

OIO No: 12/ADC/SRV/O&A/2025-26
F. No: VIII/10-221/SVPIA/DRI/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
“सीमा शुल्क भवन”, पहली मंजिल, पुरानेहाईकोटीक सामने, नवरंगपुरा, अहमदाबाद – 380009.
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DIN: 20250471MN000000E39E

PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-221/SVPIA/DRI/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या—तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-02/ENQ-18/2024 dated 30.09.2024
C	मूल आदेश संख्या / Order-In-Original No.	:	12/ADC/SRV/O&A/2025-26
D	आदेश तिथि / Date of Order-In-Original	:	24.04.2025
E	जारीकरने की तारीख / Date of Issue	:	24.04.2025
F	द्वारा पारित / Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयात कक्षानाम और पता / Name and Address of Importer / Passenger	:	(i) Shri Narendrakumar Lavjibhai Chaudhari , 264, Visnagar, Tirupati, Panchsheel Society Mehsana-384315, Gujarat (ii) Ms. Bhartiben Jagdishbhai Pamnani , resident of 13-Jyoti Bunglows, Ramosana Road, Mehsana-384001. (iii) Shri Dhaval Chaudhar@Dubai
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील) 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।		

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

Intelligence was gathered by Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, (hereinafter also referred to as DRI) that two passengers namely (i) Shri Narendrakumar Lavjibhai Chaudhari, Male, having Passport No. S6140803 and (ii) Ms. Bhartiben Jagdishbhai Pamnani, Female, having Passport No. N4710814 are suspected to be carrying restricted/prohibited goods.

2. Acting on the said intelligence, the DRI officers intercepted both the passengers namely Shri Narendrakumar Lavjibhai Chaudhari and Ms. Bhartiben Jagdishbhai Pamnani with their baggage when both the said passengers tried to exit through Green Channel at the arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad. The whole process of interception of the above two passengers was conducted under Panchnama dated 07.04.2024.

2.1 Further, DRI officers enquired about their identity, the first passenger who identified himself as Mr. Narendrakumar Lavjibhai Chaudhari and shown his Passport which was an Indian Passport bearing No. S6140803 and also shown his Boarding Pass which shows that he had travelled from Dubai to Ahmedabad on 06.04.2024 by Emirates Flight No. EK538 (Seat No. 14E) at SVPI Airport, Ahmedabad.

2.2 Subsequently, the DRI Officers enquired about the second passenger who identified herself as Ms. Bhartiben Jagdishbhai Pamnani by showing her Passport which was an Indian Passport bearing No. N4710814 and shows her Boarding Pass which reveals that she had travelled from Dubai to Ahmedabad on 06.04.2024 by Emirates Flight No. EK538 (Seat No. 14F) at SVPI Airport, Ahmedabad.

2.3 The DRI & Customs Officers then asked Shri Narendrakumar Lavjibhai Chaudhari and Ms. Bhartiben Jagdishbhai Pamnani, if they

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had anything to declare before the Customs, to which they both denied of having any dutiable or restricted items with them.

2.4 Further, the DRI officers asked Mr Narendrakumar Lavjibhai Chaudhari and Ms. Bhartiben Jagdishbhai Pamnani if they had anything dutiable to declare before custom authority, in reply to which they denied. The DRI officers then asked Mr. Narendrakumar Lavjibhai Chaudhari regarding his baggages, to which he informed that he had one Red coloured trolley bag as check-in baggage and one navy blue coloured shoulder bag as cabin baggage. The DRI officers then asked Ms. Bhartiben Jagdishbhai Pamnani regarding her baggages, to which she informed that she had one white and mixed coloured trolley bag as check-in baggage and one brown-coloured leather ladies purse as cabin baggage.

2.5 The DRI officer informed both the passengers that they would conduct their personal search and detailed examination of their baggage. Then, the DRI officers asked the passengers whether they wanted to be checked in front of an Executive Magistrate or DRI officers in reply to which the passengers gave their consent to be searched in front of the DRI officers. Now, the DRI officer asked Mr. Narendrakumar Lavjibhai Chaudhari to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival hall of Terminal 2 building, after removing all metallic objects from his body/clothes. The passenger removed all the metallic objects such as mobile, coins etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound was heard indicating that there was nothing objectionable/metallic substance on his body/clothes.

2.6 Then, the DRI officers asked Ms. Bhartiben Jagdishbhai Pamnani to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival hall of Terminal 2 building, after removing all metallic objects from her body/clothes. The passenger removed all the metallic objects such as mobile, coins etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound was heard indicating that there was nothing objectionable/metallic substance on her body/clothes.

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2.7 Thereafter, the DRI officers carried out the examination of 2 baggages of Mr. Narendrakumar Lavjibhai Chaudhari i.e 1 Red Trolley Bag and 1 navy blue shoulder bag. The officer first started examining the Red Trolley Bag where nothing objectionable was found. The officers, then, checked the contents of the navy-blue shoulder bag and noticed some worn clothes and one yellow coloured bar in the navy-blue shoulder bag. The officers, then taken into custody the yellow-coloured rectangular bar recovered from the navy-blue shoulder bag of Mr. Narendrakumar Lavjibhai Chaudhari on the reasonable suspicion that the contents of the bar might be Gold.

2.8 Then, the DRI officers carried out the examination the baggages of Ms. Bhartiben Jagdishbhai Pamnani. The officers first started examining the Mixed white coloured trolley bag and nothing objectionable was found. Then, the officers started examining the brown coloured leather ladies purse and among the contents, noticed a yellow coloured bar. The officers, then taken into custody the yellow coloured rectangular bar recovered from the brick coloured lady purse of Ms. Bhartiben Jagdishbhai Pamnani on the reasonable suspicion that the contents of the bar might be Gold.

3. The DRI officer called Shri Kartikey Vasantrai Soni, Government Approved Valuer and informed him that two yellow coloured rectangular bars had been recovered from 2 passengers and that he needed to conduct testing of the bar for its content and its valuation.

3.1. Then, a person entered the airport premises and introduced himself as Shri Kartikey Vasantrai Soni, Government Approved Valuer. Now, the DRI officer took the photograph of 2 yellow coloured rectangular bars as below:

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3.2. Subsequently, after completion of the procedure of weighment and purity check, Shri Kartikey Vasantrai Soni, the Govt. Approved Valuer submitted the valuation reports vide Certificate No: 030 / 2024-25 and 031 / 2024-25 dated 07.04.2024 in terms of the Notification No. 25/2024-Customs (N.T.) dated 28.03.2024 (gold) and Notification No. 27/2024-Customs (N.T.) dated 04.04.2024 (exchange rate). The details of valuation report in respect of the above two gold bars recovered from the above 02 passengers are as under:

SR No	Details of Items	PCS	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bar (recovered from Mr. Narendrakumar Lavjibhai Chaudhari)	1	1499.500	999.0 24Kt	1097784 0	8929687
2	Gold Bar (recovered from Ms. Bhartiben Jagdishbhai Pamnani)	1	1499.400	999.0 24Kt	1097710 7	8929092

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	Total	2	2998.900		2195494 7	1785877 9
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Seizure of smuggled gold

4. Above 02 numbers of gold bars totally weighing of 2998.900 grams, having purity of 999.0 (24 Kt.), total market value of Rs. 21954947/- were brought into India in violation of provisions of Customs Act, 1962 & FTP and consequently tantamounted to smuggling of gold and therefore the same appear to be liable to confiscation under the provisions of Customs Act, 1962. Accordingly, the recovered 02 numbers of gold bars totally weighing of 2998.900 grams, having purity of 999.0 (24 Kt.), total market value of Rs.21954947/- (Rupees Two Crore Nineteen Lakh Fifty Four Thousand Nine Hundred Forty Seven Only) placed under seizure vide Seizure Order under Section 110 of the Customs Act, 1962 under F. No. DRI/AZU/GI-02/Enq-18/2024 dated 07.04.2024 and Panchnama dated 07.04.2024.

4.1 Further, the above seized 02 gold bars were handed over to the Ware House Incharge, SVPI Airport, Ahmedabad vide Ware House Entry No. 6162 dated 07.04.2024 recovered from Shri Narendrakumar L. Chaudhari and Ware House Entry No. 6161 dated 07.04.2024 recovered from Ms. Bhartiben J. Pamnani.

5. STATEMENTS OF KEY PERSONS:

5.1. Upon completion of the panchnama proceedings at SVPI Airport, Ahmedabad, summons dated 07.04.2024 were issued to Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani for recording of their statements.

