



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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DIN No. 20250671MN0000323023

### **PREAMBLE**

A	फाइल संख्या/ File No.	:	VIII/10-260/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-260/SVPIA-B/O&A/HQ/2024-25 dated: 06.03.2025
C	मूलआदेशसंख्या/ Order-In-Original No.	:	<b>72/ADC/SRV/O&amp;A/2025-26</b>
D	आदेशतिथि/ Date of Order-In-Original	:	<b>30.06.2025</b>
E	जारीकरनेकीतारीख/ Date of Issue	:	<b>30.06.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<b>Shri Abdul Ajij S/o Nasir Khan</b> Chand Khan Ki Dhani, Riya Setho Ki, Riyani, Jodhpur, Rajasthan - 342601
(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 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: -**

Shri Abdul Ajij (DOB: 01.01.1991) holding Indian Passport bearing No. C0632263(hereinafter referred to as the said “passenger/Noticee”), residential

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address as per passport is Chand Khan Ki Dhani, Riya Setho Ki, Riyan, Jodhpur, Rajasthan – 342601, arrived by Indigo Flight No. 6E-76 from Jeddah to Ahmedabad on 26.09.2024 at Sardar Vallabhbhai Patel International Airport, Terminal-2, Ahmedabad. On the basis of passenger profiling, the passenger was spotted crossing the Green Channel with his checked-in baggage i.e. one checked in bag and two hand bags, without declaring any dutiable goods. The passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad at Sardar Vallabhbhai Patel International Airport, Terminal-2, Ahmedabad. The officers asked the passenger whether he was carrying any contraband/dutiable goods in person or in baggage to which he denied. Thereafter, the AIU officers in presence of the panchas brought the passenger Shri Abdul Ajij to AIU office situated at Sardar Vallabhbhai Patel Airport, Terminal-2, Ahmedabad, under Panchnama proceedings dated 26.09.2024 for passenger's personal search, examination of his baggage and further inquiry.

2. The officers asked the passenger if he had anything to declare to the Customs, in reply to which he denied. The officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of Customs. The AIU officers scan the checked in baggage and the hand bag of the passenger in the X-Ray baggage scanning machine, which is installed near Green Channel at Arrival Hall, Terminal 2, SVPI Airport, Ahmedabad but nothing objectionable was found.

2.1 Thereafter, the passenger was further asked by the officer of AIU if he had concealed any substance in his body, to which he replied in negative. Thereafter, on thorough personal search of the passenger it was found that the passenger was wearing a rhodium coated gold chain and was carrying semi solid paste of gold and chemical, packed in one pouch and two strips covered with white tape and concealed in the underwear worn by the passenger. The rhodium coated gold chain and the semi-solid gold paste was handed over to the AIU officers by the passenger.

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2.2 Thereafter, the AIU officers called the Government Approved Valuer for testing and Valuation of the said material, however the Government Approved Valuer informed the Customs officer that the testing of the said material is only possible at his workshop as gold must be extracted from such paste form by melting it. As per request of the Government Approved Valuer the officers along with the Pancha witnesses and the passenger Shri Abdul Ajij reached at the premises of the Government Approved Valuer.

The Government Approved Valuer at his premises after preliminary examining and weighing the white rhodium plated gold chain and paste informed that the rhodium plated gold chain is having net weight of 335.73 grams having market value of Rs.26,21,044/- (Twenty-six lakhs twenty-one thousand and forty-four only) and tariff value of Rs.23,17,937/- (Twenty-three lakhs seventeen thousand nine hundred and thirty-seven only). The photographs of the said rhodium plated gold is as under :



