



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
"सीमाशुल्कभवन , "पहलीमंजिल ,पुरानेहार्दकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
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PREAMBLE

A	फाइलसंख्या/ File No.	:	VIII/10-117/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-117/SVPIA-B/O&A/HQ/2024-25 Dated: 11.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	216/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	01.01.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	01.01.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Mrs. Roshanben Ramjansah Kanojiya, At Moli Road, Patel Para, Timbi, Amreli Gujarat 362730
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील) चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए :		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या झूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case

Mrs. Roshanben Ramjansah Kanojiya (hereinafter referred to as the "passenger/ person/ Noticee"), residing at Moli Road, Patel Para, Timbi, Amreli, Gujarat 362730, aged 37 years (DOB: 09.05.1988), holding passport number W1717270, traveled by Indigo Flight No. 6E92

from Jeddah to Ahmedabad on 15.02.2024 (Seat No. 19A) and arrived at SVPI Airport, Ahmedabad. On the basis of passenger profiling and observing suspicious movements, the passenger was intercepted by AIU officers with her checked-in baggage while attempting to exit the Green Channel at the arrival hall of Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad, under Panchnama proceedings dated 15.02.2024 in the presence of two independent witnesses for the passenger's personal search and examination of her baggage.

Accordingly, the officers, in the presence of the panchas, asked about her identity. The passenger identified herself as Mrs. Roshanben Ramjansah Kanojiya, D/o Ismalsha Alishah Saiyad, and showed her Indian Passport bearing No. W1717270. She informed that she had traveled from Jeddah to Ahmedabad on 15.02.2024 by Indigo Flight No. 6E92. The officers, in the presence of the panchas, observed that the passenger was carrying one brown-colored trolley bag.

2.1 In the presence of the panchas, the AIU officers asked the passenger if she had any dutiable or restricted items to declare to the Customs, to which She denied having any such items.

2.2 The Lady AIU officer informed the passenger that she would conduct a personal search and a detailed examination of her baggage. She offered her personal search to the passenger, which she declined, stating she trusted the officer. The Lady AIU officer then asked if she wanted to be searched before an Executive Magistrate or Superintendent of Customs, to which she consented to be searched in front of the Superintendent of Customs. The AIU officer asked the passenger to pass through the Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival Hall of Terminal 2 after removing all metallic objects from her body/ clothes. She removed all metallic objects such as her mobile phone and purse, kept them in a plastic tray, and passed through the DFMD. On passing through DFMD, no beep sound was heard, indicating no objectionable/ metallic substance on her body/ clothes. The officers, the passenger, and the panchas then moved to the AIU office located opposite Belt No.2 of the Arrival Hall, Terminal 2, SVPI Airport, Ahmedabad, along with the passenger's baggage. The officers checked the baggage in the presence of the panchas but found nothing objectionable. The officers then scanned the brown-colored trolley bag in

the X-ray baggage scanning machine (BSM), installed near the green channel counter at Terminal 2, SVPI, Ahmedabad. They observed a dark black-colored image with a yellow outline on almost all sides of the trolley bag.

2.3 The AIU officers thoroughly checked the trolley bag in the presence of the panchas and the passenger. They found one black-colored image but nothing inside the trolley bag. The officers, in the presence of the panchas and the passenger, scanned the trolley bag again after removing all the packed materials and confirmed that the dark black-colored image with a yellow outline was present on almost all edges of the trolley bag. Upon further interrogation by the AIU officers in the presence of the panchas, the passenger revealed that the brown-colored trolley bag and a lock were handed over to her in Jeddah by her tour manager, who instructed her to give these items to a person at Ahmedabad Airport. The officers cut the sides of the trolley bag and found white-colored metal wires concealed inside. The officers asked if the wires were made of gold, and the passenger confirmed they were gold coated with white rhodium. Snacks and tea were offered to the passenger periodically. The officers also cut the lock and found three small silver-colored rods.

