



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

“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380009.

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**DIN No. 20250371MN000000D82B**

**PREAMBLE**

A	फ़ाइल संख्या/ File No.	:	VIII/10-182/DRI/SVPIA/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-01/Enq-08/2024 dated 16.07.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>273/ADC/SRV/O&amp;A/2024-25</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>06.03.2025</b>
E	जारी करनेकी तारीख/ Date of Issue	:	<b>06.03.2025</b>
F	द्वारापारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	“Whom so ever it may concern” (1) To be pasted on the Notice Board of Custom House, Navrangpura, Ahmedabad – 380 009. (2) To be pasted on the Notice Board of Customs, SVPI Airport, Ahmedabad.
(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 ऊचूटी 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:**

Intelligence was gathered that gold is suspected to be brought in India from Dubai by way of hiding inside anywhere in the cavities of aircraft of Indigo Flight, Aircraft No. VT-ISR, Flight No. 6E1478, which was scheduled to be arrived at Ahmedabad from Dubai on 25.01.2024 at 09:20 hours and further scheduled to be departed for onward journey from Ahmedabad to Cochin.

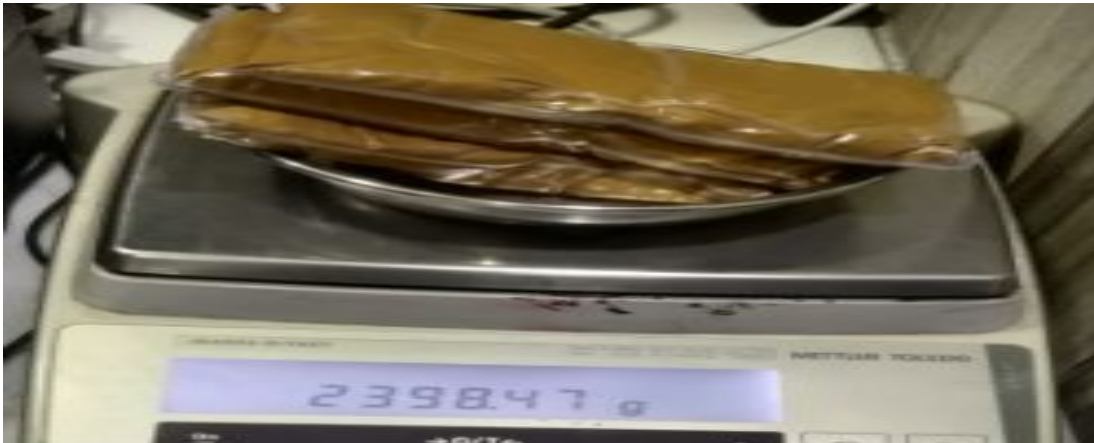
**2.** The DRI officers reached at Aerobridge Bay No. 32 of Terminal-2 of SVPI Airport, Ahmedabad where the Indigo flight 6E1478 arrived at Ahmedabad and parked for disembarking of the passengers. The officers entered the Indigo flight 6E-1478 through Aerobridge Bay No. 32 of Terminal-2 and found that all the passengers had already disembarked from the flight.

**3.** During the course of systematic rummaging of the Indigo flight 6E1478, the officers noticed that there were three pouches lying beneath the seat no. 28A of the said aircraft. The officers recovered the said three pouches covered with white tape. All three pouches appeared to be heavy and on touching it seems that some semi solid substance was kept inside the same. The said semi solid substances recovered were suspected to be containing gold. The entire rummaging/ search proceedings were recorded under panchnama dated 25.01.2024. The officer took the photograph of the said three pouches recovered, which is appended as below:



**4.** Then the DRI officers along with two independent panchas witness visited the shop of Shri Soni Kartikey Vasantrai, a government approved valuer, located at 301, Golden Signature, B/h Ratnam Complex, C. G. Road, Ahmedabad-380006 for testing and valuation of the semi-solid paste/ substances suspected to be containing gold, which were recovered during the course of rummaging of Indigo Aircraft 6E-1478. Thereafter, Shri Soni Kartikey Vasantrai weights all the three transparent pouches putting together in his weighing scale and found total gross weight as 2398.470 grams. The officer

took the picture of the same after placing on the weighing scale, which is appended as below:-