5.2. Consequent to the above summon, statement of Shri Narendrakumar L. Chaudhari was recorded under Section 108 of the Customs Act, 1962 on 07.04.2024 wherein he interalia stated that:-

- he had been working as marketing/selling agent in food items in Gujarat State. He worked as agent between buyer and seller and get commission for the same. His monthly income was approx. 70-80 thousand rupees.
- he perused the Panchnama dated 07.04.2024 drawn at Terminal 2 of SVPI Airport, Ahmedabad and DRI Office, Ahmedabad Zonal Unit dated 07.04.2024 and stated that the contents mentioned in the Panchnama are correct and based on facts.
- he agreed to the facts of Panchnama; that one gold bar having net weight of 1499.500 grams, purity of 999.0/24Kt and market value of Rs. 1,09,77,840/- was recovered from his navy blue shoulder bag, which he

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was carrying during the course of his journey from Dubai to Ahmedabad. He also stated that one gold bar was also recovered from the brick coloured lady purse carried by Ms. Bhartiben Jagdishbhai Pamnani during the same journey.

- Ms. Baratiben Jagdishbhai Pamnani was his friend since 2015. They were family friends.
- he had gone to Dubai on 2nd of March 2024 by Flight Fly Dubai.
- he had Stayed at his cousin brother Shri Dhavalkumar Shankarbhai Chaudhari at Dubai.
- he had got his ticket for Ahmedabad to Dubai booked by Shri Sumit Patel, ticket agent for which he had made payment to him. For his journey from Dubai to Ahmedabad, Shri Dhavalkumar S. Chaudhari had booked his flight ticket.
- his trip to Dubai was sponsored by Shri Dhavalbhai S. Chaudhari.
- Apart from the instant journey, he had visited seven times Dubai and few times in African Countries for the purpose his marketing/selling of foods items.
- he didn't have any purchase documents or any other documents related to the gold bar carried by him. The said gold bar was given by Shri Dhavalbhai Shankarbhai Chaudhari to smuggle into India.
- Shri Dhavalbhai Shankarbhai Chaudhari is his cousin brother and he had been residing in Dubai since last 3 years. He had supermarket and was engaged in the business of trading of products at his supermarket. He didn't have his detail address. However, he had his contact nos. +971 566419105 and +91 9638342829.
- Shri Dhavalbhai Shankarbhai Chaudhari had instructed him to smuggle the above gold bar and after arrival at SVPI Airport Ahmedabad, Shri Dhavalbhai Shankarbhai Chaudhari would call him to hand over the one gold bar carried by him and one gold carried by Ms. Bhartiben Jagdishbhai Pamnani to a person, he would tell him after exiting from the SVPI Airport Ahmedabad.
- he admitted that he and Ms. Bhartiben Jagdishbhai Pamnani were part of plan of smuggling of the two Gold bars totally weighing 2998.900 grams and having purity 999.0/24kt and total Market Value at Rs. 2,19,54,947/- (Rupees Two Crore Nineteen Lakhs Fifty-Four Thousand Nine hundred and Forty-Seven only), which were recovered under panchnama dated 07.04.2024.

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- he admitted that he along with Ms. Bhartiben Jagdishbhai Pamnani were intended to smuggle the 2 Gold bars into India without payment of duty and in violation of the provisions of the Customs Act, 1962.
- Shri Dhaval Chaudhari had offered him Rs. 50,000/- as commission in lieu of carrying the said gold bar with him from Dubai to Ahmedabad. However, the said amount was to be paid after execution of the said work.
- he had not made any declaration before the Customs authorities SVPI Airport Ahmedabad regarding carrying of the above gold as he had brought the same with an intent to smuggle the same into India; that he was enquired by the officers of DRI after intercepting him at the time when he was trying to exit from green channel about declaration of any dutiable item, he had, but the same was denied by him as he was intending to clear the above smuggled gold from the SVPI Airport without declaring the same.
- it was illegal to smuggle gold without declaring the same to the Customs authorities and would amount to violation of the Baggage Rules, 2016 and other rules made under the Custom Act, 1962. Since it was already planned to smuggle and he intentionally committed the above offence.
- the smuggled gold is liable to confiscation under the provisions of Customs Act, 1962. Further, he agreed that the 'smuggled goods, viz., foreign origin two gold bars which were seized vide seizure memo dated 07.04.2024 are liable to confiscation as per Section 111 of the Customs Act, 1962 and penalty under Section 112 of the Customs Act, 1962. Therefore, in the individual capacity he had committed an offence punishable under Section 135 of the Customs Act 1962.

5.3. Statement of Ms. Bhartiben Jagdishbhai Pamnani was also recorded under section 108 of the Customs Act, 1962 on 07.04.2024 (RUD- 7) wherein she interalia stated that:-

- She stated that she had been working as Senior Associate Manager in HDFC Bank, Mehasana since 2015. She got monthly salary as Rs. 30,000/- per month.
- She perused the Panchnama dated 07.04.2024 drawn at Terminal 2 of SVPI Airport, Ahmedabad and stated that the contents mentioned in the said panchnama are correct and based on facts.
- She agreed to the facts of panchnama and stated that the one gold bar having net weight of 1499.400 grams, purity of 999.0/24Kt and market value of Rs. 1,09,77,107/- was recovered from her brown/brick coloured leather ladies purse, which she was carrying during the course of her journey from Dubai to Ahmedabad. She also stated that 01 gold bar was recovered from the navy blue shoulder bag carried by Shri Narendrakumar Lavjibhai Chaudhari during the same journey.

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- She knew Shri Narendrakumar Laljibhai Chaudhari. He is her family friend; they had been in touch with each other since 2015. He also lived in Mehsana.
- She had gone to Dubai on 3rd of April 2024 from SVPI Airport Ahmedabad through spice jet flight.
- She had stayed at the residence of Narendrakumar Lavjibhai Chaudhari's brother at Dubai.
- Her flight ticket was booked by Shri Narendrakumar Lavjibhai Chaudhari. The purpose of visit to Dubai was leisured trip.
- Shri Narendrakumar Lavjibhai Chaudhari had sponsored her entire trip including flight ticket to all expenses for the said trip.
- Apart from the instant journey, she had travelled abroad four times.
- She did not had any purchase document/any other document related to the above gold bar carried by her. The said gold bar was given by cousin brother of Shri Narendrakumar Lavjibhai Chaudhari at Dubai. His name is Dhaval Chaudhari. He resides in Dubai and she had stayed at his place only at Dubai.
- Shri Narendrakumar Lavjibhai Chaudhari had introduced herself to Shri Dhaval Chaudhari when she had travelled Dubai on 18.01.2024. She had stayed at his place only at Dubai in the said trip also. She did not have any contact details of Shri Dhaval Chaudhari. When She had arrived at Dubai, the driver of Shri Dhaval bhai had come to receive her there.
- Shri Dhaval Chaudhary had asked her to carry one gold bar and to hand over to Shri Narendrakumar Lavjibhai Chaudhari after exiting from SVPI Airport Ahmedabad.
- Shri Dhaval Chaudhari had offered her Rs. 50,000/- as commission in lieu of carrying the said gold bar with her from Dubai to Ahmadabad. However, the said amount was to be paid after execution of the said work. Shri Narendrakumar Lavjibhai Chaudhari was also aware of the above commission amount.
- She admitted that herself and Shri Narendrakumar Lavjibhai Chaudhari were part of the plan of such smuggling of above two gold bars.
- She accepted that she along with Shri Narendrakumar Lavjibhai Chaudhari were intended to smuggle the above 2 Gold bars into India without payment of duty and in violation of the provisions of the Customs Act, 1962.

- She had not made any declaration before the Customs authorities SVPI Airport Ahmedabad regarding carrying of the above gold as she had brought the same with an intent to smuggle the same into India.
- She accepted that it was illegal to smuggle gold without declaring the same to the Customs authorities and would amount to violation of the Baggage Rules, 2016 and other rules made under the Custom Act, 1962. Since it was already planned to smuggle and she intentionally committed the above offence.
- She agreed that the smuggled gold are liable to confiscation under the provisions of Customs Act, 1962. Further, She agreed that the 'smuggled goods, viz., foreign origin two gold bars which were seized vide seizure memo dated 07.04.2024 are liable to confiscation as per Section 111 of the Customs Act, 1962 and penalty under Section 112 of the Customs Act, 1962. Therefore, in the individual capacity she had committed an offence punishable under Section 135 of the Customs Act 1962.

