OIO No:105/ADC/SRV/O&A/HQ/2026-27
F. No: VIII/10-06/DRI/SVPIA/O&A/HQ/2026-27

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

DIN: 20261171MN000061A0EC

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-06/DRI/SVPIA/O&A/HQ/2026-27
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-02/ENQ-74/2025 dated 08.05.2026
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**105/ADC/SRV/O&A/HQ/2026-27**
D	आदेशतिथि/ Date of Order-In-Original	:	**02.11.2026**
E	जारीकरनेकीतारीख/ Date of Issue	:	**02.11.2026**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**(i)**Shri Abdul Nassir Thottathil, S/o Shri Imbichi Moyi Eranhona residing at Kunnummal House, Avilora PO, Kizhakkoth, Kozhikode, Kerala-673572, **(ii)** Shri Jaman/Zaman Sharif @ Dubai, **(iii)** Shri Ismail Kacheri Kunnummal S/o Shri Kunhipocker, residing at Kacheri Kunnummal, Elettil Post, Thamarassery, Kozhikode, Kerala-673572, email id-ismayil2003@gmail.com **(iv)** Shri Althaf Usman S/o Shri Usman Kutty, residing at 376, Jawahar Nagar, Aradhya Apartment, Indore, Madhya

			Pradesh-452012, email id- althaf.usman@yahoo.com and **V)**. Shri Sandeep Mstrao S/o Shri Bhanwarlal Mstrao residing at G-904, Murlidhar Heights, Muthiya, Ahmedabad, email id- sandeeprao934@gmail.com
(1)	यह प्रति उन व्यक्तियों के उपयोग के लए 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 वरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टि कट 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 टि कट लगा होना चाहिए।		
(4)	इस आदेश के वरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अ धकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना ववाद में है या जुर्माना जहां इस तरह की दंड ववाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अ धनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case:

Intelligence developed by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred to as "DRI") indicated that a gold smuggling syndicate was operating through Sardar Vallabhbhai Patel International Airport (SVPI Airport), Ahmedabad, by using international flights arriving from Jeddah and Abu Dhabi.

2. Acting upon the specific intelligence, a team of officers of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, together with independent Panch witnesses, assembled at about 02:40 Hrs. on 14.11.2025 at Bay No. 34R, SVPI Airport, Ahmedabad, for keeping surveillance over the arrival of Indigo Flight No. 6E-76 from Jeddah to Ahmedabad on the said date, as it was suspected that a passenger travelling by the said flight might be carrying contraband / dutiable goods and may clandestinely conceal and leave such goods beneath the seat in the aircraft.

2.1 Upon arrival of the flight and after disembarkation of all passengers, the officers, along with the Panch witnesses, boarded the aircraft and carried out a thorough search of the same, including the concerned seat area. During the course of such search, four capsules wrapped with white tape were

recovered from beneath Seat No. 30F. On verification of the flight manifest, it was found that one passenger namely Shri Abdul Nassir Thottathil was allotted the said seat. Thereafter, the officers rushed towards the Green Channel at the Arrival Hall of Terminal 2, SVPI Airport, Ahmedabad, along with the recovered contraband / dutiable goods and after verifying the passport of the passengers, who had arrived at Ahmedabad by the said flight from Jeddah. Thereafter, one passenger was intercepted at about 03:50 Hrs. and the details of the passenger are as below:

Sr. No.	Name	Father Name	DOB	Passport No.	Address	PNR/ Seat No.
1	Shri Abdul Nassir Thottathil	Imbichi Moyi Eranhona	20.10.1969	T8646460	Kunnummal House, Avilora PO, Kizhakkoth, Kozhikode, Kerala, India-673572	QB 2V3 K/3 0F

2.2. The officers of DRI enquired with Shri Abdul Nassir Thottathil whether he had any goods to declare before Customs, to which the passenger denied. Thereafter the officers informed the passenger i.e. Shri Abdul Nassir Thottathil that his personal search, along with their accompanied baggage, would be conducted. After scanning the baggage in the scanner installed near the green channel of the arrival hall at SVPI Airport, Ahmedabad, the officers did not observe any unusual images indicating objectionable items. Subsequently, the officers systematically checked the entire baggage of the passenger, but found nothing objectionable.

2.3. Thereafter, the officers asked the passenger, Shri Abdul Nassir Thottathil whether he wished to be searched in the presence of an Executive Magistrate or a Superintendent of Customs; he agreed to be searched in front of a Superintendent of Customs (a Gazetted officer). He was then asked to pass through a Door Frame Metal Detector (DFMD) near the green channel in the arrival hall of Terminal 2, SVPI Airport, Ahmedabad, but no beep was heard from the machine.

2.4. Thereafter, in the presence of the Panch witnesses, the officers enquired from Shri Abdul Nassir Thottathil about the four capsules wrapped in pairs with white tape recovered from the pouch found below the seat No. 30F wherein lifesaving jacket was placed. In response, Shri Abdul Nassir Thottathil stated that he had brought the said four capsules wrapped in pairs

with white tape from Jeddah and that, at the time of disembarkation, the said four capsules were concealed by him inside the pouch wherein the life-saving jacket was placed below Seat No. 30F. Further, in presence of the Panch witnesses, when specifically asked, Shri Abdul Nassir Thottathil stated that the said four capsules was containing gold in paste form, that he did not know the exact weight of the capsules or the gold paste contained therein, and that he was not in possession of any purchase bill, invoice or other supporting document evidencing lawful import or possession of the said capsules. Thereafter, in the presence of the Panch witnesses and Shri Abdul Nassir Thottathil, the officers made a small cut on one of the capsules and found that a brown-coloured paste-like material was concealed inside the capsule.

2.5. Thereafter, the officer contacted one of the Government Approved Valuers, Shri Soni Kartikey Vasantrai, and informed him about the aforesaid suspected brown-coloured paste concealed inside four capsules wrapped in pairs with white tape. In response, Shri Soni Kartikey Vasantrai, Government Approved Valuer, informed that the removal and purification of the paste suspected to be gold from the packing material would be possible at his business premises, where requisite melting facility was available, as melting would be required in the present case. Accordingly, the DRI officers, along with the Panch witnesses and the passenger, left the airport in the official vehicle of the DRI office and reached the office of Shri Soni Kartikey Vasantrai. Thereafter, the officers produced before Shri Soni Kartikey Vasantrai the aforesaid four capsules wrapped in pairs with white tape, in which the gold was suspected to be concealed. Shri Soni Kartikey Vasantrai examined the said four capsules and thereafter removed the outer packing of white tape. Upon such examination, it was found that the inner packing of the capsules was made of rubber. The weighment of the said four capsules wrapped in pairs with white tape was carried out and the gross weight was found to be 1392.05 grams with the original packing in pairs, and 1382.17 grams after removal of the outer packing. The photographs of the same were taken and pasted as under:



Image-1

2.6. Further, after extraction of gold from the recovered capsules containing gold paste mixed with chemical substances in semi-solid form, the purity test and weighment of the extracted gold were conducted. After completion of the said procedure, the Government Approved Valuer informed that one gold bar weighing 1246.48 grams and having purity 999.0/24 Kt. was derived from the semi-solid substance consisting of gold and chemical mixture, which had a gross weight of 1382.17 grams. After testing the said bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide Certificate No. 705/2025-26 dated 14.11.2025, certified that the said gold bar was having purity 999.0/24 Kt., tariff value of Rs. 1,43,35,455/- and market value of Rs. 1,62,04,240/- as on 14.11.2025. The value of the gold bar was calculated as per Notification No. 76/2025-Customs (N.T.) dated 31.10.2025 and Exchange Notification No. 41/2025 dated 07.11.2025. The details and weighment picture of which was as under:

S No	Details of Items	PCS	Net Weight in Gram	Purity	Market value (Rs)	Tariff Value (Rs)
1	Gold extracted from the 4 (Four) capsules wrapped in pairs with white tape recovered from Shri Abdul Nassir Thottathil	1	1246.48	999.0/ 24Kt	1,62,04,240	1,43,35,455
	Total	**1**	1246.48		1,62,04,240	1,43,35,455

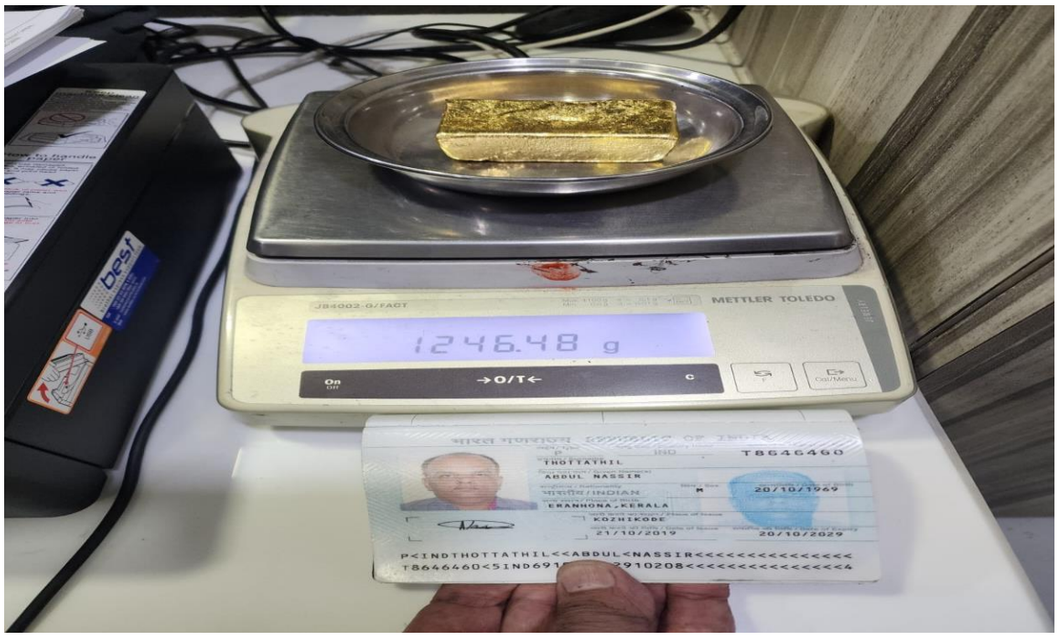


Image-2

The above said proceedings were recorded under Panchnama dated 14.11.2025**.**

Seizure of smuggled gold

2.7. Since the recovered gold bar (extracted from capsules containing gold paste mixed with chemical substances in semi-solid form) recovered from Shri Abdul Nassir Thottathil was attempted to be smuggled into India in a concealed manner without any legitimate documents/records in violation of the provisions of the Customs Act, 1962. The said gold bars, along with the packing materials used for concealment were seized under Section 110 and 119 of the Customs Act, 1962 under the Panchnama dated 14.11.2025 with a reasonable belief that the same was liable to confiscation. Accordingly, the aforesaid gold bar along with the packing materials were placed under seizure on 14.11.2025 in respect of Shri Abdul Nassir Thottathil. Seizure memo vide F. No. DRI/AZU/GI-02/Enq-74/2025 dated 14.11.2025 was also issued for seizure of the above gold bar.

