OIO No:154/ADC/SRV/O&A/HQ/2025-26
F. No. VIII/10-11/SVPIA-D/O&A/HQ/2025-26

प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

,"सीमाशुल्कभवन"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद– 380009.
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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-11/SVPIA-D/O&A/HQ/2025-26
B	कारण बताओ नोटिस संख्या-तारीख Show Cause Notice No.& Date	:	VIII/10-11/SVPIA-D/O&A/HQ/2025-26 Dated: 24.06.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	**154/ADC/SRV/O&A/HQ/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**11.11.2025**
E	जारी करने की तारीख/ Date of Issue	:	**11.11.2025**
F	द्वारा पारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	**Shri Shahidbhai Kadarbhai Khalyani**, Mankad Chok, Voravad, Botad, Bhavnagar-364710, Gujarat

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

BRIEF FACTS OF THE CASE: -

On the basis of intelligence, the officers of DRI, AZU, Ahmedabad and the officers of Air Intelligence Unit (AIU), SVPIA, Customs Ahmedabad, intercepted a male passenger named Shri Shahidbhai Kadarbhai Khalyani (D.O.B. 04.02.1987) (hereinafter referred to as the said "passenger/Noticee"), residing at Mankad Chok, Voravad, Botad, Bhavnagar, PIN-364710, Gujarat, India (address as per passport), holding an Indian Passport No. Y1532907, arriving from Dubai (DXB) to Ahmedabad(AMD) on 15.01.2025 via Spice Jet Flight No. SG 16 (Seat No. 9D), at the arrival hall of the Terminal-2 of SVPIA, Ahmedabad, while he was attempting to exit through green channel without making any declaration to the Customs. Passenger's personal search and examination of his baggage was conducted in presence of two independent witnesses and the proceedings thereof were recorded under the Panchnama dated 15.01.2025.

2. Whereas, the passenger was questioned by the AIU & DRI Officers as to whether he was carrying any contraband/dutiable goods in person or in baggage to which he denied. The Officers asked/ informed the passenger that a search of his baggage as well his personal search was to be carried out and given him an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the Passenger desired to be searched in presence of a gazetted Customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the Officers.

2.1 The AIU & DRI officers then asked the passenger to put his baggage in the X-Ray baggage scanning machine, installed near Green Channel at Arrival Hall, Terminal-II, SVPI Airport, Ahmedabad. The Officers found nothing objectionable in the baggage. The passenger, Shri Shahidbhai Kadarbhai Khalyani was then made 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. However, even during this process, no beep sound was heard indicating any presence of objectionable/ dutiable items on his body/ clothes. Further, the officers asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough interrogation by the officers, in presence of the panchas, the passenger did not confess that he is carrying any high valued dutiable goods. Then, the AIU & DRI officers make him sit in the office and the officer offered the passenger water and tea, which he did not consume. On reasonable belief that the said passenger might be carrying some high valued dutiable goods by way of concealment in his body parts, he was once again asked whether he has concealed any high valued dutiable goods in his body parts. Thereafter, on further sustained interrogation, the passenger Shri Shahidbhai Kadarbhai Khalyani confessed that he is hiding two capsules each covered with black plastic tape inside his rectum and the capsules contained gold paste and chemical in semi solid form.

2.2 Thereafter, the Officers led the passenger to the washroom located opposite baggage scanning machine outside AIU office of arrival hall, terminal 2, SVPI Airport, Ahmedabad. After sometime the passenger came out of the washroom with two capsules wrapped in black colour plastic tape. The officers then called the Government Approved Valuer (Shri Kartikey Vasantrai Soni) and informed him that two capsules each covered with black plastic tape were recovered from the rectum of the passenger and as per the passenger the capsules contained gold paste and chemical in semi solid form and that he needed to come to the Airport for verification, examination and valuation of the

recovered item. In reply, the Government Approved Valuer informed the Officers that the testing of the material is possible only at his workshop as gold has to be extracted from such semi solid paste form by melting it and also informed the address of his workshop.