**4.1.** After completion of the entire procedure of testing and purity and converting the Gold from semi-solid substance to gold bars, Shri Soni Kartikey Vasantry informed the officers that the extracted two gold bars are having purity 999.0/ 24kt and. submitted Valuation Report (Annexure - B) certification no. 1230/2023-24 dated 25.01.2024 and confirmed that two gold bars totally weighing 2092.970 grams were derived from semi solid substance consisting of Gold & Chemical mix having gross weight of 2398.470. The officer takes the picture of the same after placing on the weighing scale which is appended as below:



**4.2** In the said report, Shri Soni Karikey Vasantry confirmed that the market value of the two pieces of gold bars having net wet of 2092.970 grams, purity of 999.0 /24kt and market value of Rs. 1,34,76,6341- @ Rs.64390/per 10 grams and tariff value of Rs. 1,16,52,4431-@ Rs.55674.20/per 10 grams. Shri Soni Kartikey Vasantry submitted the valuation report of the gold bar as per the Notification No. 02/2024-Customs (N.T.) dated 15.01.2024 (gold) and

Notification No. 04/2024-Customs (N.T.) dated 18.01.2024 (exchange rate).  
The details of which are as under:-

Sr. No	Details of Items	Pcs	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
01.	Gold Bar	02	2092.970	999.0 (24 Kt)	1,34,76,634/-	1,16,52,443/-
	<b>Total</b>	<b>02</b>	<b>2092.970</b>		<b>1,34,76,634/-</b>	<b>1,16,52,443/-</b>

5. During the entire proceeding right from rummaging of flight & recovery of gold paste beneath the seat 28A of the said Aircraft till the completion of process of converting such paste/semi sold substance into 2 pcs of Gold Bars, no one came forward to claim such recovered three pouches containing semisolid substances.

5.1 Since, the recovered gold bars (derived from semi sold substances/paste) were brought into India from Dubai without any legitimate documents/records in violation of the provisions of the Customs Act, 1962, the same 2 pcs gold bars along with remnant white tapes used to store/conceal the gold in semi-solid form were seized under Section 110 of the Customs Act, 1962 under the panchnama dated 25.01.2024 with a reasonable belief that the same are liable to confiscation. Seizure memo vide F. No. DRI/AZU/GI-02/Enq-08/2024 dated 25.01.2024 was also issued for seizure of above gold. The said gold bars along with remnant white tapes were further handed over to the Ware House Incharge, SVPI Airport, Ahmedabad vide Ware House Entry No.5640 dated 25.01.2024.

6. INVESTIGATION CONDUCTED: -

6.1. Investigation was initiated to ascertain the source of the said recovered/seized gold and also to ascertain as to whether there were any claimants to the gold recovered on 25.01.2024. During the proceeding of Panchnama dated 25.01.2024, no any further lead in this respect to the claimant of the said gold could be gathered. Further, ongoing through the General Declaration Report/ Manifest dated 25.01.2024 of flight No. 6E1478 of Indigo, from DXB (United Arab Emirates) to AMD (India), it was noticed that the seat no. 28A, (three pouches of gold in semi-solid paste form recovered by the officers lying beneath the seat no. 28A of the said aircraft) was allotted to a person namely Shri Vimal Kumar Sharma.

**6.2.** Further, vide letter dated 21.03.2024, the authorised person of Indigo Airlines, SVPI Airport Ahmedabad was requested to provide information of Shri Vimal K. Sharma as Shri Vimal K. Sharma had been allotted the seat no. 28A of Indigo Flight No. 6E1478 arrived at Ahmedabad from Dubai on 25.01.2024 at 09:20 hours, from beneath the said seat no. 28A, three pouches containing semi-solid paste form substances were recovered.

**6.3.** The Indigo Airlines vide e-mail dated 28.03.2024 provided the booking details of Shri Vimal K. Sharma, who had travelled on Seat No. 28A as below:

**Seat : 28A**

PNR: YZBTMG

**Name: Mr. Vimal Kumar Sharma**

Sector: DXB-AMD

Flight: 6E-1478

Date : 25.01.2024

Passport No:W2096013

Mode of booking: Agency-Chandni Forex Tour

Mode of Payment: Agency account, Razor Pay

Contact: 918619477903, 123456789

Email Id : support@wgtrips.com

Address : Mumbai, 400013, India (IN)

**6.4.** From, the details of Mr. Vimal Kumar Sharma provided by the Indigo Airlines, it appears that the ticket was booked by an agent and no any complete address, mobile no. or mail details of Shri Vimal Kumar Sharma was found/noticed.

