the noticee has requested for adjournment vide letter dated 13.12.2024 through her advocate. Therefore, last Personal hearing was fixed on 23.12.2024. Shri Rishikesh Mehra, Advocate and Authorized representative on behalf of noticee i.e Mrs. Kavita Sirumal Ratnani has attended the personal hearing. He requested to attend the PH in person instead of video conferencing. He re-iterated his written submission dated 10.12.2024. He submitted that his client has orally declared the said possession of gold under panchnama dated 14.03.2024 wherein the panchas were two male persons named Solanki karan and jigar Vaghela, as the panchas had eye witness and they were present during entire course of panchnama proceeding from beginning to end, so there is question of dignity of his client. He has requested for cross examination of both the

panchas and officers on duty who has recorded the statement U/s 108 of Customs Act, 1962 and Superintendent, AIU Ravi Prakash Choudhary and Head Havaldar Smt. Minaxi B Parmar and requested to grant the cross examination of witness/officers in interest of justice and issue the summons/noticee for cross examination. He requested to take lenient view and release the gold.

### **Discussion and Findings:**

**13.** I have carefully gone through the facts of this case, written submission and the record of Personal Hearing.

**14.** In the instant case, I find that the main issue to be decided is whether the 01 Gold Bar weighing 565.310 of 999.0/24 Kt. purity having Tariff Value of Rs. 31,01,890/- and market value of Rs. 37,02,215/- derived from gold paste concealed in two inner vest in underwear containing gold and chemical mix in semi solid paste form and seized under Panchnama proceeding dated 04.03.2024 and seizure memo order dated 04.03.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the passenger is liable for penal action under the provisions of Section 112 of the Act; Similarly whether the packing material is liable to be confiscated under Section 119.

After having identified and framed the main issue to be decided, as stated above, I now proceed to deal with the issue in the light of facts and circumstances of the case provision of the Customs Act, 1962, contentions of the noticee and evidences available on record.

**15.** I find that the panchnama has clearly drawn out the fact that the passenger was intercepted when she was exiting the green channel without any declaration to the Customs on the basis of specific intelligence and personal search of the passenger and his baggage was conducted. The lady head havaldar asked the noticee whether she had anything to declare, in reply to which she denied. While passenger passed through Door Frame Metal Detector (DFMD), no sound was heard which indicated that she was not

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carrying anything metallic. The passenger was politely asked if she had anything declarable to Customs, in reply to which she replied in negative. The AIU officers, thereafter, took the passenger along with her baggage to AIU office located opposite to Belt No. 3, near Green Channel of Terminal 2 Building of SVPI Airport and the baggage of the passenger was thoroughly checked by them. On sustained interrogation by the lady officer, the noticee confessed that she was carrying two inner vest containing brown coloured semi solid paste of gold and after removing the same was handed over to AIU officer. It is also on record that the government approved valuer after weighing the gold in form of semi solid paste concealed inside the layer of fabric of two inner vest and informed that the total weight of the same was 1045.100 grams. Thereafter, on completion of the procedure, Government Approved Valuer, issued Valuation Certificate No: 1458/2023-24 dated 04.03.2024 and certified that one 24Kt gold bar weighing 565.310 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 31,01,890/- and market value of Rs. 37,02,215/- and the said gold bar was seized, under Panchnama dated 04.03.2024 and seizure memo order dated 04.03.2024, in the presence of the passenger and Panchas.

Under submission, I find that the noticee has alleged that the personal search was conducted before male panchas which is against the fundamental rights under Article 21 of the Constitution, however on going through the contents of Panchnama dated 04.03.2024, it is clearly evident that the personal search of the noticee was conducted by a female lady officer as per the provision. further, I noticed that the lady officer was present during the entire panchnama proceeding from starting to end. I also find that the passenger 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 her statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger. Therefore, allegation made regarding personal search was conducted before male panchas is not correct and not tenable and afterthought.

16. Further, the noticee has alleged that she was not permitted to write her statement in her own handwriting and she was forced to sign the documents, else she was arrested and inculpatory statement which was recorded is completely in contrary to correct facts and circumstances and retracted the same. I find that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I donot find any force in the contention of the noticee in this regard. It is on the record the noticee has requested the officer to type the statement on her behalf on computer and same was recorded as per her say and put her signature on the Statement. Further, I find from the content of statement that the statement was tendered by her voluntarily and willingly without any threat, coercion or duress and same was explained to her in Gujarati and Hindi. She clearly admitted in her statement that the gold was not purchased by her and someone else give and suggested to wear inner vest having gold paste. The offence committed is admitted by the passenger in her statement recorded on 04.03.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered their statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter as follows:-

- Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [ Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA”
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that “It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is

material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962”

- The Hon'ble Supreme Court in another matter of Gulam Hussain Shaikh Chougule Vs. S. Reynolds, Supt. Of Cus., Marmagoa [Reported in 2001 (134) E.L.T 3 (SC)] has categorically held that “Statement recorded by Customs Act is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act.....”
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that “Confessional Statement corroborated by the Seized documents admissible even if retracted.”

