

OIO No:13/ADC/SRV/O&A/2025-26
F. No: VIII/10-220/SVPIA/DRI/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाईकोर्ट कंप्लेक्स में, नवरंगपुरा, अहमदाबाद – 380009.

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DIN: 20250471MN000000E230

PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-220/SVPIA/DRI/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या—तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-02/ENQ-15/2024 dated 23.09.2024
C	मूल आदेश संख्या / Order-In-Original No.	:	13/ADC/SRV/O&A/2025-26
D	आदेश तिथि / Date of Order-In-Original	:	24.04.2025
E	जारीकरने की तारीख / Date of Issue	:	24.04.2025
F	द्वारा पारित / Passed By	:	Shree Ram Vishnoi , Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	<p>(i) Smt. Priyankaben Virenbai Nakrani, Aged 34 years (D.O.B. 05.08.1996) residing at A-47, Purvi Society,-1, Hira Baug, Surat City -395006</p> <p>(ii) Shri Dilipbhai Devchandbhai Alagiya, Aged 39 Years (D.O.B. 11.09.1984) residing at Damnagar, Kumbhnath Society, Bhurakhiya, Amreli, Damnagar, Gujarat-365220.</p> <p>(iii) Shri Monu Singh at Bangkok</p>
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई श्री व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हुड्को भवन, ईश्वर भवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		

(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या डियूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।
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Brief facts of the case:

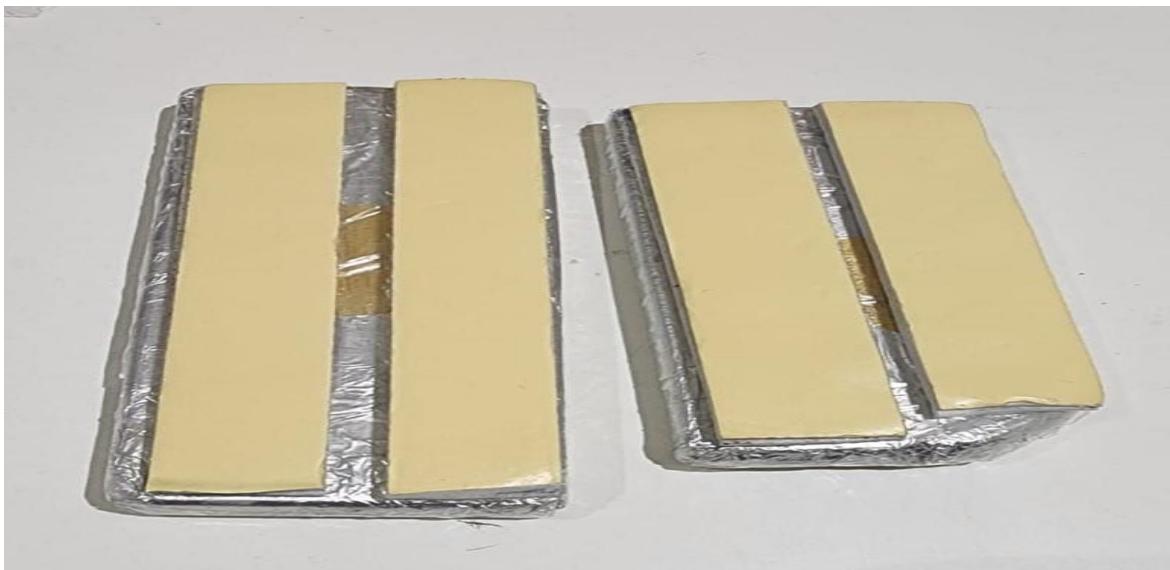
An intelligence was received by Directorate of Revenue Intelligence, Zonal Unit Ahmedabad, (hereinafter also referred to as DRI) that two passengers namely (i) Smt. Priyankaben Virenbai Nakrani (ii) Shri Dilipbhai Devchandbhai Alagiya having passport no. W5096045 and U2311578 arriving by Air Asia Flight FD144 on 26.03.2024 from Don Mueang to Ahmedabad are suspected to be carrying smuggling gold in baggage or in clothes worn by them.

2. Acting on the said intelligence, a team of officers from DRI along with officers of Air Intelligence Unit, Customs, SVPI Airport Ahmedabad, discreetly kept a watch over all passengers arriving by Air Asia Flight No. FD 144 from Don Mueang to Ahmedabad on 26.03.2024. The officers then intercepted 2 passengers viz. (i) Smt. Priyankaben Virenbai Nakrani (ii) Shri Dilipbhai Devchandbhai Alagiya having passport no. W5096045 and U2311578 and travelling vide PNR No. D8TSVG & JYND3N respectively by verifying their passport, when the said passengers tried to exit through the Green Channel at arrival hall of Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad and the proceedings thereof were recorded under panchnama of dated. 26-27.03.2024.

2.1 The DRI & Customs Officers then asked Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya, if they had anything to declare before the Customs, to which they both denied of having any dutiable or restricted items with them. Thereafter the officers asked both the passengers i.e Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya whether they wish to be searched before a Gazetted officer or Magistrate, to which they agreed to be searched in front of a Gazetted officer of Customs. Both the said passengers were then asked to pass through Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival hall of Terminal 2, SVPI Airport Ahmedabad after removing all metallic objects from their body/clothes.

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2.2 When Smt. Priyankaben Virenbai Nakrani passes through DFMD, a beep sound was noticed. Consequently, the officers asked Smt. Priyankaben Virenbai Nakrani that whether she possessed any metallic substance in her clothes or body to which she had denied. Subsequently, through frisking of Smt. Priyankaben Virenbai Nakrani by the lady officer of AIU resulted in recovery of 2(two) heavy bars wrapped in aluminum foil and transparent tape and having double sided tapes on both bars. The photograph taken thereof are reproduced as below:



2.3 The officer then asked Smt. Priyankaben Virenbai Nakrani that why she did not inform about the same i.e 2 bars when she passed through DFMD, she replied that she was told by Shri Dilipbhai Devchandbhai Alagiya, her co-passenger, not to disclose that she was carrying gold bars before customs authority. On further questioning by the officers, Smt. Priyankaben Virenbai Nakrani informed that the above 2 gold bars were handed over by one person known to Shri Dilipbhai Devchandbhai Alagiya.

2.4 Further, on being removed the aluminum foil and transparent tape from the said metal object, a gold bar with marking "Valcambi Suisse 1 Kg gold 999.9 Essayer Fondeur Sr. No. BD81821" and a cut gold bar with marking "Valcambi Suisse 1 Kg gold 999.9 Essayer Fondeur Sr. No. BD81817 were found. The photograph taken thereof are reproduced as below:

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2.5 Thereafter, the officer contacted Government Approved Valuer Shri Kartikey Vasantrai Soni and informed about the recovery of gold bars. Further, the officer requested Shri Kartikey Vasantrai Soni to carry out the testing, purity and valuation of the said material. Shri Kartikey Vasantrai Soni, then after completion of entire procedure of weigment and purity check, submitted his valuation reports (Annexure - A) vide Certificate No: 1614/2023-24 dated 27.03.2024 in terms of the Notification No. 22/2024-Customs (N.T.) dated 15.03.2024 (gold) and Notification No. 18/2024-Customs (N.T.) dated 07.03.2024 (exchange rate). The details of the same are as under:

SR. No.	Details of Items	Pcs	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold KG Bar (1000.000 Gms) and Cut Gold Bar(847.800 gms) (Valcambi Suisse 1 Kg gold 999.9 Essayer Fondeur Sr No. BD81821 and BD81817)	2	1847.800	999.9 24 Kt	1269069 0	1077082 6

Seizure of smuggled gold

2.6 Since, Smt. Priyankaben Virenbai Nakrani did not declare the said gold bars to the Customs Authorities and thereby have attempted to smuggle gold in the conceal manner with an intention to evade payment of Customs duty in violation of the provisions of Customs Act, 1962, total 1847.800 Grams Gold of 24Kt. with purity 999.0, having total Market Value of Rs. 1,26,90,690/- (Rupees One Crore Twenty Six Lakhs Ninety Thousand Six hundred and Ninety only) and total tariff value of Rs. 1,07,70,826/- (Rupees One Crore Seven Lakhs Seventy Thousand Eight Hundred and Twenty Six only) along with the with aluminum foil and tape, which were used to cover/conceal the said gold bars were placed under seizure under section 110 of the Customs Act, 1962 vide seizure memo dated 27.03.2024 as the same were liable to confiscation under Section 111 & Section 119 of the Customs Act, 1962 respectively

2.7 The seized gold bars along with packing material used for concealment were handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide ware House 6115 and 6116 both dated 27.03.2024 respectively for safe custody.