5.4. Further, the DRI Officers, Ahmedabad Zonal Unit, Ahmedabad sought remand to the custody of Shri Narendrakumar L. Chaudhari vide application dated 18.04.2024 from the Hon'ble Additional Chief Metropolitan Magistrate, Ahmedabad. The Hon'ble ACMM Court, Ahmedabad vide its order dated 19.04.2024 granted remand to the custody of Shri Narendrakumar L. Chaudhari for tendering his statement before the DRI officers. The DRI officers recorded the statement of Shri Narendrakumar L. Chaudhari on 20.04.2024 under Section 108 of the Customs Act, 1962 wherein Shri Narendrakumar L. Chaudhari inter-alia stated that:-

- On being asked regarding the introduction of Shri Dhaval Chaudhari to Ms. Bhartiben, he stated that Ms. Bhartiben visited Dubai on 18.01.2024 for a leisure trip; that he was already there in Dubai at that time; that during her trip, Ms. Bharti met him in Dubai at Meena Bazar; that he took her to the place of his cousin Shri Dhaval Chaudhari and introduced her with Shri Dhaval Chaudhari.
- He and Ms. Bhartiben again visited to Dubai on 04.02.2024 together; that both of them stayed at the residence of Shri Dhaval Chaudhari and then on 20.02.2024, they returned together from Dubai to Ahmedabad.
- He stated that he had visited to Dubai in February 2024 for business purpose, while Ms. Bhartiben had visited to Dubai for a leisure trip. The tickets for the said trip were also booked through Shri Sumit Patel. And the ticket expenses for the trip were paid individually by me and Ms. Bhartiben in cash.
- Further, on being asked about his frequent visits to UAE, he stated that he used to visit to Dubai, Abu Dhabi and Sharjah frequently for

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marketing of rice, pulses etc. Once he got orders from overseas he used to place order to the Indian suppliers and in return he got commission on the value of the goods.

6. From the investigation conducted and statements of the concerned persons, it appears that Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani attempted to smuggle gold bars into India in connivance with Shri Dhavalkumar S. Chaudhari@Dubai. Further, it evidently appears that said gold bars recovered from the above said two passengers in a similar manner such as recovered gold bars from both the persons were molded in the similar manner, the way of concealment of the gold bars, the said gold bars recovered from the respective bags/baggage of both the persons, flight details of the persons, staying arrangement of both the passengers at Dubai, ticket arrangements of the passengers etc. which clearly indicates the same syndicate. Shri Dhavalkumar S. Chaudhari@Dubai was the person, who has actively managed and instructed both the passengers to smuggle the said gold bars into India through SVPI, Airport Ahmedabad in lieu of monetary consideration. Though the quantity of gold illegally imported was split into two different parts and carried by two different persons, all of whom had the common intention to smuggle the gold and evade the applicable custom duty and the all of them were also regulated/managed by a common person i.e. Shri Dhavalkumar S. Chaudhari@Dubai. Thus, the acts done by all three persons namely Shri Narendrakumar L. Chaudhari, Ms. Bhartiben J. Pamnani and Shri Dhavalkumar S. Chaudhari@Dubai attempted to smuggle gold bars into India collectively appear to be as act done by each person individually.

Sr. No .	Details of Items	PC S	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bar (recovered from Mr. Narendrakumar Lavjibhai Chaudhari)	1	1499.50 0	999.0 24Kt	1097784 0	8929687
2	Gold Bar (recovered from Ms. Bhartiben Jagdishbhai Pamnani)	1	1499.40 0	999.0 24Kt	1097710 7	8929092
	Total	1	2998.90 0		2195494 7	1785877 9

ARREST OF SHRI NARENDRAKUMAR L. CHAUDHARI AND MS. BHARTIBEN J. PAMNANI:

7. Based on the evidences gathered and the statements recorded as above, it appears that Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani have committed an offence punishable under Customs Act, 1962. It appears that they had attempted to smuggle total of 02 (Two) number of gold bars, having total weight of 2998.900 grams, purity of 999.0/24Kt without declaration of the same to the Customs Authorities with a view to evading payment of Customs duty, the said gold attempted to be smuggled by them are liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. During the conducting search

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proceedings of baggage of both the persons at the time of interception and subsequent investigation evidently led that all of the two passengers in a very planned manner have attempted such smuggling of gold by adopting the same modus operandi in connivance with Shri Dhaval Chaudhari@Dubai. From the above, it evidently established that they have knowingly concerned themselves in an offence punishable under Section 135(1) of the Customs Act, 1962, as they had knowingly involved themselves in dealing/carrying with 2998.900 grams of smuggled Gold having purity of 999.0/24 Carat for total market value of Rs. 2,19,54,947/- and concerned themselves in carrying, removing, depositing, harbouring, keeping, concealing of smuggled Gold, which they knew and/or had reasons to believe that the same were liable to confiscation under Section 111 of the Customs Act, 1962. The same has also been admitted in their respective statements. Hence, both of them as Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani were arrested on 07.04.2024 at Ahmedabad under the provisions of Section 104 of the Customs Act, 1962 vide Arrest Memo dated 07.04.2024, after getting required order from the competent authority. They were further produced before the Hon'ble Court of ACMM, Ahmedabad, who ordered for their judicial custody.

8. FORENSIC EXAMINATION OF MOBILE PHONES OF SHRI NARENDRAKUMAR L. CHAUDHARI AND MS. BHARTIBEN J. PAMNANI:-

8.1. During the course of their respective statements of the above persons, they had voluntarily submitted their mobile phones under their statements dated 07.04.2024 for further investigation. The said mobile phones were sent to National Forensic Sciences University, Gandhinagar, for forensic analysis and examination. National Forensic Sciences University, Gandhinagar vide their letter reference case no. NFSU/CoEDF/DEL/119/24 dated 28.05.2024 submitted/provided their report along with extracted data. NFSU also issued certificate under Section 65B of Indian Evidence Act, 1872 to this office in respect of above retrieval.

8.2. During the course of analysis of extracted data of Mobile phone i.e. iPhone 15 Plus belonging to Ms. Bhartiben J. Pamnani, provided by NFSU, Gandhinagar, no chats were found with the involved person in the said smuggling case.

8.3. During the course of analysis of extracted data During the course of analysis of extracted data of Mobile phone "Nothing Phone Model No. A063" belonging to Shri Narendrakumar L. Chaudhari, no relevant data was found. However, on analysis of his Samsung Galaxy S23, it was noticed that several chats or data such as issuance of Visa, booking of flight tickets of several persons, shared with/by Shri Sumit Ahabad TT and Shri Hare Krishna were found.

8.4. After analyzing the images and data retrieved from the said mobiles, this office summoned dated 27.06.2024 to Shri Narendrakumar L. Chaudhari to appear on 04.07.2024 for tendering his statement under Section 108 of the Customs Act, 1962 confronting the above stated images/ data.

8.4.1. Consequent to the above summon, Shri Narendrakumar L. Chaudhari appeared on 04.07.2024 to tender his statement on 04.07.2024 under Section 108 of the Customs Act, 1962 wherein, he inter-alia stated that:-

- He perused the Panchnama dated 07.04.2024 drawn at Terminal 2 of SVPI Airport, Ahmedabad and stated that one gold bar having net weight of 1499.500 grams, purity of 999.0/24Kt and market value of Rs. 1,09,77,840/- was recovered from his navy blue shoulder bag, which he was carrying during the course of his journey from Dubai to Ahmedabad and 1 (one) gold bar was recovered from the brick coulored lady purse carried by his friend Ms. Bhartiben Jagdishbhai Pamnani during the same journey. He confessed his mistake for the said act.
- He was also shown the certificate no. NFSU/103/CoEDF/DFL/63/2024 issued by NFSU dated 28.05.2024 through with NFSU had shared data retrieved from his mobile, which he had submitted to the department during his statement dated 07.04.2024 for further verification.
- On being asked about the examination of data retrieved from his mobile which revealed that there were several chats, between him and 919313203004@s.whatsapp.net (saved as Sumit Abad TT in his mobile phone). The said chats also revealed that Shri Sumit Abad TT had shared him visa, flight ticket etc. of several persons. In this regard, he stated that he was also engaged in work related to issuance of visa, booking of flight tickets etc. During the said process, if any person approached him for issuance of Visa or booking of flight, then he used to collect all the requisite documents from the clients/person and used to forward the same to Shri Sumit@Ahmedabad through whats app. Most of the time, he asked the client directly to share his/her requisite documents to Shri Sumit@Ahmedabad on his mobile no. 9313203004. After all the process done, Shri Sumit@Ahmedabad used to share the respective visa/ flight ticket to Shri Narendrakumar L. Chaudhari through whats app messengers.
- On being asked about Sumit@Ahmedabad, he stated that one of his friends had referred to Shri Sumit@Ahmedabad by giving his mobile no. 9313203004. As per best of his knowledge, he runs a travel agent business in Ahmedabad. He had only his contact no. 9313203004.