2.8. The seized gold bars, along with the packing materials used for concealment, were handed over to the Warehouse In-Charge, SVPI Airport, Ahmedabad, for safe custody vide Warehouse Entry Nos. 7806 and 7807 respectively, all dated 14.11.2025 for safe custody.

3. STATEMENT OF KEY PERSON:

3.1. Upon completion of the Panchnama proceedings at SVPI Airport, Ahmedabad, summons dated 14.11.2025 was issued to Shri Abdul Nassir Thottathil, for recording of his statement**.**

3.2. Consequent to the above summons, statement of Shri Abdul Nassir Thottathil, was recorded under Section 108 of the Customs Act, 1962 on 14.11.2025 wherein he interalia stated that:

- He was shown the Panchnama dated 14.11.2025 drawn at SVPI Airport, Ahmedabad along with valuation certificate issued by Shri Soni Karthikey, Govt. Approved Valuer and stated that he agreed with the facts mentioned therein.
- He carried 4 capsules of foreign-origin gold wrapped in pairs with white tape, weighing 1392.05 grams, and hid them inside the pouch beneath seat No. 30F while travelling from Jeddah to Ahmedabad by Indigo Flight No. 6E-76
- He worked as a laborer in Master Company in Jeddah.
- His friend Ismail gave him the 4 capsules of foreign-origin gold at Kerala Market in Jeddah.
- He said he did not know Ismail's whereabouts.
- He carried the gold for a payment of 500 Saudi Riyal, i.e. about Rs. 11,800/-, and that he accepted the offer out of greed.
- Ismail instructed him to hide the gold beneath seat No. 30F and to get off at Ahmedabad Airport, but he did not know who was to receive or remove the gold.
- Ismail had booked his ticket to India and was also supposed to book his return ticket to Jeddah.
- He perused the Section 110, 111, 112 and 135 of the Customs Act, 1962 and after reading and understanding them, accepting the legal consequences of his actions. He acknowledged the gold was liable for confiscation.

4. Arrest of Shri Abdul Nassir Thottathil:

4.1. Based on the evidences gathered and the statements recorded as above, it appeared that Shri Abdul Nassir Thottathil had committed an offence punishable under Customs Act, 1962, as he had smuggled one gold bar (extracted from total of 04 (four) capsules wrapped in pairs with white tape, contained gold paste mixed with chemical substances in semi-solid form) without declaration of the same before Customs Authorities and with a view to evade payment of Customs duty. The said one gold bar smuggled by Shri Abdul Nassir Thottathil was liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. Thus, he had knowingly concerned himself in an offence punishable under Section 135(1) of the Customs Act, 1962, as he had knowingly concerned himself in dealing/carrying Net weight

1246.48 grams of smuggled gold of 24 carat having purity of 999 having total market value of Rs. 1,62,04,240/- and concerned himself in carrying, removing, depositing, harboring, keeping, concealing of smuggled Gold which he knows and/or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Hence, Shri Abdul Nassir Thottathil were arrested on 14.11.2025 at Ahmedabad under the provisions of Section 104 of the Customs Act, 1962 vide Arrest Memo dated 14.11.2025, after getting required authorization from the competent authority. He was further produced before the Hon'ble Court of ACMM, Ahmedabad, who ordered for his judicial custody.

5. FURTHER INVESTIGATION CONDUCTED:

5.1. Further, on the basis of the information received and the statement of Shri Abdul Nassir Thottathil dated 14.11.2025, Shri Ismail Kacheri Kunnummal, whose name had emerged in the said statement and who was found to be arriving in India on 20.11.2025 by Indigo Flight No. 6E-76, was intercepted and informed that his name had surfaced in the earlier gold smuggling case and that he was required to appear before the officers of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, to give his statement under Section 108 of the Customs Act, 1962. Accordingly, he was served with summons dated 20.11.2025, which he voluntarily accepted, and he thereafter appeared before the officers at the office of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad, for recording of his statement. During inquiry, it further came to light that a *Botim* application group named "*Restro*" had been created, in which the names of Shri Althaf Usman and Shri Sandeep Mstrao, both employed with Indigo Airlines at SVPI Airport, Ahmedabad, had also surfaced. On further inquiry, Shri Ismail Kacheri Kunnummal stated that the said Restro group had been created for executing gold smuggling activities at the direction of Shri Jaman/Zaman Sharif. Thereafter, Shri Althaf Usman and Shri Sandeep Mstrao were also served with summons requiring them to appear before the officers of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad, and to give their statements under Section 108 of the Customs Act, 1962 in connection with the said gold smuggling case. Both Shri Althaf Usman and Shri Sandeep Mstrao voluntarily accepted the summons and appeared before the office of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad, on 20.11.2025 for recording of their statements.

6. STATEMENTS OF SHRI ISMAIL KACHERI KUNNUMMAL, SHRI ALTHAF USMAN AND SHRI SANDEEP MSTRAO:

6.1. Consequent to the above summons, statement of Shri Ismail Kacheri Kunnummal, was recorded under Section 108 of the Customs Act, 1962 on 20.11.2025 wherein he interalia stated that:

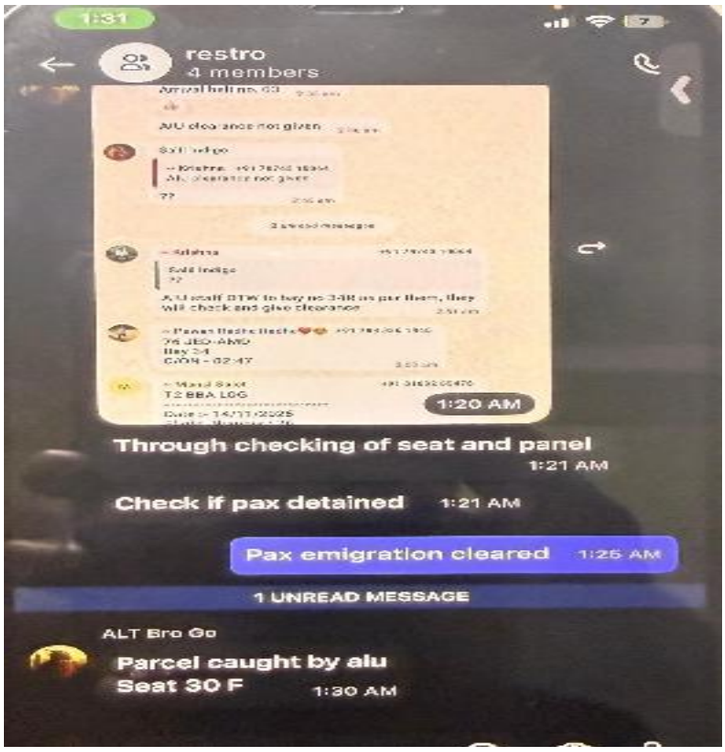
- He had perused the Panchnama dated 14.11.2025, valuation certificate and Abdul Nassir Thottathil's statement dated 14.11.2025, and that he agreed to the facts stated therein.
- Jaman/Zaman Sharif, had handed over four capsules of gold wrapped in pairs with white tape at Abdul Nassir Thottathil's residence in Jeddah and that he was present there.
- The Botim application was used for communication and that the group named "Restro" had been created by Althaf Usman.
- He was also made an admin of the Restro group and that the group was created for communication among members related to gold smuggling and other activities.
- His role was recruitment of delivery persons, financial management of foreign-origin gold, and communication among the group members. He further stated that Jaman/Zaman Sharif was the main investor in the gold smuggling syndicate and gave Jaman/Zaman Sharif's number as +971527361752.
- Ismail Kacheri Kunnummal stated that the smuggling had initially started with around 700 grams and later exceeded 1 kg.
- Althaf Usman was his friend, worked in Indigo Airlines at SVPI Airport Ahmedabad, and that he had met him at his café namely "Spoon" at Khodasar, Gandhinagar.
- He stated that Sandeep Mstrao was added to the group by Althaf Usman, worked in Indigo Airlines at SVPI Airport Ahmedabad, and used the mobile number 9033558247.
- Althaf Usman and Sandeep Mstrao used to collect gold based on seat details shared in the group and confirm the collection in the Botim app chat group "Restro".
- He, Althaf Usman and Sandeep Mstrao were involved in the smuggling activity for monetary consideration, wherein he was getting Rs. 2,000 to 3,000 and Althaf Usman/Sandeep Mstrao getting Rs. 10,000 each per consignment.

- He came to know from Althaf Usman in the Botim app group that the parcel had been caught by AIU from seat No. 30F on 14.11.2025, and that Abdul Nassir's wife informed him that Abdul had been arrested. The parcel was 4 capsules of foreign-origin gold in semi-solid form wrapped in pairs with white tape weighing about 1392.05 grams.
- He perused Abdul Nassir's statement dated 14.11.2025 and after perusing Abdul Nassir's statement, he agreed with it except for the part that Ismail had given him the gold; according to him, Jaman/Zaman Sharif had given the parcel to Abdul Nassir.
- He admitted that he had been involved in such activities 10 to 12 times during the last two months.
- He admitted that Abdul Nassir did not have invoice or documents proving legitimate import and that the gold was brought with the clear intention of smuggling.
- He accepted that smuggling gold without declaration and payment of duty was illegal, and that he had become involved due to financial and family conditions.
- He agreed that the gold was liable for confiscation under Section 111 of the Customs Act, 1962.
- He confirmed the valuation details shown to him, including the extracted gold bar weighing 1246.48 grams having purity 999.0/24K, market value Rs. 1,62,04,240/- and tariff value Rs. 1,43,35,455/-.
- He agreed that the seized gold was liable for confiscation under Sections 110, 111, 112 and 135 of the Customs Act, 1962 and that he had committed an offence punishable under Section 135 in his individual capacity.

6.2. Consequent to the above summons, statement of Shri Althaf Usman, was recorded under Section 108 of the Customs Act, 1962 on 20.11.2025 wherein he interalia stated that:

- He was working as senior executive security at SVPI, Airport for Indigo Airlines. He used to supervise the work related to departure of the flight i.e. boarding of the passengers, loading of the baggage, BMA (Baggage Makeup Area) monitoring and manpower allocation planning etc. Further he stated that he was doing the work of supervising for last 3 years.