3. STATEMENTS OF KEY PERSONS:

Upon completion of the panchnama proceedings at SVPI Airport, summons were issued to (i) Ms. Priyankaben Virenbai Nakrani (ii) Shri Dilipbhai Devchandbhai Alagiya for recording their statement.

3.1 Statement of Ms. Priyankaben Virenbai Nakrani was recorded under Section 108 of the Customs Act, 1962 on 27.03.2024, wherein she inter-alia stated that:

3.1.1 she along with Shri Dilipbhai Devchandbhai Alagiya went from CSMI, Mumbai Airport to Bangkok (Thailand) on 20.03.2024 via Thai Airways flight and returned India and arrived at SVPI Airport, Ahmedabad on 26.03.2024

3.1.2 Shri Dilipbhai Dechandbhai Alagiya proposed her to visit Bangkok, Thailand along with him for pleasure trip and visit different places like Pattaya beach etc. to which she readily agreed to.

3.1.3 Shri Dilipbhai Devchandbhai Alagiya booked her tickets from India to Thailand including return journey from Thailand to India and also paid for the food and stay expenses at Thailand.

3.1.4 she agreed with the fact that 1847.800 grams of Foreign Origin Gold bars (2 pieces) having purity 999.9 (24Kt) was concealed and kept by her during her journey from Don Mueang to Ahmedabad which was subsequently recovered from her worn clothes i.e. from the rear pocket of her jeans pant and was seized under panchnama dated 27.03.2024

3.1.5 she received the said quantity 1847.800 grams of the gold on 26.03.2024 from Shri Dilipbhai Devchandbhai Alagiya at Hotel Grace, Bangkok, Thailand.

3.1.6 Shri Devchandbhai Dilipbhai Alagiya handed over the said gold weighing 1847.800 grams of gold bars (2 pieces) having purity 999.9 (24Kt) to her on 26.03.2024 at the lobby of Hobby Grace, Bangkok before check out from the Hotel.

3.1.7 Shri Dilipbhai Devchandbhai Alagiya convinced her that by sale of Foreign origin 'Gold' having purity 999.9 (24Kt) one can earn profit as Gold rates are lower in Bangkok than India.

3.1.8 Shri Dilipbhai Devchandbhai Alagiya offered sharing of 50% part of the profit in the sale proceeds upon selling the same in domestic market, if she had agreed to take the said foreign origin gold to India.

3.1.9 she agreed with his plan of bringing gold into the country in the form of gold bars and clearing the same through Indian Customs without declaring the same before Customs Authorities.

3.1.10 she was supposed to hand over the said foreign origin gold weighing 1847.800 grams after clearing the same from Customs, at SVPIA Ahmedabad to Shri Dilipbhai Devchandbhai Alagiya for further sale in domestic market.

3.1.11 she accepted that bringing 'Gold' into India without declaring it before Customs Authorities is smuggling and that it is illegal to smuggle gold without declaring the same to the Customs authorities.

3.2 Statement of Shri Dilipbhai Devchandbhai Alagiya was recorded under Section 108 of the Customs Act, 1962 on 27.03.2024, wherein, he inter-alia stated that:

3.2.1 he along with Smt. Priyankaben Virenbai Nakrani had gone to Bangkok on 21.03.2024 from Mumbai Airport.

3.2.2 that he visited Bangkok to travel various tourist places and also to bring GOLD items from there

3.2.3 that he had and got their flight tickets booked through an agent namely M/s Zakar Tours and Travels that the fare of ticket price is yet to be paid to the agent by himself.

3.2.4 Smt. Priyankaben Virenbai Nakrani is his friend and they met on social networking apps approx. 2 years back and he had offered her to travel Bangkok with him for visit various tourist places in Thailand

3.2.5 he had provided the said 2 Gold bars totally weighing of 1847.800 grams, having purity of 999.9 Kt. and market value of

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Rs.1,26,90,690/- to Ms Priyankaben Virenbai Nakrani and on his direction she carried the said gold bars from Thailand to India.

3.2.6 the DRI officers intercepted him and Ms. Priyankaben Virenbai Nakrani after crossing the green channel and also asked them if they wanted to declare anything before customs to which they had denied.

3.2.7 he had obtained the said gold bars from a person namely Shri Monu Singh@Bangkok, who basically facilitates smuggling of gold into India and he did not have purchase documents or any other documents of the said gold.

3.2.8 they had carried the said gold items on a mutual agreement with Shri Monu Singh@Bangkok that after smuggling the said gold items into India, he himself was about to pay Rs. 1,07,85,556/- approx to Shri Monu Singh@Bangkok for the said 2 said gold bars.

3.2.9 the profit margin of the said gold bars was to be shared between himself and Smt. Ms. Priyankaben Virenbai Nakrani in ratio 50-50.

3.2.10 Shri Monu Singh(Mob. No. +91 8860666088, +6944279734) is basically from Delhi and he has been currently living at Bangkok since last 4 years and he is engaged in the business of Gold and he owns a firm namely Sai Bullion in Thailand.

3.2.11 he had brought such 2 gold bars into India and tried to exit SVPI Airport without declaring the same before the customs authority with sole intention to clear the same and to evade the custom duty.

4. Arrest of (I) Smt. Priyankaben Virenbai Nakrani and (II) Shri Dilipbhai Devchandbhai Alagiya

Based on the evidences gathered and the statement recorded, it appeared that Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya have committed an offence punishable under Customs Act, 1962. As Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya, have attempted to smuggle gold bars without declaration of the same before Customs Authorities with a view to evade payment of Customs duty. The said gold smuggled by the above persons was liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. Thus, they had knowingly concerned themselves in an offence punishable under Section 135(1) of the Customs Act, 1962, as they had knowingly concerned themselves in dealing/carrying 1847.800 grams of smuggled gold of 24 carat having purity of 999 having total market value of Rs. 1,26,90,690/- and concerned themselves in carrying, removing, depositing, harboring, keeping, concealing of smuggled Gold which they knew and/or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Hence, Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya were arrested on 27.03.2024 at Ahmedabad under the provisions of Section 104 of the Customs Act, 1962 and were produced before the Hon`ble ACMM court, Ahmedabad, who remanded them to judicial custody.

5. Further Investigation

5.1 Enquiry with the airlines regarding the booking details of return journey

Further, vide email dated 14.05.2024, Air Asia Airlines was requested for booking details of the passengers namely Shri Dilipbhai Devchandbhai Alagiya and Ms. Priyanka Virenbhai Nakrani who had traveled from Don Mueang to Ahmedabad. Vide email dated 16.05.2024, Air Asia Airlines reported that the tickets of both the passengers were booked by a travel agency and in the said booking email id is mentioned as zakartours@gmail.com. Statement of Shri Dilipbhai Devchandbhai Alagiya dated 27.03.2024 also revealed that he booked his and Ms. Priyanka Virenbhai Nakrani tickets through a travel agent namely M/s Zakar Tours based out of Surat.