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However, he did not have any other details about Shri Sumit@Ahmedabad.

- He stated that for getting visa issued, he used to charge Rs. 7300 to Rs. 7800 per person and for getting flight ticket booked he used to charge Rs. 500 plus the actual amount of flight ticket. However, he used to make payment of Rs. 7000 per person for issuance of Visa and actual price of flight ticket to Shri Sumit@Ahmedabad. Hence, in case of visa related work, he used to get Rs. 300 to Rs. 800 as his commission for undertaking visa related work and Rs. 500 in case of booking of flight ticket. He further stated that there were not fixed pattern of receiving/giving payment or charges for such activities. Most of the time, he received payment from his clients in cash form and after retaining his profit/commission amount, he used to give the payment to a person referred by Shri Sumit@Ahmedabad in cash form only. The said referred person used to collect such amount from him in person. He also stated that sometimes, on his direction, his client used to make direct payment to Shri Sumit@Ahmedabad through UPI and his commission/charges were paid to him in form of cash by them.

- On being asked about the examination of data retrieved from his mobile revealed that there were several chats, between him and (917041185804@s.whatsapp.net) (saved as Hare Krishna in his mobile phone). The said chats also revealed that Shri Hare Krishna had also shared to him, visa, flight ticket etc. of several persons. In this regard, he stated that Shri Hare Krishna is also a travel agent in Dubai. The similar kind of activities as stated above in respect of Shri Sumit@Ahmedabad was done by Shri Hare Krishna @ Dubai. He used to get visa issued and get the flight ticket booked through Shri Hare Krishna@Dubai. In such cases, He collected similar amount as stated in the answer to the above regarding Shri Sumit@Ahmedabad from his clients in cash form and when he used to travel Dubai, he used to make payment to Shri Hare Krishna in person in the form of cash only. He did not have any whereabouts of Shri Hare Krishna except his mobile no. as above.

8.5. During the course of recording of the statements of Shri Narendrakumar L. Chaudhari dated 07.04.2024, 20.04.20204 & 04.07.2024 and the statement of Ms. Bhartiben J. Pamanani dated

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07.04.2024 respectively (Refer RUD-05 & 07), they inter-alia stated that a person namely Shri Dhaval Chaudhari@Dubai had booked ticket for said trip and made all the arrangements for the said activity of the smuggling of gold from Dubai into India. Further, they admitted that they were got ready for smuggling of such gold from Dubai into India through SVPI, Airport Ahmedabad on the monetary consideration of Rs. 50,000/- as a commission to each for the execution of such type of smuggling activity. However, Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamanani were unable to provide the whereabouts of Shri Dhaval Chaudhari residing at Dubai. As, Shri Dhaval Chaudhari is residing at Dubai and managing all the smuggling activity from Dubai. Hence, no action could be initiated against Shri Dhaval Chaudhari@Dubai. However, during the statement, Shri Narendrakumar L. Chaudhary had provided contact no. 9638342829 of Shri Dhaval Chaudhary@Dubai.

8.6. On analysis of SDR/CDR obtained from the respective service providers in respect of mobile nos. of the involved persons namely Shri Narendrakumar L. Chaudhari using Mob. No. 9798998885, Shri Dhaval Chaudhari (as provided by Shri Narendrakumar L. Chaudhari) using Mob. No. 9638342829 and Ms. Bhartiben J. Pamanani using Mob. No. 9662214150, it appears that the mobile no. 9638342829 belonging to Shri Dhaval Chaudhary was subscribed on the name of Shri Mayur Chaudhary, which was deactivated and address provided in the said CDR/SDR in respect of the said no. was incomplete. On being further analysed the call details of the remaining two numbers, no relevant data/details were noticed from the details of CDR.

9. SUMMATION

9.1. Investigation so far conducted and statements of Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani, it evidently led to the findings that, in a very planned manner, Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani attempted to smuggle 02 gold bars into India through SVPI Airport Ahmedabad from Dubai in association with Shri Dhaval Chaudhari@Dubai. Shri Dhaval Chaudhari@Dubai had managed and facilitated to the said persons to execute such type of smuggling activity in India. The said two gold bars were recovered by the officers of DRI during the course of interception & subsequently conducting physical examination of Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani. They also in their statements

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inter-alia stated that they had not bought the said gold and they did not have any purchase documents of such gold bars. They also inter-alia stated that all such gold bars were given by Shri Dhaval Chaudhari@Dubai for smuggling into India through SVPI, Airport Ahmedabad. They also in their respective statements inter-alia admitted that they agreed to smuggle such gold bars in lieu of consideration/commission of Rs. 50,000/- along with flight tickets for journey of themselves from India to Dubai and from Dubai to India.

9.2. From all the foregoing paras, it appears that 02 gold bars having purity of 999.0/24 Carat, totally weighing of 2998.900 grams and having a market value of Rs. 2,19,54,947/- were attempted to be smuggled by Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani into India through SVPI Airport Ahmedabad from Dubai.

9.3. From the above, it evidently appears that process of smuggling of such gold has been undertaken by Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani in connivance with Shri Dhaval Chaudhari had conspired such type of smuggling activity of Gold. Shri Dhaval Chaudhari recruited the above said passengers to perform such types illegal activities for smuggling of gold into India in lieu of monetary consideration/commission and they all formed a syndicate of smuggling of above said gold into India. Shri Dhaval Chaudhari@Dubai appears to be kingpin/mastermind/beneficiary owner of the recovered 02 gold bars. Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani undertook such smuggling activities in lieu of consideration/commission. Hence, it appears that both the above persons involved in the instant case had the common intention to smuggle the gold and evade the applicable custom duty. Hence, it appears that Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani and Shri Dhaval Chaudhari@Dubai are part of the same syndicate for smuggling of above gold bars.

9.4. In view of above, 02 gold bars having purity of 999.0/24 Carat, totally weighing of 2998.900 grams & having a market value of Rs.2,19,54,947/- recovered from Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani are to be treated as smuggled goods as defined under Section 2(39) and prohibited goods as defined under Section 2(33) of the Customs Act, 1962 as the same were brought into India, attempting

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to smuggle into India by violating the provisions of the Customs Act, 1962 and FTP.

9.5. From all the above foregoing paras, it evidently appears that Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani with the nexus of Shri Dhaval Chaudhari have conspired to smuggle the above 02 gold bars having purity of 999.0/24 Carat, totally weighing of 2998.900 grams & having a market value of Rs.2,19,54,947/- . The offences committed by Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani have also been admitted in their respective statements recorded under Section 108 of the Customs Act, 1962 as mentioned in para supra. The market value of above gold is Rs. 2,19,54,947/-, which is more than one Crore. The same were seized under Section 110 of the Customs Act, 1962 as the same were liable to confiscation under Section 111 of the Customs Act, 1962.

9.6. From the above, it also established that they have knowingly concerned themselves in an offence punishable under Section 135(1) of the Customs Act, 1962, as they had knowingly involved themselves in dealing/carrying with 2998.900 grams of smuggled Gold having purity of 999.0/24 Carat for total market value of Rs. 2,19,54,947/- and concerned themselves in carrying, removing, depositing, harbouring, keeping, concealing of smuggled Gold, which they knew and/or had reasons to believe that the same were liable to confiscation under Section 111 of the Customs Act, 1962.

10. LEGAL PROVISIONS: -

10.1. 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.

10.2. 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

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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.

10.3. 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

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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.

10.4. Condition 41 of S1. 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.*

10.5. Baggage Rule, 2016 –

10.5.1. 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”.

10.5.2. 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.

10.6. 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

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Government vide DGFT's Notification No. 49/2015-2020 dated 5th 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).

10.6.1. 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).

10.7. 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 bars having purity of 999.0/24 Ct recovered from Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani are 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 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.

10.8. 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.

10.9. Further, in terms of provisions under Section 123 of the Customs Act, 1962, it is the responsibility of the person who is in possession of the said gold / silver or the person claiming ownership of the same, to prove that the same were not smuggled gold. Relevant provisions of Section 123 of the Customs Act, 1962 are as under:

Section 123: Burden of proof in certain cases. -

- (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.*

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

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

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

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported,

contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

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

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

10.11. 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,

10.12. Section 119: Confiscation of goods used for concealing smuggled goods:

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

10.13. 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.