Further, the Valuer also informed that the pouch and the strips wrapped with white Tape contain semi-solid substance consisting of Gold & a chemical mix having Gross weight 1672.14 grams. The Government Approved Valuer after completion of the procedure at his premises informed that a gold bar weighing 1473.21 grams derived from solid substance consisting of gold and chemical mix of weighing 1672.14 grams. The Government Approved Valuer vide (Annexure A & B) Certificate No. 960/2024-25 dated 26/09/2024 certified that 1473.21 grams gold bar is having purity 999.0/24 karat and Tariff Value of Rs. 1,01,71,292/- and Market value of Rs.1,15,01,350/ The value of the gold bar was calculated as per the Notification No. 61/2024-Customs (N.T.) dated 13/09/2024 (Gold Tariff) and Notification No. 45/2024-Customs (N.T.) dated 20/06/2024 (Exchange Rate). The photographs of the said pouch and the strips

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wrapped with white Tape contain semi-solid substance consisting of Gold & a chemical mix recovered from the underwear of the passenger and the gold bar derived from it are as under :



**2.3** The Government Approved Valuer vide Certificate No. 960/2024-25 dated 26/09/2024 certified that 1473.21 grams gold bar is having purity 999.0/24 karat and Tariff Value of Rs. 1,01,71,292/- and Market value of Rs.1,15,01,350/-, whereas the rhodium plated gold chain is having net weight of 335.73 grams having market value of Rs.26,21,044/-(Twenty Six Lakhs Twenty One Thousand and Forty Four Only) and tariff value of Rs.23,17,937/- (Twenty Three Lakhs Seventeen Thousand Nine Hundred and Thirty Seven Only). The value was calculated as per the Notification No. 61/2024-Customs (N.T.) dated 13/09/2024 (Gold Tariff) and Notification No. 45/2024-Customs (N.T.) dated 20/06/2024 (Exchange Rate). The details of the Valuation of the said gold bar is tabulated in below table:

<b>Sl. No.</b>	<b>Details of Items</b>	<b>PCS</b>	<b>Net Weight In Gram</b>	<b>Purity</b>	<b>Market Value (Rs.)</b>	<b>Tariff Value (Rs.)</b>
1.	Gold Bar (Derived from one pouch and two strips covered with white tape)	1	1473.210	999.0 24 Kt	1,15,01,350/-	1,01,71,292/-
2.	Gold chain (Rhodium plated)	1	335.73	999.0 24 Kt	26,21,044/-	23,17,937/-
	Total	2	1808.940		1,41,22,395/-	1,24,89,229/-

**3.** The method of testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate

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given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates. The following documents produced by the passenger were withdrawn under the Panchnama dated 26.09.2024:

- i) Copy of Passport No. C0632263 issued at Jaipur, Rajasthan on 05.09.2024 valid up to 04.09.2034.
- ii) Boarding pass of Indigo Flight No. 6E-76, Seat No. 25A from Jeddah to Ahmedabad dated 26.09.2024.

**Seizure of the above gold bar and gold chain:**

4. Accordingly, 01 rhodium coated gold chain having purity 999.0/24 Kt. weighing 335.73 grams and 01 gold bar having purity 999.0/24 Kt. weighing 1473.210 grams recovered from Shri Abdul Ajij, was seized vide Panchnama dated 26.09.2024, under the provisions of Customs Act 1962, on the reasonable belief that the said 01 gold bar and 01 rhodium coated gold chain was attempted to smuggle into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made there under.

**Statement of Shri Abdul Ajij:**

5. Statement of Shri Abdul Ajij was recorded on 26.09.2024, under Section 108 of the Customs Act, 1962, wherein he interalia stated that:

- (i) He is studied up to fifth standard and can read, write and speak Hindi language. His monthly income is Rs.15,000/-.
- (ii) That was the very first time, he had travelled abroad. He travelled to Jeddah on 11.09.2024 for umrah (religious visit) and came back on 26.09.2024 by Indigo Flight 6E 76 from Jeddah to Ahmedabad. He arranged his air tickets from his savings.
- (iii) In Jeddah, he came in contact with one unknown person through other pilgrims, who offered him to carry the Gold in form of Paste and Rhodium coated gold chain and deliver the same to one person at Ahmedabad as directed by that unknown person. Further, that unknown person offered him an amount of Rs. 30,000/- for the said work. That unknown person provided him a specially designed underwear containing 01 pouch and 02 strips covered with white tape having gold in semi-solid paste form in it and 01 rhodium coated gold chain. That unknown person had promised him to pay Rs. 30,000/-

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after delivery of the gold paste and rhodium coated gold chain to the concerned person in Ahmedabad. That unknown person also told me to wear the said specially designed underwear containing 01 pouch and 02 strips covered with white tape having gold in semi-solid paste form in it and 01 rhodium coated gold chain to evade normal detection before the Indian Customs.