**6.5.** Further, vide letter dated 23.04.2024, the Regional Passport Officer, Passport Officer was requested to provide the details of Passport No. W2096013 such as KYC/Complete information alongwith address and contact no. of Mr. Vimal Kumar Sharma.

**6.6.** In response to the above letter, the Regional Passport Office, Ahmedabad vide their letter dated 25.01.2024 provided the complete address of Shri Vimal Kumar Sharma, having Passport No. W2096013 i.e. 57/32, Moula Bux Building Srinagar Road, Ajmer-305001, Rajasthan, India.

**6.7.** Subsequently, summons dated 10.05.2024 and 17.05.2024 were issued to Shri Vimal Kumar Sharma to be appeared in the office to tender the statement. Consequent to the above summon, Shri Vimal K. Sharma appeared on 29.05.2024 to tender his statement and his statement was recorded on 29.05.2024 under section 108 of the customs Act, 1962 where he inter-alia stated:

- that he was working as an accountant in a travelling agency i.e. Mollani Tour & Travels, Dubai based company which was engaged in providing visa to the willing persons. He used to collect the fees from the persons to whom the visas were issued by the said company. His salary was 15000/- as and when he used to visit Dubai for the said purpose and the said amount was paid by cash by travelling agent i.e. Mollani Tour & Travels, Dubai. As his working visa was allotted by the said company since 2020 which expired on 03.03.2024.
- that as per panchnama dated 25.01.2024, three pouches containing Gold in semi-solid form lying beneath the seat no. 28A had been recovered by the officers of DRI, Ahmedabad during the course of rummaging of Indigo flight 6E1478; that he did not have any idea about such gold which was recovered by the officers from beneath the said seat.
- that he was working as an accountant in a travelling agency i.e. Mollani Tour & Travels, Dubai based company which was engaged in providing visa to the willing persons. Accordingly, the said tour and travels company offered him tickets to visit Dubai and from Dubai to Ahmedabad and he had gone to Dubai on 16 or 17.01.2024 for the said purpose. After completing his job assignment related to visa work, the said company decided to send him back to India and they booked his ticket for the flight No. 6E1478 which was scheduled to be arrived on 25.01.2024. The ticket allotted to him via Indigo flight 6E1478 dated 25.01.2024 and having seat No. 28A. Further, he stated that on the day, he had boarded to the said flight, the seat no. 28A was window side and there were two ladies passengers beside him. He did not have any relation in any manner with such three pouches of Gold in semi-solid form which was recovered by the officers beneath the said seat no. 28A allotted to him. He also stated that he did not know any person, who had any kind of connection with such gold.

**6.8.** Thus, from the statement of Shri Vimal K. Sharma, no connection/relation with the said two pieces of gold bars (extracted from semi-solid paste form) having net weight of 2092.970 grams, purity of 999.0/24kt and market value of Rs. 1,34,76,634/- recovered beneath the seat no. 28A of Indigo Flight No. 6E1478 could be ascertained.

**7.** From the above foregoing, it appears that the above gold items were illegally brought into India & without any legitimate documents in violation of the provisions of the Customs Act, 1962 & FTP. Hence, the same were

liable to be confiscation under Section 111 of the Customs Act, 1962. Consequently, the same were seized under Section 110 of the Customs Act, 1962. The remnant of white tape used to conceal the gold paste was also liable to confiscation under Section 119 of the Customs Act, 1962, which was also seized under Section 110 of the Customs Act, 1962.

**7.1.** During the entire investigation, no any further lead/clue was found. During the entire proceedings/investigation, no one came forward to claim the above gold seized by this office. Hence, two pieces of gold bars (extracted from semi-solid paste form) having net weight of 2092.970 grams, purity of 999.0/24kt and market value of Rs. 1,34,76,634/- recovered beneath the seat no. 28A of Indigo Flight No. 6E1478 remained 'Unclaimed'.