- He had perused the Panchnama dated 14.11.2025, valuation certificate and Abdul Nassir Thottathil's statement dated 14.11.2025, and that he had knowledge of those proceedings.
- On 14.11.2025, his shift started at 02:00 Hrs. and the work of monitoring baggage offloading for Flight No. 6E-76 was orally assigned to him.
- He did not know Abdul Nassir Thottathil personally, but knew him as the passenger whose seat number he came to know from the Botim app chat group.
- He stated that the parcels containing gold were used to bring by a passenger, and that Shri Sandeep Mstrao or some other person used to remove it from the flight and hand it over to him. Further, he used to hand over the parcels to a person instructed by Shri Sandeep Mstrao, usually near at Simran Hotel or Indira Bridge, through phone or Botim instructions.
- He agreed to the plan of gold smuggling wherein Shri Sandeep Mstrao used to call him or post in the group and hand over parcels at VIP Parking area outside Terminal 1, after which he used to deliver them in Shri Sandeep Mstrao 's Hyundai Accent car to the designated place.
- He perused chat screenshots extracted from Botim app chat group "Restro" and stated that a message from him in the group read as "Through Checking of seat and panel" and "check if pax detained" on 14.11.2025, which he admitted he had posted. Screenshot placed as below:



- He stated that he knew Shri Ismail Kacheri Kunnummal, who worked at a café in Gandhinagar, and that they became friends when he visited the café.
- The Botim app group was used for further work because messages would get deleted without hassle, and that his name in the group was "ALT Bro Go" with mobile number 7415295372.
- He received between Rs. 5,000 and Rs. 10,000 for each delivery of gold from outside the airport. He further stated that each time Shri Sandeep Mstrao handed over the parcel/packet to him for the purpose of delivery outside the airport.
- He admitted that collecting parcels from international flights and clearing them without Customs knowledge amounted to smuggling and was punishable under the Customs Act, 1962.

6.3. Consequent to the above summons, statement of Shri Sandeep Mstrao, was recorded under Section 108 of the Customs Act, 1962 on 20.11.2025 wherein he interalia stated that:

- He worked as Assistant Manager, Indigo at SVPI Airport, Ahmedabad, and that his role was to expedite the process and ensure staff alignment as per SOP.
- He met Shri Ismail Kacheri Kunnummal 2–3 months earlier along with Shri Althaf Usman and had visited Ismail Kacheri Kunnummal's café at Gandhinagar for dinner.
- He did not personally know Shri Zaman, but Ismail Kacheri Kunnummal informed him that Zaman was in Dubai and dealing in gold business.
- He perused the statement of Ismail Kacheri Kunnummal dated 20.11.2025 and agreed with its contents.
- He admitted that, about 2–3 months earlier, Ismail Kacheri Kunnummal briefed him and Althaf Usman about the method of smuggling parcels by concealing them in the aircraft seat area and then collecting them after the passenger disembarked. He stated that he initially hesitated, but later agreed to the plan because of the monetary benefit offered by Ismail Kacheri Kunnummal.
- He admitted that he had the Botim application on his mobile phone but deleted it on 20.11.2025 when summoned by DRI officer. He perused Botim app chat screenshots retrieved from Ismail Kacheri Kunnummal's phone and admitted that the group named "Restro"

contained his mobile number under the name "Sand Bro Go", and that he responded personally and acted as per the conversations.

- He stated that around 10 to 12 times he collected parcels from international flights and handed them over to Althaf Usman for further delivery, or sometimes delivered them himself.
- He stated that the parcels were delivered near Indra Bridge and that he did not know the names or personal details of the recipients. He further stated that he knew the parcels contained gold.
- He stated that the exact location of the parcel in the aircraft was communicated in the Botim group by Ismail Kacheri Kunnummal and Zaman, and that he collected the parcel in the guise of checking the aircraft.
- He stated that Ismail Kacheri Kunnummal paid Rs. 50,000 for every such delivery, and that this amount was divided equally between him and Althaf Usman.
- He perused the Panchnama dated 14.11.2025 and Abdul Nassir Thottathil's statement dated 14.11.2025 and signed them in token of perusal.
- He stated that on 14.11.2025 he and Althaf Usman were at the airport to collect the parcel brought by Abdul Nassir Thottathil, but DRI officers had already checked and recovered the parcel from the aircraft, so they remained silent and monitored Flight No. 6E-76.
- He admitted that he knew Abdul Nassir was bringing a gold parcel on Flight No. 6E-76 from Jeddah and that he and Althaf Usman were to collect and deliver it.
- He admitted that collecting and delivering parcels from international aircraft without declaration to Customs amounted to smuggling and was punishable under the Customs Act, 1962.

The statements of the above persons, read conjointly, establish that a deliberate, organized and continuing international smuggling syndicate existed and operated through coded communications on the Botim application using the group "Restro", with a clear chain of command involving Shri Ismail Kacheri Kunnummal, Shri Althaf Usman, Shri Sandeep Mstrao and Shri Jaman/Zaman Sharif. The international syndicate used flight numbers, seat numbers and code words to conceal the smuggled goods in aircraft and retrieve them after landing. Shri Althaf Usman and Shri Sandeep Mstrao exploited their airport access and operational position to

retrieve the contraband from the aircraft and deliver it to the recipients outside the airport. Shri Ismail Kacheri Kunnummal coordinated and financed the operation and arranged the delivery chain within India. The goods so brought into India were foreign origin gold, brought without declaration and without any legitimate import documents.

7. Arrest of Shri Ismail Kacheri Kunnummal, Shri Althaf Usman and Shri Sandeep Mstrao:

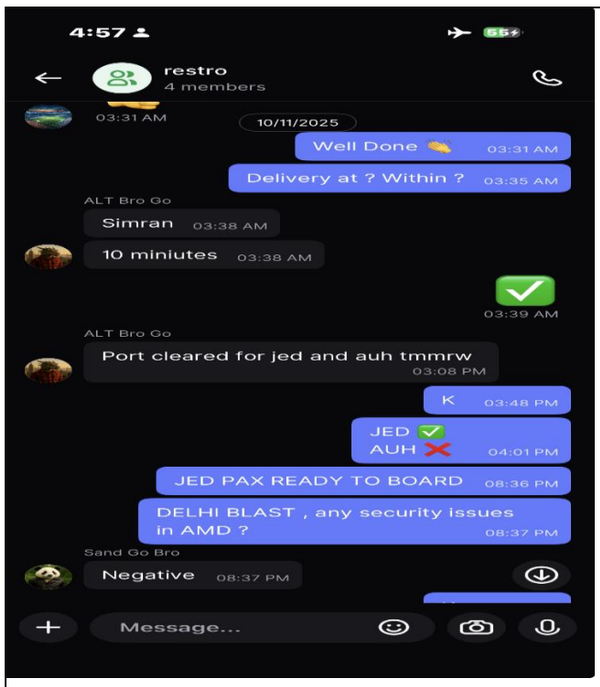
7.1. Based on the evidences gathered and the statements recorded as above, it appeared that the act of smuggling of gold was deliberately undertaken by Shri Ismail Kacheri Kunnummal, Shri Althaf Usman and Shri Sandeep Mstrao, who attempted to smuggle the gold into India in violation of the provisions of the Customs Act, 1962 without any declaration and with intent to evade Customs duty. The offence committed by them were also been admitted in their statements recorded under Section 108 of the Customs Act, 1962. The market value of the seized gold is more than one crore. They had therefore committed an offence under Section 135(1)(a) & (b) of the Customs Act, 1962, and the same was punishable under Section 135(1)(i)(A). Therefore, they were liable to be arrested under Section 104 of the Customs Act, 1962 read with Circular No. 28/2015-Customs dated 23.10.2015 and amended Circular No. 13/2022-Customs dated 16.08.2022. The offence was cognizable under Section 104(6)(c). Hence, (i) Shri Ismail Kacheri Kunnummal, (ii) Shri Althaf Usman and (iii) Shri Sandeep Mstrao were arrested on 20.11.2025 at Ahmedabad under the provisions of Section 104 of the Customs Act, 1962 vide Arrest Memos dated 20.11.2025, after getting required authorization from the competent authority. They were further produced before the Hon'ble Court of ACMM, Ahmedabad on 21.11.2025, who ordered for their judicial custody.

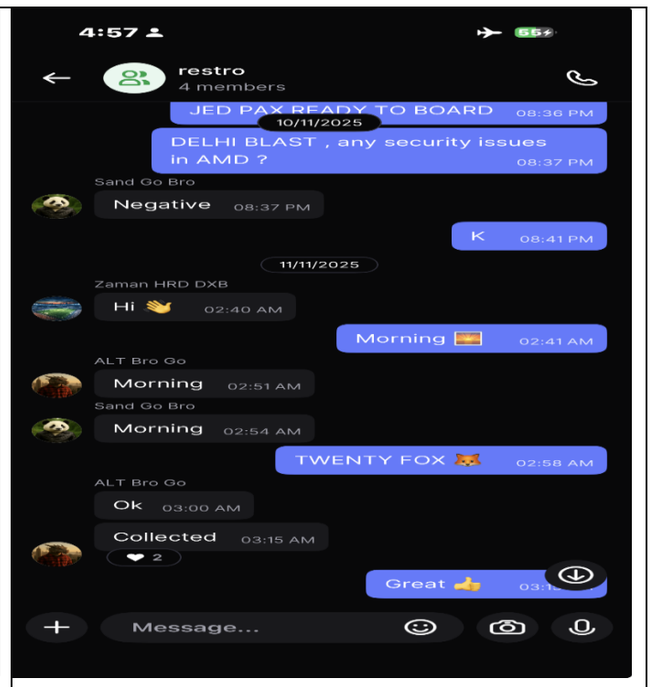
7.2. Further, a remand application was filed before the Hon'ble Court on 21.11.2025, setting out the role of the accused as an active member of the gold smuggling syndicate and requesting custodial interrogation to ascertain the detailed working of the syndicate, the identities of other associates, the manner of concealment and retrieval of the smuggled gold, and the complete operational chain involved in the said illegal activity. Upon consideration of the said application, the Hon'ble Court granted DRI custody of the accused up to 24.11.2025 vide remand warrant dated 21.11.2025. Upon completion of the DRI custody period, the accused was sent back to judicial custody.