5.2 Statement of Mr. Magatarpara Vijaybhai Javarajbhai Proprietor of M/s Zakar Tours dated 10.06.2024 recorded under Section 108 of the Customs Act, 1962.

In his statement dated 10.06.2024, Mr. Magatarpara Vijaybhai Javarajbhai Proprietor of M/s Zakar Tours stated that he had booked the tickets for Shri Dilip Devchandbhai Alagiya and Ms Priyanka Virenbhai Nakrani for their travel from Mumbai to Bangkok and from Don Mueang to Ahmedabad in the month of March 2024. Shri Dilip Devchandbhai Alagiya approached him for booking of tickets and after that he(Dilip) sent him(vijaybhai) passport copy of himself and Ms Priyanka Virenbhai Nakrani. Further he stated that payment of journey from Don Mueang to Ahmedabad is still pending. Further, he was asked about the booking done by Mr. Dilip Devchandbhai Alagiya for other passengers and in reply he produced available ledger account of Mr. Dilip Devchandbhai Alagiya from dated 01.11.2022 to 25.11.2022.

5.3 Statement of Shri Dilipbhai Devchandbhai Alagiya dated 28.08.2028 recorded under Section 108 of the Customs Act, 1962

Vide the said statement dated 28.08.2028, Shri Dilipbhai Devchandbhai Alagiya interalia stated that

- One Mr. Nilesh Jadvani alias bhana bhai used to call him for booking of the flight tickets of the passengers to Dubai who would be smuggling Gold into India from Dubai
- he used to send the details of passengers received from Mr. Nilesh Jadvani to Mr. Vijaybhai of M/s Zakar Tours for booking of to and fro

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flight from Ahmedabad/Mumbai to Dubai and sometimes their hotel bookings at Dubai also.

- Mr. Nilesh Jadvani is involved in the smuggling of Gold and for that he needed the Carriers who would smuggle gold into India and in the last of year 2022, he (Nilesh) approached him (Dilip) and asked for persons/carriers who would be smuggling Gold from Dubai to India. After that, he had introduced some of the known persons to Mr. Nilesh Jadvani and then Mr. Nilesh Jadvani directly contacted the said persons.
- He had provided approx. 15-17 persons/carriers to Mr. Nilesh Jadvani for gold smuggling activities and out of that he had no idea how many persons and how many times have actually smuggled gold
- Mr. Nilesh Jadvani used to visit the office of M/s Zakar Tours and paid the outstanding amount for booking of the tickets in cash.
- Mr. Vijaybhai of M/s Zakar Tours used to give him commission of approx. Rs. 2000 to 2500 per passenger for their flight tickets booked by him and Mr. Nilesh Jadvani.

5.4 SDR/CDR details of contact no. belonging to Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbhai Nakrani:

CDR/SDR data of contact no. 7778989777 and 9106316342 belonging to Mr. Dilipbhai Devchandbhai Alagiya and 9725505522, belonging to Ms. Priyanka Virenbhai Nakrani were called and after analyzing the same, it appears that both were in constant touch with each other from Oct 2023 to Mar 2024. It also appears that the location of both the said persons is same i.e at Mumbai on the evening of 20.03.2024 to catch a flight from Mumbai to Bangkok.

5.5 Data Extracted from the Mobile Phones belonging to Mr. Dilipbhai Devchandbhai Alagiya.

5.5.1 During analyzing of the data extracted from the Mobile Phone Iphone 15 Pro Max belonging to Mr. Dilipbhai Devchandbhai Alagiya, it appears that Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbhai Nakrani travelled on same PNR from Mumbai to Bangkok together on 21.03.2024 as flight booking details from Mumbai to Bangkok in respect of them was found in the Mobile Phone. The Image of flight ticket is as below:

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BOOKING DETAILS

Mumbai - Bangkok

Thu, 21 Mar 2024 • Non stop • 4h 5m duration

 Thai Lion SL-219	Mumbai BOM 00:10 hrs Thu, 21 Mar 4h 5m	Bangkok 05:45 hrs DMK Thu, 21 Mar
	Chhatrapati Shivaji International Airport Terminal 2		Don Mueang Intl Terminal 1
PNR	MQDLLX		
	 20 Kgs* check-in	 1 PC* cabin	
TRAVELLER	SEAT	MEAL	E-TICKET NO
MR. DILIPBHAI ALAGIYA Adult 310-5109885215			310-5109885215
MS. PRIYANKABEN NAKRANI Adult 310-5109885216			310-5109885216

5.5.2 After analyzing the call log of the number +9106316342 belonging to Mr. Dilipbhai Devchandbhai Alagiya, it was observed that from 23.03.2024 to 26.03.2024 Mr. Dilipbhai Devchandbhai was in constant touch with the No. +918860666088, which belongs to the Monu Singh@Bangkok of Sai Bullion as provided by Mr. Dilipbhai Devchandbhai Alagiya in his statement dated 27.03.2024. The Sample of Screen shot of the call log is reproduced as below:

6	To: +918860666088 Mb ^k Direction: Outgoing	26-03-2024 07:22:00(UTC+0)	00:00:28	Unknown				Source: WhatsApp Business
7	From: +918860666088 Mb ^k Direction: Incoming	26-03-2024 06:02:05(UTC+0)	00:00:31	Answered				Source: WhatsApp Business
8	To: +918860666088 Mb ^k Direction: Outgoing	26-03-2024 04:38:58(UTC+0)	00:00:15	Unknown				Source: WhatsApp Business
9	From: +918860666088 Mb ^k Direction: Incoming	25-03-2024 07:17:44(UTC+0)	00:00:35	Answered				Source: WhatsApp Business
10	From: +918860666088 Mb ^k Direction: Incoming	25-03-2024 04:29:45(UTC+0)	00:00:29	Answered				Source: WhatsApp Business
11	From: +918860666088 Mb ^k Direction: Incoming	24-03-2024 07:45:05(UTC+0)	00:00:06	Answered				Source: WhatsApp Business
12	From: +918860666088 Mb ^k Direction: Incoming	24-03-2024 07:43:45(UTC+0)	00:00:16	Answered				Source: WhatsApp Business
13	From: +918860666088 Mb ^k Direction: Incoming	24-03-2024 07:39:33(UTC+0)	00:00:09	Answered				Source: WhatsApp Business

14	From: +918860666088 Mb ^k Direction: Incoming	24-03-2024 04:43:48(UTC+0)	00:01:57	Answered				Source: WhatsApp Business
15	To: +918860666088 Mb ^k Direction: Outgoing	23-03-2024 08:58:18(UTC+0)	00:00:07	Unknown				Source: WhatsApp Business
16	From: +918860666088 Mb ^k Direction: Incoming	23-03-2024 08:55:33(UTC+0)	00:00:18	Answered				Source: WhatsApp Business
17	From: +918860666088 Mb ^k Direction:	23-03-2024 07:52:32(UTC+0)	00:00:09	Answered				Source: WhatsApp Business

6. Relevant Legal Provisions:

6.1 According to the Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification 31/2016 (NT) dated 01.03.2016, all passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage under Section 77 of the Customs Act, 1962.

6.2 All the dutiable articles imported into India by a passenger in his baggage are classified under CTH 9803. As per Section 77 of the Customs Act, 1962, the owner of any baggage shall for the purpose of clearing it, make a declaration of its contents to the proper officer. 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 Foreign Trade (Development and Regulation) Act, 1992, the Rules and Orders made there under and the Foreign Trade Policy for the time being in force.