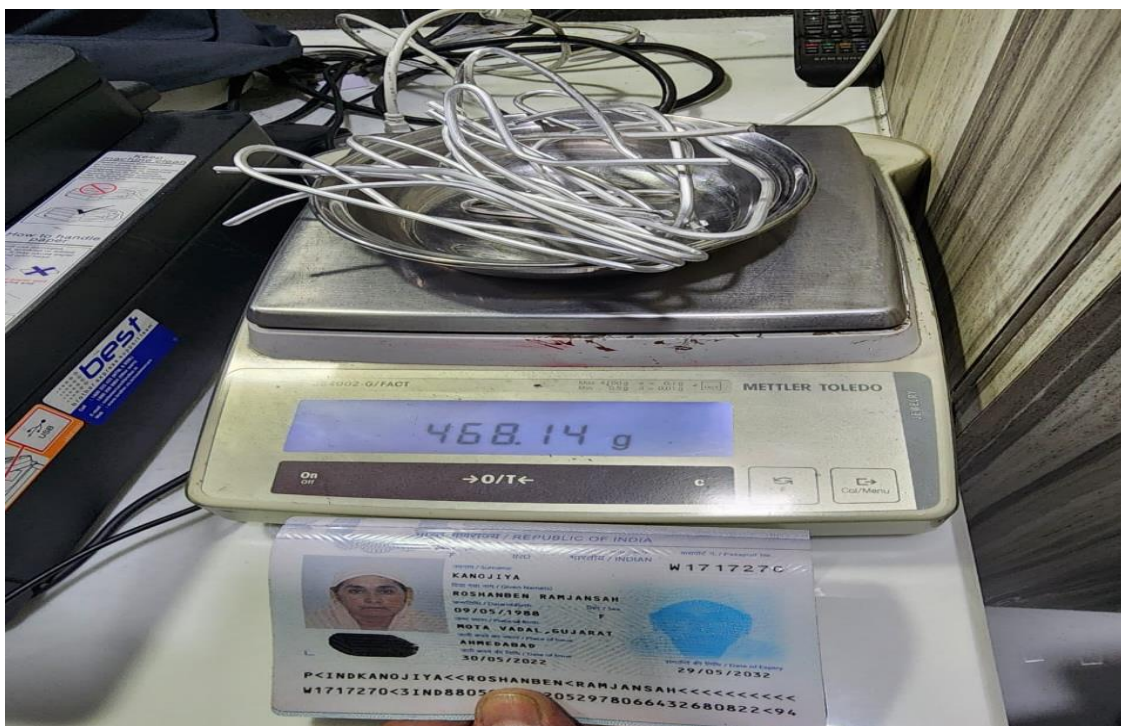
2.4 The officers called the Government Approved Valuer and informed him about the recovered white-colored metal wires, which the passenger claimed were gold coated with white rhodium, and the three small rods recovered from the lock. The valuer stated that the testing of the material was only possible at his workshop, as the gold wires and rods needed to be melted and converted into a gold bar, and provided the address of his workshop.

2.5 The AIU officers, the panchas, and the passenger left the airport premises in a government vehicle and reached the premises of the Government Approved Valuer at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad-380006.

2.6 Upon arrival at the aforementioned premises, the AIU officer introduced the panchas and the passenger to Shri Kartikey Vasantrai Soni, the Government Approved Valuer. After weighing the white-colored metal wires on his scale, Shri Kartikey Vasantrai Soni informed them that the wires and three small rods recovered from Mrs. Roshanben

Ramjansah Kanojiya were gold, weighing 468.140 grams and 198.580 grams, respectively.

2.7 The AIU Officer took the photograph of the said gold wires and 03 small rods, which is as under:



2.8 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, led the AIU Officers, Panchas, and the passenger to the furnace located nearby in his premises. Shri Kartikey Vasantrai Soni began the process of converting the white gold wires recovered from Mrs. Roshanben Ramjansah Kanojiya into a gold bar. The gold wires were put into the furnace and, upon heating, turned into a liquid. The liquid gold was then poured into a mould, and after cooling, it became a golden-colored solid metal in the form of a bar. After completing the procedure, the Government Approved Valuer weighed the golden-colored bar, which

was derived from 468.140 grams of gold wires and 198.580 grams from the three small rods, in the presence of the officers, panchas, and the passenger, resulting net weights of gold bars having 466.430 grams and net weight of 198.100 grams, respectively.