Besides, the allegation in the SCN have not been established merely based on the Statement, rather the noticee has not provided any documentary evidences which support their claim on Gold. I also find that the said Gold Bar weighing 565.310 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 31,01,890/- and market value of Rs. 37,02,215/- derived from gold in form of gold paste in semi solid form recovered from the passenger and seized, under Panchnama dated 04.03.2024 carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of Customs Act, 1962. It is on record that the said concealed gold was carried by her and thereby violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

**17.** I find under submission that the noticee mentioned that due to ignorance of Customs Law as she brought the gold first time she was unable to declare the same before authority. *The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.* It is clear case of non-declaration with an intent to

smuggle the gold. Accordingly, there is sufficient evidence to say that the notice had kept the gold in form of gold paste concealed inside the layer of fabric of two inner vest, which was in her possession and failed to declare the same before the Customs Authorities on their arrival at SVPIA, Ahmedabad. The case of smuggling of gold in form of paste concealed inside the layer of fabric of two inner vest recovered from her possession and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that 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, 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 proof that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**18.** Further, the noticee has asked for the cross examination of Panchas, Superintendent, AIU, Customs, Ahmedabad who recorded Panchnama and recorded Statement alongwith the Head Havaldar, AIU, Customs who interrogated the noticee and conducted a personal search. I find that it is mandatory to allow the cross examination in adjudication proceedings under Section 138B (2) of the Customs Act, 1962. It is on the principle of Natural Justice that both sides should be heard fairly and reasonably, that if any reliance is placed on evidence or record against a person, then that evidence or record must be placed before him/her for his/her information, to comment and criticism. No Natural Justice requires that there should be kind of formal cross-examination. So long as the party charged has a fair and reasonable opportunity, to see, comment and criticise the evidence, statement or record on which the charge has been made against him/her, the demands and test of natural justice are satisfied. Cross Examination in that sense is not the technical cross-examination in a Court of Law in the Witness Box, as held in

the Judgment of Kishanlal Agarwal Vs. Collector of land Customs, AIR 1967 Cat. 80 at page 87. Further, it is held that denial of Cross Examination does not lead to violation of Principle of Natural Justice. The Following Case Laws are relevant and support the above view:

- Poddar Tyres (Pvt) Ltd Vs. Commissioner- 2000 (126) E.L.T 737:- Wherein it has been held that cross examination not a part of natural justice but only that of procedural justice and not a 'sine qua non'.
- Kumar Jagdish Ch.Sinha Vs. Collector-2000 (124) E.L.T 118 (Cal H.C)- In this case it has been held that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- A.K Hanbeen Motarred Vs. Collector-2000(125) E.L.T 173 (Mad H.C) wherein it has been held that the strict rule of burden of proof applicable to criminal prosecution may not be applicable to proceedings before Customs Authorities.
- Shivom Ply N-wood Pvt Ltd Vs. Commissioner of Customs and Central Excise Aurangabad-2004 (177) E.L.T 1150 (Tri. Mumbai)- Wherein it has been held that cross examination not to be claimed as a matter of right.

It is settled position that proceedings before the quasi-judicial authority is not at the same footing as proceeding before a Court of Law and it is the discretion of the authority whether request of cross examination to be allowed in the interest of natural justice. Denial of request for cross-examination has been held as not violating the principle of Natural Justice during the quasi-judicial proceedings in the following case laws:-

- In the case of Kanungo & Co. Vs. Collector of Customs, Calcutta & Others [1993 (13) E.L.T 1486 (S.C)] wherein it was unequivocally held that for proceedings under Customs Act, the right to compliance to the principle of Natural Justice does not cover the right to cross examination

witnesses. Relevant Para 12 is reproduced wherein the Hon'ble Supreme Court observed as follows:-

*“In our opinion, the principle of Natural Justice do not require that in matters like this person who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statement made before the Customs Authorities. Accordingly, I hold that there is no force in the third contention of the appellant”*