6.3 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-2020, 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. The gold can be imported by the banks (authorized by RBI) and the agencies nominated for the said purpose under Para 4.41 of Chapter-4 of Foreign Trade Policy or by "Eligible Passenger" as per the provision of Notification No. 50/2017-Customs dated 30.06.2017 (Sr.No. 356). As per Notification No. 50/2017-Customs dated 30.06.2017, the '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.

The above said legal provisions are reproduced below:

Para 2.26 (a) of the Foreign Trade Policy 2015-2020:

Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance.

Para 4.41 of the Foreign Trade Policy 2015-2020:

Nominated Agencies:-

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(i) Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.

(ii) Nominated Agencies are MMTC Ltd, The Handicraft and Handlooms Exports Corporation of India Ltd, The State Trading Corporation of India Ltd, PEC Ltd, STCL Ltd, MSTC Ltd, and Diamond India Limited.

(iii) Notwithstanding any provision relating to import of gold by Nominated Agencies under Foreign Trade Policy (2015-2020), the import of gold by Four Star and Five Star Houses with Nominated Agency Certificate is subjected to actual user condition and are permitted to import gold as input only for the purpose of manufacture and export by themselves during the remaining validity period of the Nominated Agency certificate.

(iv) Reserve Bank of India can authorize any bank as Nominated Agency.

(v) Procedure for import of precious metal by Nominated Agency (other than those authorized by Reserve Bank of India and the Gems &Jewellery units operating under EOU and SEZ schemes) and the monitoring mechanism thereof shall be as per the provisions laid down in Hand Book of Procedures.

(vi) A bank authorized by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

6.4 CBIC Customs Notification No. 50/2017 dated 30.06.2017 where the condition regarding import of gold by passenger in the following manner:

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.

Baggage Rule, 2016 –

6.5 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 his bona fide baggage of jewelry up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees, if brought by a lady passenger”.

6.6 A combined reading of the above-mentioned legal provisions under Foreign Trade Regulations, the Customs Act, 1962 and the notifications issued therein - clearly indicate that import of gold including gold jewellery through Baggage is Restricted and conditions have been imposed on the said imports by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. Only passengers who satisfy those mandatory conditions can import gold as a part of their bona fide personal baggage and the same has to be declared to the Customs at the time of their arrival and applicable duty paid. These conditions are nothing but restrictions imposed on the import of gold through passenger baggage. Further, from the foregoing legal provisions of Foreign Trade Policy, 2015-2020 read with Reserve Bank of India circulars issued under Foreign Exchange Management Act (FEMA), Notifications issued by the Government of India and Circular issued by CBIC, it is evident that no one can import gold in any other manner as not explicitly stated/permited above. The impugned gold bars of 999/24K purity extracted from the semi-solid substance in paste form concealed in

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the clothes of the above 3 passengers smuggled into India in the instant case are not covered by any of the above circulars/notifications.

6.7 Further, as per Section 2(33) of the 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 but does not include any goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with, implying that any goods imported in violation of the conditions subject to which the goods are permitted to be imported are nothing but prohibited goods. Hence, the smuggling of gold in the paste/semi-solid form in capsules, in contravention of the Foreign Trade Policy 2015-20 read with the relevant notification issued under the Customs Act, 1962, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in the said Regulations. It is pertinent to note that any prohibition applies to every type of prohibition which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence the restrictions imposed on the said imports are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable for confiscation under Section 111 of Customs Act, 1962.

6.8 Therefore, it appears that import of gold in contravention of the Foreign Trade Policy 2015-20 read with the Customs Act, 1962 and RBI circulars, as well as the Rules and regulations mentioned supra, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in said Regulations.

Section 2(33) of the 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 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.

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.

6.9 Further, in terms of provisions under Section 123 of the Customs Act, 1962, it is the responsibility of the person who is in possession of the said gold / silver or the person claiming ownership of the same, to prove

that the same were not smuggled gold. Relevant provisions of Section 123 of the Customs Act, 1962 are as under:

Section 123: Burden of proof in certain cases. –

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.

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.

6.10 Further, Section 111 of the Customs Act, 1962 provides for the confiscation of the goods which are imported improperly.

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;
- (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;]

6.11 Further, Section 112 of the Customs Act, 1962 provides the penalty on the persons for the improper import of the goods.

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, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

6.12 Section 119: Confiscation of goods used for concealing smuggled goods :

Any goods used for concealing smuggled goods shall also be liable to confiscation.

7. Contraventions and Charges:

7.1 From the investigation conducted so far, it appears that Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbai Nakrani had knowingly concerned themselves in the said act of smuggling of 1847.800 grams of gold, having market value of Rs. 1,26,90,690/- which was recovered from the possession of Ms Priyanka Virenbai Nakrani on 27.03.2024 for personal monetary consideration/benefit.

7.2 Mr. Dilipbhai Devchandbhai Alagiya received 2 Gold bars totally weighing of 1847.800 grams, having purity of 999.9 Kt. and market value of Rs.1,26,90,690 from One Mr. Monu Singh@Bangkok and then Mr. Dilipbhai Devchandbhai Alagiya handed over the said 2 gold bars to Ms Priyanka Virenbai Nakrani in the Hotel of Bangkok on 26.03.2024 and further told her keep the said gold bars with her and that he would take it from her upon arrival into India. Mr. Dilipbhai Devchandbhai Alagiya also convinced Ms Priyanka Virenbai Nakrani that good money can be earned by selling the foreign origin gold in Indian market. Thus, Ms Priyanka Virenbai Nakrani concealed and kept the said 2 gold bars during her journey from Don Mueang to Ahmedabad in the rear pocket of her jeans pant worn by her in such a manner that the said gold bars are not detected during hand baggage checking at Customs Airport with an intention to smuggle the same into India to evade payment of Customs duty. They both had chosen to move through Green Channel and did not declare the gold before the Customs Authorities at SVPI Airport, Ahmedabad which was concealed in her Rear pocket of jeans for monetary consideration. The act of concealing the gold bars and intentional non-declaration of the said gold before the Customs authority shows the mens-rea on the part of Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbai Nakrani, with a view to avoid payment of Customs duty. Further both of them had smuggled gold to sell the same in the Indian domestic markets, therefore, it appears that Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbai Nakrani, were not inclined to declare

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the goods viz. gold bars that they were carrying before the Customs Authorities. Thus Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbhai Nakrani contravened the provisions of Section 77 of the Customs Act, 1962 in as much as they failed to declare the said smuggled seized gold before the Customs

7.3 Further, Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbhai Nakrani were unable to produce documents evidencing legitimate import of the said Gold seized from the possession of Ms Priyanka Virenbhai Nakrani. In terms of the provisions of Section 123 of the Customs Act, 1962 burden of proving that they are not smuggled goods is on the person from whose possession the goods were seized. Whereas it further appears from the statement of that Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbhai Nakrani that they were aware that bringing gold in the above manner is contrary to the provisions of the Customs Act, 1962 with an intention to carry gold without the knowledge of the Customs Authorities, without declaration and payment of appropriate Customs duties which rendered the above said quantity of 1847.800 grams of gold liable to confiscation under the provisions of Section 111(d), (l) and (m) of the Customs Act, 1962.

7.4. Therefore, Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbhai Nakrani have concerned themselves in the act of smuggling of foreign origin Gold and have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules 2016, Customs Notifications, etc. Thus the said gold is to be treated as Prohibited goods in terms of Section 2(33) of the Customs Act, 1962. The restrictions imposed on the said import are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable to confiscation under Section 111 of the Customs Act, 1962 and rendered themselves liable for penalty under Section 112(a) & (b) of Customs Act, 1962 and the said activity is smuggling in terms of Section 2(39) of the Customs Act, 1962.

7.5 Further, Shri Monu Singh@Bangkok has concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad which has rendered himself liable for penalty under Section 112(a) and 117 of Customs Act, 1962.