- (iv) He accepted the offer as he was out of finances and therefore agreed to the offer given by that unknown person in Jeddah. As per direction of that unknown person he wore the specially designed underwear containing 01 pouch and 02 strips covered with white tape having gold in semi-solid paste form in it and 01 rhodium coated gold chain. That unknown person at Jeddah (Saudi Arabia) informed him that one person at Ahmedabad Airport will receive him and after confirmation on mobile, he was supposed to deliver the said specially designed underwear containing 01 pouch and 02 strips covered with white tape having gold in semi-solid paste form in it and 01 rhodium coated gold chain to the said person in Ahmedabad. On direction of that unknown person, he was supposed to get payment of Rs. 30,000/- at Ahmedabad from that receiver after delivery of the same.
- (v) He has never engaged in any smuggling activity and this was the first time he indulged in smuggling of gold;
- (vi) He is aware of Customs laws and baggage rules. He is fully aware that clearing gold without declaring before Customs, with an intent to evade payment of Customs duty is an offence, under the provisions of Customs Act, 1962 and Regulations;
- (vii) He has been present during the entire course of the Panchnama and he confirmed the events narrated in the said panchnama drawn on 26.09.2024 at Terminal-2, SVPI Airport, Ahmedabad.

#### **6. Summation:**

The above said 01 rhodium coated gold chain having purity 999.0/24 Kt. weighing 335.73 grams and 01 gold bar having purity 999.0/24 Kt. weighing 1473.210 grams recovered from Shri Abdul Ajij was allegedly attempted to be smuggled into India, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar and the rhodium coated gold chain was attempted to be smuggled by Shri Abdul Ajij, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said 01 rhodium coated gold chain having purity 999.0/24 Kt.

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weighing 335.73 grams and 01 gold bar having purity 999.0/24 Kt. weighing 1473.210 grams (totalling to 1808.94 grams having purity 999.0/24 Kt. having Tariff Value of 1,24,89,229/- and Market value of 1,41,22,395/-) along with its packing material used to conceal the said gold bars, was placed under seizure under the provision of Section 110 (1) and (3) of the Customs Act, 1962 vide Seizure memo Order dated 26.09.2024.

**6.1.** Further, the offence committed by the passenger, Shri Abdul Ajij was a punishable offence under section 135(1)(a) & (b) of the Customs Act, 1962 and therefore he was liable to be arrested u/s 104 of the Customs Act, 1962. Accordingly, after getting due authorization from the Hon'ble Pr. Commissioner of Customs, Ahmedabad, the passenger Shri Abdul Ajij having Passport No. C0632263 was arrested on 27.09.2024 at 11:30 AM, in terms of Section 104 of the Custom Act, 1962 for committing offences punishable under section 135 of the Customs Act, 1962.

## **7. RELEVANT LEGAL PROVISIONS:**

### **A. THE CUSTOMS ACT, 1962:**

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

(22) “goods” includes-

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

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

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

(39) “smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;”

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

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

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

**IV) Section 79. Bona fide baggage exempted from duty. -**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CONTRAVICTION AND VIOLATION OF LAWS**

8. It therefore appears that:

(a) The passenger Shri Abdul Ajij had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India by any way concerned in carrying, removing, depositing, harboring, keeping, concealing, or in any manner dealing with the said 01 rhodium coated gold chain having purity 999.0/24 Kt. weighing 335.73 grams and 01 gold bar having purity 999.0/24 Kt. weighing 1473.210 grams, **totaling to 1808.94 grams having purity 999.0/24 Kt.** having Tariff Value of Rs. 1,24,89,229/- (One Crore Twenty Four Lakh Eighty Nine Thousand Two Hundred Twenty Nine Only) and Market value of Rs. 1,41,22,395/- (One Crore Forty One Lakh Twenty Two Thousand Three Hundred Ninety Five Only).