2.3 Thereafter, the Officers, along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer, located at 301, Golden Signature, Behind Ratnam Complex, C. G. Road, Ahmedabad-380006. On reaching the above-mentioned premises, the officers introduced the panchas as well as the passenger to one person namely Shri Kartikey Vasantrai Soni, Government Approved Valuer. Shri Kartikey Soni weighed the said capsules recovered from the rectum of the said passenger and informed that the gross weight of the capsules is 738.41 gms. Thereafter, the Government Approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Shri Kartikey Soni started the process of converting the semi solid paste into solid gold by putting it into the furnace and upon heating the substance turned into liquid material. The said substance consisting of gold in liquid state was then taken out of furnace and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, the Government Approved Valuer informed that 01 (One) gold bar totally weighing 660.96 Grams has been derived from 738.41 grams of two capsules containing gold and Chemical mix. The photographs of the said recovered capsules and the gold bar derived from it are as under:

3. The Government Approved valuer further vide his Certificate No. 1434/2024-25 dated 15.01.2025, certified that the gold bar, weighing 660.96 grams (Net Weight) is having purity 999.0/24 Kt. and is having Market Value of Rs. 53,26,677/- (Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as Rs. 48,08,087/- (Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only), which has been calculated as per the Notification No. 88/2024-Customs (N.T.) dated 31.12.2024 (gold) and Exchange Rate Notification No. 14/2024 dated 03.01.2025 (Exchange rate). The valuation report provided by the said Govt. Approved Valuer is summarized as under:

Sl. No.	Item Particulars	PCS	Net Weight (in Grams)	Market Value (in Rs.)	Tariff Value (in Rs.)
1.	Gold Bar- 999.0/24 Kt. purity	01	660.96	53,26,677/-	48,08,087/-

3.1 Thereafter, after the completion of the extraction of gold at the workshop of Govt. Approved Valuer, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle along with the extracted gold bar weighing 660.96 grams derived from the two capsules containing gold paste and Chemical mix having gross weight of 738.41 gms, that was recovered, from the rectum of the passenger, on 15.01.2025.

SEIZURE OF THE ABOVE GOLD BAR:

4. The said 01 Gold Bar totally weighing 660.96 Grams derived from 738.41 grams of two capsules containing gold paste and Chemical mix was carried by the passenger without any legitimate Import documents inside the Customs Area, therefore the same falls under the category of Smuggled Goods and stands liable for confiscation under the Customs Act, 1962. Therefore, the said gold, weighing 660.96 grams (Net Weight) is having purity 999.0/24 Kt. and is having Market Value of **Rs.53,26,677/-** (Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as **Rs.48,08,087/-** (Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only), was placed under seizure vide Order dated 15.01.2025 issued under the provisions of Section 110(1) and 110(3) of the Customs Act, 1962 under reasonable belief that the subject gold bar is liable for confiscation under Section 111 of the Customs Act, 1962.

STATEMENT OF SHRI SHAHIDBHAI KADARBHAI KHALYANI:

5. Statement of Shri Shahidbhai Kadarbhai Khalyani was recorded on 15.01.2025, wherein he inter alia stated that his personal details like name, address and family details as mentioned in the statement are true and correct and that he is educated up to class 6th and engaged in sale purchase of scrap vehicles.

5.1 He further stated that he went to Dubai to purchase scrap on 09.01.2025 but due to tender requirement he could not purchase any scrap. He visited Abu Dhabi and Burj Khalifa during his stay at Dubai and came back on 15.01.2025 by Spice Jet Flight No. SG-16 from Dubai to Ahmedabad at SVPI International Airport, Ahmedabad.

5.2 He perused the Panchnama dated 15.01.2025 and stated that the facts narrated therein are true and correct.

5.3 He further stated that he concealed the gold in form of capsules covered with the black tape in his rectum, to evade custom duty by not declaring the same before Customs and wants to clear the gold illicitly.

5.4 He further stated that this was the first instance of his indulgement in smuggling of gold activity by way of concealing two capsules consisting mixture of gold and chemical covered with black plastic tape concealed in his rectum.

6. In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold in this case is more than Rs.50,00,000/-, hence this case is fit for arrest in terms of Section 104 of the Customs Act, 1962. The relevant pars of Section 104 of Customs Act, 1962 is as: -

Section 104 of the Customs Act, 1962-

The provisions of Section 104 (6) & (7) of the Customs Act, 1962 is reproduced as under: -

(6) Notwithstanding anything contained in the Code of [(6) Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to-

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.]

Hence, the passenger, Shri Shahidbhai Kadarbhai Khalyani was arrested on 15.01.2025 under Section 104 of the Customs Act, 1962 and was further released on bail subject to fulfilment of conditions, in terms of Para 3.2 of Circular No. 38/2013-Cus dated 17.09.2013.

6.1 From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules, 2016, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 01 gold bar totally weighing 660.96 Grams, having purity of 24Kt/999.0 was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams, found concealed in the rectum by the passenger, Shri Shahidbhai Kadarbhai Khalyani, who had arrived from Dubai to Ahmedabad on 15.01.2025 via Spice Jet Flight No. SG 16, at Terminal-2 of SVPIA Ahmedabad. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules and for these reasons alone it cannot be considered as a Bonafide Baggage under the Customs Baggage Rules, 2016.