7.3. During the remand period, statements of Shri Ismail Kacheri Kunnummal, Shri Althaf Usman and Shri Sandeep Mstrao was recorded under Section 108 of the Customs Act, 1962 on 22.11.2025 wherein they interalia stated that: -

- They confirmed their earlier statements recorded on 20.11.2025 and stated that the same were true and correct.
- Ismail Kacheri Kunnummal stated that the gold smuggling operation involved repeated consignments through flights from Abu Dhabi and Jeddah between 16.10.2025 and 14.11.2025.
- Ismail Kacheri Kunnummal gave a date-wise flight chart, the details of these flights are corroborating with the chat retrieved from him mobile phone, (Screenshots of the chat are attached with statements and also appearing at coming para) showing ten instances of smuggling, including flights 6E-1432 and 6E-76, and corresponding seat numbers such as 30F, 20E, 23F, 37F, 16A, 31F, 24A, 5A, 20F and 30F.
- Ismail Kacheri Kunnummal stated that the group members were himself, Althaf Usman, Sandeep Mstrao and Jaman/Zaman Sharif, and that the group was used for coded communication regarding seat numbers, hiding places and delivery points.
- Ismail Kacheri Kunnummal stated that the smuggled gold was delivered to Muhammed and Ashib near Simran Hotel or Bharat Petrol Pump near Indra Bridge, Ahmedabad, and he identified them from extracted images from his mobile phone.
- Ismail Kacheri Kunnummal stated that Muhammed and Ashib were his partners in Spoon Malabar Café, Khudasan, Gandhinagar, and provided their mobile numbers.
- Ismail Kacheri Kunnummal explained the code words used in the Restro group, such as “Thirty Fox” for seat no. 30F, “Twenty Elephants” for seat no. 20E, “Sixteen Apple” for seat no. 16A, “Twenty-Four Apple” for seat no. 24A and “Twenty Fox” for seat no. 20F.
- Althaf Usman admitted that he and Sandeep Mstrao were active participants in the Restro group and that the group was used for communication about boarding, arrival, seat numbers, concealment locations, delivery points.
- Althaf Usman confirmed that the group namely “Restro” was a closed group comprising four participants, namely Shri Sandeep Mstrao, Shri Ismail Kacheri Kunnummal, Shri Jaman/Zaman Sharif and himself. Shri Jaman/Zaman Sharif first used to ask whether gold could be sent on a

particular flight or at a particular time. Thereafter, either Shri Sandeep Mstrao or himself used to give him the indication "***port cleared for jed and auh tmmrw***", meaning that gold could be sent on a particular day either from Jeddah or Abu Dhabi. Accordingly, Shri Jaman/Zaman Sharif used to communicate the place of boarding, i.e. whether Jeddah or Abu Dhabi, so as to identify the flight, and thereafter used to send the seat number in coded form, such as "***TWENTY FOX***" for seat No. 20F. For which ALT Bro Go (Altaf) replies in affirmation that he has collected, meaning smuggled gold was collected by him.

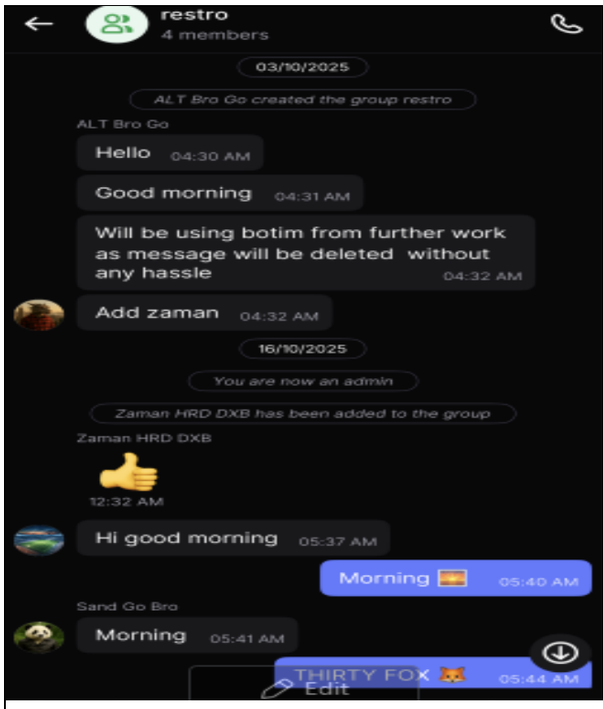


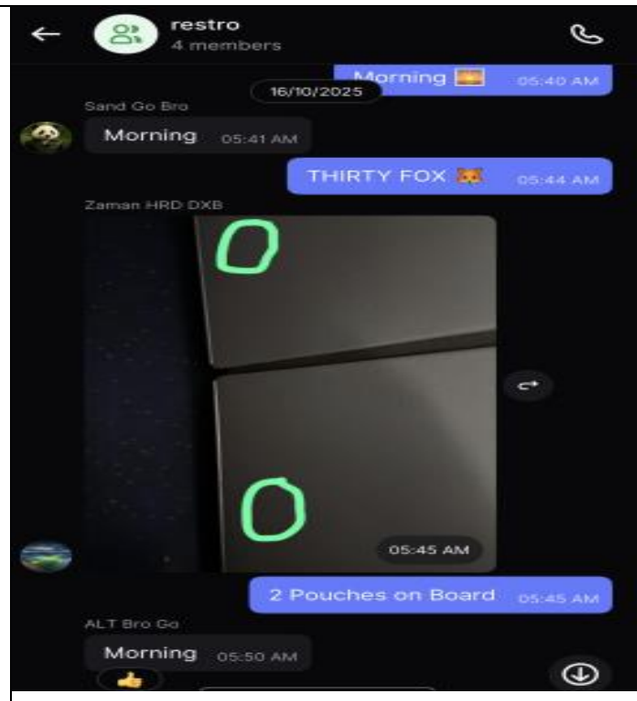


- Althaf Usman stated that his entry was through the Arrival Gate of Terminal 1, that he used the Indigo office on the first floor of the Arrival Hall, and that there was no body checking at the entry gate, while frisking happened only before entering the ramp area.
- Althaf Usman stated that there was no security checking on exit from the ramp/arrival side and that he used to exit through the same gate.
- Althaf Usman admitted that he and Sandeep Mstrao collected and delivered parcels from international flights 10 to 12 times during October-November 2025.
- Althaf Usman stated that in some instances he alone collected and delivered the parcel, in some cases Sandeep Mstrao did so, and in some cases both did it jointly.

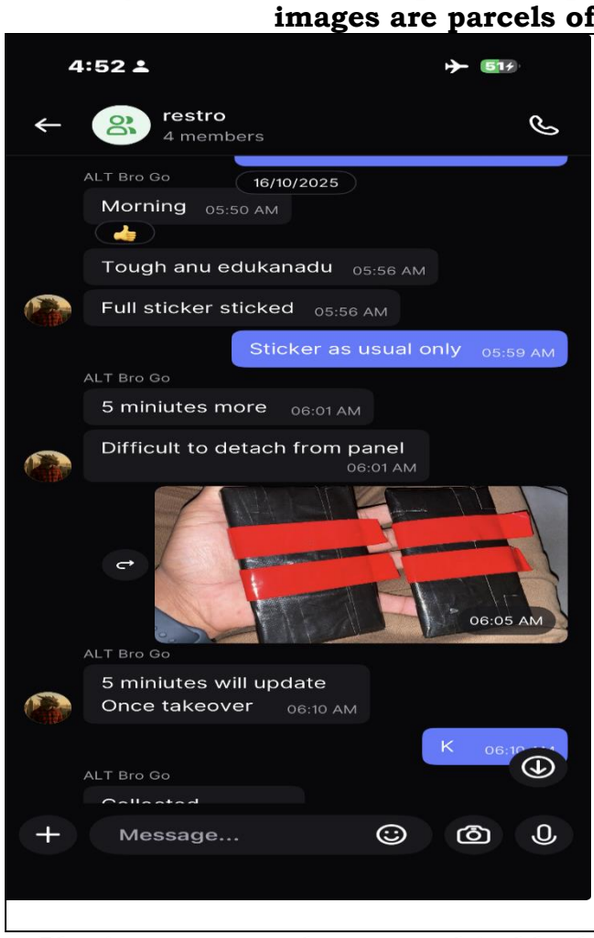
- Althaf Usman also gave a flight-wise table of collection and delivery instances, matching the Abu Dhabi and Jeddah flights and seat numbers used in the smuggling operation.
- Althaf Usman stated that the exact concealment location was communicated on Botim app, usually under the seat in pouch wherein life jacket was placed or in the side panel near the legs for window seats.
- Althaf Usman stated that the parcel was carried from the aircraft to Terminal 1 using airline vehicles and then exited through Staff Gate or ATC Tower Gate without security check.
- Sandeep Mstrao also confirmed that he and Althaf Usman used the Botim group "Restro" to coordinate boarding, arrival, seat number, concealment, delivery.
- Sandeep Mstrao admitted that he received around Rs. 50,000 for every delivery and that the amount was shared equally with Althaf Usman.
- Sandeep Mstrao stated that he knew the parcel contained gold and that collecting and delivering such parcels from international flights without declaration amounted to smuggling.
- Sandeep Mstrao stated that he was aware of Abdul Nassir Thottathil's gold-carrying flight on 14.11.2025 and that he and Althaf Usman were to collect the parcel, but DRI officers had already recovered it from the aircraft.
- Sandeep Mstrao also confirmed that he and Althaf Usman usually delivered the parcels near Indra Bridge Circle, near a petrol pump, or near Simran Hotel opposite the Cantonment Area.
- Sandeep Mstrao stated that the recipients were persons speaking Malayalam, and he confirmed from photographs extracted from Ismail Kacheri Kunnummal's phone that the same persons were those to whom the parcels were delivered.

