

OIO No: 07/ADC/SRV/O&A/2025-26
F. No: VIII/10-224/SVPIA/DRI/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.
दूरभाष: (079) 2754 4630E-mail: cus-ahmd-adj@gov.in फैक्स: (079) 2754 2343

DIN: 20250471MN00001151DF

PREAMBLE

A	फाइलसंख्या / File No.	:	VIII/10-224/SVPIA/DRI/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-02/ENQ-26/2024 dated 28.10.2024
C	मूलआदेशसंख्या / Order-In-Original No.	:	07/ADC/SRV/O&A/2025-26
D	आदेशतिथि / Date of Order-In-Original	:	23.04.2025
E	जारीकरनेकीतारीख / Date of Issue	:	23.04.2025
F	द्वारापारित / Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	(i) Shri Shabbir Hussain Umerbhai Ghonia S/o Shri Umer Kasambhai, DOB: 15.10.1960 residing at Aishabai Chamber 74, 1/F R/34 Sufiya Zuber Road, Nagpada, Mumbai- 400008. (ii) Shri Babubhai @ Dubai
(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 मंजिल, 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 इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील		

	को खारिज कर दिया जायेगा।
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Brief facts of the case:

An intelligence was received by Directorate of Revenue Intelligence, Zonal Unit Ahmedabad, (hereinafter also referred to as DRI) that one passenger namely Shri Shabbir Hussain Umerbhai Ghonia having passport no. Z4952342 arriving by Indigo Flight 6E 1478 on 02.05.2024 from Dubai to Ahmedabad is suspected to be carrying smuggling gold in baggage or in clothes worn by him.

2. Acting on the said intelligence, a team of officers from DRI discreetly kept a watch over all passengers arriving by Indigo Flight 6E 1478 on 02.05.2024 from Dubai to Ahmedabad. The officers then intercepted 1 passenger viz. Shri Shabbir Hussain Umerbhai Ghonia having passport no. Z4952342 by verifying his passport, when the said passenger tried to exit through the Green Channel at arrival hall of Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad and the proceedings thereof were recorded under panchnama of dated 02.05.2024.

2.1 The DRI Officers then asked Shri Shabbir Hussain Umerbhai Ghonia, if he had anything to declare before the Customs, to which he denied of having any dutiable or restricted items with him. Thereafter the officers asked Shri Shabbir Hussain Umerbhai Ghonia to pass through Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival hall of Terminal 2, SVPI Airport Ahmedabad after removing all metallic objects from his body/clothes, however, no beep sound was heard from the machine. Further, the DRI officers scanned all the baggage of Shri Shabbir Hussain Umerbhai Ghonia in the X- ray machine but nothing suspicious is observed. Now, the DRI officers asked Shri Shabbir Hussain Umerbhai Ghonia again, if he was having anything dutiable goods which required to be declared to the Customs to which he denied. Upon sustained interrogation by the DRI officers, the passenger confessed that he was carrying 2 capsules of gold in paste form hidden inside his body in rectum. Thereafter, Shri Shabbir Hussain Umerbhai Ghonia was taken into Gents washroom opposite belt no. 1 of arrival hall of Terminal 2 of SVPI Airport, Ahmedabad, wherein he removed both capsules from his rectum through excretion.

2.2 Thereafter, the Government Approved Valuer Shri Kartikey Vasantrai Soni was informed about the recovery of gold in paste form and requested to carry out the testing, extraction and valuation of the gold recovered in paste form. Shri Kartikey Vasantrai Soni informed that testing, valuation and extraction of gold is only possible at his workshop. The officers along with the passenger then left the airport for the workshop of Government Approved Valuer. At the workshop, Shri Kartikey Vasantrai Soni carried out the weighment of semi-solid/paste/dust substance in 2 capsules recovered from Shri Shabbir Hussain Umerbhai Ghonia and found that the gross weight of said substance was 319.260 grams.