6.2 According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper Officer. In the instant case, the passenger had not declared the said gold items totally weighing 660.96 grams having purity of 24 Kt/999.0 because of malafide intention and thereby contravened the provisions

of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold bar totally weighing 660.96 gms having purity of 24Kt/999.0 recovered from Shri Shahidbhai Kadarbhai Khalyani, was attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold bar totally weighing 660.96 grams having purity of 24 Kt/999.0 is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Consequently, 01 gold bar totally weighing 660.96 Grams having purity of 24Kt/999.0 derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams, found concealed in the rectum by the passenger, Shri Shahidbhai Kadarbhai Khalyani, who had arrived from Dubai to Ahmedabad on 15.01.2025 via Spice Jet Flight No. SG16, at Terminal-2 of SVPIA Ahmedabad was placed under seizure vide Panchnama dated 15.01.2025 and Seizure Order dated 15.01.2025 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

SUMMATION:

7. The aforementioned proceedings indicates that Shri Shahidbhai Kadarbhai Khalyani attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having the Market Value of Rs.53,26,677/- (Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as Rs.48,08,087/- (Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same was placed under seizure vide Order dated 15.01.2025 issued under the Provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold Bar is liable for confiscation under Section 111 of the Customs Act, 1962.

LEGAL PROVISIONS RELEVANT TO THE CASE:

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

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

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

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

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

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

The Customs Act, 1962:

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

8.5 As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

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

8.6 As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.

8.7 As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.

8.8 As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

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

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

8.11 Section 111. Confiscation of improperly imported goods, etc.:

The following goods brought from a place outside India shall be liable to confiscation: -

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

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

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

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

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

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

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

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

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

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

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

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

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

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

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

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

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

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

111, or abets the doing or omission of such an act, or

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

8.14 As per Section 123 of Customs Act 1962,

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

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

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

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

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

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

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

Customs Baggage Rules and Regulations:

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

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

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

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

8.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done

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

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

Condition no. 41 of the Notification:

If,- 1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and 2. the gold or silver is,- (a)carried by the eligible passenger at the time of his arrival in India, or (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ; Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs. Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such

passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

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

10. <u>CONTRAVENTION AND VIOLATION OF LAWS:</u>

It therefore appears that:

(i) Shri Shahidbhai Kadarbhai Khalyani had attempted to smuggle/improperly import 01 Gold Bar totally weighing 660.96 Grams having purity 24KT /999.0 and having the Market Value of Rs.53,26,677/-(Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as Rs.48,08,087/- (Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only), recovered from the semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams, found concealed in the rectum by the passenger, with a deliberate intention to evade payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The said passenger, Shri Shahidbhai Kadarbhai Khalyani had knowingly and intentionally smuggled the said gold in the form of semi solid substance consisting of Gold and Chemical mix having Gross weight 660.96 Grams, found concealed in the rectum by him, on his arrival from Dubai to Ahmedabad on 15.01.2025 by Spice Jet Flight No. SG16 (Seat No. 9D) at Terminal-2 SVPIA Ahmedabad, with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by Shri Shahidbhai Kadarbhai Khalyani, by way of concealment in body and without declaring it to Customs on arrival in India cannot be treated as Bonafide household goods or personal effects. Shri Shahidbhai Kadarbhai Khalyani has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as amended.

(ii) Shri Shahidbhai Kadarbhai Khalyani by not declaring the gold brought by him in the form of 01 gold bar totally weighing 660.96 Grams having purity of 24Kt/999.0 that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams, found concealed in the rectum by him, which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

(iii) The improperly imported/smuggled gold by Shri Shahidbhai Kadarbhai Khalyani, in the form of 01 gold bar totally weighing 660.96 Grams having purity of 24Kt/999.0 that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams,

found concealed in rectum by him , before arriving from Dubai to SVPI Airport, Ahmedabad, on 15.01.2025 via Spice Jet Flight No. SG16 (Seat No. 9D) at Terminal -2, SVPIA Ahmedabad on 15.01.2025, for the purpose of the smuggling without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(iv) Shri Shahidbhai Kadarbhai Khalyani, by the above-described acts of omission/commission and/or abetment has rendered himself liable for penalty under Section 112 of Customs Act, 1962.