(b) The gold chain was coated in rhodium whereas the gold bar was

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derived from semi-solid paste which was found concealed in the underwear worn by the passenger and not declared to the Customs. The passenger indulged himself in the instant case of smuggling of gold 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-re-a appears to have been established beyond doubt. Therefore, the said gold bar and gold chain totally weighing 1808.94 grams of purity 999.0/24 Kt. by Shri Abdul Ajij by way of concealment and without declaring it to the Customs 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.

- (c) By not declaring the value, quantity and description of the goods, 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.
- (d) The passenger has failed to produce the purchase documents of the said gold bar and Custom duty payment documents/proof has also not been submitted by the passenger for the same.
- (e) The improperly imported rhodium coated gold chain and the gold bar which was derived from semi-solid paste which was found concealed in the trouser worn by the passenger and without declaring it to the Customs, was thus liable for confiscation under Section 111 of the Customs Act, 1962.
- (f) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- (g) Shri Abdul Ajij by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

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(h) As per Section 123 of Customs Act 1962, the burden of proving that the said gold chain and gold bar **totally weighing 1808.94 grams** of purity 999.0/24 Kt. and having Tariff Value of Rs. 1,24,89,229/- (One Crore Twenty Four Lakh Eighty Nine Thousand Two Hundred Twenty Nine Only) and Market value of Rs. 1,41,22,395/- (One Crore Forty One Lakh Twenty Two Thousand Three Hundred Ninety Five Only), found concealed with the passenger, without declaring it to the Customs, is not smuggled goods, is upon the passenger.

**09.** Accordingly, a Show Cause Notice was issued to **Shri Abdul Ajij, residing at Chand Khan Ki Dhani, Riya Setho Ki, Riyan, Jodhpur, Rajasthan - 342601**, as to why:

- (i) 01 Rhodium coated gold chain having purity 999.0/24 Kt. weighing 335.73 grams worn by the passenger and 01 gold bar having purity 999.0/24 Kt. weighing 1473.210 grams (derived from the gold and chemical paste), **totalling to 1808.94 grams (335.73 grams + 1473.210 grams) having purity 999.0/24 Kt.** having Tariff Value of **Rs. 1,24,89,229/-** (Rupees One Crore Twenty-Four Lakh Eighty-Nine Thousand Two Hundred Twenty-Nine Only) and Market value of **Rs. 1,41,22,395/-** (Rupees One Crore Forty-One Lakh Twenty-Two Thousand Three Hundred Ninety-Five Only) found concealed in the form of semi-solid paste in the underwear worn by the passenger and seized under panchnama proceedings dated 26.09.2024 and Seizure Memo Order dated 26.09.2024, 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) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

**Defense reply and record of personal hearing:**

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

**11.** The noticee was given opportunity for personal hearing on 05.05.2025, 16.05.2025 & 02.06.2025 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being