8. ROLE OF PERSONS.

From the investigation conducted, role of following persons were emerged.

8.1 Role of Ms. Priyanka Virenbhai Nakrani

As evident from the evidences available on record in the form of Panchnama dated 27.03.2024, statement dated 27.03.2024 as well as statement of his co-passenger Mr. Dilipbhai Devchandbhai Alagiya dated

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27.03.2024 recorded under Section 108 of the Customs Act, 1962 etc., it appears that Ms. Priyanka Virenbai Nakrani indulged in the act of smuggling of 2 foreign origin Gold bars totally weighing 1847.800 Grams which was concealed in her worn clothes i.e in the rear pocket of her jeans pant having total market value of Rs. 1,26,90,690/- while travelling from Don Mueang to Ahmedabad on 26.03.2024. She agreed with the plan of Shri Dilipbhai Devchandbhai Alagiya to bring Gold into India form of gold bars and clearing the same through Indian Customs without declaring the same before Customs Authorities and share the 50% parts of the profit in the sale proceeds upon selling the same in domestic market. It further appears that she knowingly participated in all the activities related to smuggling of foreign origin gold in lure of money.

8.2 Role of Shri Dilipbhai Devchandbhai Alagiya

8.2.1 As evident from the evidences available on record in the form of Panchnama dated 27.03.2024, his statement dated 27.03.2024 and 28.08.2024 as well as statement of his co-passenger Ms. Priyanka Virenbai Nakrani recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri Dilipbhai Devchandbhai Alagiya indulged in act of smuggling of 2 foreign origin Gold bars totally weighing 1847.800 Grams (999/24 Kt) and market value of Rs.1,26,90,690/-. He obtained the said 2 gold bars from one Mr. Monu Singh@Bangkok and provided the said 2 Gold bars to Ms Priyankaben Virenbai Nakrani at Hotel Grace, Bangkok, Thailand and on his direction she(Priyanka)carried the said 2 gold bars from Thailand to India by way of concealment in her rear pocket of jeans. He had carried the said gold bars on a mutual agreement with Shri Monu Singh@Bangkok that after smuggling the said gold items into India, he himself was about to pay Rs. 1,07,85,556/- approx to Shri Monu Singh@Bangkok for the said 2 said gold bars. He also stated in his statement dated 28.08.2024 that in the past, on the directions of One Mr. Nilesh Jadvani he used to provide persons/carriers who would be smuggling Gold from Dubai to India and further facilitate him (Nilesh) for booking of to and fro flight tickets of the passengers from Ahmedabad/Mumbai to Dubai who would be smuggling Gold into India and sometimes their hotel bookings at Dubai also through one of his known Travel agent. He had provided approx. 15-17 persons/carriers to Mr. Nilesh Jadvani for gold smuggling activities. He had travelled to Bangkok for smuggling purpose only with the intention of smuggling of

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gold into India against monetary personal enrichment. He knowingly participated in all the activities related to smuggling of foreign origin gold in lure of money. Further, he booked flight tickets of his and Ms. Priyanka Virenbai Nakrani from Mumbai to Bangkok and from Bangkok to Ahmedabad. He knowingly booked their flight tickets from Mumbai to Bangkok on the same PNR and from Bangkok to Ahmedabad on different PNR which shows his malafide intention and to mislead the customs authorities.

8.2.2 Moreover, as per the evidences available on record in the form of Panchnama dated 28.01.2024, statements of the concerned persons and enquiry with the airlines, it is clear that both the said passengers viz. Mr. Dilipbhai Devchandbhai Alagiya and Ms. Priyanka Virenbai Nakrani indulged in act of smuggling of gold. Both belong to the same syndicate. They indulged in smuggling of gold into India without the knowledge of the Customs Authorities and without declaration/payment of appropriate Customs duty at Airport.

8.3 Role of Mr. Monu Singh@Bangkok

As evident from the evidences available on record in the form of statement of Mr. Dilipbhai Devchandbhai Alagiya and Ms Priyanka Virenbai Nakrani both dated 27.03.2024, extracted data of the mobile phone of Mr. Dilipbhai Devchandbhai Alagiya recorded under Section 108 of the Customs Act, 1962 etc., it appears that the said 2 gold bars of foreign origin was provided by Shri Monu Singh@Bangkok to Mr. Dilipbhai Devchandbhai Alagiya. During the analysis of data extracted from the Mobile Phone of Mr. Dilipbhai Devchandbhai Alagiya, it was observed that from 23.03.2024 to 26.03.2024, he was in constant touch with No. +918860666088, which belongs to the Monu Singh@Bangkok of Sai Bullion as provided by Mr. Dilipbhai Devchandbhai Alagiya in his statement dated 27.03.2024.

09. Accordingly, a Show Cause Notice was issued to **(i)** Ms. Priyankaben Virenbai Nakrani, Aged 34 years (D.O.B. 14.01.1990) residing at A-47, Purvi Society,-1, Hira Baug, Surat City -395006 **(ii)** Shri Dilipbhai Devchandbhai Alagiya, Aged 39 Years (D.O.B. 11.09.1984) residing at Damnagar, Kumbhnath Society, Bhurakhiya, Amreli, Damnagar, Gujarat-365220 as to why:-

- i. 1847.800 grams of Gold having a market value of Rs. 1,26,90,690/- recovered from the possession of Ms. Priyankaben Virenbai Nakrani should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- ii. aluminium foil and tape used to conceal the gold bars recovered from Ms. Priyankaben Virenbai Nakrani, having no value should not be confiscated under Section 119 of the Customs Act, 1962.
- iii. Penalties should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.
Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

Also Show Cause Notice was issued to Mr. Monu Singh@Bangkok for imposing penalty upon him under Section 112(a) of the Customs Act, 1962 and under Section 117 of the Customs Act, 1962.

10. Defense reply and record of personal hearing:

10.1 Defense Reply of Noticee No. 1 i.e Ms. Priyankaben Virenbai Nakrani: - The noticee has not submitted any written defense reply against the allegation made against her in SCN.

10.2 Defense Reply of Noticee No. 2 i.e Shri Dilipbhai Devchandbhai Alagiya: - The noticee has not submitted any written defense reply against the allegation made against him in SCN.

10.3 Defense Reply of Noticee No. 3 i.e Mr. Monu Singh@Bangkok: - The noticee has not submitted any defense reply against the allegation made against him in SCN.

Personal Hearing:-

11. Adequate opportunities of personal hearing were given to all noticees in the Show Cause, which is summarized as under:-

Noticee No. 1 and Noticee No. 2: i.e Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya

The noticees were given opportunity for personal hearing on 10.02.2021, 21.02.2025 & 21.03.2025. Shri Mahavir Bhansali, Advocate and Authorized representative on behalf of both noticee i.e Shri Priyankaben Virenbai Nakrani & Shri Dilipbhai Devchandbhai Alagiya was appeared

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for personal hearing. He requested to attend the PH in person instead of video conferencing. He submitted that his clients brought this type of goods first time and there is no case registered against his clients prior to this case and they are not habitual offenders and not found involved in similar case earlier. He submitted that his client Smt. Priyankaben Virenbai Nakrani claimed the ownership on the gold. He further mentioned that the gold was not ingeniously concealed and not in large quantity. DRI officers did not allow them to declare the same and allow the option of payment of duty alongwith fine and penalty. He submitted that his client has brought the gold for her personal use. He further requested to release the gold on payment of nominal penalty and allowed redemption fine in the instant case. Further, he submitted the case laws in his support, wherein redemption fine was imposed for release of gold.

Noticee No. 3: Shri Monu Singh at Bangkok: The noticee was given opportunity for personal hearing on 10.02.2021, 21.02.2025 & 21.03.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962, 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.