## **8. LEGAL PROVISIONS: -**

**8.1.** 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.

**8.2.** 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.

**8.3.** 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:-***

- (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.*

**8.4.** Condition 41 of Sl. No.356 of CBIC Customs Notification No. 50/2017 dated 30.06.2017 where the condition regarding import of gold by passenger is regulated 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.

**8.5. Baggage Rule, 2016 –**

**8.5.1.** 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 jewellery 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”.

**8.5.2.** 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/permitted above.

**8.5.3.** In exercise of powers conferred by Section 3 read with Section 5 of FT (D&R) Act, 1962, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government vide DGFT’s Notification No. 49/2015-2020 dated 5<sup>th</sup> January, 2022 made amendment in import policy conditions of gold in any form Chapter 71 of ITC (HS), 2017, Schedule-1 (Import Policy) as under:

ITC(HS) Code	Item Description	Policy	Existing Policy Condition	Revised Policy Condition
71061000	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069110	Unwrought: Grains	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069190	Unwrought: Others		Silver dore can be imported by refineries against a license with AU condition.	
71069210	Sheets, plates, strips, tubes and pipes	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT(for other agencies).	No change in existing Policy Condition
71069290	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT(for other agencies).	No change in existing Policy Condition
71081100	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71081200	Other unwrought forms	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).  Gold dore can be imported by refineries against a license with AU condition.	Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA(for qualified jewellers through India International Bullion Exchange)  Gold Dore can be imported by refineries against an import license with AU condition.
71081300	Other semi-manufactured forms	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71189000	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA(for qualified jewellers through India International Bullion Exchange).

**8.5.4.** As per the said Notification, the expression “*Gold in any form*” includes *gold in any form above 22 carats* under Chapter 71 of ITC (HS), 2017, Schedule-I (Import Policy).

**8.6.** 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 bars having purity of 999.0/24 Ct recovered from unknown passenger(s)/ person(s) is in contravention of the Foreign Trade Policy 2015-20 read with the relevant notification issued under the Customs Act, 1962 & rules made thereunder, 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 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.

**8.7.** 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.***

**8.8.** 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. –***

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

- (a) *In a case where such seizure is made from the possession of any person, -*
- (i) *on the person from whose possession the goods were seized; and*
- (ii) *if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person.*
- (b) *In any other case, on the person, if any, who claims to be the owner of the goods so seized.*
- (2) *This section shall apply to gold and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

**8.9.** 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;]*

**8.10.** 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,*

**8.11.** Section 119: Confiscation of goods used for concealing smuggled goods :

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

**9.** From all the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22 carat) was restricted as per DGFT Notification and import was permitted only by nominated agencies. It clearly appears that import of goods whereof is allowed subject to certain conditions are to be treated as prohibited goods under Section 2(33) of the Customs Act, 1962 in case such conditions are not fulfilled. Gold is not allowed to be imported freely in baggage and it is permitted to be imported subject to fulfilment of certain conditions.

### **Contravention and violation of Laws**

**10.** It therefore appears that:

(a) The unknown passenger(s)/ person(s) who is/are claiming the ownership, had attempted to smuggle/improperly import 02 Gold bars, totally weighing 2092.970 grams (*Recovered from semi-solid Gold Paste packed in 03 pouches*), having purity of 999.0/24kt and market value of Rs.1,34,76,634/- and tariff value of Rs.1,16,52,443/- 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. The unknown person(s)/passenger(s) had smuggled the said gold in the paste form packed in 03 pouches and concealing the same beneath the Seat No. 28A of Indigo Flight, Air Craft No. VT-ISR, Flight No. 6E1478 on 25.01.2024 so as to enable to retrieve the same and to hand over to some other relevant person at the airport where he/she had landed, to clear it illicitly to evade payment of the Customs duty. Therefore, the improperly imported gold by the unknown passenger(s)/person(s) by way of concealment without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The unknown person(s)/passenger(s) has/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.