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

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

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

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

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

**b).** Hon'ble High Court of Kerala in he 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.*

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

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

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

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

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

*Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained -*

*Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]*

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

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

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

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

#### **Discussion and Findings:**

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

13. In the instant case, I find that the main issue to be decided is whether the 1808.94 grams (335.73 grams + 1473.210 grams) of gold in form of chain and gold bar (derived from semi solid paste concealed in his underwear) 24KT(999.0 purity), having total Tariff Value of **Rs.1,24,89,229/-** and Market Value of **Rs.1,41,22,395/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 26.09.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling that Shri Abdul Ajij was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search was required to be carried out. The AIU officers under Panchnama proceedings dated 26.09.2024 in presence of two independent witnesses asked the noticee if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. Then officers asked the noticee whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the noticee in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of Customs. The AIU officers scan the checked in baggage and the hand bag of the noticee by passing them in the X-Ray baggage scanning machine, but nothing objectionable was found. Thereafter, the noticee was further asked by the officer of AIU if he had concealed any substance in his body, to which he replied in negative. Thereafter, on thorough personal search of the noticee a rhodium coated gold chain was recovered and also recovered a pouch and two strips covered with white tapes containing semi solid paste of gold and chemical which were concealed in the underwear. Thereafter, the rhodium coated gold chain and the semi-solid gold paste was handed over to the AIU officers by the noticee.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said pouch and strips containing semi solid substance consisting of gold and chemical mix and after completion of extraction, the Government Approved Valuer informed that 01 gold bar weighing **1473.210 grams** having purity 999.0/24KT was derived from pouch and strips containing gold and chemical mix concealed in his underwear. Further, the govt. approved valuer informed that the total weight of rhodium coated gold chain was 335.73 grams and having purity as 999.0/24kt. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar and chain was **Rs.1,24,89,229/-** and Market value is **Rs.1,41,22,395/-**. The details of the Valuation of the said gold bar and chain is tabulated as below:

<b>Sl . N o.</b>	<b>Details of Items</b>	<b>PC S</b>	<b>Net Weight In Gram</b>	<b>Purity</b>	<b>Market Value (Rs.)</b>	<b>Tariff Value (Rs.)</b>
1.	Gold Bar (Derived from one pouch and two strips covered with white	1	1473.210	999.0 24 Kt	1,15,01,350/-	1,01,71,292/-

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	tape)					
2.	Gold chain (Rhodium plated)	1	335.73	999.0 24 Kt	26,21,044/-	23,17,937/-
	Total	2	1808.940		1,41,22,395/-	1,24,89,229/-

**16.** Accordingly, the said 01 gold bar and 01 gold chain having purity 999.0/24 Kt. weighing 1808.94 grams (335.73 grams + 1473.210 grams), recovered from noticee was seized vide Panchnama dated 26.09.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold bar and 01 gold chain 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 1808.94 grams (335.73 grams + 1473.210 grams) of 01 gold bar and 01 gold chain, having Tariff Value of **Rs.1,24,89,229/-** and Market value is **Rs.1,41,22,395/-** carried by the noticee appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the noticee in his voluntary statement recorded on 26.09.2024 under Section 108 of the Customs Act, 1962.

**17.** I also find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the noticee. I find that the noticee has tendered his statement under Section 108 of Customs Act, 1962 voluntarily without any duress and threat and after understanding the same, he put his dated signature on that. Moreover, no record/documents regarding retraction found in the file which clearly establishes that the statement was completely correct to the facts, submitted by the noticee before officer. I find that the statement given by noticee under Section 108 of the Customs Act, 1962, was made voluntarily and carry evidentiary value under the law. In fact, in his statement, he has clearly admitted that he was aware that the bringing gold by way of concealment to India is illegal and an offense. Further, in his statement, he clearly admitted that during his visit he came in contact with an unknown person through other pilgrims at Jeddah who offered him to carry the said rhodium coated gold chain and gold in form of paste in pouch and strips and for that he would get Rs. 30,000/- The said admission, clearly inference that the gold found in possession of noticee does not belong to him and nor purchased by him. One unknown person in Jeddah handed a specially

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designed underwear containing 01 pouch and 02 strips containing gold in paste form and 01 rhodium coated gold chain for smuggling the same in India and instructed to wear the said underwear and gold chain to evade normal detection before Customs. He clearly admitted in his statement that in greed of money, he opted this illegal smuggling of gold in form of paste and chain. This deliberate act of concealing the gold in form of paste in underwear, worn by him and coating the gold chain with rhodium to make it look like silver, clearly indicate his intention for not declaring the said gold items before customs and to hoodwink the officers so that he might remove the same clandestinely without payment of customs duty. Such willful non-declaration and conscious attempt to evade duty on the part of the noticee amounts to a clear contravention of the provisions of the Customs Act, 1962, as well as the Baggage Rules, 2016 and thereby conclusively establishes his culpability in the commission of an act of smuggling. 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. 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, as amended.