2.3 It was observed that though the passenger was carrying gold paste in his rectum, DFMD machine failed to detect the same. Accordingly, two samples, each containing 2 gram gold paste drawn for detailed examination of the substance, under section 144 of Customs Act, 1962. Thus, quantity of gold paste remained to be 315.260 grams. Shri Kartikey Vasantrai Soni, then after completion of entire procedure of weighment and purity check, submitted his valuation reports (Annexure - B) vide Certificate No: 125/2024-25 dated 02.05.2024 in terms of the Notification No. 29/2024-Customs (N.T.) dated 15.04.2024(gold) and Notification No. 30/2024-Customs (N.T.) dated 18.04.2024 (exchange rate). The details of the same are as under:

S. N.	Details of Items	PC S	Quantity of Gold in Paste form Gross Weight	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bar	1	315.260	280.020	999.0 24Kt	2060947	1826884

Seizure of smuggled gold

3. Since, Shri Shabbir Hussain Umerbhai Ghonia did not declare the said gold to the Customs Authorities and thereby has attempted to smuggle gold in the conceal manner with an intention to evade payment of Customs duty in violation of the provisions of Customs Act, 1962, total 280.020 Grams Gold of 24Kt. with purity 999.0, having market value of Rs. 20,60,947/- (Rupees Twenty Lakhs Sixty Thousand Nine Hundred Forty Seven only) and tariff value of Rs. 18,26,884/- (Eighteen Lakhs

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Twenty Six Thousand Eight Hundred Eighty Four Only) was placed under seizure under section 110 of the Customs Act, 1962 vide seizure memo dated 02.05.2024 as the same were liable to confiscation under Section 111 of the Customs Act, 1962.

3.1 Further, quantity of 4(Four) grams of gold in paste form attributed to 2(Two) samples (02 grams each) which were taken as sample for detailed examination in terms of provision of Section 144 of Customs Act, 1962 from the total quantity of gold (in paste form) i.e 319.260 grams, which were attempted to be smuggle by the passenger named Shri Shabbir Hussian Umerbhai Ghonia in conceal manner with intention to evade the payment of custom duty in violation of the provision of Customs Act, 1962 were placed under Seizure vide Seizure Memo dated 25.10.2024 on reasonable belief that the said goods are liable for Confiscation under Section 111 of Customs Act, 1962.

3.2 Subsequently, the seized gold bar(in respect to the Seizure memo dated 02.05.2024) was handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide ware House 6243/2024 dated 02.05.2024 for safe custody. Further, out of 02 samples, one sample has been sent to NFSU and other sample are laying at DRI office. It is important to mention that on receipt of the ramnant sample (whatsoever would be received from NFSU) and remaining other sample would be deposited at Ware House In Charge, SVPI, Airport, Ahmedabad.

STATEMENTS OF KEY PERSONS:

4. Upon completion of the panchnama proceedings at SVPI Airport, summons was issued to Shri Shabbir Hussain Umerbhai Ghonia for recording of his statement.

4.1 Statement of Shri Shabbir Hussain Umerbhai Ghonia was recorded under Section 108 of the Customs Act, 1962 on 02.05.2024, wherein he inter-alia stated that:

4.1.1 he went to Dubai on 24.04.2024 for tourism purpose. He stayed there at his friend's house at Dehra, Dubai. During his visit to Dubai, his local friend Baabubhai over there advised him to bring the gold to India as the gold in Dubai is cheaper as compared to India. On his advice he brought the gold by way of body concealment in rectum.

4.1.2 he was very well aware that bringing of gold from foreign into India without payment of customs duty is an offence and punishable But in lieu of profit margin, he carried gold

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4.1.3 Babubhai arranged 2 gold paste capsules and he concealed those semi-solid gold paste capsules in his rectum. Further, Babubhai assured him that no one could find if he concealed the gold paste in his rectum and travelled to India.

4.1.4 Babubhai is his friend and stayed in Dubai and is a cab driver.

4.1.5 this is the first time when he had indulged in smuggling of gold activity

4.1.6 he confirmed the events narrated in the Panchnama drawn on 02.05.2024 at Terminal -2, SVPI Airport, Ahmedabad

5. LEGAL PROVISIONS: -

5.1 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.

5.2. 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.

5.3. 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

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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.*

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

If,

1. (a) the duty is paid in convertible foreign currency;
- (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,-
 - (a) carried by the eligible passenger at the time of his arrival in India, or

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- (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and
- (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

Baggage Rule, 2016 –

5.5 As per Rule 5 of the Baggage Rules, 2016, "a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewelry up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees, if brought by a lady passenger".