- (b) The unknown passenger(s)/ person(s) who is/are claiming the ownership, by not declaring contents of the baggage which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported (smuggled) gold by unknown passenger(s)/ person(s) who is/are claiming the ownership, packed in plastic pouches in the paste form ;found left out for the purpose of the smuggling in the aircraft without declaring it to the Customs is thus liable for confiscation under Section 111(d), (e), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (d) The unknown passenger(s)/ person(s) who is/are claiming the ownership, by the above-described acts of omission/ commission and/or abetment has/have rendered themselves liable to penalty under Section 112 of Customs Act, 1962.
- (e) As per Section 123 of Customs Act 1962, the burden of proving that the 02 Gold bars, totally weighing 2092.970 grams (*Recovered from Gold Paste packed in 03 pouches*) having purity of 999.0/24kt, market value of Rs.1,34,76,634/- and tariff value of Rs.1,16,52,443/- without declaring it to the Customs Authority, concealed beneath the Seat No. 28A of Indigo Flight, Air Craft No. VT-ISR, Flight No. 6E1478 on 25.01.2024 are not smuggled goods, is upon the said unknown passenger(s)/ person(s) who is/are claiming the ownership of the said gold, who are the Noticee(s) in this case.

11. Accordingly, a Show Cause Notice was issued to the unknown passenger(s)/ person(s) who is/are claiming the ownership of the said aforesaid 02 Gold bars totally weighing **2092.970** grams derived/retrieved from the semi-solid paste substance packed in 03 pouches, weighing 2398.470

grams recovered from the Indigo Flight, Air Craft No. VT-ISR, Flight No. 6E1478 on 25.01.2024 beneath the Seat No. 28A, as to why:

- (i) The 02 Gold bars, totally weighing 2092.970 grams (Recovered from Gold Paste packed in 03 pouches) having purity of 999.0/24kt, market value of Rs.1,34,76,634/- and tariff value of Rs.1,16,52,443/-, found concealed beneath the Seat No. 28A of Indigo Flight, Air Craft No. VT-ISR, Flight No. 6E1478 on 25.01.2024 and placed under seizure under panchnama proceedings dated 25.01.2024 should not be confiscated under the provisions of Section 111(d), (e), (i) and (j) of the Customs Act, 1962;
- (ii) remnant of the white tapes which was used for the concealment of gold paste recovered, having Nil value seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 119 of the Customs Act, 1962.
- (iii) Penalty should not be imposed upon the unknown passenger(s)/ person(s) who is/are claiming the ownership of the said gold under Section 112 of the Customs Act, 1962.

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

**12.** The noticee i.e. unknown person(s)/ passenger(s)/ original importer or any other claimant has not submitted any written submission to the Show Cause Notice issued.

**13.** The noticee i.e. unknown person(s)/ passenger(s) / original importer or any other claimant has not appeared for personal hearing granted to them on 10.01.2025, 20.01.2025 and 03.02.2025. The letter for personal hearing were served by way of affixing on the Notice Board of Customs House Building in term of Section 153 of Customs Act, 1962. In the instant case, the noticee(s) has been granted sufficient opportunity of being heard in person for three times but no body come forward to attend PH. I am of the opinion that sufficient opportunities have been offered to the Noticee(s)/unknown passenger in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

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

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

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

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

**b).** Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), the Hon'ble Court has observed that;

*Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.*

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

*Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9*



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

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

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

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

*Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]*

**f).** The Hon'ble High Court of Jharkhand in W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central

Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that

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

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

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

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

**14.** I have carefully gone through the facts of this case. Further, after granting sufficient opportunities to be heard in person, no one came forward to claim the goods and did not appear in personal hearing as well as filed any written reply to the Show Cause Notice. The adjudication proceedings cannot wait until the Noticee(s)/Unknown Passenger makes it convenient to file his/their submissions and appear for the personal hearing. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

**15.** In the instant case, I find that the main issues that are to be decided is whether the 02 Gold bars totally weighing **2092.970** grams, having Tariff Value of Rs.1,16,52,443/- and Market Value of Rs.1,34,76,634/- derived from semi-solid paste substance consisting of Gold & other Chemical Mix weighing 2398.470 grams recovered from unknown person(s)/passenger(s), which were seized vide Seizure Order/Memo under Panchnama proceedings both dated 25.01.2024, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the unknown person(s)/ passenger(s) is liable for penalty under the provisions of Section 112 of the Act .