Discussion and Findings:

12. I have carefully gone through the case records, Show Cause Notice, relied upon documents to Show Cause Notice and Statements of the Noticees alongwith the submission made by the noticees or their representative at the time of personal hearing scheduled on various dates. Further, sufficient opportunities to be heard were extended to all the noticees of the SCN following the Principles of Natural Justice.

12.1. Before discussing the allegations levelled in the impugned SCN in light of submissions made by some of the noticees, it is imperative to mention that none of them have retracted from their voluntarily statements tendered by them before DRI officers under Section 108 of Customs Act, 1962. I find that the said noticees have admitted in their respective statements that they have given statements voluntarily and

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without any inducement, threat and coercion or by any improper means. I find that the statements recorded under Section 108 of the Customs Act, 1962 have evidentiary value under the provisions of law. The Judgment relied upon in this matter as follows:-

- (i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that evidence-confession statement made before Customs officer, though retracted within six days, is admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.
- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidence"
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that " It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- (iv) There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- (v) Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- (vi) The Hon'ble Supreme Court in another case of Gulam Hussain Shaik Chougule Vs. S.Reynolds, Supdt of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC) categorically held that "Statement recorded by the Customs officer under Section 108 of the Customs Act, is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."

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(vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323(SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "

13. I perused the facts presented before me. The question that need to be addressed in the instant case are within the jurisdiction of Customs Act, 1962 and allied laws as under:-

- i.** Whether the goods seized are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;
- ii.** Whether, seized 02 Gold bars weighing i.e 1847.800 Grams concealed in rear pocket of her jeans pant having a market value of Rs. 1,26,90,690/- recovered from the possession of Ms. Priyankaben Virenbai Nakrani (herein after mentioned as Noticee No. 1) is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iii.** Whether, aluminium foil and tape used to conceal the gold bars recovered from Ms. Priyankaben Virenbai Nakrani, having no value seized under Section 110 of the Customs Act, 1962 is liable for confiscation under Section 119 of the Customs Act, 1962.

iv. Whether the act of the Noticee No. 1 to Noticee No. 3 renders them to be penalized discretionarily under Section 112 & Section 117 of the Customs Act, 1962;

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

"Further, Section 2(33) of the Act defines "Prohibited Goods" as under:- Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with. "From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negatived the said contention and held thus:- "... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in

force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition. **Relying on the ratio of the judgment stated above, I find that the goods brought by the Noticee No. 1 i.e Smt. Priyankaben Virenbhai Nakrani on direction of Noticee No. 2 named Shri Dilipbhai Devchandbhai Alagiya, are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

15. I will now examine the submission made by the noticees one by one as per the relevant law and as per the provisions: -

15.1 I find that based on specific intelligence, officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as 'DRI') had intercepted two passengers namely Smt. Priyankaben Virenbhai Nakrani & Shri Dilipbhai Devchandbhai Alagiya, while they were trying to exit through green channel without making any declaration, on the basis that both were trying to smuggle huge quantities of contraband/primary gold of foreign origin from Don Mueang , Bangkok to Ahmedabad. While passing through DFMD, a loud beep was heard, which indicates that something objectional goods were with Smt. Priyankaben Virenbhai Nakrani and Upon sustained interrogation by the DRI and Customs officers, the noticee Smt. Priyankaben Virenbhai Nakrani confessed that she was carrying 2(two) heavy bars wrapped in aluminum foil and transparent tape and having double sided tapes on both bars. On further questioning by the officers, Smt. Priyankaben Virenbhai Nakrani informed that the above 2 gold bars were handed over by one person known to Shri Dilipbhai Devchandbhai Alagiya. It is on the record that the net weight of the gold recovered

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from Smt. Priyankaben Virenbai Nakrani was 1847.800 grams with 999.0/24kt purity and having market value of Rs. 1,26,90,690/-. It is uncontested fact that the gold in form of bars was not declared to the Customs Under Section 77 of the Customs Act, 1962 and the noticee was trying to pass through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely gold bars, which were found concealed and recovered in manner as described above, was made by Smt. Priyankaben Virenbai Nakrani in prescribed declaration form. The noticee was not eligible to import gold and that too undeclared in substantial quantity and hence the same cannot be treated as "bonafide baggage" in terms of section 79 of the Customs Act, 1962 and the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

15.2 I find during the personal hearing, the authorized representative on behalf of Noticee No. 1 and Noticee No.2 mentioned that his client Smt. Priyankaben Virenbai Nakrani claimed the ownership on the gold. He submitted that his clients brought this type of goods first time and there is no case registered against his clients prior to this case and they are not habitual offenders and not found involved in similar case earlier. I find from submission during the personal hearing that, they have claimed the ownership on the seized gold, even the gold was not purchased by Noticee No. 1 and Noticee No. 2 and have no purchase bill or other legitimate documents regarding this. I find from the statements tendered by them before DRI officers, that the said gold bars were given by Shri Dilipbhai Devchandbhai Alagiya to Smt. Priyankaben Virenbai Nakrani to carry the same which was ultimately given by a person named Shri Monu Singh@Bangkok, who basically facilitates smuggling of gold into India. I find that both noticees i.e Shri Dilipbhai Devchandbhai Alagiya & Smt. Priyankaben Virenbai Nakrani have not submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold, therefore, claiming of ownership on the gold is afterthought and without backing any legal documentation. Section 123 of the Customs Act, 1962 stipulates: -

Section 123. Burden of proof in certain cases. -

¹ [(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,² [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

In the instant case, the burden of proving that the gold bars are not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bars having net total weight 1847.800 grams (Gold KG Bar (1000.000 Gms) and Cut Gold Bar(847.800 gms) (Valcambi Suisse 1 Kg gold 999.9 Essayer Fondeur Sr No. BD81821 and BD81817) of foreign origin are not smuggled in nature lie on Smt. Priyankaben Virenbai Nakrani from whose possession the gold was recovered or other noticees, if claims ownership of the impugned gold seized on 26/27.03.2024. The gold in form of bars which were recovered from Smt. Priyankaben Virenbai Nakrani and both noticees admitted to have smuggled it into India in their respective voluntarily statements recorded under Section 108 of Customs Act, 1962. During the personal hearing they have submitted that they were not allowed by DRI officer to declare the gold bars and not given the option of payment, however from the content of panchnama and statements, I find that both were intercepted after crossing the green channel which is prescribed for the passengers who have nothing to declare and when they were asked, if they have anything to declare, both denied and mentioned that they have nothing to declare. Only after passing through the DFMD and sustained interrogation, Smt. Priyankaben Virenbai Nakrani confessed that she was having two gold bars concealed in rear

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pocket of her jeans. Therefore, the allegation of the noticees that they were not allowed to declare the same is not found legally justified on the basis of evidences available on the records. The test report shows that the derived gold bars were found to be purity of 999.0/24Kt. I find that during the personal hearing of Smt. Priyankaben Virenbai Nakrani & Shri Dilipbhai Devchandbhai Alagiya that Smt. Priyankaben Virenbai Nakrani has claimed the ownership on the gold, however they have clearly admitted that the gold was neither purchased by them nor they have any purchase invoices/bank statement regarding purchase or other legitimate documents which establish their ownership, therefore, I hold that merely claiming the ownership on the gold, without any documentary evidences does not make them the owner of the gold. Thus, they failed to discharge their 'burden of proof that the Gold was legally imported/possessed and also, they had not declared the same to the Customs in the prescribed Indian Customs Declaration Form. Applying the ratio of the judgments of the Hon'ble Supreme Court in the matter of Om Prakash Bhatia Vs Commissioner of Customs [2003 (6) SCC 161] and the Hon'ble High Court, Madras in the case of Samynathan Murugesan Vs. Commissioner of Customs 1201,0 (254) ELT A0151, I find that the said smuggled Gold Bars weighing 1847.800 grams of foreign origin are liable to absolute confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962 and accordingly, the claim of ownership on gold does not hold ground as they have not even purchased or have any legitimate documents which establish their ownership.