5.6 A combined reading of the above-mentioned legal provisions under Foreign Trade Regulations, the Customs Act, 1962 and the notifications issued therein - clearly indicate that import of gold including gold jewellery through Baggage is Restricted and conditions have been imposed on the said imports by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. Only passengers who satisfy those mandatory conditions can import gold as a part of their bona fide personal baggage and the same has to be declared to the Customs at the time of their arrival and applicable duty paid. These conditions are nothing but restrictions imposed on the import of gold through passenger baggage. Further, from the foregoing legal provisions of Foreign Trade Policy, 2015-2020 read with Reserve Bank of India circulars issued under Foreign Exchange Management Act (FEMA), Notifications issued by the Government of India and Circular issued by

CBIC, it is evident that no one can import gold in any other manner as not explicitly stated/permitted above.

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

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

Section 2(33) of the Customs Act, 1962 - "Prohibited Goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Section 2(39) of the Customs Act, 1962 - "Smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

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

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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.

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

Section 111. Confiscation of improperly imported goods, etc. -

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

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
 - (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
 - (m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;]

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

Section 112. Penalty for improper importation of goods, etc. -

Any person, -

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

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

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

6 Contraventions and Charges:

6.1. From the investigation conducted so far, it appears that Shri Shabbir Hussain Umerbhai Ghonia had knowingly concerned himself in the said act of smuggling of 319.260 grams of gold in paste form, which was recovered from the possession of Shabbir Hussain Umerbhai Ghonia on 02.05.2024 for personal enrichment.

6.2. Mr. Shabbir Hussain Umerbhai Ghonia received 2 capsules wrapped with black tape containing gold in paste form from Shri Babubhai @ Dubai and concealed the same in his rectum with an intention to smuggle the same into india to evade the payment of custom duty and personal enrichment. The said capsules containing gold paste were concealed in rectum that same could not be detected by the customs authority at Airport. He had chosen to move through Green channel and did not declare the said gold before the customs Authorities at SVPI Airport, Ahmedabad which was concealed in his rectum for personal enrichment. The act of concealing the gold and intention of non-declaring to the said gold before the customs authority shows mens-rea on the part of Mr. Shabbir Hussain umerbhai Ghonia. Thus, Shri Shabbir Hussain Umerbhai Ghonia contravened the provisions of Section 77 of the customs Act, 1962 in as much as he failed to declare the said smuggled seized gold before the customs at SVPI Airport. Further, Shri Shabbir Hussain Umerbhai Ghonia went to Dubai on 24.4.2024 and came back on 02.05.2024, hence was not falls under the category of eligible passenger in terms of Notification No. 50/ 2017-Cus dated 30.06.2017.

6.3 Further, Shri Shabbir Hussain Umerbhai Ghonia was unable to produce documents evidencing legitimate import of the said Gold seized from the possession of Shri Shabbir Hussain Umerbhai Ghonia. In terms of the provisions of Section 123 of the Customs Act, 1962 burden of proving that they are not smuggled goods is on the person from whose possession the goods were seized. Whereas it further appears from the statement of Shri Shabbir Hussain Umerbhai Ghonia that he was aware that bringing gold in the above manner is contrary to the provisions of the Customs Act, 1962 with an intention to carry gold without the knowledge of the Customs Authorities, without declaration and payment of appropriate Customs duties which rendered the above said quantity of 280.020 grams of gold + 04 grams gold in paste form, liable to confiscation under the provisions of Section 111(d), (l) and (m) of the Customs Act, 1962.

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

6.5 Further, Shri Babubhai has concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad which has rendered himself liable for penalty under Section 112(a)&(b) and 117 of Customs Act, 1962.

7. ROLE OF PERSONS IN THE ABOVE SMUGGLING OF GOLD:
From the investigation conducted, role of following persons were emerged.

7.1. Role of Shri Shabbir Hussain Umerbhai Ghonia

7.1.1 As evident from the evidences available on record in the form of Panchnama dated 02.05.2024, statement dated 02.05.2024 recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri

Shabbir Hussain Umerbhai Ghonia indulged in the act of smuggling of 2 capsules having gold in paste form net weighing 280.020 Grams which was concealed in his rectum having total market value of Rs. 20,60,947/- while travelling from Dubai to Ahmedabad on 02.05.2024. He brought gold by way of body concealment in rectum and to further sell in the Indian Domestic markets for monetary consideration. It further appears that he knowingly participated in all the activities related to smuggling of foreign origin gold in lure of money.