**16.** I find that the Panchnama clearly draws out the fact that on the basis of intelligence that gold is suspected to be brought in India from Dubai by way of hiding inside anywhere in the cavities of aircraft of Indigo Flight, Aircraft No. VT-ISR, Flight No. 6E1478, which was scheduled to be arrived at Ahmedabad from Dubai on 25.01.2024 at 09:20 hours and further scheduled to be departed for onward journey from Ahmedabad to Cochin. During the Systematic rummaging of the Indigo flight 6E1478, the officers noticed that there were three pouches lying beneath the seat no. 28A of the said aircraft. The officers recovered the said three pouches covered with white tape. All three pouches appeared to be heavy and on touching it seems that some semi solid substance was kept inside the same. The said semi solid substances recovered were suspected to be containing gold. The entire rummaging/search proceedings were recorded under panchnama dated 25.01.2024.

**17.** It is on the record that the government approved valuer weighed the said semi-solid paste/substances suspected to be containing gold, which were recovered during the course of rummaging of Indigo Aircraft 6E1478 and reported the weight as 2398.470 grams. It is also on record that the Govt. Approved Valuer extracted 02 gold bars from the said gold paste & chemical mix and after completion of process, the Government Approved valuer certified that, said gold bars are of 24 Kt./999.0 purity, weighing 2092.97 grams having market value of Rs. 1,34,76,634/- and Tariff Value of Rs. 1,16,52,443/-, which were seized vide Seizure Memo/ Order under Panchnama proceedings both dated 25.01.2024, in the presence of the Panchas.

**18.** I also find that unknown passenger(s)/ importer, has neither questioned the manner of the Panchnama proceedings nor controverted the facts detailed in the Panchnama. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas. It is found that the unknown passenger had concealed the semi-solid substance in three pouches concealed beneath Seat 28A, from which 2092.97 Grams of gold bar was extracted. The gold bar was recovered from a semi solid paste which was hidden in the pouch of the Life Jacket placed under the Seat no. 28A of the aircraft of Indigo Flight No. 6E1478 from Dubai to Ahmedabad with an intent to clear it illicitly and evade payment of Customs duty and thereby, contravening the provisions of the Customs Act, 1962 and the Rules and Regulations made under it. I find that the seat no. 28A was booked under name of Mr. Vimal Kumar Sharma (Passport No:W2096013) as per the investigation carried by DRI. I find that in his statement recorded under Section 108 of Customs Act,

1962, Shri Vimal Kumar Sharma mentioned that he did not have any relation in any manner with such three pouches of Gold in semi-solid form which was recovered by the officers beneath the said seat no. 28A which was allotted to him. He also stated that he did not know any person, who had any kind of connection with such gold. Therefore, I hold that the gold items were illegally brought into India and without any legitimate documents in violation of the provisions of the Customs Act, 1962 & Foreign Trade Policy 2015-20.

**19.** I find that, the gold bars recovered after purifying the said semi solid substance weighing 2398.470 grams consisting of Gold & Chemical mix and extracted 02 gold bar weighing 2092.970 Grams is of 999.0/24 Kt. Purity. Further, I find that the unknown passenger has improperly imported the said gold, by concealing/ hiding it in the 03 pouches placed under the Seat no. 28A of the aircraft of Indigo Flight No. 6E 1478 from Dubai to Ahmedabad, in the form of semi-solid substance, from which 2092.970 Grams gold was extracted. By such an act of improperly importation/ smuggling of gold, the unknown passenger has contravened the provisions of 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 the Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

**20.** 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 negated 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 unknown person(s), are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.

**21.** From the facts discussed above, it is proved that all the above acts of contravention on the part of the said unknown passenger (s)/original importer have rendered the said gold weighing 2092.970 grams of 24 Kt/999.00 purity having tariff value of Rs.1,16,52,443/- and market Value of Rs. 1,34,76,634/- placed under seizure under Panchnama dated 25.01.2024, liable for confiscation under the provisions of Section 111(d), 111(e), 111(i) and 111(j) of the Customs Act, 1962. By using the modus of concealment of the said gold, it is observed that the unknown passenger(s)/importer(s) was fully aware that the goods are offending in nature on its import. It is seen that the unknown passenger(s)/importer(s) has involved himself in carrying, keeping, concealing

and has dealt with the impugned gold in a manner which he/they knew were liable to confiscation under the Act.

**22.** 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 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.. It is also observed in the instant case that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 2092.970 grams derived/retrieved from the semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 2398.470 grams concealed in three pouches covered with white tape kept under the seat No. 28A of aircraft, cannot be treated as bonafide household goods or personal effects. The noticee(s)/passenger(s)/Unknown Person(s) 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.