2.9 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, in the presence of the officers, panchas, and the passenger, tested and evaluated the gold bar. He confirmed that it was 24 Kt. gold with a purity of 999.0. He summarized that the gold bar consisted of 24 Kt. gold with a purity of 999.0, weighing 466.430 grams with a market value of Rs.29,58,565/- and a tariff value of Rs.25,76,517/-, and 198.100 grams of gold bar with a market value of Rs.12,56,548/- and a tariff value of Rs.10,94,287/-. The value of the gold bar was calculated according to Notification No. 09/2024-Customs (N.T.) dated 31.01.2024 (gold) and Notification No. 10/2024-Customs (N.T.) dated 01.02.2024 (exchange rate). He submitted his valuation report to the AIU Officer, which is attached to the show cause notice in Annexure-A. The officers, panchas, and the passenger signed the valuation report.

2.10 The AIU Officer took the photograph of the said gold bars which is as under:





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

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	466.430	999.0 24Kt	29,58,565/-	25,76,517/-
2.	Gold Bar	1	198.100	999.0 24Kt	12,56,548/-	10,94,287/-.
	Total	2	664.530	999.0 24Kt	42,15,113/-	36,70,804/-

2.12 After completing the process of converting the gold wires and three gold rods into two gold bars at the workshop, the officers, panchas, and the passenger returned to the airport with the extracted gold bar on 15.02.2024.

3. Upon inquiry by the AIU officer, in the presence of the panchas, Mrs. Roshanben Ramjansah Kanojiya produced her identity proof documents, which are as follows:

- (i) Copy of Passport No. W1717270 issued at Ahmedabad on 30.05.2022 and valid until 29.05.2032.
- (ii) Copy of Boarding Pass PNR OVH9SG.

The officers, panchas, and the passenger all signed and dated the copies of the aforementioned documents and the passenger manifest as acknowledgment.

4. The AIU officers informed the panchas and Mrs. Roshanben Ramjansah Kanojiya that the gold bar, weighing 466.430 grams with a purity of 999.0 and a market value of Rs.29,58,565/-, and a tariff value of Rs.25,76,517/-, derived from the gold wires, and weighing 198.100 grams with a market value of Rs.12,56,548/- and a tariff value of

Rs.10,94,287/- derived from the three small gold rods, recovered from the passenger, was attempted to be smuggled into India to evade payment of customs duty, a violation of the Customs Act, 1962. The AIU officer stated their reasonable belief that the gold was being smuggled by Mrs. Roshanben Ramjansah Kanojiya is liable for confiscation under the provisions of the Customs Act, 1962. Hence, the gold bar and the packing material, i.e., one brown-colored trolley bag, were placed under seizure, as per the Seizure Memo dated 15.02.2024, issued from F. No. VIII/10-313/AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

5. The AIU officers, in the presence of the panchas and Mrs. Roshanben Ramjansah Kanojiya, placed the gold weighing 466.430 grams and 198.100 grams, recovered from the passenger, in one transparent plastic box. They placed the packing list on the same, tied it with white thread, and sealed it with the Customs lac seal to prevent tampering. The brown-colored trolley bag was also separately sealed after placing the packing list.

5.1 Subsequently, the officers, two panchas, and Mrs. Roshanben Ramjansah Kanojiya all signed and dated the packing list placed over the box as acknowledgment of the packing and sealing process carried out in their presence. The AIU officers informed that the copies of travel documents and identity proof documents have been collected for further investigation, duly signed by the officers, panchas, and Mrs. Roshanben Ramjansah Kanojiya.