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where Gold Bars weighing 1847.800 grams of foreign origin were seized under Section 110 of the Customs Act, 1962 on reasonable belief that they were smuggled in to India from Don Mueang, Bangkok. I find from the statements of both noticees i.e Noticee No. 1 and Noticee No. 2 recorded under Section 108 of Customs Act, 1962, that the said gold bars were given to them by a person named Shri Monu Singh at Bangkok for smuggling the said goods in India and they have admitted that they have not any copy of invoice of the said gold bars. Shri Dilipbhai Devchandbhai Alagiya has admitted in his statement that the gold was given by Shri Monu Singh at Bangkok on mutual agreement that after selling it in

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India, he had to pay Rs. 1,07,85,556/- approx. to Shri Monu Singh@Bangkok. I find that both the noticees could not produce any valid legal documents for procuring or transporting or possessing such gold of foreign origin. In their statement recorded under Section 108 of Customs Act, 1962, they admitted that they were aware that the gold in form of bars, they were carrying, had been smuggled into India from Don Mueang, Bangkok and they were knowingly carrying the smuggled gold from Don Mueang, Bangkok to Ahmedabad for monetary benefits. It shows that knowingly and consciously they were involved in carrying and handling the foreign origin gold which they have reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended. Also, I find that, in their statement they had admitted that the gold was not purchased by them and was given by a person named Shri Monu Singh at Don Mueang, Bangkok to smuggle the same into India.

15.3 I also find that the noticee Smt. Priyankaben Virenbai Nakrani & Shri Dilipbhai Devchandbhai Alagiya had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of their 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 noticees. In fact, in their statements dated 27.03.2024, they have clearly admitted that they had travelled from Don Mueang, Bangkok to Ahmedabad carrying gold in form of bars concealed in rear pocket of jeans by Smt. Priyankaben Virenbai Nakrani on direction of Shri Dilipbhai Devchandbhai Alagiya, to smuggle the same and conceal in the manner that the same was not noticed by the Customs Authority. They have mentioned that they were aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. By using the modus of concealing the gold in form of bars concealed in rear pocket of jeans without declaring to the Customs on arrival in India, it is observed that the both noticees were fully aware that the import of said goods is offending in nature. It is therefore very

clear that they have knowingly carried the gold and failed to declare the same to the Customs on their arrival at the Airport. It is seen that they have involved themselves in carrying, keeping, concealing and dealing with the impugned goods in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the both noticees have committed an offence of the nature described in Section 112 of Customs Act, 1962 making them liable for penalty under Section 112 of the Customs Act, 1962.

15.4 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 both noticees had not filed the baggage declaration form and had not declared the said gold which was in their possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were tried to exit through Green Channel which shows that the noticees were trying to smuggle the goods and trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticees have 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 bars total net weighing 1847.800 Grams recovered from the possession of Smt. Priyankaben Virenbai Nakrani having market value of Rs. 1,26,90,690/-, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, both the noticees have not fulfilled the conditions of eligible

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passenger to brought the gold. The noticees have 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.

15.5 As per the provisions of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall 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;

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

Serial No. 356 (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, subject to fulfillment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

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

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(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

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled. As per the respective statements of Smt. Priyankaben Virenbai Nakrani & Shri Dilipbhai Devchandbhai Alagiya recorded under Section 108 of the Customs Act, 1962, both went to Don Mueang, Bangkok for pleasure trip on 20.03.2024 and returned on 26.03.2024 well before the stipulated time of stay. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such conditions were satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a

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restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods i.e gold bars in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

(II) In terms of Section 111 (I) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

(I) 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;

I find that the said gold bars were not declared by Smt. Priyankaben Virenbai Nakrani & Shri Dilipbhai Devchandbhai Alagiya to the Customs under Section 77 of the Customs Act, 1962 and they passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely derived gold bars which were found concealed and recovered in manner as described above, was made by the Noticees Smt. Priyankaben Virenbai Nakrani & Shri Dilipbhai Devchandbhai Alagiya, in the prescribed declaration form. Also, I find that both were not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (I) of the Customs Act, 1962.

(III) in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

In this regard, I find that gold bars weighing 1847.800 Grams recovered from the possession of Smt. Priyankaben Virenbai Nakrani having market value of Rs. 1,26,90,690/- and admittedly smuggled into India.

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On test, those gold were found to be of purity of 999.0/24kt. Further, I find that both the noticees could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign found in person of Smt. Priyankaben Virenbai Nakrani, thus failing to discharge their "burden of proof" that the gold was legally imported/possessed. They have also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

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.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Smt. Priyankaben Virenbai Nakrani in prescribed declaration form. I also find that the noticees were not eligible to import the said gold bars and that too undeclared in terms of Section 77 of Customs Act, 1962 and hence the said gold bars are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

16. 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]

17. 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.

18. 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).

19. 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.

20. 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".

21. 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."*

22. I find that during the PH, the authorized representative on behalf of both noticees submitted that their clients have brought the gold first time and there is no case registered against them prior to this incident and they are not habitual offenders. He submitted that the gold was brought by Smt. Priyankaben Nakrani for her personal use and requested to release the gold on payment of nominal penalty and allowed redemption fine.

In this regard, I find that in their respective statements they have admitted that the gold in form of bars was given to Smt. Priyankaben Nakrani by the Shri Dilipbhai Devchandbhai Alagiya who received the said gold ultimately from Shri Monu Singh @ Bangkok and

Shri Dilipbhai Alagiya admitted that they have smuggled the same for monetary benefit and therefore, the claim of the noticee that the gold was for her personal use is far from the truth with the documentary evidences and afterthought. Further, during the PH, the authorized representative submitted case laws wherein redemption fine was allowed for release of gold. In this regard, before proceeding further, I would like to reproduce section 125 of Customs Act, 1962 wherein it is stated that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

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

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

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

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

I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above regarding allowing release of gold on payment of the redemption fine/penalty. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products* [2004 (170) ELT 135(SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated

by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi* [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar* [2007(2013) ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. 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. I find that the noticees have relied upon various case law submitted during the Personal Hearing by their authorized representative, however, I find that the Hon'ble Supreme Court in case of *Ambica Quarry Works Vs. State of Gujarat & Othrs* [1987 (1) S.C C.213] observed that "the ratio of any decision must be understood in the background of fact of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it." Further, in case of *Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd* 2003 (2) SC 111, the Hon'ble Apex Court observed " it is well settled that a little difference in facts or additional fact may make a lot of difference in the precedential value of a decision." In view of above, I hold that every case has different moments and facts when compare in minute-to-minute details. With respect to case law submitted it is stated that every case is unique and facts are different in every case, the same has to be considered accordingly. The orders are having different facts and even a small change in facts can completely change the complexion of the case and hence, I find that judgments relied upon by the noticees, are not squarely applicable in the instant case.