**23.** I find that the said 02 gold bars of 24 Kt., totally weighing 2092.970 grams derived from gold paste carried and concealed in 03 pouches covered with white tape weighing 2398.470 grams concealed under seat No. 28A of aircraft, as discussed above, was to smuggle without declaring it to Customs authorities and by this act, the unknown passenger(s)/importer(s) or any other claimant has held the said goods liable for confiscation. **I, therefore, refrain from using my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Customs Act, 1962.**

**24.** In the case of ***Samynathan Murugesan [ 2009 (247) ELT 21 (Mad)]***, ***the Hon'ble High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras has ruled that***

**as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.**

**25.** Further I find that in a 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)."

**26.** The **Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)]** has 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.*

**27.** 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 7-10-2019 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 10-5-1993 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”.

**28.** 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 White 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."*

24.....

**25.....**

*"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.**"*

**29.** Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the unknown passenger (s) had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no one has come forward to claim the ownership of the seized goods and /or has submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Thus, the unknown passenger (s) has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement of Shri Vimal Kumar Sharma, I find that the manner of concealment of the gold is **ingenious** in nature, as the same was derived from semi solid paste in 03 pouches covered with white tape concealed under Seat No. 28A of Indigo Flight No. 6E 1478 with intention to smuggle the same into India and



evade payment of customs duty. Accordingly, mens-rea in the case is proved beyond doubt. Therefore, the gold weighing 2092.970 grams of 24Kt./999.0 purity in form of gold bars, derived from semi solid paste in 03 pouches covered with white tape concealed under Seat No. 28A of Indigo Flight No. 6E 1478 is therefore, liable to be **confiscated absolutely**. I therefore hold in **unequivocal terms that the gold bars weighing 2092.970 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(e), 111(i) and 111(j) of the Act**. I also hold in unequivocal terms that the remnant of White tape, used to conceal the gold paste, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.

30. The act of concealing the gold in paste form, with intention to smuggle the same into India and to avoid the Customs Duty, has rendered the unknown passenger(s)/ importer(s) or any other claimant liable for penalty under Section 112 of the Customs Act, 1962. However, since the passenger/ owner of the imported impugned gold is not known and nobody else has come forward to claim the ownership on impugned gold/ goods, therefore, I desist from imposing personal penalty under the provisions of Section 112 of the Act on unknown passenger/ person in this case.

31. Accordingly, I pass the following Order.

### **ORDER**

- i. I order **absolute confiscation** of 02 Gold Bars of 24 Kt./999 purity, totally weighing **2092.970 grams**, having Market Value of **Rs.1,34,76,634/-** (Rupees One Crore Thirty Four Lakh Seventy Six Thousand Six Hundred Thirty Four Only) and Tariff Value of **Rs.1,16,52,443/-** (Rupees One Crore Sixteen Lakh Fifty Two Thousand Four Hundred Forty Three Only), derived/retrieved from the semi-solid paste substance consisting of Gold & other Chemical Mix in 03 pouches, total weighing 2398.470 grams covered in white tape concealed under Seat No. 28A of Indigo Flight No. 6E 1478 under the provisions of Sections 111(d), 111(e), 111(i) and 111 (j) of the Customs Act, 1962;
- ii. I order absolute confiscation of remnant of white tape used to conceal the gold paste in 03 pouches concealed under Seat No. 28A of Indigo Flight No. 6E 1478, having no value, under Section 119 of the Customs Act, 1962.

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- iii. I refrain from imposing the penalty on unknown person(s)/passenger(s)/or other claimant under Section 112 of Customs Act, 1962.

**32.** Accordingly, the Show Cause Notice No. DRI/AZU/GI-01/Enq-08/2024 dated 16.07.2024 stands disposed of.

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

DIN: 20250371MN000000D82B

F. No. VIII/10-182/DRI/SVPIA/O&A/HQ/2024-25

Date:06.03.2025

To,

“Whom so ever it may concern”

- 1) To be pasted on the Notice Board of Customs House, Navrangpura, Ahmedabad-380009;
- 2) To be pasted on the Notice Board of Customs, SVPI Airport, Ahmedabad.

Copy to:-

1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
6. Guard File.