6. A Statement of Mrs. Roshanben Ramjansah Kanojiya was recorded under Section 108 of the Customs Act, 1962 on 15.02.2024, wherein she stated that:

- i.)** Her name, age and address stated above is true and correct. She is a house wife;
- ii.)** Her husband was expired 4 years back, so she lives with her children at Amreli. Her two sons work on daily wages;
- iii.)** She went to Jeddah on 25.01.2024 for Umrah and returned back on 15.02.2024 approx. 02:00 AM. To carry some goods such as chocolates, cashew nuts, dates, clothes one unknown person gave a trolley & lock and informed her to handover the trolley bag to his son at Ahmedabad Airport;
- iv.)** that she did not know that in sides of the bag gold was concealed in form of gold wire and she was not given anything for carrying the bag;

- v.) that the gold wires weighing 466.430 grams and 198.100 grams are not belonged to her, but she carried the same to India;
- vi.) that she never indulged in any smuggling activity in the past. This is the first time she brought Gold into India concealing the same in her trolley bag;
- vii.) that she is aware that smuggling of gold without payment of customs duty is an offence. Since, she had to clear the gold wires without payment of Customs duties, she did not made any declarations in this regard. She confirmed the recovery of gold bar weighing 466.430 grams of 999.0/ 24 Kt purity valued at Rs.29,58,565/- (market value) and Rs. 25,76,517/- (tariff value) from her during the course of Panchnama dated 15.02.2024. She opted for green channel so that she can attempt to smuggle the Gold without paying customs duty;
- viii.) that her tickets were booked by herself through a travel agent in Kheda, Gujarat

7. The aforementioned gold bar of 24 Kt. gold, with a purity of 999.0, weighing 466.430 grams and having a market value of Rs.29,58,565/- and a tariff value of Rs.25,76,517/-, derived from the gold wires, and weighing 198.100 grams with a market value of Rs.12,56,548/- and a tariff value of Rs.10,94,287/-, derived from the three small gold rods recovered from the said person, was attempted to be smuggled into India with the intent to evade payment of customs duty, which is a clear violation of the provisions of the Customs Act, 1962. Therefore, on reasonable belief, the gold bar, totaling 466.430 grams with a net weight of 198.100 grams, which was attempted to be smuggled by Mrs. Roshanben Ramjansah Kanojiya, is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Consequently, the aforementioned gold bar, net weighing 198.100 grams, was placed under seizure under the provisions of Section 110 of the Customs Act, 1962, as per the Seizure Memo Order dated 15.02.2024, issued from F. No. VIII/10-313/AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

8. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

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

(22) "goods" includes-

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

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

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

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

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

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

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

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

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

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for

transshipment referred to in the proviso to sub-section (1) of section 54;"

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

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

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

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

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

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

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

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

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

Contravention and violation of laws:

9. It therefore appears that:

- (a)** The passenger had dealt with and actively indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold bar of 24 Kt. gold having purity 999.0 weighing 466.430 Grams having market value of Rs.29,58,565/- (Rupees Twenty Nine Lakhs Fifty Eight Thousand Five Hundred Sixty Five Only) and Tariff Value of Rs.25,76,517/- (Rupees Twenty Five Lakhs Seventy Six Thousand Five Hundred Seventeen Only) derived from the gold wires and gold bar of 24 Kt. gold having purity 999.0 weighing 198.100 grams of having Market Value of Rs.12,56,548/- (Rupees Twelve Lakhs Fifty Six Thousand Five Hundred Forty Eight Only) and Tariff Value of Rs.10,94,287/- (Rupees Ten Lakhs Ninety Four Thousand Two Hundred Eighty Seven Only) derived from the 03 small gold rods recovered from the passenger, not declared to the Customs with a deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported gold bar net weighing 466.430 grams and gold bar net weighing 198.100 Grams respectively having purity of 999.0/24 Kt. by the person without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.
- (b)** By not declaring the value, quantity and description of the goods imported by her, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