7.1.2 By the above act and omission, Shri Shabbir Hussain Umerbhai Ghonia concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad and had knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc. which rendered the subject smuggled gold liable for confiscation under the provision of Section 111 of the Custom Act, 1962 and rendered himself liable for penalty under Section 112(a) & (b) and 117 of Customs Act, 1962.

7.2 Role of Mr. Babubhai

7.2.1 As evident from the evidences available on record in the form of statement of Shri Shabbir Hussain Umerbhai Ghonia dated 02.05.2024, recorded under Section 108 of the Customs Act, 1962 etc., it appears that the said 2 capsules containing gold paste was provided by Shri Babubhai to Shri Shabbir Hussain Umerbhai Ghonia. He arranged the capsules containing gold paste in the Dubai and also advised Shri Shabbir Hussain Umerbhai Ghonia to smuggle Gold into India.

7.2.2 By the above act and omission, Shri Babubhai has concerned himself in the illegal activity of gold smuggling through SVPI airport, Ahmedabad have knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the subject smuggled gold liable for confiscation under the provision of Section 111 of the Custom Act, 1962 has rendered himself liable for penalty under Section 112(a) & (b) and 117 of Customs Act, 1962.

8. Accordingly, a Show Cause Notice was issued to Shri Shabbir Hussain Umerbhai Ghonia S/o Shri Umer Kasambhai, DOB: 15.10.1960

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residing at Aishabai Chamber 74, 1/F R/34 Sufiya Zuber Road, Nagpada, Mumbai- 400008 as to why:-

- i. 280.020 grams of Gold having a market value of Rs.20,60,947/- recovered from the possession of Shri Shabbir Hussain Umerbhai Gonja should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- ii. 4 Grams of Gold in paste form (quantity attributed to the samples taken from the total smuggled quantity of 319.260 recovered from the possession of Shri Shabbir Hussain Umerbhai Gonja) should not be confiscated under the provision of Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iii. Penalties should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.
- iv. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

8.1 Also Show Cause Notice was issued to Shri Babubhai @Dubai as to why:-

- i. Penalties should not be imposed upon them under Section 112(a) & 112 (b) of the Customs Act, 1962.
- ii. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

9. Defense reply and record of personal hearing:

9.1 Defense Reply of Noticee No. 1 i.e Shri Shabbir Hussain Umerbhai Gonja - The noticee has not submitted any written defense reply against the allegation made against him in SCN.

9.2 Defense Reply of Noticee No. 2 i.e Mr. Babubhai:- The noticee has not submitted any written defense reply against the allegation made against him in SCN.

Personal Hearing: -

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

Noticee No. 1: i.e Shri Shabbir Hussain Umerbhai Gonja

The noticee was given opportunity for personal hearing on 21.02.2025, 10.03.2025 & 21.03.2025 and letters dispatched on the given address through speed post. This office has not received the letters back undelivered from the post which implies the same were delivered to the noticee, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is

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obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Noticee No. 2: Shri Babubhai @ Dubai:

The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025 & 21.03.2025. The letter for intimation for personal hearing were served to the noticee by affixing the same on notice board in terms of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Discussion and Findings:

11. I have carefully gone through the case records, Show Cause Notice, relied upon documents to Show Cause Notice and Statements of the Noticees alongwith any submission made by the noticees at the time of personal hearing scheduled on various dates. Further, sufficient opportunities to be heard were extended to all the noticees of the SCN following the Principles of Natural Justice. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

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

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

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

“7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the

judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

b). Hon’ble High Court of Kerala in 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.”

11.2. Also, before discussing the allegations levelled in the impugned SCN, it is imperative to mention the noticee Shri Shabbir Hussain Umerbhai Gonia has retracted from his voluntarily statements tendered by him before DRI officers under Section 108 of Customs Act, 1962. I also find that Noticee Shri Babubhai @ Dubai did not come forward before investigation officers and also not submit any defense reply against the allegation levelled against him in SCN. I find that the said noticee Shri Shabbir Hussain Umerbhai Gonia has admitted in his respective statements that he had given statement voluntarily and without any inducement, threat and coercion or by any improper means. I find that the statements recorded under Section 108 of the Customs Act, 1962 have evidentiary value under the provisions of law. The Judgment relied upon in this matter as follows:-

- (i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that evidence-confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.
- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that “Statement recorded by a Customs Officer under Section 108 is valid evidence”
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that “ It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act, 1962”
- (iv) There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion

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of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.