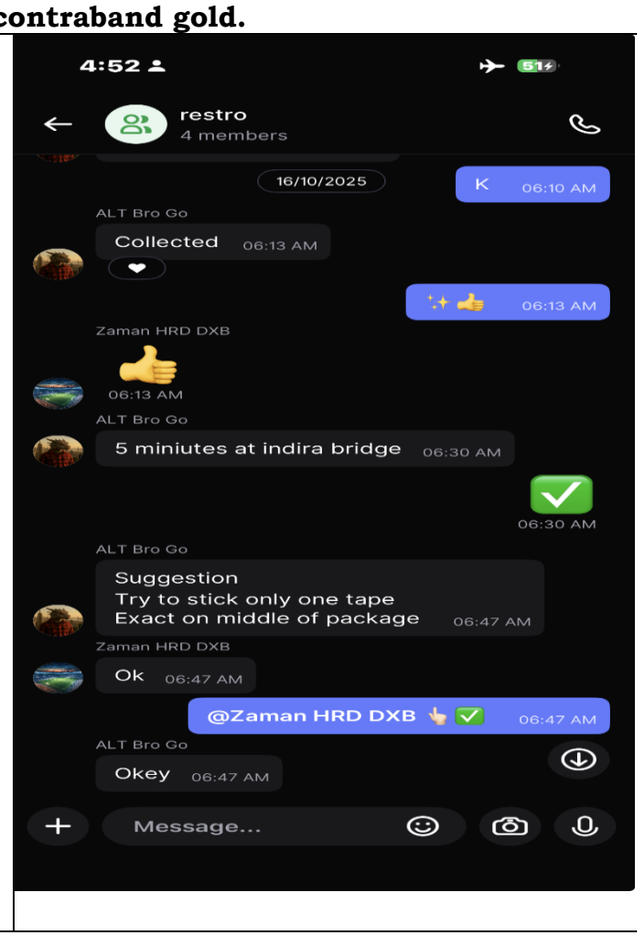
7.4. Relevant screenshot extracted from Ismail Kacheri Kunnummal's phone of Botim app chat group "Restro" are produced as below:



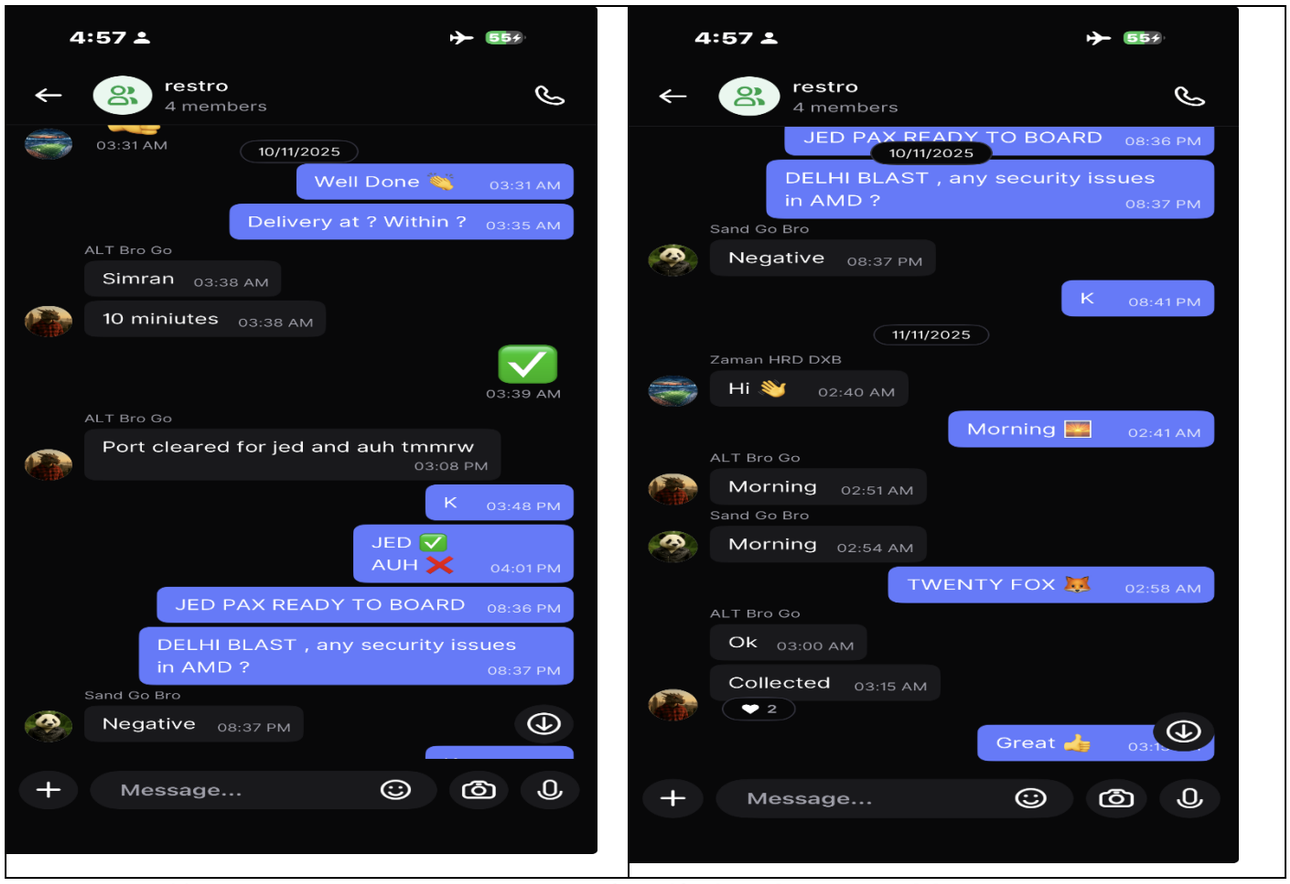


Thirty Fox in the above picture represents seat number 30F and the images are parcels of contraband gold.





The images parcels wrapped in black colour with red plastic tapes are contraband gold in the above picture.



Twenty Fox represents seat details i.e. Seat No. 20F

From the above statements and relevant screenshots extracted from Ismail Kacheri Kunnummal's phone of Botim app chat group "Restro", it is evident that Shri Ismail Kacheri Kunnummal, Shri Althaf Usman and Shri Sandeep Mstrao have admitted the existence of a coordinated and continuing gold smuggling syndicate operating through the Botim group "Restro", wherein coded communications were used for conveying flight numbers, seat numbers, concealment locations and delivery points for the illicit movement of foreign-origin gold from flights arriving from Abu Dhabi and Jeddah. They further admitted that the smuggled gold was collected from the aircraft by Shri Althaf Usman and/or Shri Sandeep Mstrao, sometimes jointly, taken out of the airport without declaration, and delivered at predetermined locations such as near Simran Hotel and Indra Bridge to identified recipients including Muhammed and Ashib, while Shri Ismail Kacheri Kunnummal coordinated the operation and the said persons acted for monetary consideration. Thus, the statements mutually corroborated each other and established a deliberate, organized and repeated international smuggling operation involving airport access, coded digital communication, concealment near aircraft seats and life jacket pouches, retrieval after landing, and delivery outside the airport as part of a structured international syndicate.

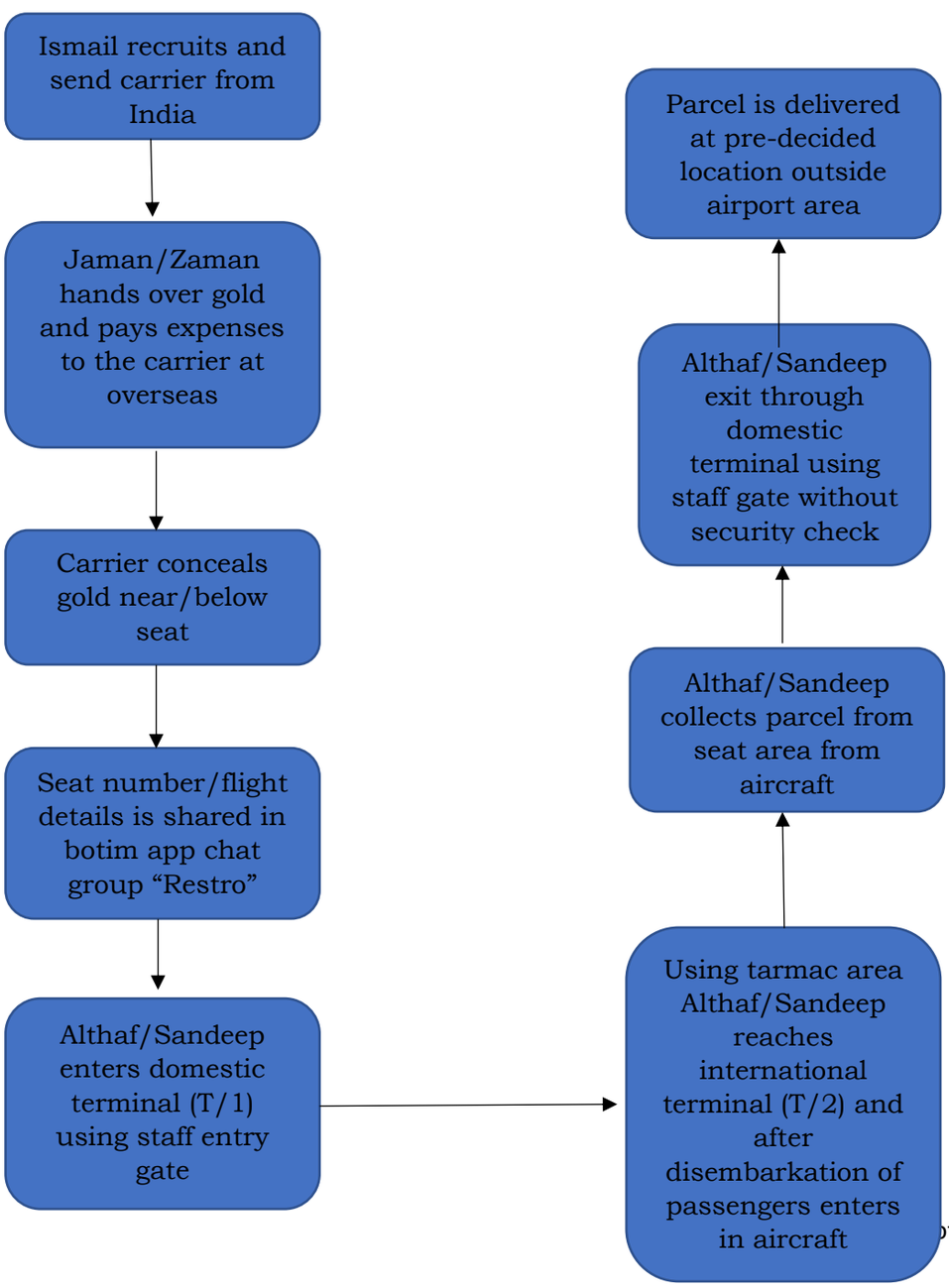
8. On the basis of the statements recorded and the evidence collected during the course of investigation, it has emerged that the noticees/accused persons involved in previously undertook smuggling operations between Ahmedabad and Abu Dhabi/Jeddah on the dates and flight sectors indicated hereinbelow, during which quantities of gold about 700-1000 grams are stated to have been smuggled on each occasion (The below mentioned chart/table is prepared on the basis of chat, Screenshots of which are attached with statements of Shri Ismail Kacheri Kunnummal): -