- (c)** The improperly imported gold bar by the passenger, Mrs. Roshanben Ramjansah Kanojiya, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- d)** Mrs. Roshanben Ramjansah Kanojiya, by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.
- (e)** As per Section 123 of the Customs Act, 1962, the burden of proving that the gold bar weighing 466.430 Grams having market value of Rs.29,58,565/- (Rupees Twenty Nine Lakhs Fifty Eight Thousand Five Hundred Sixty Five Only) and Tariff Value of Rs.25,76,517/- (Rupees Twenty Five Lakhs Seventy Six Thousand Five Hundred Seventeen Only) and gold bar weighing 198.100 Grams having purity 999.0/24 Kt. and involving market value of Rs.12,56,548/- (Rupees Twelve Lakhs Fifty Six Thousand Five Hundred Forty Eight Only) and Tariff Value of Rs.10,94,287/- (Rupees Ten Lakhs Ninety Four Thousand Two Hundred Eighty Seven Only), without declaring it to the Customs, are not smuggled goods, is upon the person and Noticee, Mrs. Roshanben Ramjansah Kanojiya.

10. Therefore, Show cause notice F. No: VIII/10-117/SVPIA-B/O&A/HQ/2024-25 dated 11.07.2024 has been issued to Mrs. Roshanben Ramjansah Kanojiya D/o Ismalsha Alisha Saiyad, holding an Indian Passport Number No. W1717270, residing at Moli Road, Patel Para, Timbi, Amreli Gujarat 362730 as to why:

- (i) The Two Gold Bars imported of 24 Kt having purity 999.0 one weighing 466.430 Grams having market value of Rs.29,58,565/- and Tariff Value of Rs.25,76,517/- derived from the gold wires and another weighing 198.100 grams of Gold Bar having Market Value of Rs.12,56,548/- (Rupees Twelve Lakhs Fifty Six

- Thousand Five Hundred Forty Eight Only) and Tariff Value of Rs.10,94,287/- (Rupees Ten Lakhs Ninety Four Thousand Two Hundred Eighty Seven Only), derived from the three small gold rods, recovered from the Passenger who carried white colour metal wires are made of gold coated with white rhodium concealed inside the sides of the trolley bag, having gross weightment of Gold Bar of 468.140 grams and net weightment of 198.580 grams, respectively, which has been placed under seizure under Panchnama proceedings dated 15.02.2024 and Seizure Memo Order dated 15.02.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) The packing materials under seizure on the reasonable belief that the same was used for packing and concealment of the above-mentioned gold bars which were attempted to be smuggled into India in violation of the Customs Act, 1962, under Panchnama dated 15.02.2024 and seized under subsequent Seizure memo order dated 15.02.2024, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense Reply and Personal Hearing:

11. Mrs. Roshanben Ramjansah Kanojiya relied to the Show Cause Notice through her written submission dated 05.08.2024, wherein she submitted that;

- (a) She travelled to Saudi Arabia for offering prayer of Umrah alongwith family members through a private tour and travels named Al Kuba Tours;
- (b) one trolley bag from which gold in form of wires and rod was given by Hanifbhai.
- (c) she denies the allegation of having knowledge about the suitcase having gold in the SCN and I have not given such type of statement. The tour guide Hanifbhai and his son clearly has framed me in the matter and the act of bringing gold was unintentional and without knowledge
- (d) I have nothing to do with the trolley bag and as well as with the gold extracted from the trolley bag.

Additionally, the noticee has submitted her submission vide letter dated 16.12.2024 wherein she affirmed that the seized material i.e gold

is not her and she does not claim any ownership on the said gold and if the gold was seized by the government, she don't have any objection and will not claim in future. She submitted a Pen-drive wherein recording of tour operator's son and middleman booking agent (Hasan Raza).

12. Further a Personal Hearing was granted on 09.12.2024 in the matter where Mrs Roshanben Ramjansah Kanojiya alongwith his son Hasan Shah appeared, wherein she requested a week time for filing her further submission.

Discussion and Findings:

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

14. In the instant case, I find that the main issue to be decided is whether the 02 Gold Bars weighing 664.530 grams (466.430 grams + 198.100 grams) of 999.0/24 Kt. purity having Tariff Value of Rs. 36,70,804/- and market value of Rs. 42,15,113/- derived from gold wires and gold rods concealed edges of trolley bag and lock which was recovered from the passenger and seized, under Panchnama dated 15.02.2024 and seizure memo order dated 15.02.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the passenger is liable for penal action under the provisions of Section 112 of the Act; Similarly whether the packing material is liable to be confiscated under Section 119.