- (v) Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- (vi) The Hon'ble Supreme Court in another case of Gulam Hussain Shaik Chougule Vs. S.Reynolds, Supdt of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC) categorially held that "Statement recorded by the Customs officer under Section 108 of the Customs Act, is admissible in evidence. The Court has to test whether the inculcating portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."
- (vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323 (SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "

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

- i. Whether the goods seized are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;

- ii.** Whether, seized Gold bar total weighing 280.020 Grams extracted from the gold paste found concealed in his rectum having a market value of Rs.20,60,947/- recovered from the possession of Shri Shabbir Hussian Umerbhai Ghonia is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962;
 - iii.** Whether, 4 grams of gold paste (quantity attributed to sample taken from the total smuggled quantity of gold paste 319.260 recovered from the possession of Shri Shabbir Hussian Umerbhai Ghonia) is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.
 - iv.** Whether the act of the Noticee No. 1 & Noticee No. 2 renders themselves to be penalized discretionarily under Section 112 & Section 117 of the Customs Act, 1962;
- 13.** 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

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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 and recovered from possession Shri Shabbir Hussain Umerbhai Ghonia, are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

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

14.1 I find that based on intelligence, officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as 'DRI') intercepted Shri Shabbir Hussain Umerbhai Ghonia who were arriving by

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Indigo Flight 6E 1478 on 02.05.2024 from Dubai to Ahmedabad, who was trying to exit through green channel without making any declaration and all proceeding were recorded under Panchnama proceeding dated 02.05.2024. The DRI Officers then asked Shri Shabbir Hussain Umerbhai Ghonia, if he had anything to declare before the Customs, to which he denied of having any dutiable or restricted items with him. Thereafter the officers asked Shri Shabbir Hussain Umerbhai Ghonia to pass through Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival hall of Terminal 2, SVPI Airport Ahmedabad after removing all metallic objects from his body/clothes, however, no beep sound was heard from the machine. Further, the DRI officers scanned all the baggage of Shri Shabbir Hussain Umerbhai Ghonia in the X- ray machine but nothing suspicious is observed. Now, the DRI officers asked Shri Shabbir Hussain Umerbhai Ghonia again, if he was having anything dutiable goods which required to be declared to the Customs to which he denied. Upon sustained interrogation by the DRI officers, the passenger confessed that he was carrying 2 capsules of gold in paste form hidden inside his body in rectum. Thereafter, Shri Shabbir Hussain Umerbhai Ghonia was taken into Gents washroom opposite belt no. 1 of arrival hall of Terminal 2 of SVPI Airport, Ahmedabad, where above said passenger removed both capsules from his rectum.

It is on the record that the gross weight of the gold paste recovered from noticee was 319.260 grams (out of that 04 grams in 02 samples each of 2 grams taken out for examination purpose) and upon extraction of the same by the Govt. Approved Valuer the Net weight of Gold bar formed from the said gold paste comes to 280.020 grams with 999.0/24kt purity and having market value of Rs.20,60,947/-. It is uncontested fact that the gold in form of paste was not declared to the Customs Under Section 77 of the Customs Act, 1962 and noticee was trying to pass through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely gold paste, which was found concealed and recovered in manner as described above, was made by noticee Shri Shabbir Hussain Umerbhai Ghonia in prescribed declaration form. The noticee was not eligible to import gold and that too undeclared in substantial quantity and hence the same cannot be treated as "bonafide baggage" in terms of section 79 of the Customs Act, 1962 and

the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

14.2 I also find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement and any later stage of the proceedings. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the noticee. In fact, in his statement dated 02.05.2024, he has clearly admitted that he had travelled from Dubai to Ahmedabad by Flight No. 6E 1478 dated 02.05.2024 carrying gold in form of paste and concealed the same in his rectum; that he had intentionally not declared the substance containing foreign origin gold before the Customs authorities as he wanted to clear the same illicitly and evade payment of customs duty; that he was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. In his statement, he submitted that the gold was not purchased by him and was given by his friend Shri Babubhai who stayed at Dubai and working as a cab driver. He gave him 02 capsules containing gold in paste form and asked to conceal the same in his rectum, as no one could find if he concealed the gold paste in his rectum and travelled to India.