Sr. No.	Flight No.	Arrival Date	Arriving from	Quantity Involved (as per statement) (In Grams)	Notification No.	Tariff Value @1000 (In Rs.)	Market Value @1000 (In Rs.)
1	6E-1432	16.10.2025	Abu Dabhi	700 to 1000	Notification No. 65/2025-CUSTOMS (N.T.) / Exchange Rate Notification No.: 39/2025	11903190.00	13050000.00
2	6E-1432	17.10.2025	Abu Dabhi	700 to 1000	Notification No. 65/2025-CUSTOMS (N.T.) / Exchange Rate Notification No.: 40/2025	11770490.00	13100000.00
3	6E-1432	19.10.2025	Abu Dabhi	700 to 1000		11770490.00	13100000.00
4	6E-76	20.10.2025	Jeddah	700 to 1000		11770490.00	13050000.00
5	6E-1432	07.11.2025	Abu Dabhi	700 to 1000	Notification No. 72/2025-CUSTOMS (N.T.) / Exchange Rate Notification No.: 41/2025	11500750.00	12210000.00
6	6E-1432	08.11.2025	Abu Dabhi	700 to 1000		11500750.00	12250000.00
7	6E-1432	09.11.2025	Abu Dabhi	700 to 1000		11500750.00	12210000.00
8	6E-76	10.11.2025	Jeddah	700 to 1000		11500750.00	12310000.00
9	6E-76	11.11.2025	Jeddah	700 to 1000		11500750.00	12700000.00
Total				**6300 to 9000**		**104718410.00**	**113980000.00**

From the above, it is evident that the noticees/accused persons, collectively smuggled a total quantity of about 9 kilograms of gold during the aforesaid journeys, involving aggregate tariff value of about Rs. 10.472 crore rupees and corresponding aggregate market value of about Rs. 11.398 crore rupees.

9. On examination of the Subscriber Data records provided by the respective Telecom Services, mobile no. 9562208649 belongs to Muhammed T P and mobile no. 8160435985 belongs to Shri Muhammed Haseeb, as per the Ismail Kacheri Kunnummal's statement dated 22.11.2025, these belong to Muhammed and Ashib respectively. Accordingly, summons was issued to Muhammed T P and Muhammed Haseeb to present themselves before officer of DRI for recording their statements. However, Summons were returned undelivered with remarks of 'Insufficient Address' or 'Not Traceable,' indicating the individuals could not be served at their known addresses.

10. <u>Modus Operandi:-</u>



10.1. The modus operandi of the syndicate was that Shri Ismail Kacheri Kunnummal had first identified and recruited the carrier for the purpose of smuggling foreign-origin gold into India. Shri Jaman/Zaman Sharif, arranged the carrier's travel expenses and handed over the gold to the carrier at Jeddah or Abu Dhabi, as the case may be. Thereafter, the carrier concealed the gold below or near the seat of the aircraft in the manner already decided and communicated to the syndicate members through the Botim app chat group "Restro". The seat number, flight number and the place of concealment were communicated in coded form to Shri Althaf Usman and Shri Sandeep Mstrao through the said group, so that the parcel could be identified and retrieved after the flight arrived at Ahmedabad.

10.2. Thereafter, Shri Althaf Usman and/or Shri Sandeep Mstrao, by using their Airport Entry Permit access, used to enter through the domestic terminal staff entry and move through the tarmac area to reach international terminal where the concerned international flight arriving. After the passengers had disembarked, since they were authorized to enter into the aircraft, they used to collect the concealed parcel from the seat area or from the pouch/life jacket section, depending upon the flight and seat position. After collecting the parcel, they used to exit through domestic terminal using the staff gate without undergoing security check, as no effective checking was carried out at the exit point considering it as domestic movement. The recovered parcel was thereafter handed over at a pre-decided location such as Simran Hotel, Indra Bridge, Bharat Petrol Pump or any other place already communicated in advance through Botim app by Shri Ismail Kacheri Kunnummal or Shri Jaman/Zaman Sharif.

10.3. The entire operation was conducted in a planned and coordinated manner, with each person having a well-defined role. Shri Ismail Kacheri Kunnummal acted as the coordinator, recruiter and communication link within India and abroad. Shri Jaman/Zaman Sharif acted as the foreign-side supplier/arranger and source of the gold. The carrier acted as the person who physically brought the gold into India and concealed it in the aircraft. Shri Althaf Usman and Shri Sandeep Mstrao exploited their airport access and operational position to retrieve the gold from the aircraft and ensure its movement outside the airport. The use of Botim app chat group "Restro" and coded messages was intended to avoid detection by Customs and security agencies and to facilitate repeated smuggling of foreign-origin gold into India without declaration and without payment of Customs duty.

11. LEGAL PROVISIONS:

11.1. 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.

11.2. All the dutiable articles imported into India by a passenger in his baggage are classified under CTH 9803. As per Section 77 of the Customs Act, 1962, the owner of any baggage shall for the purpose of clearing it, make a declaration of its contents to the proper officer. As per Section 11(1) of the Foreign Trade (Development and Regulation) Act,1992, no export or import shall be made by any person except in accordance with the provisions of Foreign Trade (Development and Regulation) Act, 1992, the Rules and Orders made there under and the Foreign Trade Policy for the time being in force.

11.3. In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-2020, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. The gold can be imported by the banks (authorized by RBI) and the agencies nominated for the said purpose under Para 4.41 of Chapter-4 of Foreign Trade Policy or by "Eligible Passenger" as per the provision of Notification No. 50/2017- Customs dated 30.06.2017 (Sr. No. 356). As per Notification No. 50/2017- Customs dated 30.06.2017, the 'eligible passenger' means passenger of Indian origin or a passenger holding valid passport issued under the Passport Act, 1967 who is coming to India after a period of not less than 6 months of stay abroad.

The above said legal provisions are reproduced below:

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

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

Para 4.41 of the Foreign Trade Policy 2015-2020:

Nominated Agencies: -

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

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

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

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

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

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

11.4. Condition 41 of Sl. No. 356 of CBIC Customs Notification No. 50/2017 dated 30.06.2017 where the condition regarding import of gold by passenger is regulated in the following manner:

If,
1. (a) the duty is paid in convertible foreign currency;

(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and

2. the gold or silver is, -

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

(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and

(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1;

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

warehouse and pays the duty leviable thereon before his clearance from customs.

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

11.5. Baggage Rules, 2016 –

11.5.1. 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".

11.5.2. 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.

11.6. 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 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). Silver dore can be imported by refineries against a license with AU condition.	No change in existing Policy Condition
71069190	Unwrought: Others			
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).

11.6.1. 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).

11.7. 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 1246.48 grams gold (extracted from the recovered capsules containing gold paste mixed with chemical substances in semi-solid form) having purity of 999.0/24 Ct recovered from Shri Abdul Nassir Thottathil 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.

11.8. Therefore, it appeared 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.

11.9. 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.

11.10. 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;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

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

(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with

the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;]

11.11. 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,

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

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

11.13. From all the above paras, it appeared 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 appeared 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.

12. VIOLATIONS & CONTRAVENTION OF VARIOUS PROVISIONS:

12.1. The seized goods, a gold bar having purity of 999.0/24 Carat, totally weighing of Net 1246.48 grams & having a market value of Rs. 1,62,04,240/- has 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 and around 9 Kg of foreign origin Gold in paste form already smuggled into India in 9 past journeys as agreed by them in their respective statements. The said gold bar does not also

appear to be allowed to be imported by (i) Shri Abdul Nassir Thottathil, (ii) Shri Jaman/Zaman Sharif, (iii) Shri Ismail Kacheri Kunnummal, (iv) Shri Althaf Usman and (v) Shri Sandeep Mstrao keeping the restrictions on such import under the provisions of FTP and Customs Act, 1962. Hence, it appeared that the said two gold bar was 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), (e) and (l) of the Customs Act, 1962.

Further, the packing materials used for concealing the above said gold bar of purity 999/24 Kt. (extracted from the 4 capsules covered with white tape), totally weighing net 1246.48 grams believed to be used for concealment is liable to confiscation under Section 119 of the Customs Act, 1962. Also, (i) Shri Abdul Nassir Thottathil, (ii) Shri Jaman/Zaman Sharif, (iii) Shri Ismail Kacheri Kunnummal, (iv) Shri Althaf Usman and (v) Shri Sandeep Mstrao have claimed the ownership of the said seized gold. However, they failed to discharge their onus in terms of the provisions of Section 123 of the Custom Act, 1962. These actions render the said gold quantity liable for confiscation and also render penal action under the Customs Act, 1962.

12.2. A total quantity of about 9 kilograms of gold, involving aggregate tariff value of about Rs. 10.472 crore rupees and corresponding aggregate market value of about Rs. 11.398 crore rupees had been illegally smuggled into India previously without declaring before the custom authority in violation of the provisions of the Customs Act, 1962 & FTP and Custom Baggage Rules. The said gold does not appear to be allowed to import by (i) Shri Jaman/Zaman Sharif, (ii) Shri Ismail Kacheri Kunnummal, (iii) Shri Althaf Usman and (iv) Shri Sandeep Mstrao keeping the restrictions on such import under the provisions of FTP and Customs Act, 1962. Hence, it appeared that the said gold had been 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), (e) and (l) of the Customs Act, 1962.

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

13.1 Role of Shri Abdul Nassir Thottathil:

13.1.1 From the oral and documentary evidence available on record, it stood established that Shri Abdul Nassir Thottathil acted as the carrier of foreign-origin gold in the impugned trip. He travelled from Jeddah to Ahmedabad by Indigo Flight No. 6E-76 on 14.11.2025 carrying four capsules wrapped in white tape, which he concealed inside the pouch containing the life-saving jacket below Seat No. 30F of the aircraft.

13.1.2 He admitted that the said capsules contained gold in paste form, that he had brought the same from Jeddah on the directions of Ismail Kacheri Kunnummal, and that he had no invoice, import document or other proof of lawful possession/import. He further admitted that he had concealed the gold with intent to smuggle it into India and had denied declaration of any dutiable item before Customs.

13.1.3 His statement, therefore, clearly reflected his active and knowing participation in the smuggling attempt and established that he knowingly attempted to evade Customs declaration and duty in respect of foreign-origin gold totally weighing 1392.05 grams, which on extraction yielded gold bar weighing 1246.48 grams of 999.0 purity.