11. VIOLATIONS & CONTRAVENTION OF VARIOUS PROVISIONS:

11.1. The seized goods, 02 gold bars having purity of 999.0/24 Carat, totally weighing of 2998.900 grams & having a market value of Rs. 2,19,54,947/- have been attempted to be illegally smuggled into India without declaring before the custom authority in violation of the provisions of the Customs Act, 1962 & FTP and Custom Baggage Rules. The said gold bars do not also appear to be allowed to be imported by Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani keeping the restrictions on such import under the provisions of FTP and Customs Act, 1962. Hence, it appears that the said 02 gold bars were brought into India with a motive to smuggle into India by way of fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Therefore, the same prohibited goods may be treated as imported illegally into India and liable to confiscation under the provisions of Section 111(d), (l) & (m) of the Customs Act, 1962.

12. ROLE OF PERSONS IN THE ABOVE SMUGGLING OF GOLD:

12.1. Role of Shri Dhaval Chaudhari@Dubai:

12.1.1. On carefully going through the evidences available on record in the form of statements of Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri Dhaval Chaudhari@Dubai was the mastermind to smuggle the said 02 gold bars into India through SVPI Airport, Ahmedabad from Dubai. He recruited both the said passengers and assigned the said work to execute such smuggling activities from Dubai to India offering them commissions and flight tickets, lodging and fooding as well. Shri Dhaval Chaudhari instructed and handed over the said 02 gold bars to Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani for undertaking such smuggling activities. However, whereabouts of Shri Dhaval Chaudhari@Dubai was not found. Thus, he has not joined with the investigation and he has not come forward to prove his innocence in the smuggling of gold by above said persons. He recruited/managed Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani as the carriers of such attempted smuggled gold items against

the commission/monitory consideration. They provided the ticket for travel and monetary considerations to the above said persons as admitted by both of the carriers in their respective statement. Hence, it appears that Shri Dhaval Chaudhari@Dubai in a very planned manner attempted to smuggle 02 gold bars through Narendrakumar L. Chaudhary and Ms. Bhartiben J. Pamnani from Dubai to India through SVPI Airport. The said Gold Bars recovered and seized are liable to confiscation under Section 111 of the Customs Act, 1962. Thus, he appears to be the mastermind/beneficiary in this entire smuggling racket of the above 02 gold bars.

12.1.2. Therefore, Shri Dhaval Chaudhari has concerned himself in the act of smuggling of foreign origin 02 gold bars and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

12.2. Role of Shri Narendrakumar L. Chaudhari:

12.2.1. From evidences gathered, both oral and documentary, available on records, clearly established the role of Shri Narendrakumar L. Chaudhari, resident of 264, Visnagar, Tirupati Panchsheel Society, Mehasana, who has indulged himself in act of carrying of 01 gold bar, totally weighing 1499.500 grams having purity of 999.0 (24 Kt), total market value of Rs. 1,09,77,840/- out of totally smuggled by himself and Ms. Bhartiben J. Pamnani in jointly as 2998.900 grams, having market value of Rs. 2,19,54,947/- from Dubai to India through SVPI, Airport Ahmedabad. He came from Dubai to India with an intention to smuggle of the above 02 gold bars into India belonging to Shri Dhaval Chaudhary@Dubai for monetary considerations and for personal enrichment in connivance with the kingpin/mastermind/beneficiary owner Shri Dhaval Chaudhari. He himself in his statement described that he and Ms. Bhartiben Jagdishbhai Pamnani were part of the plan of smuggling of above two gold bars, which were recovered and seized by the officers of DRI. Shri Narendrakumar Lavjibhai Chaudhari also admitted that he had introduced Ms. Bhartiben J. Pamnani to Shri Dhaval Chaudhari. Investigation also led to findings that Shri Dhaval Chaudhari@Dubai offered him and Ms. Bhartiben J. Pamnani commission

of Rs. 50,000/- to each in lieu of carrying the said two gold bars with them (carried one gold bar by each). During the course of interception, Shri Narendrakumar Lavjibhai Chaudhari was also enquired by the officers of DRI, whether, he wanted to declare any dutiable item before the custom authority, to which he had denied. Shri Narendrakumar L. Chaudhari did not have any documents/purchase documents in respect of both the gold bars, which were attempted to be smuggled. Hence, he appears to be important part of the syndicate of such smuggling of 02 gold bars in nexus with Ms. Bhartiben J. Pamnani and Shri Dhaval Chaudhari@Dubai.

12.2.2. The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-reas on the part of Shri Narendrakumar L. Chaudhari with a view to avoiding payment of Customs duty. It therefore, appears that Shri Narendrakumar L. Chaudhari, was not inclined to declare the goods viz. gold items that he was carrying before the Customs Authorities. Thus, 02 gold bars concealed by them, totally weighing 2998.900 grams, purity of 999.0 24 Kt and having market value of Rs.2,19,54,947/-, recovered from the possession of Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani, were illegally attempted to be smuggled by them into India without declaration and payment of appropriate Customs duties.

12.2.3. Therefore, Shri Narendrakumar L. Chaudhari has concerned himself in the act of smuggling of 02 gold bars and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

12.3. Role of Ms. Bhartiben J. Pamnani:

12.3.1. From evidences gathered, both oral and documentary, available on records, clearly established the role of Ms. Bhartiben J. Pamnani, resident of 13, Jyoti Bunglows, Ramosana Road, Mehsana - 384001 who has indulged herself in act of carrying of 01 gold bar, totally weighing 1499.500 grams having purity of 999.0 (24 Kt), total market value of Rs.1,09,77,840/- out of totally smuggled by herself and Shri Narendrakumar L. Chaudhari in jointly as 2998.900 grams, having market value of Rs.2,19,54,947/- from Dubai to India through SVPI,

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Airport Ahmedabad. She alongwith Shri Narendrakumar L. Chaudhari came from Dubai to India with an intention to smuggle of the above 02 gold bars into India belonging to Shri Dhaval Chaudhary@Dubai for monetary considerations and for personal enrichment in connivance with the kingpins of smuggling racket viz Shri Dhaval Chaudhari. She herself in her statement described that she and Shri Narendrakumar L. Chaudhari were part of the plan of smuggling of above two gold bars, which were recovered and seized by the officers of DRI. Ms. Bhartiben J. Pamnani in her statement also admitted that she was introduced to Shri Dhaval Chaudhari by Shri Narendrakumar L. Chaudhari, who is her family friend. Investigation also led to the findings that Shri Dhaval Chaudhary@Dubai offered Ms. Bhartiben J. Pamnani and Shri Narendrakumar L. Chaudhari commission of Rs. 50,000/- to each in lieu of carrying the said two gold bars with them (carried one gold bar by each). During the course of interception, Ms. Bhartiben J. Pamnani was also enquired by the officers of DRI, whether, she wanted to declare any dutiable item before the custom authority, to which she had denied. Ms. Bhartiben J. Pamnani did not have any documents/purchase documents in respect of both the gold bars, which were attempted to be smuggled. Hence, she appears to be important part of the syndicate of such smuggling of 02 gold bars in nexus with Shri Narendrakumar L. Chaudhari and Shri Dhaval Chaudhary@Dubai.

12.3.2. The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-reas on the part of Ms. Bhartiben J. Pamnani with a view to avoiding payment of Customs duty. It therefore, appears that Ms. Bhartiben J. Pamnani, was not inclined to declare the goods viz. gold items that she was carrying before the Customs Authorities. Thus, 02 gold bars concealed by them, totally weighing 2998.900 grams, purity of 999.0 24 Kt and having market value of Rs.2,19,54,947/-, recovered from the possession of Shri Narendrakumar L. Chaudhari and Ms. Bhartiben J. Pamnani, were illegally attempted to be smuggled by them into India without declaration and payment of appropriate Customs duties.