14.3 I find that the noticee has clearly accepted that he had not declared the gold in paste form concealed in his rectum, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. In the statement, he admitted that the gold was not purchased by him and his friend Shri Babubhai gave him the said gold in form of paste in capsules at Dubai and asked for carrying the said gold to India. I find that the noticee had gave his statement voluntarily under Section 108 of Customs Act, 1962 without any threat, coercion and recorded as per his say. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended,

and para 2.26 of the Foreign Trade Policy 2015-20. 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.

14.4 I find that the noticee has not 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. Section 123 of the Customs Act, 1962 stipulates: -

Section 123. Burden of proof in certain cases. -

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

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

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

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

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

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

In the instant case, the burden of proving that the seized derived gold bar are not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bar weighing 280.020 grams (extracted from 315.260 grams paste) + (04 grams of gold paste taken as sample for examination) of foreign origin are not smuggled in nature lie on Shri Shabbir Hussain Umerbhai Ghonia from whose possession the gold was recovered and seized on 02.05.2024. The test report shows that gold bar derived from gold paste was of purity of 999.0/24Kt. I find from the records that sufficient opportunity was given

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to be heard in person and to submit his defense reply against the allegation made under subject SCN, to the noticee Shri Shabbir Hussain Umerbhai Ghonia, however the noticee did not turned up and neither file any defense reply nor avail the opportunity of personal hearing which shows his reluctant behavior and he was not bothered about the ongoing adjudication proceeding. Accordingly, I hold that the noticee has nothing to submit in his defense and the noticee Shri Shabbir Hussain Umerbhai Ghonia could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in his possession. Thus, he was failed to discharge the "burden of proof that gold bar derived from the paste was legally imported/possessed and also, he had not declared the same to the customs in prescribed Indian Customs Declaration Form. Moreover, I find that he admitted in his voluntary statement that the gold in capsules containing gold paste were given to him by his friend Shri Babubhai. Applying the ratio of judgments of the Hon'ble Supreme Court in matter of Om Prakash Bhatia Vs. Commissioner of Customs [2003(6) SSC 161] and Hon'ble High Court, Madras in case of Samynathan Murugesan Vs. Commissioner of Customs [2010 (254) ELT A015], I find that the said smuggled derived gold bar weighing 280.020 grams from gold paste weighing 315.260 grams + 04 grams of gold paste (02 samples, each of 02 grams) extracted as sample from the total gold paste recovered from noticee weighing 319.260 grams (315.260 Grams + 04 Grams) of foreign origin are liable to absolute confiscation under Section 111 (d), 111(l) & 111(m) of Customs Act, 1962.

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where a gold bar weighing 280.020 grams from gold paste weighing 315.260 grams + 04 grams of gold paste (02 samples, each of 02 grams) extracted as sample from the total gold paste recovered from noticee weighing 319.260 grams (315.260 Grams + 04 Grams) of foreign origin was seized under Section 110 of the Customs Act, 1962 on reasonable belief that the same was smuggled in to India from Dubai. As per Sub-Section 2 of Section 123 of the Customs Act, 1962, onus for proving that the seized gold bar, weighing 280.020 grams, having market value of Rs.20,60,947/- and 04 grams of extracted sample from the total gold paste recovered, are not of smuggled in nature, shall be on Shri Shabbir Hussain Umerbhai Ghonia,

from whose possession the impugned goods were seized. Shri Shabbir Hussain Umerbhai Ghonia in his statement mentioned that the said gold in form of paste was given to him by his friend Shri Babubhai, for smuggling the said goods in India. In his statement recorded under Section 108 of Customs Act, 1962, he admitted that he was aware that the gold paste, he was carrying, had been smuggled into India from Dubai and he was knowingly carrying the smuggled gold from Dubai to Ahmedabad for monetary benefits. It shows that knowingly and consciously he was involved in carrying and handling the foreign origin gold which he has reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended. He in his statement admitted that the gold was not purchased by him and was given by his friend in form of capsules which were concealed by him in his rectum.

14.5 It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were tried to exit through Green Channel which shows that the noticee was trying to smuggle the goods and trying to evade the payment of eligible customs duty. I also find that the definition of “eligible passenger” is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee have not declared the gold before customs authority. It is also observed that the imports were also for non-

bonafide purposes. Therefore, the said improperly imported gold paste recovered from the possession of Shri Shabbir Hussain Umerbhai Ghonia, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee has not fulfilled the conditions of eligible passenger to brough the gold. 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.