- In the case of Suman Silk Mills Pvt Ltd Vs. Commissioner of Customs & C.Ex. Baroda [2002 (142) E.L.T. 640 (Tri- Mumbai), Tribunal observed at Para 17 that-  
*“Natural Justice-Cross-Examination- Confessional Statement-No Infraction of principle of Natural Justice where witnesses not cross-examined when statements admitting evasion were confessional.”*
- In the case of Commissioner of Customs, Hyderabad Vs. Tallaja Impex reported in 2012 (279) E.L.T 433 (Tri.). it was held that-  
*“In a quasi-judicial proceeding strict rules of evidences need not to be followed. Cross Examination cannot be claimed as a matter of right.”*
- In the case of Patel Engg. Ltd Vs. UOI reported in 2014 (307) E.L.T 962 (Bom.) Hon'ble High Court has held that-  
*“Adjudication- Cross-Examination- Denial of- Held does not amount to violation of principle of Natural Justice in every case, instead it depends on the particular facts and circumstances- Thus, right of Cross Examination cannot be asserted in all inquiries and which rule or principle of Natural Justice must be followed depends upon several factors- Further, even if Cross-Examination is denied, by such denial alone, it cannot be concluded that principle of Natural Justice has been violated.”*
- Hon'ble Punjab and Haryana High Court in its decision in case of Azad Engg Eorks Vs. Commissioner of Customs and Central Excise, reported as 2006 (2002) E.L.T 423 held that-

*“..... It is well settled that no right rule can be laid down as to when principles of Natural Justice apply and what is their scope and extent. The said rule contains Principle of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon’ble Supreme Court in K.L Tripathi Vs. State Bank of India & others, AIR 1984 SC 273.”*

- Hon’ble Tribunal in case of P Pratap Rao Sait Vs. Commissioner of Customs reported as 1988 (33) E.L.T (Tri.) has held in Para 5 that;-  
*“..... The plea of the learnt counsel that the appellant was not permitted to Cross-Examine the officer and that would vitiate the impugned order on grounds of Natural Justice in not legally tenable.”*
- Similarly in A.L Jalauddin Vs. Enforcement Director reported as 2010 (261) E.L.T 84 (Mad H.C) the Hon’ble High Court held that;-  
*“.....therefore, we do not agree that the Principles of Natural Justice have been violated by not allowing the appellant to Cross-Examination these two people. We may refer to the paragraph in AIR 1972 SC 2136=1983 (13) E.L.T 1486 (S.C) (Kanungo & Co. Vs. Collector, Customs, Calcutta)”*

I find that the noticee has not provided any specific reasons which establish that there is some evident information missed while recording her statement and lapse in Panchnama and asked for Cross-Examination in general by mentioning that they are true witness to the events. I find the ratio of the case laws relied upon by the noticee for cross examination are not relevant/squarely applicable in the instant Case. Therefore, without any specific reason, I am not inclined to give option of Cross-Examination of witnesses as sought by the noticee. I also find that Cross Examination sought without indicating specific reasons, is not admissible in view of following case laws:-

➤ In the case of Fortune Impex Vs. Commissioner of Customs, Calcutta [ 2001 (138) E.L.T 556 (Tri. Kolkata] , Hon'ble Tribunal Observed that :-

“... it is not required that in each and every case, Cross-Examination should necessarily be allowed. There is no absolute right of Cross-Examination provided in the Customs Act. The Advocate had given a list of 26 persons for Cross-Examination without indicating the specific reasons for Cross Examination the.... It cannot be said that there was violation of Principles of Natural Justice by not allowing the Cross Examination of the persons sought by him.” This view taken by the tribunal has been affirmed by Hon'ble Supreme Court-2004 (164) E.L.T 4 (S.C) & 2004 (167) E.L.T.A 134 (S.C)

➤ Hon'ble CESTAT, Kolkata in its decision in Dipu das Vs. Commissioner of Customs, Kolkata reported as 2010 (261) E.L.T 408 (Tri. Del), has held that-

*“.....In adjudication proceedings, Cross Examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same.”*

Finally, Section 138B(2) or in any other provisions of the Customs Act/Law has not such explicit arrangement for examination-in-chief, Cross Examination and re-examination. The instant case is not merely based on the statement of noticee but also, they have not provided any documentary evidences viz. copy of purchase bill, Bank Statement as corroborative evidences which establish their claim and ownership. Thus, I find that Cross-Examination, sought by the noticee is without any merit and a ploy to delay the adjudication proceedings. In these circumstances, I am not inclined to allow cross examination sought by noticee and considering the facts and circumstances of the case, such denial cannot lead to violation of principles of Natural Justice. In view of above judicial pronouncement, I hold that Cross-Examination cannot be demanded as a matter of right by the noticee.