13.2 Role of Shri Jaman/Zaman Sharif:

13.2.1 From the evidence gathered, it stood established that Shri Jaman/Zaman Sharif, also referred to as “Zaman HRD DXB” in the Botim App chat group “Restro”, was one of the principal organizers and foreign-side handlers of the syndicate. He had handed over the four capsules of foreign-origin gold to Shri Abdul Nassir Thottathil at Jeddah and was the person who initiated and controlled the movement of the contraband from abroad.

13.2.2 The statement of Ismail Kacheri Kunnummal revealed that Jaman/Zaman Sharif was the main investor in the syndicate and that he directed the smuggling activity, while the statement of Althaf Usman and Sandeep Mstrao established that Jaman/Zaman Sharif, through the Botim group “Restro,” used to issue instructions regarding flights, seat numbers, concealment locations and timing of delivery.

13.2.3 Thus, Jaman/Zaman Sharif appeared to be the foreign-based mastermind who arranged the delivery of gold in Jeddah, coordinated with the Indian-side operatives through coded digital communication, and caused

the contraband to be brought into India without declaration and without payment of Customs duty.

13.3 Role of Shri Ismail Kacheri Kunnummal:

13.3.1 From the evidence on record, it stood established that Shri Ismail Kacheri Kunnummal was the key coordinator, recruiter and financial manager of the syndicate operating through the Botim group "Restro". He admitted that the group was created for communication regarding gold smuggling and other activities and that he was also made admin of the group.

13.3.2 He further admitted that he had been in search of a job in Jeddah and he was present there when Jaman/Zaman Sharif handed over the gold capsules to Abdul Nassir Thottathil, and that he recruited delivery persons, managed the movement of contraband, and coordinated delivery to recipients in India. He also identified the recipients Muhammed and Ashib and stated that the gold was delivered near Simran Hotel and Indra Bridge.

13.3.3 The statements dated 22.11.2025 further established that Ismail Kacheri Kunnummal was the main communicator and controller on the Indian side, that he used coded terms for seat numbers and flight details, and that he was fully aware of repeated smuggling operations through Jeddah and Abu Dhabi flights. He thus acted as the operational link between the foreign supplier, the airport staff and the ultimate recipients.

13.4 Role of Shri Althaf Usman:

13.4.1 The evidence on record established that Shri Althaf Usman, being employed as Senior Executive Security with Indigo Airlines at SVPI Airport, Ahmedabad, had used his airport access and operational position to facilitate the retrieval of smuggled gold from the aircraft. He admitted that the Botim group "Restro" was created by him and that he was a member/admin in the said group.

13.4.2 He further admitted that the group was used for communication relating to boarding, arrival, seat number, concealment place and delivery point, and that he used to receive and respond to such coded messages. He stated that he collected parcels from the aircraft, knew that they contained gold, and handed them over to persons instructed by Ismail Kacheri Kunnummal at locations such as Simran Hotel and Indra Bridge.

13.4.3 The statement dated 22.11.2025 further revealed that Althaf Usman had access to Terminal 1 and Terminal 2, and he could board aircraft under his AEP, and used the absence of checking at exit gates to move the contraband out of the airport. He thus knowingly and actively facilitated the smuggling operation by retrieving gold from the aircraft and ensuring its onward delivery.

13.5 Role of Shri Sandeep Mstrao:

13.5.1 From the evidence available on record, it stood established that Shri Sandeep Mstrao, working as Assistant Manager with Indigo Airlines at SVPI Airport, Ahmedabad, was also an active participant in the syndicate and used his airport access to assist in collection and movement of smuggled gold from the aircraft.

13.5.2 He admitted that he was a member of the Botim group "Restro" under the name "Sand Bro Go", that the group was used to communicate seat numbers, concealment locations, delivery points and monetary consideration, and that he had personally participated in and responded to the said conversations.

13.5.3 He further admitted that he had collected parcels from international aircraft around 10 to 12 times, had delivered them at locations such as Simran Hotel and Indra Bridge, and had received monetary consideration for such deliveries. He also acknowledged that on 14.11.2025 he and Althaf Usman were present to collect Abdul Nassir's parcel, but the same had already been recovered by DRI officers from the aircraft.

13.5.4 Thus, it appeared that Sandeep Mstrao knowingly participated in the repeated retrieval and delivery of smuggled gold, assisted the syndicate by using his operational access at the airport, and acted in furtherance of the illegal plan devised by Ismail Kacheri Kunnummal and directed by Jaman/Zaman Sharif.

13.6 From the above, it was evident that Shri Abdul Nassir Thottathil acted as the carrier of the contraband gold from Jeddah, Shri Jaman/Zaman Sharif operated as the foreign-based supplier and controller, Shri Ismail Kacheri Kunnummal functioned as the coordinator and financial/communication link, and Shri Althaf Usman and Shri Sandeep Mstrao used their airport access to retrieve and move the gold out of the aircraft and deliver it to the

identified recipients. Their statements mutually corroborated each other and established a deliberate, organized and repeated international smuggling syndicate operating through coded Botim communications, concealment inside aircraft seat/life jacket compartments, retrieval after landing and delivery outside the airport for monetary gain.

14. Accordingly, a Show Cause Notice bearing no. DRI/AZU/GI-02/ENQ-74/2025 dated 08.05.2026 was issued to **(i) Shri Abdul Nassir Thottathil,** S/o Shri Imbichi Moyi Eranhona residing at Kunnummal House, Avilora PO, Kizhakkoth, Kozhikode, Kerala-673572 **(ii) Shri Jaman/Zaman Sharif** @ Dubai, **(iii) Shri Ismail Kacheri Kunnummal** S/o Shri Kunhipocker, residing at Kacheri Kunnummal, Elettil Post, Thamarassery, Kozhikode, Kerala-673572 **, (iv) Shri Althaf Usman** S/o Shri Usman Kutty, residing at 376, Jawahar Nagar, Aradhya Apartment, Indore, Madhya Pradesh-452012 and **(v) Shri Sandeep Mstrao** S/o Shri Bhanwarlal Mstrao residing at G-904, Murlidhar Heights, Muthiya, Ahmedabad as to why:-

i. A Gold bars weighing 1246.48 grams (4 capsules covered with white tape) having a market value of Rs. 1,62,04,240/- seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111(d), (e) and (l) of the Customs Act, 1962 also read with Section 123 of the Custom Act,1962;

ii. Packing materials believed to be used for concealing the above said gold bars of purity 999/24 Kt., totally weighing 1246.48 grams should not be confiscated under Section 119 of the Customs Act, 1962 also read with Section 123 of the Custom Act,1962;

iii. Total quantity of about 9 kilograms of gold smuggled during the 9 previous journeys involving aggregate market value of about 11.398 crore rupees (as per para 8) notwithstanding their present unavailability as they were smuggled in violation of the various provisions of Customs Act, 1962 should not be held liable to confiscation under Section 111(d), (e) and (l) of the Customs Act, 1962 also read with Section 123 of the Custom Act, 1962;

iv. Penalties should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.

15. Defense reply and record of personal hearing:

15.1 Defense Reply of Noticee No. 1 i.e **Shri Abdul Nassir Thottathil,** S/o Shri Imbichi Moyi Eranhona residing at Kunnummal House, Avilora PO, Kizhakkoth, Kozhikode, Kerala-673572: - The noticee vide letter dated 19.06.2026 has submitted his written submission wherein he respectfully submitted that he did not claim on the gold and did not raise any objection regarding the proposed confiscation of the seized gold weighing 1246.48 grams. He submitted that his only grievance is for the proposed penalty in the SCN against him. He denies all the allegations and averments contained in Show Cause Notice except to the extent, which were expressly admitted in the submission. He submitted that the case pertains to seizure of 04 capsules found wrapped in white tape and recovered from beneath seat no. 30F of the flight No. 6E-76 dated 14.11.2025 bound from Jeddah to Ahmedabad on which he was travelling on that seat, however he pleaded his innocence and unawareness of the said recovered gold before the officers. The officers without acceding to my entreaties proceeded to conduct personal search and detailed examination of his baggage however nothing incriminating goods or documents were seized from his possession. He submitted that despite of any evidence against him he was dragged into the case as a carrier solely the base that he travelled from Jeddah to Ahmedabad on the Seat no. 30F and case was made on the fabricated statement. He submitted that the Department must have provide concrete evidence like statements of co-passengers or crews or any fingerprints to prove his complicity in hiding the gold under the seat. There are no other evidences in form of Call records or exchange of message between him and actual smugglers to prove his involvement. He submitted that he did not have any contact or acquaintance with the person Ismail whose name was extracted from his statement and his name was cropped up in statement of Ismail only at instance of the officers and therefore, request for cross examination of co noticee named Shri Ismail.

He Submitted that it is an admitted fact that no contraband goods or incriminating documents were seized from his possession at the Airport. He had no role in smuggling of gold nor did he any contact with any of the person involved in the smuggling. He submitted that in the matter there was no statement recorded of any of the co passengers and even any of the crew members, as it is commonly seen now a days that flight crew, attendants and other aviation staff involved in the smuggling cases. He further submitted that he aggrieved with the proposal and his involvement in the smuggling of 09 Kgs gold during 09 previous journeys. He submitted

that no even an iota of evidence was produced in any of RUDs to even remotely suggest his role in smuggling of gold on previous occasions. The very issuance of SCN demanding penalty for gold allegedly smuggled on earlier occasions especially when the gold was never seized is bad in law.

He further claimed that it is evident from the screenshots of restro botim group that he was not a member of that group and therefore a SCN cannot be issued against him on some wild allegations of gold smuggling up to 09 kgs on earlier occasions and therefore, the charges of gold smuggling as syndicate is without any admissible material and liable to be set aside. The allegation of bringing the gold weighing 1246.48 grams as carrier suffers various legal infirmities. He submitted a panchnama is fundamentally a formal document recording the action of seizing officers, including physical observation in transparent manner. The Panchnama describes what the independent witnesses (panchas) saw during a search or seizure and it is not an interrogation log. It is not meant to record the statement of the noticee admitting his guilt. Whereas on one hand the panchnama is simply meant to record the physical facts of a seizure, the statement is for recording the questionnaire. The recording of statement in panchnama points at the sanctity of the content of panchnama and further invalidates the statement purportedly recorded.