(v) As per Section 123 of Customs Act 1962, the burden of proving that the said Gold bar totally weighing 660.96 Grams that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams found concealed in the rectum by the passenger, Shri Shahidbhai Kadarbhai Khalyani who arrived from Dubai via Spice Jet Flight No. SG16 (Seat No. 9D) at Terminal -2, SVPIA Ahmedabad on 15.01.2025 are not smuggled goods, is upon Shri Shahidbhai Kadarbhai Khalyani, who is the Noticee in this case.

11. Accordingly, a Show Cause Notice was issued to Shri Shahidbhai Kadarbhai Khalyani (D.O.B. 04.02.1987), holding an Indian Passport No. Y1532907, residing at Mankad Chok, Voravad, Botad, Bhavnagar-364710 (Gujarat), as to why:

(i) One (01) Gold Bar, having purity 999.0/24 Kt., weighing 660.96 Grams (Net Weight) and having the Market Value of **Rs.53,26,677/-** (Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as **Rs.48,08,087/-** (Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only), derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams, found concealed in the rectum by the passenger, Shri Shahidbhai Kadarbhai Khalyani, who arrived from Dubai to Ahmedabad on 15.01.2025 by Spice Jet Flight No. SG16, at Terminal-2 of SVPIA Ahmedabad, placed under seizure under Panchnama proceedings dated 15.01.2025 and Seizure Memo Order dated 15.01.2025, 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) Penalty should not be imposed upon Shri Shahidbhai Kadarbhai Khalyani, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

DEFENSE REPLY AND RECORD OF PERSONAL HEARING:

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

13. The noticee was given opportunity for personal hearing on 13.08.2025, 25.08.2025 & 15.09.2025 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.

13.1 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 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:

14. 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.

14.1 In the instant case, I find that the main issue to be decided is whether the 01 gold bar 660.96 Grams (Net Weight) purity of 24Kt/999.0 derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 738.41 Grams, found concealed in the rectum by the passenger in form of 02 capsules, having the Market Value of **Rs.53,26,677/-** (Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as **Rs.48,08,087/-** (Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 15.01.2025 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal

action under the provisions of Section 112 of the Act.

15. I find that the Panchnama has clearly drawn out the fact that on the basis of information received from DRI, AZU, that **Shri Shahidbhai Kadarbhai Khalyani** was suspected to be carrying some high valued dutiable goods by way of concealment in his body parts and therefore a thorough search of all the baggage of the noticee as well as his personal search was required to be carried out. The AIU officers alongwith DRI officers under Panchnama proceedings dated 15.01.2025 in presence of two independent witnesses asked the noticee if he had anything dutiable to declare to the Customs authorities, to which the said noticee replied in negative. The AIU officer asked the noticee to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he was not carrying any high valued dutiable goods. Further, no objectionable material was found from the baggage of the said noticee. However, upon sustained interrogation, the said noticee confessed that he had two capsules wrapped with black coloured plastic tape consisting of gold and chemical mix paste inside his rectum. Thereafter, on being asked the noticee removed the two capsules and handed over the same to the AIU officers. The officers of AIU also checked his baggage thoroughly but nothing objectionable was noticed.

16. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said 02 capsules wrapped with black coloured plastic tape consisting of gold and chemical mix and informed that the weight of said capsules was **738.41** Grams. After completion of process of extraction of gold from the gold and chemical mix paste, the Govt. Approved Valuer informed that 01 gold bar was extracted having purity 999.0/24Kt. and weight of 660.96 Grams. Further, the Govt. Approved Valuer informed that the total Market Value of the said derived 01 gold bar was **Rs.53,26,677/-** and Tariff Value was **Rs.48,08,087/-**. The details of the Valuation of the said gold bar is tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	01	660.96	999.0/24Kt	53,26,677/-	48,08,087/-

17. Accordingly, the said 01 gold bar (derived from gold and chemical mix in form of 02 capsules concealed in his rectum) having purity 999.0/24 Kt. weighing 660.96 Grams, recovered from noticee was seized vide Panchnama dated 15.01.2025, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold bar was smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 01 gold bar weighing 660.96 grams (Net Weight), having Market Value of **Rs.53,26,677/-** and Tariff Value of **Rs.48,08,087/-** carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 15.01.2025 under Section 108 of the Customs Act, 1962.

18. 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 Panchas as well as the noticee. In fact, in his statement, he has clearly admitted that he concealed the gold in form of capsules covered with the black tape in his rectum, to evade custom duty by not declaring the same before Customs and wants to clear the gold illicitly. He further admitted that this was the first instance of his indulgement in smuggling of gold activity by way of concealing two capsules consisting mixture of gold and chemical covered with black plastic tape concealed in his rectum. 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 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 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.