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**19.** From the facts discussed above, it is evident that the noticee had carried gold weighing 565.310 grams (derived from gold paste concealed inside her vest), while arriving from Abu-Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 565.310 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 in paste form concealed in her inside her vest 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 the noticee had not declared any goods to Customs and specifically had not declared the said gold bar 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. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold bars recovered/derived from gold paste concealed inside her vest without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the Gold Bar weighing 565.310 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 31,01,890/- and market value of Rs.37,02,215/- derived from gold paste recovered from the passenger and seized, under Panchnama dated 04.03.2024 and seizure memo order dated

04.03.2024 is 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 concealment of gold in form of gold paste concealed inside her vest, 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 she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same was liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

**21.** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and she was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly

imported gold weighing 565.310 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bona fide 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 bar weighing 565.310 grams, having Tariff Value of Rs.31,01,890/- and Market Value of Rs.37,02,215/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 04.03.2024 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 such modus of concealing the gold, it is observed that the noticee was fully aware that the import of said goods is offending in nature.

**22.** I find that the Noticee confessed of carrying the said gold of 565.310 grams concealed by her 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.

**23.** 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 gold bar weighing 565.310 grams, having Tariff Value of Rs.31,01,890/- and Market Value of Rs.37,02,215/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 04.03.2024. 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 gold bars weighing 565.310 grams, by deliberately not declaring the same by her on arrival at airport with the wilful 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.

**24.** 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 565.310 grams, was recovered from her 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 paste form concealed inside her vest. 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.

**25.** Under her submission, the noticee has requested to redeem the gold on payment of redemption fine and submitted various OIO and OIA wherein redemption fine was allowed in lieu of confiscation of goods. Firstly, on plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

**Section 125. Option to pay fine in lieu of confiscation. -**

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods<sup>1</sup> [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

<sup>2</sup> [**Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, <sup>3</sup>[no such fine shall be imposed]:**

**Provided further that]** , without prejudice to the provisions of the proviso to sub-section (2) of [section 115](#), such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

The noticee has submitted OIO and OIA in her support. In this regard, I find that the allowing the redemption is on the discretion of Adjudicating Authority which guided by law. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] that the option to release 'Prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration*". Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249

(Del.)] held that “*Exercise of discretion by judicial, or quasi judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive.*” Now in the latest judgment the Hon’ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 & 8083/2023 held that “*---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer*”.

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 bar. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of gold paste concealed in inner vest, with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 565.310 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in her statement dated 04.03.2024 stated that she has carried the said gold by concealment to evade payment of Customs duty. ***Therefore, keeping in view the judicial pronouncement above and facts of the case, I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

**26.** 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]*

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

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

*89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we*

*are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).*

**29.** 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.*

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

except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

**31.** 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."*

**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."*

**32.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold bars weighing 565.310 grams (derived from gold paste concealed in inner vest), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold bar weighing 565.310 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.**

**33.** I further find that the noticee had involved herself and abetted the act of smuggling of the said gold bar weighing 565.310 grams, carried by her. She has agreed and admitted in her statement that she travelled with the said gold in form of gold paste concealed in inside the vest from Abu-Dhabi 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 under it, the noticee attempted to smuggle the said gold bar of 565.310 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee

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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 are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the noticee is also liable for penal action under Sections 112 of the Act and I hold accordingly.

**34.** Accordingly, I pass the following Order:

**ORDER**

- i) I order absolute confiscation of Gold Bar weighing **565.310** grams of 999.0/24 Kt. purity having Tariff Value of **Rs. 31,01,890/-** (Rupees Thirty One Lakhs One Thousand Eight Hundred Ninety only) and market value of **Rs. 37,02,215/-** (Rupees Thirty Seven Lakhs Two Thousand Two Hundred Fifteen only) derived from paste containing gold and chemical mix concealed in inner vest worn/recovered from the noticee and seized, under Panchnama dated 04.03.2024 and seizure memo order dated 04.03.2024, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii) I order absolute confiscation of goods used for packing and concealment of seized gold vide seizure order under Panchnama proceedings both dated 04.03.2024, under the provisions of Section 119 of the Customs Act, 1962;
- iii) I impose a penalty of **Rs.10,00,000/-** (Rupees Ten Lakh Only) on **Mrs. Kavita Sirumal Ratnani** under the provisions of Section 112(a) (i) & Section 112(b)(i) of the Customs Act 1962.

35. Accordingly, the Show Cause Notice No. VIII/10-90/SVPIA-D/O&A/HQ/2024-25 dated 18.06.2024 stands disposed of.

**(Shree Ram Vishnoi)**  
Additional Commissioner  
Customs, Ahmedabad

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**DIN: 20250171MN000000CC93**

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**BY SPEED POST AD**

To,  
**Mrs. Kavita Sirumal Ratnani**,  
residential address as per passport is  
A-44, Harijanvas, B/H Vima Hospital,  
Warasia Colony, Vadodara 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.
5. The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusam@gov.in
6. Guard File.