15. I find that the panchnama has clearly drawn out the fact that the passenger was intercepted when she was exiting the green channel without any declaration to the Customs at the Red channel and on suspicion; personal search of the passenger and his baggage was conducted. While passenger passed through Door Frame Metal Detector (DFMD), no sound was heard which indicated that she was not carrying anything metallic. The passenger was politely asked if she had anything declarable to Customs, in reply to which she replied in negative. The AIU officers, thereafter, took the passenger along with her baggage to AIU office located opposite to Belt No. 2, near Green Channel of Terminal 2 Building of SVPI Airport and the baggage of the passenger was thoroughly checked by them. The officers then scanned the brown-colored trolley bag in the X-ray baggage scanning machine (BSM), installed near the green channel counter at Terminal 2, SVPI, Ahmedabad. They observed

a dark black-colored image with a yellow outline on almost all sides of the trolley bag. Upon further interrogation by the AIU officers in the presence of the panchas, the passenger revealed that the brown-colored trolley bag and a lock were handed over to her in Jeddah by her tour manager, who instructed her to give these items to a person at Ahmedabad Airport. The officers cut the sides of the trolley bag and found white-colored metal wires concealed inside. The officers asked if the wires were made of gold, and the passenger confirmed they were gold coated with white rhodium. It is also on record that the government approved valuer after weighing the gold wire and gold rods and informed that the total weight of the was 666.72 grams. Thereafter, on completion of the procedure, Government Approved Valuer, issued Valuation Certificate No: 840/2022-23 dated 15.02.2024 and certified that two 24Kt gold bar weighing 664.530 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 36,70,804/- and market value of Rs. 42,15,113/- and the said gold bars was seized, under Panchnama dated 15.02.2024 and seizure memo order dated 15.02.2024, in the presence of the passenger and Panchas.

I also find that the said 02 Gold Bars weighing 664.530 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 36,70,804/- and market value of Rs. 42,15,113/- derived from gold in form of gold wire and gold rod recovered from the passenger and seized, under Panchnama dated 15.02.2024 carried by the passenger appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. The offence committed is admitted by the passenger in her statement recorded on 15.02.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered their statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter is as:-

- 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 evidences"
- 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”

- 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.
- 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.”

16. I also find that the passenger had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording her statement. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger. In fact, in her statements, she has clearly admitted that to carry some goods such as chocolates, cashew nuts, dates and clothes one unknown person gave her a trolley and lock from which gold in form of gold wire recovered from inner side of trolley bag and gold rod was recovered from lock. I find from the submission that Gold wire and gold rod were not belong to her and was given by some other person but it is on record that the said concealed gold was carried by her and thereby violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020. Further, I find that the noticee has submitted some call recording mentioning that the same was related to their tour operator’s son and middleman booking agent, however no authenticity of the same is established by the noticee, therefore, I find that the same is not tenable and justified.

17. I find under submission that the noticee mentioned that the trolley bag from which gold wire and gold rod recovered was given to her by their tour guide and asked to hand over the same to his son at Ahmedabad Airport. She further mentioned that the gold does not belong

to her and she is not claimed any ownership for the gold if seized by Government Authority and she does not any objection and will not claim in future. She mentioned that she had nothing to do with the said trolley bag as well as with the gold and she was merely a victim in this case. In addition, she submitted some call recording by mentioning that the recording was of tour operator's son and middleman booking agent. I find that merely taking plea that she is a victim in the case and she was not having knowledge of gold concealed in the bag does not absolve the noticee from the consequences of their action. Further, the noticee has accepted in her tendered statement that she had not declared the said gold on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the gold in form of gold wire and gold rod concealed in inner side of trolley bag and in lock, which was in her possession and failed to declare the same before the Customs Authorities on their arrival at SVPIA, Ahmedabad. The case of smuggling of gold wire and gold rod concealed in the trolley bag recovered from her possession and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