**18.** Further, the noticee has confessed 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 and 01 gold chain coated with rhodium, in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. Therefore, as per the above discussion, 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 and accordingly, violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20 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

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they are not smuggled, shall be on the person from whose possession the goods have been seized.

**19.** From the facts discussed above, it is evident that noticee had carried the said gold weighing 1808.94 grams (335.73 grams + 1473.210 grams) in form of gold paste and rhodium coated chain, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24KT/999.00 purity totally weighing 1808.94 grams (335.73 grams + 1473.210 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. I find that to bypass the restriction imposed for importation of gold, the noticee converted the gold in to paste form by some chemical method for concealing the same by changing the physical appearance of the gold which was generally a solid metal. Conversion of the metal into paste makes the detection difficult by metal detector or scanner and to deceive the officer. Further, I find that the noticee concealed the said gold paste in specially designed underwear in a way so that the customs officer could have never suspected that he was carrying something which is under prohibition. It appears that the said noticee wilfully did this to hoodwink the Customs Authority with the intention to evade payment of Customs Duty. It appears to be conscious smuggling which is forbidden and naturally prohibited. By concealing the said gold and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**20.** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. Further, I would also like to draw attention to the definition of "eligible passenger" 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

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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 went to Jeddah on 11.09.2024 and returned back on 26.09.204, therefore, makes him non eligible passenger to brought the gold from foreign country, as per the conditions prescribed under above mentioned notification. Also, at the time of interception the noticee has not possessed with foreign exchange which is an integral condition for payment of customs duty for the foreign origin gold which was found in his possession. Had, the noticee was an intention to bring the gold in a legal way then he would have declared the same before the authority and have been foreign exchange with him to discharge the duty liability on importation of gold. Firstly, the noticee was not comes under the ambit of "eligible passenger" as per the conditions prescribed under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 and secondly, he had no foreign exchange with him to pay duty on importation of gold as required by the noticee, which makes it clear that the said gold which was found in possession of noticee was meant for smuggling. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 1808.94 grams (335.73 grams + 1473.210 grams) concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 1808.94 grams (335.73 grams + 1473.210 grams), in form of gold chain and gold paste, having Tariff Value of Rs.1,24,89,229/- and Market Value of Rs.1,41,22,395/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 26.09.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in form of semi solid substance containing gold and chemical mix in one pouch and two strips, in his specially designed underwear, and coating the gold chain with rhodium to make it appear as silver, 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

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seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**21.** I find that the Noticee confessed of carrying the said gold of 1808.94 grams (335.73 grams + 1473.210 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.

**22.** It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bar weighing 1808.94 grams (335.73 grams + 1473.210 grams), having Tariff Value of Rs.1,24,89,229/- and Market Value of Rs.1,41,22,395/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 26.09.2024. 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 chain and gold bar weighing 1808.94 grams (335.73 grams + 1473.210 grams), by deliberately not declaring the same by him on his arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the noticee has committed an offence of the nature

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described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

**23.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, **non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'**. This makes the gold seized in the present case "prohibited goods" as the noticee, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold weighing 1808.94 grams (335.73 grams + 1473.210 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 semi solid form in his underwear and concealed the gold chain by coating it with rhodium. In the present case, the manner of concealment being clever, conscious and pre-meditated. The quantity and type of gold being for commercial use and this being a clever attempt to brazenly smuggle the impugned gold. 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.