19. 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 noticee had kept the said 01 gold bar having net weight 660.96 grams, having purity of 24Kt/999.0 was derived from semi solid substance consisting of gold and chemical mix having gross weight 738.41 grams, found concealed in the rectum 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 Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77 and 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 as amended. 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.

20. From the facts discussed above, it is evident that noticee had carried the said gold weighing 660.96 grams, 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 bar of 24Kt/999.00 purity totally weighing 660.96 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By concealing the said gold in form of paste of gold and chemical in form of capsules in his rectum 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(22), 2(33) and 2(39) 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 he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days*. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 660.96 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 as amended and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 660.96 grams, having Market Value of Rs.53,26,677/-(Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as Rs.48,08,087/- (Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only) recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 15.01.2025 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in paste of gold and chemical in form of Capsules and concealed the same in his rectum, 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.

22. I find that the Noticee confessed of carrying the said gold of 660.96 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 noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

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 smuggle the same clandestinely and 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 660.96 grams, having Market Value of Rs.53,26,677/- and Tariff Value of Rs.48,08,087/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 15.01.2025. 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 bar weighing 660.96 grams, by deliberately not declaring the same by him 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 noticee, trying to smuggle it and was not eligible passenger to bring it in India or import gold into India in baggage as per the prescribed conditions. The said gold bar weighing 660.96 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 noticee concealed the said gold in his rectum in form of capsules containing gold and chemical mix. 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.

25. 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/submitted to prove licit import of the seized gold bar, which shows that the noticee has nothing to submit in his defense and sole purpose of the noticee to smuggle the same into India and to avoid the payment of duty without declaring the same before customs authority at airport. 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 capsules in his rectum with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 660.96 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 his statement dated 15.01.2025 stated that he had carried the said gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit/personal benefit and that too by concealment of the said gold in form of paste in capsules in his rectum. ***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 Cen-Tax 261 (Del.) has held-

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

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

32. Given the facts of the present case before me and the judgements and rulings cited above, the said 01 gold bar weighing 660.96 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 660.96 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962**.

33. As regard to imposition of penalty under Section 112 of Customs Act, 1962 in respect of Noticee **Shri Shahidbhai Kadarbhai Khalyani**, I find that in the instant case, the principle of mens-rea on behalf of noticee is established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold and deliberately concealed the gold in form of paste in capsules in his rectum, thus, established that the concealment of said gold is ingenious in nature. 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 smuggled the gold bar and attempting to evade the Customs Duty by not declaring the gold weighing 660.96 grams having purity of 999.0/24Kt. 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. I further find that the noticee had involved himself and abetted the act of smuggling of the said 01 gold bar weighing 660.96 grams, carried by him by concealment. He has agreed and admitted in his statement that he travelled from Dubai to Ahmedabad with the said gold in form paste in capsules concealed in his rectum. 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, the noticee attempted to smuggle the said gold of 660.96 grams, having purity 999.0/24kt by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) and Section 112(b) of the Customs Act,1962 and I hold accordingly.

34. Accordingly, I pass the following Order:

O R D E R

i) I order **absolute confiscation** of 01 gold bar net weighing **660.96** grams having purity of 999.0/24Kt. derived from paste of gold and chemical mix, containing in form of 02 capsules concealed in his rectum, having Market Value of **Rs.53,26,677/-** (Rupees Fifty-Three Lakhs Twenty-Six Thousand and Six Hundred Seventy-Seven only) and Tariff value as **Rs.48,08,087/-**(Rupees Forty-Eight Lakhs Eight Thousand and Eighty-Seven only), placed under seizure under Panchnama dated 15.01.2025 and seizure memo order dated 15.01.2025, 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.13,50,000/-** (Rupees Thirteen Lakh Fifty Thousand Only) on **Shri Shahidbhai Kadarbhai Khalyani** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

35. Accordingly, the Show Cause Notice No. VIII/10-11/SVPIA-D/O&A/HQ/2025-26 dated 24.06.2025 stands disposed of.

Digitally signed by
SHREE RAM VISHNOI
Date: 11-11-2025
14:25:26

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

DIN:20251171MN0000414264
F. No:VIII/10-11/SVPIA-D/O&A/HQ/2025-26 Date:11.11.2025

BY SPEED POST AD

To,
Shri Shahidbhai Kadarbhai Khalyani,
Mankad Chok, Voravad, Botad,
Bhavnagar-364710 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, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in
6. Guard File.