14.6 In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

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

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

Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 41 of the Subject Notification.

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

If,-

1. *(a) the duty is paid in convertible foreign currency;*
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. *the gold or silver is,-*

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*(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

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the Noticee. As per the statement of Shri Shabbir Hussain Umerbhai Ghonia recorded under Section 108 of the Customs Act, 1962, he went to Dubai for touring on 24.04.2024 and return on 02.05.2024, thus he had returned before the stipulated time of stay as prescribed for importation the gold. I find that a well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUTs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be

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

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

(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;

I find that the said gold paste in form of capsules concealed in rectum and was not declared by Shri Shabbir Hussain Umerbhai Ghonia to the Customs under Section 77 of the Customs Act, 1962 and he passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold paste which were found concealed and recovered in manner as described above, was made by the Noticee Shri Shabbir Hussain Umerbhai Ghonia, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

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

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

In this regard, I find that total 319.260 grams of gold paste of foreign origin which was recovered from possession of Shri Shabbir Hussain Umerbhai Ghonia and admittedly smuggled into India. On test, the gold was found to be of purity of 999.0/24kt. Moreover, I find that Shri Shabbir Hussain Umerbhai Ghonia could not produce any licit or valid documents regarding their legal

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importation/acquisition/possession/transportation of the gold of foreign found in person of Shri Shabbir Hussain Umerbhai Ghonia, thus failing to discharge his "burden of proof" that the gold was legally imported/possessed. He has also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

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

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Shri Shabbir Hussain Umerbhai Ghonia in prescribed declaration form and hence the said gold is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

14.7 I find that the nature of concealment of gold in form of paste concealed in rectum by the noticee shows that the noticee Shri Shabbir Hussain Umerbhai Ghonia was fully aware that the import of said goods is offending in nature. From his voluntary statement recorded under Section 108 of Custom Act, 1962, I find that the noticee has clearly admitted that he was aware of carrying the gold in paste form in his rectum in form of capsules. It is therefore very clear that he has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. *It is seen that he has involved himself in carrying, keeping, concealing and dealing with the impugned goods in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act.* I find that the noticee clearly admitted in his statement that the gold in form of paste did not belong to him and same was given by his friend Shri Babubhai for smuggling. Accordingly, on the basis of documentary as well as content of his voluntary statement, mens-rea of the noticee is proved beyond doubt and the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

15. 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]

16. 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.

17. 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).

18. 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.

19. 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".

20. 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.**"

21. On the basis of above discussion in light of the referred judgments and nature of concealment of the gold to smuggle the same, ***I am therefore, not inclined to use my discretion to give an option to noticee Shri Shabbir Hussain Umerbhai Ghonia to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

22. Given the facts of the present case before me and the judgements and rulings cited above, the said derived gold bar weighing 280.020 grams, alongwith the 04 grams of gold paste extracted as sample for examination, carried by the noticee are therefore liable to be confiscated absolutely. ***I therefore hold in unequivocal terms that the said gold paste total weighing 319.260 grams out of which a gold bar total net weighing 280.020 grams was extracted and 04 grams of gold paste taken as sample for examination purpose, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.***

23. As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Shabbir Hussain Umerbhai Ghonia, ***I find that in the instant case, the principle of mens-rea on behalf of noticee are established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold*** by concealing the gold in paste from capsules in his rectum. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that ***"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute."*** In the instant case, the noticee was attempting to smuggled the gold in form of paste and attempting to evade the Customs Duty by not declaring the gold paste found in his

possession. Hence, the identity of the goods is not established and non-declaration at the time of import, is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold paste weighing 319.260 grams, carried by him. He has agreed and admitted in his statements that he had travelled from Dubai to Ahmedabad with the said gold in form of paste concealed in his rectum in form of 02 capsules. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold paste total weighing 319.260 grams (out of which a gold bar total net weighing 280.020 grams was extracted and 04 grams of gold paste taken as sample for examination purpose). Thus, it is clear that the noticee has concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold which they know very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee named Shri Shabbir Hussain Umerbhai Ghonia is liable for the penalty under Section 112(a) & 112 (b) of the Customs Act, 1962 and I hold accordingly.