In the instant case, I find that the manner of concealment, clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticees have 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 bars wrapped in aluminum foil in rear pocket of her jeans, with intention to smuggle the same into India and evade payment of customs duty. Moreover, they have not declared the same before Customs Authority which shows their malafide intention to remove clandestinely without declaring the same. Therefore, I hold that the said gold bars weighing 1847.800 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. In the instant case, without any documents viz. purchase invoice, Bank Statement and other documents, it established that the gold was not purchased by the noticee in a legitimate way and was carried by the Noticee for getting monetary benefit and that too by concealment of the said gold. On the basis of above discussion in light of the referred judgments and nature of concealment of the gold to smuggle the same, ***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.***

23. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bars weighing 1847.800 grams, carried by noticee Smt. Priyankaben Virenbai Nakrani on direction of Shri Dilipbhai Devchandbhai Alagiya are therefore liable to be confiscated absolutely. ***I therefore hold in unequivocal terms that the said gold bars total net weighing 1847.800 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. I also hold in unequivocal terms that aluminium foil and tape used to conceal the gold bars recovered from Smt. Priyankaben Virenbai Nakrani, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.***

24. As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticees Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya, ***I find that in the instant case, the principle of mens-reas on behalf of noticees are established as both the***

noticees has failed to follow the procedure and intentionally involved in smuggling of the gold. I find from the records available and voluntary statements tendered that the gold in form of bars was given by Shri Monu Singh @ Bangkok to Shri Dilipbhai Devchandbhai Alagiya and Shri Dilipbhai Devchandbhai Alagiya had convinced Smt. Priyankaben Virenbai Nakrani to conceal and to smuggle the gold bars in India. 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 noticees were attempting to smuggle the gold in form of bars and attempting to evade the Customs Duty by not declaring the same net weighing 1847.800 grams having purity of 999.0 and 24K. 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 their part. I further find that the noticees had involved themselves and abetted the act of smuggling of the said gold bars weighing 1847.800 carried by them. I find from the statement of Smt. Priyankaben Virenbai Nakrani that the gold in form of bars was given by Shri Dilipbhai Devchandbhai Alagiya to carry the same in India by way of concealment and Shri Dilipbhai Devchandbhai Alagiya also admitted his statement that the said gold bars were given to him by Shri Monu Singh @ Bangkok for smuggling. It is also evident from the digital evidences viz. Call Detail Records, that Shri Dilipbhai Devchandbhai Alagiya was in constant touch with Shri Monu Singh @ Bangkok during their stay at Bangkok which confirms that they have involved in the said smuggling of gold in commercial quantity. They have agreed and admitted in their respective statements that they had travelled from Don Mueang, Bangkok to Ahmedabad with the said gold in form of bars concealed in rear pocket by Smt. Priyankaben Virenbai Nakrani. Despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act,

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1962 and the Regulations made under it, the noticees attempted to smuggle the said gold of 1847.800 grams, having purity 999.0/24kt by concealment. Thus, it is clear that the noticees have concerned themselves in **carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with gold** in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act. Accordingly, I find that the both noticees named Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya are liable for the penalty under Section 112(a) & Section 112(b) of the Customs Act, 1962 and I hold accordingly.

24.1 Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019. The detailed discussions in the preceding paragraphs clearly prove that the both noticees not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, both noticee accepted to carry the gold in form of bars for monetary benefit and involved themselves in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticees named Smt. Priyankaben Virenbai Nakrani and Shri Dilipbhai Devchandbhai Alagiya.

25. Now, I come to allegation in the Show Cause Notice that as to whether penalty should be imposed upon Shri Monu Singh @ Bangkok (Noticee No. 03) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

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From the records available viz. documentary as well as digitally and voluntary statement tendered by Shri Dilipbhai Devchandbhai Alagiya (Noticee No. 2) under Section 108 of Customs Act, 1962, I find that Shri Dilipbhai Devchandbhai Alagiya had received the gold bars from Shri Monu Singh @ Bangkok who basically facilitates smuggling of gold in India. Further, I find from the statement that Shri Dilipbhai Devchandbhai Alagiya known Shri Monu Singh @ Bangkok from last 04 to 05 years. In the voluntary statement tendered by Shri Dilip Alagiya, I find that on mutual agreement, Shri Monu Singh @ Bangkok handed over the gold bars on credit and later on Shri Dilipbhai Alagiya had to pay Rs. 1,07,85,556/- approx. after selling the same in India. From the investigation and digital evidences/records available in the file and as per voluntary statements, I find that Shri Monu Singh @ Bangkok and Shri Dilipbhai Alagiya know each other and was in constant touch with each other over phone. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Further, Shri Dilipbhai Devchandbhai Alagiya never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in his voluntary statement tendered before DRI officers at any stage of investigation. Even during the personal hearing, the authorized representative has submitted that the gold was not purchased by them and not have any purchase bill or any payment proof. From the details on records, Call Details Records (CDR) and from Statement of Shri Dilipbhai Devchandbhai Alagiya, I find that Shri Monu Singh @ Bangkok was the key person who handed over the gold to Shri Dilipbhai Alagiya and accordingly, participated in the activity related to smuggling of gold. It is seen that the noticee Shri Monu Singh @ Bangkok has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. His non-appearance before the Investigating Authority and even before the Adjudicating Authority during the entire process of investigation and adjudication respectively alongwith Call Data Records and statements of Noticee Shri Dilipbhai

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Alagiya confirms that he was involved in the smuggling of the said gold bars. If the Noticee No. 03 (Shri Monu Singh @ Bangkok) was a law-abiding citizen, he would have appeared before the DRI to prove his innocence or present himself before Adjudicating Authority. It, is therefore, proved beyond doubt that the noticee Shri Monu Singh @ Bangkok has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

26. Accordingly, I pass the following Order:

O R D E R

- i.** I order **absolute confiscation** of 02 Gold bars weighing 1847.800 Grams (999.0/24Kt) having a market value of **Rs. 1,26,90,690/-** (Rupees One Crore Twenty-Six Ninety Thousand Six Hundred Ninety only) recovered from the possession of Smt. Priyankaben Virenbhai Nakrani which were concealed by her in rear pocket of jeans on the direction of Shri Dilipbhai Devchandbhai Alagiya from whom she received the said gold bars and placed under seizure under panchnama dated 26/27.03.2024 and seizure memo order dated 27.03.2024 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;
- ii.** I order absolute confiscation of aluminum foil and tape used to conceal the gold bars which recovered from Smt. Priyankaben Virenbhai Nakrani, having no value, under Section 119 of the Customs Act, 1962.
- iii.** I impose a penalty of Rs. 20,00,000/- (Rupees Twenty lakh Only) on **Smt. Priyankaben Virenbhai Nakrani** under the provisions of Section 112(a)(i) & 112(b)(i) of the Customs Act 1962.
- iv.** I impose a penalty of Rs. 15,00,000/- (Rupees Fifteen lakh Only) on **Shri Dilipbhai Devchandbhai Alagiya** under the provisions of Section 112(a)(i) & 112(b)(i) of the Customs Act 1962.

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- v. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Monu Singh @ Bangkok** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- vi. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Smt. Priyankaben Virenbhai Nakrani** under the provisions of Section 117 of the Customs Act 1962.
- vii. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Dilipbhai Devchandbhai Alagiya** under the provisions of Section 117 of the Customs Act 1962.
- viii. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Monu Singh @ Bangkok** under the provisions of Section 117 of the Customs Act 1962.

27. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-15/2024 dated 23.09.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250471MN000000E230

By SPEED POST A.D.

To,

1. Smt. Priyankaben Virenbhai Nakrani, Aged 34 years (D.O.B. 05.08.1996) residing at A-47, Purvi Society,-1, Hira Baug, Surat City -395006 (**email id: p2nakrani7@gmail.com**)
2. Shri Dilipbhai Devhandbhai Alagiya, Aged 39 Years (D.O.B. 11.09.1984) residing at Damnagar, Kumbhnath Society, Bhurakhiya, Amreli, Damnagar, Gujarat-365220 (**email id: dilippatel9449@gmail.com**)
3. Shri Monu Singh at Bangkok

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
4. The Deputy/Assistant Director, DRI, Ahmedabad Zonal Unit.

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5. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
6. Guard File.