18. From the facts discussed above, it is evident that the noticee had carried gold weighing 664.530 grams (derived from gold wire and gold rod), while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 664.530 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold in the trolley bag in form of gold wire and in lock as gold rod and not declaring the same before the

Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

19. It is seen that the noticee had not declared any goods to Customs and specifically had not declared the said gold bar which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold bars recovered from gold wire and gold rod concealed in trolley bag by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the 02 Gold Bars weighing 664.530 grams of 999.0/24 Kt. purity having Tariff Value of Rs. 36,70,804/- and market value of Rs.42,15,113/- derived from gold wire and gold rod recovered from the passenger and seized, under Panchnama dated 15.02.2024 and seizure memo order dated 15.02.2024 is liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealment of gold in form of gold wire and gold rod concealed in inside the corner of trolley bag, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same was liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making her liable for penalty under

Section 112 of the Customs Act, 1962.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and she was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 664.530 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said 02 gold bars weighing 664.530 grams, having Tariff Value of Rs.36,70,804/- and Market Value of Rs.42,15,113/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 15.02.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using such modus of concealing the gold, it is observed that the noticee was fully aware that the import of said goods is offending in nature.

21. I find that the Noticee confessed of carrying the said gold of 664.530 grams concealed by her and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

22. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bars weighing 664.530 grams, having Tariff Value of Rs.36,70,804/- and Market Value of Rs.42,15,113/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 15.02.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bars weighing 664.530 grams, by deliberately not declaring the same by her on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

23. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bars weighing 664.530 grams, was recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in gold wire and gold rod concealed in inner side of trolley bag. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the noticee.

24. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of gold wire and gold rod in trolley bag, with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bars weighing 664.530 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in her statement dated 15.02.2024 stated that she has carried the said gold by concealment to evade payment of Customs duty. ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

25. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the

Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

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

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

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

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

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

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

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

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

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

"23. *There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet*

containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."

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

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bars weighing 664.530 grams (derived from gold wire and gold rod concealed in inner side of trolley bag and in lock), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 02 gold bar weighing 664.530 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.**

32. I further find that the noticee had involved herself and abetted the act of smuggling of the said gold bars weighing 664.530 grams, carried by her. She has agreed and admitted in her statement that she travelled with the said gold in form of gold rod and gold wire concealed in trolley bag from Jeddah to Ahmedabad. Despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said 02 gold bars of 664.530 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the noticee is also liable for penal action under Sections 112 of the Act and I hold accordingly.

33. Accordingly, I pass the following Order:

ORDER

OIO No:40/ADC/VM/OA?2023-24
F. No: VIII/10-173/SVPIA/O&A/HQ/2022-23

- i) I order absolute confiscation of 02 Gold Bars weighing **664.530** grams of 999.0/24 Kt. purity having Tariff Value of **Rs. 36,70,804/-** (Rupees Thirty-Six Lakh Seventy Thousand Eight Hundred Four only) and market value of **Rs. 42,15,113/-** (Rupees Forty-Two Lakh Fifteen Thousand One Hundred Thirteen only) derived from gold wire and gold rod concealed in lock and inner sides of trolley bag recovered from the passenger and seized, under Panchnama dated 15.02.2024 and seizure memo order dated 15.02.2024, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii) I order absolute confiscation of goods used for packing and concealment of seized gold vide seizure order under Panchnama proceedings both dated 15.02.2024, under the provisions of Section 119 of the Customs Act, 1962;
- iii) I impose a penalty of **Rs.11,00,000/-** (Rupees Eleven Lakh Only) on **Mrs. Roshanben Ramjansah Kanojiya** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-117/SVPIA-B/O&A/HQ/2024-25 dated 11.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-117/SVPIA-B/O&A/HQ/2024-25 Date:01.01.2024

DIN: 20250171MN000000D7CF

BY SPEED POST AD

To,
Mrs. Roshanben Ramjansah Kanojiya,
At Moli Road, Patel Para, Timbi,
Amreli Gujarat 362730.

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusamd@gov.in
6. Guard File.