12.3.3. Therefore, Ms. Bhartiben J. Pamnani has concerned himself in the act of smuggling of 02 gold bars and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to

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confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

13. Accordingly, a Show Cause Notice was issued to **(i)** Shri Narendrakumar Lavjibhai Chaudhari, 264, Visnagar, Tirupati, Panchsheel Society Mehsana-384315, Gujarat **(ii)** Ms. Bhartiben Jagdishbhai Pamnani, resident of 13-Jyoti Bunglows, Ramosana Road, Mehsana-384001 **(iii)** Shri Dhaval Chaudhari@Dubai as to why:-

- i. 02 gold bars totally weighing 2998.900 grams having purity of 999.0/24 Carat and market value of Rs.2,19,54,947 seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- ii. Penalties should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.
- iii. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

14. Defense reply and record of personal hearing:

14.1 Defense Reply of Noticee No. 1 & Noticee No. 2 i.e Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani:- The noticee Shri Narendra L Chaudhari and Ms. Bhartiben Jagdishbhai Pamnani through their advocate have submitted their written submission vide letter dated 10.12.2024 and 21.02.2025 wherein he mentioned that their clients were not involved in any smuggling or attempt of smuggling in the incident on 06.04.2024. their clients acted in a completely bonafide manner upon landing at Airport. Upon Arrival and after immigration check, their clients themselves informed the officers that they were carrying gold bar with them. The said can be ascertained from CCTV footage of the said date. He submitted that their client had not concealed the gold bar in any manner but carried the same with them in their hand luggage. He submitted that instead of guiding them with declaration, a case was made out as if they had attempted to smuggle the said gold bar into India. He reiterated that their clients are bonafide passengers and there was no attempt on their part to illegally smuggled gold bar as alleged in SCN and therefore, the penal action is not warranted in the facts of present case.

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The allegations in SCN are unjustified as none of them are sustainable under law. He submitted that with regard to contention in Para 1 and Para 2 regarding exiting through green channel without declaring the gold bar, is completely false. He submitted that their clients were carrying the gold bar in their hand luggage for their personal use and with bonafide intention to declare the same with the authorities. He submitted that their clients had approached the customs officers for informing them that they were carrying gold with them and the fact can be ascertained from CCTV footage of the said date. Their clients were carrying the gold in their hand luggage bag and not concealed in any manner. These facts clearly shows that their clients were never involved in smuggling or attempt thereof. He submitted that there was no ingenious concealment of the gold bars and putting them in their hand luggage for the purpose to keep them secure. Reference is made to CBIC Circular No. 495/5/92-Cus VI dated 10.05.1993 which lays down that in case where there is no concealment of gold, option to redeem should be granted to person. He submitted that his clients are bonafide passengers, who had brought the gold bar from Dubai for their personal use and had intention to declare the same.

He further submitted that they have disputed the veracity of the complete statement as mentioned in Para 5.2 and 5.3 of SCN. He submitted that his clients are not well versed with English language and therefore, they could not apprehend the statement taken by the authorities under Section 108 of Customs Act, 1962. He submitted that the part of statement where it was mentioned that his clients had brought the gold on behalf of Shri Dhaval Chaudhari is completely false. It is settled law that in cases like the instant case where there are allegation of smuggling and there is dispute of facts, CCTV footage can be considered to be best possible evidences to come to truth of the matter. (Mohammed Haroon Vs. Additional Director General of Revenue Intelligence, Chennai, 2021 (378) E.L.T 754 (Mad.)

He further submitted that from the forensic analysis of belongings did not reveal anything incriminating against his clients. He submitted that gold is not absolutely confiscable and can be imported on payment of duty. The gold bars was lying in hand luggage and the same was not concealed in discreet place. Without prejudice to the foregoing, it is further submitted that the gold bars should be allowed on payment of redemption fine. The Hon'ble Supreme Court, High Courts and Appellate Fora have allowed for redemption of seized gold in numerous cases

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identical to the case in hand. Reference is made to Union of India Vs. Dhanak M Ramji 2010 (252), E.L.T.A 102 (S.C) and Shaikh Jamal Basha Vs. G.O.I 1997 (91) E.L.T 277 (A.P) wherein the courts have held that Section 125 of the Act leaves option to the officer to grant the benefit of redeem the goods by paying fine in lieu of confiscation so far as goods, which can be imported, but because of the method of importation adopted, become liable for confiscation.

Regarding the penalty, he submitted that the matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the case of M/s. Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with the knowledge that he was required to act otherwise; penalty might be imposed. He submitted that penalty is quasi-criminal matter and therefore, it could be resorted to only incases where malafide intention or guilty conscious of an assessee was established. In the facts of present case where no suggestion or allegation of any malafide intention to evade payment of duty is even made out against the clients. There is no justification in imposition of penalty in law as well in facts.

He requested to re-export the seized gold bars. His clients states that they had no intention to importing the gold bar without payment of any custom duty and the same was brought on behalf of Mr. Dhaval Chaudhari. Now considering the ensuing circumstances wherein gold has been wrongfully confiscated by the authorities, their clients is inclined to re-export the said jewellery. This issued has been considered by the GOI in case of Surya Babbar reported in 2018 (364) ELT 1196 wherein considering series of decisions rendered prior thereto, the GOI has held that option of re-export is always available to the noticee and should be allowed. He submitted that the gold is not prohibited but is permitted on payment of custom duty. Thus, the said option of re-export may be extended to his clients. If re-export is allowed, his client shall made necessary travel plans for the same purpose as well. In recent cases of the appellate tribunals, the adjudicating authority held that the gold items were liable for absolute confiscation, such orders were challenged before appellate authorities and

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such order have been consistently set aside holding and declaring that the gold jewellery carried by the passengers are not prohibited items but amenable to payment of customs duty. In such circumstances the said gold items should not be absolutely confiscated and should be permitted to be released on payment of customs duty and penalty, if any considering the facts and circumstances of the case. He relied upon the decision of Appellate Tribunal in case of Lookman Mohamed Yusuf Vs. Commissioner, Ahmedabad, 2024 (17) CENTAX 4 (Tri-AMD) and Waqar Vs. Commissioner, 2023 (11) Centax 123 (Tri.ALL). He submitted that the allegation and contentions of the SCN are unsustainable in fact and in law and therefore, all the allegations as well as the contentions deserve to be vacated and withdrawn.

14.2 Defense Reply of Noticee No. 3 i.e Shri Dhaval Chaudhari@Dubai:-

The noticee has not submitted any defense reply.

Personal Hearing:-

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

Noticee No. 1 and Noticee No. 2: i.e Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani:

The noticee was given opportunity for personal hearing on 10.02.2025 & 21.02.2025. Smt. Prabhdeep Kaur, Advocate and Authorized Representative appeared for personal hearing on 21.02.2025 on behalf of Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani. She submits a written submission. She further submits that re-export or release of the goods may be permitted on imposition of token redemption fine/penalty, if any, in light of the submission made.

Noticee No. 3: Shri Dhaval Chaudhari@Dubai:

The noticee was given opportunity for personal hearing on 10.02.2025, 21.02.2025 & 21.03.2025 and same were served by affixing the same on the Notice Board of H.Q in terms of provision of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

Discussion and Findings:

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

16.1. Before discussing the allegations levelled in the impugned SCN in light of submissions of the noticees, it is imperative to mention that the Noticee No. 1 and Noticee No.2 i.e Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani in the submission made through their advocate, have contested that they are not well versed with english language and could not comprehend the statement taken by the authorities under Section 108, Customs Act, 1962. They submitted that the part of the statement which states they had brought the gold on behalf of one Shri Dhaval Chaudhari is completely false. I find that the said noticees had admitted in their respective statements that they have given statements voluntarily and without any inducement, threat and coercion or by any improper means. I find that they gave their statement voluntarily under Section 108 of Customs Act, 1962 and as per their say without any threat, pressure and inducement and after going through the correctness of the facts recorded in their statement, they put their signature with full presence of mind. I find from the content of respective statements tendered by the noticees that the statements were typed on computer in english as per their request and same was explained to them. I find that the noticee has not submitted any documents substantiating the fact/claim. The retraction of statement (if given under duress/pressure) under Section 108 has to be backed by some evidences to substantiate the statement were recorded under duress/threat/pressure/inducement. The statement under section 108 of the Customs Act, 1962 is voluntary and they were at liberty to not endorse the typed statements as per their say, if the same had been not correct. Therefore, I donot find any force in the contention of the noticees in this regard. If they had any problem with english typed statement, they were at liberty to ask the

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officer to type in the language in which they were comfortable at the time of recording of the statements and they could also write their statement in their own handwriting, which they failed to do so. The submission of the said noticees that they were not well versed with English and the statements were false, is obviously an afterthought and strategy to mislead or detrain the entire process. It is on the record that the noticee has tendered his statement(s) voluntarily under Section 108 of the Customs Act, 1962. I find that the statement recorded under Section 108 of the Customs Act, 1962 has evidentiary value under the provisions of law. The Judgment relied upon in this matter as follows:-

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

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reported in 2001 (134) ELT 3 (SC) categorically held that "Statement recorded by the Customs officer under Section 108 of the Customs Act, is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."