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

24. Now, I come to allegation in the Show Cause Notice that as to whether penalty should be imposed upon Shri Babubhai @ Dubai (Noticee

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No. 02) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or otherwise.

From the records available on file as documentary and voluntary statement tendered by noticee named Shri Shabbir Hussain Umerbhai Ghonia under Section 108 of Customs Act, 1962, I find that the noticee Shri Shabbir Hussain Umerbhai Ghonia has mentioned in his voluntary statement that Shri Babubhai is his friend who lives in Dubai and working as cab driver. He went to Dubai for touring purpose and stayed with Shri Babubhai. Shri Babubhai has suggested him to carry the gold as gold is cheaper in Dubai as compared to India. He clearly admitted that on advice of his friend Shri Babubhai he agreed to carry the gold. I find from the statement of Shri Shabbir Hussain Umerbhai Ghonia that the gold in form of paste in 02 capsules was given by Shri Babubhai. From the investigation and records available in the file and as per voluntary statement tendered by the noticee Shri Shabbir Hussain Umerbhai Ghonia, I find that Shri Babubhai was the person who handed over the gold in paste form in two capsules and asked Shri Shabbir Hussain Umerbhai Ghonia to conceal the same in his rectum as , it could not be detected by anyone. I find that sufficient opportunities were given to the noticee Shri Babubhai to submit his defense reply and to appear for personal hearing. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Further, the noticee Shri Shabbir Hussain Umerbhai Ghonia has never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in his voluntary statement tendered before DRI officers at any stage of investigation. From the documentary evidences and as per the investigation, I find that Shri Babubhai was key person, who arranged the gold in paste form, handed over to Shri Shabbir Hussain Umerbhai Ghonia and asked him to conceal the same in his rectum so that the same could not be detected. Thus, noticee Shri Babubhai has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. His non-appearance before the Investigating

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Authority and even before the Adjudicating Authority during the entire process of investigation and adjudication respectively, details/data and statement of Noticee Shri Shabbir Hussain Umerbhai Ghonia reveals that he was involved in the smuggling of the said gold. If the Noticee was a law-abiding citizen, he would have appeared before the DRI to prove his innocence or present himself before adjudicating authority to prove his non-involvement in the smuggling but he failed to do so which indicates that he was involved himself in the smuggling of said gold. It, is therefore, proved beyond doubt that the noticee Shri Babubhai @ Dubai has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

25. Accordingly, I pass the following Order:

ORDER

- i.** I order **absolute confiscation** of gold bar weighing 280.020 grams having purity of 999.0/24Kt, extracted from 315.260 grams of gold paste, out of total gold paste weighing 319.260 grams, found in possession of Shri Shabbir Hussain Umerbhai Ghonia and concealed in form of 02 capsules in his rectum having total Market value of derived gold bar is **Rs. 20,60,947** and placed under seizure under panchnama dated 02.05.2024 and seizure memo order dated 02.05.2025 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;
- ii.** I order **absolute confiscation** of 04 grams of gold paste taken out as sample for examination purpose, from total gold paste weighing 319.260 grams, found in possession of Shri Shabbir Hussain Umerbhai Ghonia and concealed in form of 02 capsules in his rectum, placed under seizure under panchnama dated 02.05.2024 and seizure memo order dated 02.05.2025 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;
- iii.** I impose a penalty of Rs. 4,00,000/- (Rupees Four Lakh Only) on **Shri Shabbir Hussain Umerbhai Ghonia** under the provisions

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of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.

- iv. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Babubhai @ Dubai** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- v. I impose a penalty of Rs. 50,000/- (Rupees One Lakh Only) on **Shri Shabbir Hussain Umerbhai Ghonia** under the provisions of Section 117 of the Customs Act 1962.
- vi. I impose a penalty of Rs. 50,000/- (Rupees One Lakh Only) on **Shri Babubhai @ Dubai** under the provisions of Section 117 of the Customs Act 1962.

26. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-26/2024 dated 28.10.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250471MN00001151DF

By SPEED POST A.D.

To,

(i) Shri Shabbir Hussain Umerbhai Gonia
S/o Shri Umer Kasambhai,
Aishabai Chamber 74, 1/F R/34 Sufiya Zuber Road,
Nagpada, Mumbai- 400008

(ii) Shri Babubhai @ Dubai

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
4. The Assistant/Deputy Director, DRI, AZU, Ahmedabad
5. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
6. Guard File.