**24.** In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold. 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 pouch and strips covered with white tape containing gold in semi solid paste form in his underwear and concealed the gold chain coated with rhodium, with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold items weighing 1808.94 grams (335.73 grams + 1473.210 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 26.09.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty and also admitted that the gold was not purchased by him and was just a carrier of said gold for monetary benefit. In

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the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment of the said gold in semi solid form in his underwear alongwith the gold chain coated with rhodium. ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

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

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

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

**26.** In this context, I would like to reinforce my standing by placing my reliance on the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], wherein the Hon'ble High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**27.** Further, I placed my reliance on 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;

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

28. To further, support my view, I would like to relied upon the judgment of 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.*

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

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

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

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

**31.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold chain and gold bar weighing 1808.94 grams (335.73 grams + 1473.210 grams), carried by the noticee is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said 01 gold bar and 01 gold chain coated with rhodium having total weight of 1808.94 grams (335.73 grams + 1473.210 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.

**32.** Regarding imposing penalty under Section 112 of Customs Act, 1962, I find that there is no bar in the Customs Act upon simultaneous penalty under Section 112 (a) and (b). Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "does or omits to do any act which act or omission render such goods liable to confiscation under Section 111, or abets the doing or omission of such act" of Section 112(a) of the Customs Act, 1962 and Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962. To support my view, I placed reliance on the judgment in case of Revisionary Authority, New Delhi in the matter of Smt. Shakeena Ahammed Thadayil, Kozhikode Vs. Commissioner of Customs, Calicut (Order No. 44/24-Cus dated

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13.02.2024), which is squarely apt in the instant case. The noticee had attempted to smuggle the said goods by deliberately not declaring the same upon arrival with wilful intent to evade customs duty. Further, the statement of the noticee reveals that he was just carrier of gold for monetary benefits and has attempted to smuggle the gold on direction of some unknown person. I find that in the instant case, the principle of mens-reas on behalf of noticee is clearly established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold. Therefore, the noticee is liable to penalty under Section 112(a) and 112(b) of Customs Act, 1962. Further, while deciding the penalty in the instant case, I also consider 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 smuggle the gold in form of paste as well as in form of chain and attempting to evade the Customs Duty by not declaring said gold weighing **1808.94 grams (335.73 grams + 1473.210 grams)** having purity of 999.0 and 24Kt. Hence, the identity of the goods is not established and non-declaration at the time of import, is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar and gold chain weighing 1808.94 grams (335.73 grams + 1473.210 grams), carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Jeddah to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 1808.94 grams (335.73 grams + 1473.210 grams), having purity 999.0 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. Therefore, I find that the noticee is liable for penal action under Sections 112 of the Act and I hold accordingly.

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

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## ORDER

- i) I order **absolute confiscation** of 01 Rhodium coated gold chain having purity 999.0/24 Kt. weighing 335.73 grams worn by the noticee and 01 gold bar having purity 999.0/24 Kt. weighing 1473.210 grams (derived from the gold and chemical paste concealed in form of pouch and strips in his underwear), both having **total weight of 1808.94 grams (335.73 grams + 1473.210 grams) having purity 999.0/24 Kt.** and having Tariff Value of **Rs. 1,24,89,229/-** (Rupees One Crore Twenty-Four Lakh Eighty-Nine Thousand Two Hundred Twenty-Nine Only) and Market value of **Rs. 1,41,22,395/-** (Rupees One Crore Forty-One Lakh Twenty-Two Thousand Three Hundred Ninety-Five Only), which were placed under seizure under Panchnama dated 26.09.2024 and seizure memo order dated 26.09.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) I impose a penalty of **Rs. 35,00,000/- (Rupees Thirty-Five Lakhs Only)** on **Shri Abdul Ajij** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

**34.** Accordingly, the Show Cause Notice No. VIII/10-260/SVPIA-B/O&A/HQ/2024-25 dated 06.03.2025 stands disposed of.

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

F. No: VIII/10-260/SVPIA-B/O&A/HQ/2024-25 Date:30.06.2025  
**DIN: 20250671MN0000323023**

### **BY SPEED POST AD**

To,  
**Shri Abdul Ajij S/o Nasir Khan**  
Chand Khan Ki Dhani,  
Riya Setho Ki, Riyan,  
Jodhpur, Rajasthan - 342601

### **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.

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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.