(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. "

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

- i.** Whether the goods seized are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;
- ii.** Whether, seized Gold bars weighing 2998.900 Grams of purity 999.0/24kt concealed in hand luggage by the noticees Shri Narendrakumar Lavjibhai Chaudhari and Ms. Bhartiben Jagdishbhai Pamnani having a market value of Rs.2,19,54,947 /- is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.

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

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

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

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

19. I will now examine allegations made in SCN and the submission made by the noticees one by one as per the relevant law and as per the provisions: -

19.1 I find that based on specific intelligence, officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as 'DRI') had intercepted two passengers namely Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani, who were trying to exit through green channel without making any declaration, that both were trying to smuggle huge quantities of contraband/primary gold of foreign origin from Dubai to Ahmedabad. Upon examination of the shoulder bag and purse, two yellow coloured two bars were recovered. It is on the record that after completion of the procedure of weighment and purity check, Shri Kartikey Vasantrai Soni, the Govt. Approved Valuer submitted the valuation reports vide Certificate No: 030 / 2024-25 and 031/ 2024-25 dated 07.04.2024 in terms of the Notification No. 25/2024-Customs (N.T.) dated 28.03.2024 (gold) and Notification No. 27/2024- Customs (N.T.) dated 04.04.2024 (exchange rate) and informed that 02 numbers of gold bars totally weighing of

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2998.900 grams, having purity of 999.0 (24 Kt.), total market value of Rs. 2,19,54,947/- . The details are as :-

SR No	Details of Items	PCS	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold Bar (recovered from Mr. Narendrakumar Lavjibhai Chaudhari)	1	1499.500	999.0 24Kt	10977840	8929687
2	Gold Bar (recovered from Ms. Bhartiben Jagdishbhai Pamnani)	1	1499.400	999.0 24Kt	10977107	8929092
	Total	1	2998.900		21954947	17858779

It is uncontested fact that the gold in form of bars were not declared to the Customs Under Section 77 of the Customs Act, 1962 and both noticees were 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 bars, which were found concealed and recovered in manner as described above, from Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani in prescribed declaration form. In their submission they have contested that they have approached the officer on duty after completing immigration formalities, in this regard, I find that in their voluntary statements and content of panchnama, they have intercepeted while they are trying to exit through green channel without any declaration and in their respective statements both noticees admitted that they want to remove the gold bars illicitly and clandestinely without declaring to the customs to evade the payment of Customs Duty. I find from the records that no retraction had been filed by any of the noticees, therefore, I hold that the content of panchnama and statements are correct and true and contention of noticees are afterthought and without backed by any documentary evidences. If they were true that they want to declare the gold in the form of bars lying with them, then they should approach red channel to declare the same, irrespective of doing so they were trying to exit through green channel without making any declaration, which proves that the claim made by them they were approached the on duty customs officer for guidance for declaration is afterthought. Moreover, I

find from the statement of Shri Narendrakumar L Chaudhari and Smt. Bhartiben J Pamnani that they were frequent fliers and visited abroad seven time and four time earlier respectively, which makes sense that they were well equipped with the customs procedure and therefore, they were well aware that if they have dutiable goods with them, they have to approach red channel to declare the same but they have failed to do so. Further, I find that both noticees were 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.

19.2 I find from the submission that they have mentioned that they had brought the gold for their personal use and the part of statement wherein it was mentioned that the gold was brought for Shri Dhaval Chaudhari, is false and incorrect. In this regard, it is pertinent to mention that merely claiming that they have brought the gold for their personal use and not for someone else, does not make them the owner of the gold. I find that both noticee i.e Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani have not submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. If they had purchased gold themselves and for their personal use, they must have some purchase invoices in the name of them and have some transaction details for the purchasing the same, but they have failed submitted any such documentary evidences in terms of Section 123 of the Customs Act, 1962 which stipulates as: -

Section 123. Burden of proof in certain cases. -

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

- (a) in a case where such seizure is made from the possession of any person, -
 - (i) on the person from whose possession the goods were seized; and

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

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

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

In the instant case, the burden of proving that the gold bars are not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bars having net total weight 2998.900 grams of foreign origin are not smuggled in nature lie on Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani from whose possession the gold was recovered or other noticees, if claims ownership of the impugned gold seized on 07.04.2024. The gold in form of bars recovered from Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani and both admitted to have smuggled it into India in their respective voluntarily statements recorded under Section 108 of Customs Act, 1962. The test report shows that the gold bars were found to be purity of 999.0/24Kt. I find that neither in their written submission nor during the personal hearing of Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani have submitted any purchase invoices/bank statement regarding purchase or other legitimate documents which establish their ownership, therefore, I hold that merely claiming the ownership on the gold, without any documentary evidences does not make them the owner of the gold. **Also, in their written submission, they have contradicts themselves, as on one hand they have mentioned in para 8 that they have brought the gold for their personal use and claimed that the part of statement wherein it was mentioned that they have brought the gold for a person named Shri Dhaval Chaudhari is not correct and false and on other hand at para 14, they have submitted that "they have brought the gold on behalf of Shri Dhaval Chaudhari."** Thus, they failed to discharge their

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'burden of proof that the Gold was legally imported/possessed and also they had not declared the same to the Customs in the prescribed Indian Customs Declaration Form. Applying the ratio of the judgments of the Hon'ble Supreme Court in the matter of Om Prakash Bhatia Vs Commissioner of Customs [2003 (6) SCC 161] and the Hon'ble High Court, Madras in the case of Samynathan Murugesan Vs. Commissioner of Customs 1201,0 (254) ELT A0151, I find that the said smuggled Gold Bars weighing 2998.900 grams of foreign origin are liable to absolute confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962 and accordingly, the claim of ownership on gold does not hold ground as they have not even purchased or have any legitimate documents which establish their ownership.

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where Gold Bars weighing 2998.900 grams of foreign origin were seized under Section 110 of the Customs Act, 1962 on reasonable belief that they were smuggled in to India from Dubai. As per Sub-Section 2 of Section 123 of the Customs Act, 1962, onus for proving that the seized gold bars, having total net weight 2998.900 grams and valued at Rs. 2,19,54,947/- are not of smuggled in nature, shall be on Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani, from whose possession the impugned goods were seized. Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani were the two persons, traveling together, intercepted with the gold bars having total net weight 2998.900 grams, found in possession of Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani. I find from the statements of both noticees i.e Noticee No. 1 and Noticee No. 2 recorded under Section 108 of Customs Act, 1962, that the said gold bars was given to them a person named Shri Dhaval Chaudhari cousin of Shri Narendrakumar L Chaudhari for smuggling and for doing so they would get Rs. 50,000/-. I find that the noticee Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani could not produce any valid legal documents for procuring or transporting or possessing such gold of foreign origin. In their statements recorded under Section 108 of Customs Act, 1962, they admitted that they were aware that the gold bars, they were carrying, had been smuggled into India from Dubai and they were

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knowingly carrying the smuggled gold from Dubai to Ahmedabad for monetary benefits. It shows that knowingly and consciously they were involved in carrying and handling the foreign origin gold which they have reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended. They in their statement admitted that the gold was not purchased by them and was given by someone else at Dubai to smuggle the same into India.

19.3 I also find that the noticee Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of their statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the noticees. In fact, in their statements dated 07.04.2024, they have clearly admitted that they had travelled from Dubai to Ahmedabad carrying gold bars with them, to smuggle the same and conceal in the manner that the same was not noticed by the Customs Authority. They have mentioned that they were aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. By using the modus of concealing the gold in their bags, without declaring to the Customs on arrival in India, it is observed that the both noticees were fully aware that the import of said goods is offending in nature. I find under submission, that they have mentioned that they have approached the on-duty officers for guidance and same was ascertained from the CCTV footage and request to share the CCTV footage. Regarding, this, I find no such request for sharing CCTV footage for the date 06.04.2024 by any of noticees at any stage of investigation and after that. If they were correct and true they have to ask the officers for the same at that time only however, they failed to do so which make, it clear that they have intercepted by the officers while they were trying to exit through the green channel. Asking the same after lapse of more than a year, is just

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

19.4 It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the both noticees had not filed the baggage declaration form and had not declared the said gold which was in their possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were tried to exit through Green Channel which shows that the noticees were trying to smuggle the goods and trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticees have not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold bars total net weighing 2998.900 Grams recovered from the possession of Ms. Bhartiben Jagdishbhai Pamnani and Shri Narendrakumar Lavjibhai Chaudhari having market value of Rs. 2,19,54,947/-, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, both the noticees

have not fulfilled the conditions of eligible passenger to bring 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.

19.5 As per the provisions of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

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

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

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

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

If,-

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

(a)carried by the eligible passenger at the time of his arrival in India, or

(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 both noticees. As per the respective statements of Ms. Bhartiben Jagdishbhai Pamnani and Shri Narendrakumar Lavjibhai Chaudhari recorded under Section 108 of the Customs Act, 1962, both went to Dubai on 02.04.2024 and returned on 06.04.2024 well before the stipulated time of stay. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such 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

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(13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be 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 goods i.e gold bars in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

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

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

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

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

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

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In this regard, I find that gold bars weighing 2998.900 grams recovered from the possession of Ms. Bhartiben Jagdishbhai Pamnani and Shri Narendrakumar Lavjibhai Chaudhari having market value of Rs. 2,19,54,947/- and admittedly smuggled into India. On test, those gold were found to be of purity of 999.0/24kt. Further, I find that both the noticees could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign found in person of Ms. Bhartiben Jagdishbhai Pamnani and Shri Narendrakumar Lavjibhai Chaudhari, thus failing to discharge their "burden of proof" that the gold was legally imported/possessed. They have also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

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

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

20. Under their submission, the noticees have requested to redeem the gold on payment of redemption fine and relied on the various case law in case of Union of India vs. Dhanak M Ramji 2010 (252) E.L.T.A 102(S.C) and Shaikh Jamal Basha Vs. G.O.I 1997 (91) E.L.T 277 (A.P). On Plain reading section 125 of Customs Act, 1962, I find that, the officers may allow the redemption fine, if he finds fit. The relevant portion of the same is as:-

Section 125. Option to pay fine in lieu of confiscation. -
(1) *Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for*

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the time being in force, and shall, in the case of any other goods, give to the owner of the goods¹ [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

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

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

The noticee has submitted various judgment wherein Redemption fine is allowed for release of Gold, on contrary I relied on the following judgment wherein redemption fine is not allowed which are as :-

20.1 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]

20.2 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.

20.3 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).

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

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

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

20.5 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".

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

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

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

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 both noticees i.e Ms. Bhartiben Jagdishbhai Pamnani and Shri Narendrakumar Lavjibhai Chaudhari to redeem the gold weighing 2998.900 grams on payment of redemption fine, as envisaged under Section 125 of the Act.***

22. The noticees in their submission have requested for allowing the gold bars for re-export. Section 80 of the Act reads as under:

"Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been

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made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name".

22.1 I find that Section 80 of the Act does allow re-export of goods but the important point to be seen is as to whether there has been a true declaration of the goods on arrival. In the present case, I find that both noticees had not requested for re-export of the seized Gold neither at any time after their arrival at SVPI Airport nor during the whole proceedings. So, I find that request made by them for re-export of gold bars is merely an afterthought and cannot be considered. The noticees repeatedly denied of having gold with them at the time of investigation and gold bars were recovered after through checking of their baggage as well as their personal search. So, their contention that they wanted to declare the gold is merely afterthought. Further, it is already established and an admitted fact that there was no declaration made of the gold bar concealed by the noticees. Therefore, the option under Section 80 of the Act would not be applicable to them. The request for re-export is therefore, rejected.

23. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bars weighing 2998.900 grams, carried by both noticees are therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said gold bars total net weighing 2998.900 grams (1499.500 Grams & 1499.400 Grams), recovered from Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani respectively and placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.**

24. As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticees Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani, *I find that in the instant case, the principle of mens-reas on behalf of noticees are established as both the noticees has failed to follow the procedure and intentionally involved in smuggling of the gold.* On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down

in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "*The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.*" In the instant case, the noticees were attempting to smuggled the gold in form of bars and attempting to evade the Customs Duty by not declaring the gold bars net weighing 2998.900 grams (1499.500 Grams & 1499.400 Grams) having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on their part. I further find that the noticees had involved themselves and abetted the act of smuggling of the said gold bars weighing 2998.900 grams (1499.500 Grams & 1499.400 Grams), carried by them. They have agreed and admitted in their respective statements that they had travelled from Dubai to Ahmedabad with the said gold in form of bars concealed in their hand luggage. Despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticees attempted to smuggle the said gold of 2998.900 grams (1499.500 Grams & 1499.400 Grams), having purity 999.0 by concealment. Thus, it is clear that the noticees have 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 both noticees named Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani are liable for the penalty under Section 112(a) & 112(b) of the Customs Act, 1962 and I hold accordingly.

24.1 Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no

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express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019. The detailed discussions in the preceding paragraphs clearly prove that the both noticees not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, both noticee accepted to carry the gold in form of bars for monetary benefit and involved themselves in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticees named Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani.

25. Now, I come to allegation in the Show Cause Notice that as to whether penalty should not be imposed upon Shri Dhaval Chaudhari (Noticee No. 03) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962.

From the records available on file as documentary as well as digitally and voluntary statements tendered by Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani under Section 108 of Customs Act, 1962, I find that Shri Dhaval Chaudhari was the person who handed over the gold bars to both noticees for smuggling of the same to India and offered them commission, flight tickets, lodging and fooding as well. I find that both the noticees have neither submitted their defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Further, Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in their voluntary statement tendered before DRI officers at any stage of investigation. From the details on records and from Statements of Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani, I find that Shri Dhaval Chaudhari was the person who manages the all the activities and handed over the gold bars to both noticees i.e Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai

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Pamnani to smuggle the same in India and accordingly, participated in the activity related to smuggling of gold and a part of syndicate. It is seen that the noticee Shri Dhaval Chaudhari has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. His non-appearance before the Investigating Authority and even before the Adjudicating Authority during the entire process of investigation and adjudication respectively alongwith Call Data Records and statements of Noticees i.e Shri Narendrakumar Lavjibhai Chaudhari & Ms. Bhartiben Jagdishbhai Pamnani reveal that he was involved in the smuggling of the said gold bars. If the Noticee No. 03 (Shri Dhaval Chaudhari) was a law-abiding citizen, he would have appeared before the DRI to prove his innocence. It, is therefore, proved beyond doubt that the noticee Shri Dhaval Chaudhari has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

26. Accordingly, I pass the following Order:

ORDER

- i. I order **absolute confiscation** of 02 Gold bars weighing 2998.900 grams (1499.500 Grams & 1499.400 Grams) of purity 999.0/24kt having a market value of **Rs. 2,19,54,947/-** (Rupees Two Crore Nineteen Lakhs Fifty-Four Thousand Nine Hundred Forty-Seven only) and Tariff Value of **Rs. 1,78,58,779/-** (Rupees One Crore Seventy-Eight Lakhs Fifty-Eight Thousand Seven Hundred Seventy-Nine Only) recovered from the possession of Shri Narendrakumar Lavjibhai Chaudhari and Ms. Bhartiben Jagdishbhai Pamnani, placed under seizure under panchnama dated 07.04.2024 and seizure memo order dated 07.04.2024 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;

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- ii. I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on **Shri Narendrakumar Lavjibhai Chaudhari** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- iii. I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on **Ms. Bhartiben Jagdishbhai Pamnani** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- iv. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Dhaval Chaudhari @ Dubai** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- v. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Narendrakumar Lavjibhai Chaudhari** under the provisions of Section 117 of the Customs Act 1962.
- vi. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Ms. Bhartiben Jagdishbhai Pamnani** under the provisions of Section 117 of the Customs Act 1962.
- vii. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Dhaval Chaudhari @ Dubai** under the provisions of Section 117 of the Customs Act 1962.

27. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-18/2024 dated 30.09.2024 stands disposed of.

(Shree Ram Vishnoi)
 Additional Commissioner
 Customs, Ahmedabad

F. No. VIII/10-221/SVPIA/DRI/O&A/HQ/2024-25 Date:24.04.2025

DIN: 20250471MN000000E39E

By SPEED POST A.D.

To,

- (i) Shri Narendrakumar Lavjibhai Chaudhari, 264, Visnagar, Tirupati, Panchsheel Society Mehsana-384315, Gujarat., E-mail ID: nlchaudharyu1980@gmail.com
- (ii) Ms. Bhartiben Jagdishbhai Pamnani, resident of 13-Jyoti Bunglows, Ramosana Road, Mehsana-384001, Gujarat., E-mail ID: nim.bharati@gmail.com
- (iii) Shri Dhaval Chaudhari@ Dubai

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Copy to :-

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