He further alleged that the statement was not recorded in his handwriting and same was typed in English language. Moreover, the purported statement does not have any paternity, since neither the name not the designation of the officer who typed the statement was mentioned. Therefore, with these infirmities the purported statement cannot be relied upon. He placed reliance on judgment of Hon'ble Tribunal (Mumbai) in case of Leonardo Villarico Vs. Commissioner of Customs reported in 1991 (56) ELT 765. Above all the purported statement also did not contain any written endorsement acknowledging the truthfulness and voluntariness of the same. A pre typed endorsement admitting the voluntariness, correctness and truthfulness of the purported statement cannot take place of a hand written endorsement. He further placed reliance on the case of Hon'ble Bombay High Court in Union of India Vs. Kisan Ratan Singh and others (2020 SCC Online Bom.39).

He further submitted that the statement was recorded under illegal confinement exercising coercion and force upon him and his signature were forcefully obtained on several typed papers withing giving any opportunity to go through the content of the same. The content of the said papers were neither read over to him nor were he permitted to read the same. He placed

reliance on the judgment of Hon'ble High Court of Kerala in Assistant Commissioner of Customs Vs. Edwin Andrew Minihan reported in 2023(7) KHC 512. The invocation of Section 123 against him is bad in law and not legally sustain. He submitted that it is evident that the gold was recovered from below the Seat No. 30 F and it is indisputable that no gold was seized from his possession. Thus the statutory burden under Section 123 of the act falls either upon the person from whose possession the gold was seized or who claims the ownership upon the gold. As neither incriminating goods or documents were found from him nor he claims any ownership over the seized gold, therefore, the presumption of smuggling under Section 123 of the act cannot be used against him. Even the proposal for imposition of penalty under Section 112 of the act is highly uncertain and legally not sustainable in the light of judgment passed by Hon'ble High Court of Madras in B.Lakshmichand V Government of India reported in 1983(12) ELT 322(MAD).

He submitted that he did not violate any of the provisions of the Act. The said case was booked against him on assumption, presumptions and surmise and accordingly requested to absolve him of all the allegations and to exonerate him from proposed penal consequences.

15.2 Defense Reply of Noticee No. 2 i.e Shri Jaman/Zaman Sharif @ Duabi: - The noticee has not submitted any written defense reply against the allegation made against him in SCN.

15.3 Defense Reply of Noticee No. 3 i.e Ismail Kacheri Kunnummal: - The noticee vide letter dated 29.06.2026 has submitted his written submission wherein he denies all the allegations and averments contained in Show Cause Notice except to the extent, which were expressly admitted in the submission. He submitted that the case pertains to seizure of 04 capsules found wrapped in white tape and recovered from beneath seat no. 30F of the flight No. 6E-76 dated 14.11.2025 bound from Jeddah to Ahmedabad. He submitted that a panchnama is not meant to record statement of noticee admitting his guilt. It is a formal document meant for recording the actions of seizing officers as seen by the independent panchas. The moment a panchnama starts recording statement loses its evidentiary value and in turns contains foregone conclusions arrived at by the Department to somehow effect seizure. Therefore, it can be concluded that the statement recorded from Noticee Shri Abdul Nasir Thottahil was at behest of the officer and was not voluntary one. He relied on case law of Supreme Court in Ramanand @ Nandlal Bharti V State of U.P (2022 SCC Online SC 1396)

He submitted that the very procedure conducted resulted in seizure was not in accordance with law and fully unacceptable. A bare reading of panchnama reveals that the conclusions arrived at by the officers was nothing but jumping with haste without making any efforts to have meaningful verification to trace out the actual culprits and made the case according to their whims and fancies. The officers conducted that search inside the flight after all the passenger alighted and after recovered the four capsules from beneath of Seat No. 30 F concluded that the concealment was made by none other than the Noticee No. 1 Shri Abdul Nassir Thottahil to which the said seat was allotted and not even to bother to find out the passengers who travelled in the nearby seats. He submitted that the panchnama was not drawn in compliance with the guidelines for handling and storage of valuable goods that are seized/confiscated by the Department dated 01.12.2015 issued Department of Revenue, CBIC(Anti-Smuggling Unit), Ministry of Finance bearing F.No. 394/97/2015-Cus (AS). The panchnama is silent regarding the putting the seized 04 capsules of gold inside a transparent box/ container, sealing of that box/container, handing over sealed box/container to assayer, opening of the seal by assayer and conducting of extraction and purity check in front of noticee No. 1 and the witnesses and all these facts raises serious doubt whether the seized gold substituted, contaminated or altered between the time of seizure and the time it reached to assayer and this ultimately results in rejection of the assayer's valuation report regarding the weight and purity because there is no legal proof that the gold tested by the assayer is the exact same gold seized from the passenger. He submitted that the case of Department is that 04 capsules were seized the valuation certificate ought to have detailed the extraction of gold from the four capsules. However, the valuation certificate does not mention any process for extraction of gold from 04 capsules seized. On contrary it simply states that one gold bar was assayed. This impliedly means that the gold seized (04 capsules) was not the one that was assayed (One Gold Bar). Further, it was no where mentioned about the process by which the gold purity was ascertained as 999.0(24Kt), hence in all probability the gold seized is not the one that is weight and tested for purity.

He submitted that he was initially implicated into the subject case based on a purported statement of Shri Abdul Nassir Thottathil (Noticee No. 1). In order to accept a typed statement as voluntary it should invariably contain a handwritten endorsement acknowledging the truthfulness, voluntariness and reliability of the content of statement. It is well settled

principle that "voluntariness and truthfulness are the sine qua non for relying on any statement recorded under Section 108 of Act. The lack of hand endorsement of the statement of Noticee No. 1 cannot be relied and cannot be admitted as evidence and relied upon the judgment passed by Hon'ble High Court of Kerala in Assistant Commissioner of Customs V Edwin Andrew Minihan reported in 2023 (7) KHC 512. He submitted that the statement of Noticee No. 1 and His statement is contrary to the fact that in the statement of Noticee NO. 1 where in he stated that the gold was handed to by Ismail, however I have specifically mentioned that the gold was handed over to Noticee No 1 by Shri Jaman Sharif. Further, as per Noticee No. 1 it was in kerala market in Jeddah but as per his statement it was at residence of noticee no. 1. In light of these contradictions the very foundational bedrock on which this case has been framed against him is shaken to the root and hence falls to ground.

He further submitted that when all noticees have allegedly deposed that they can write English then why the statement was not obtained in their handwriting, moreover neither the name nor designation of the officer who typed the statement was mentioned in the statement. in light of dictum laid down by Hon'ble Tribunal (Mumbai) in case of Leonardo Villarico Vs. Collector of Customs (1191 (56) ELT 765), all statements are liable to be rejected. On perusal of SCN and RUDs, it is evident that the whole case against him has been framed on the basis of purported statement and some screenshots of exchanged messages in a Botim group namely Restro. Further, it was revealed that there were 04 persons in the group who exchanged the messages, but the investigation failed to identify the people and their mobile numbers, their service provider. The very issuance of SCN is bad in law as it demands to show cause against a 09 kgs of gold smuggled during 09 previous journeys, notwithstanding their present unavailability. A SCN cannot demand a person to prove against the allegation of smuggling gold without physically seized that gold. The very issuance of SCN demanding penalty for gold allegedly smuggled on earlier occasion, specially when the gold was never seized is bad in law. This is especially so when the physical seizure in the instant case confines only to 1246.48 grams of gold. It is further submitted that no incriminating goods or documents were seized from his possession and also not claiming any ownership on the seized gold, hence invocation of Section 123 of the Customs Act is bad in law and not legally sustainable. Further, as per the statement dated 20.11.2025 it was mentioned that "I was working in gold smuggling activities for monetary

consideration and that I was offered Rs. 2000/- to Rs. 3000/- only." It is highly incomprehensible to a prudent mind as to why someone would take up such a risky job for such a meager remuneration.

He submitted that as per the statement recorded on 20.11.2025 and 22.11.2025 that gold belong to Jaman Sharif of Dubai and was delivered to some person namely Muhammed and Ashib, all of whose phone number were already brought on record. Therefore, it was the duty of department to trace out the whereabouts of these persons and record their statement, however the department was failed to do so.

He further submitted that if he was member of syndicate and involved in smuggling as alleged and was aware of incarceration of the carrier, then why he would come Ahmedabad on 20.11.2025. He submitted that he runs a tea shop at Ahmedabad and that he had gone abroad for business purpose. Even the proposal for imposition of penalty under Section 112 of the act is highly uncertain and legally not sustainable in the light of judgment passed by Hon'ble High Court of Madras in B.Lakshmichand V Government of India reported in 1983(12) ELT 322(MAD).

He submitted that he did not violate any of the provisions of the Act. The said case was booked against him on assumption, presumptions and surmise and accordingly requested to absolve him of all the allegations.

15.4 Defense Reply of Noticee No. 4 i.e Shri Althaf Usman:- Shri Althaf Usman vide letter dated 01.06.2026 submitted his written submission wherein he denies all allegation levelled against him in the SCN. The allegation is entirely false and fabricated. He submitted that the said goods were neither found in his possession nor recovered from him at any point of time during the course of investigation or otherwise. Since the goods were not recovered from his custody, control or premises and also not claimed any ownership on gold and never claimed any claim on gold in future. He further submitted that he did not have any direct, indirect connection, association or relationship with the said goods, therefore cannot be held liable for any penalty, fine or punishment arising from the matter. Further, he submitted that he had no objection to the lawful seizure of the alleged concealed goods by the authorities in accordance with the procedure established by the law. He further denies all other statement and allegation contained in the SCN and request to drop the proceedings initiated against him.

15.5 Defense Reply of Noticee No. 5 i.e Shri Sandeep Mstrao:- Shri Sandeep Mstrao vide letter dated 22.06.2026 submitted his written submission wherein he denies all allegation levelled against him in the SCN. The allegation is entirely false and fabricated. He submitted that the said goods were neither found in his possession nor recovered from him at any point of time during the course of investigation or otherwise. Since the goods were not recovered from his custody, control or premises and also not claimed any ownership on gold and never claimed any claim on gold in future. He further submitted that he did not have any direct, indirect connection, association or relationship with the said goods, therefore cannot be held liable for any penalty, fine or punishment arising from the matter. Further, he submitted that he had no objection to the lawful seizure of the alleged concealed goods by the authorities in accordance with the procedure established by the law. He further denies all other statement and allegation contained in the SCN and request to drop the proceedings initiated against him.

Personal Hearing:-

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

Noticee No. 1: i.e Shri Abdul Nassir Thottathil

The noticee was given opportunity for personal hearing on 22.06.2026 and 29.06.2026. Miss Ayesha Nuha V, Advocate and authorized person appeared for personal hearing on 29.06.2026 on behalf of Shri Abdul Nassir Thottathil through video conferencing. She reiterated the contents of the written submission, emphasizing that the smuggled gold was not recovered from the personal possession of her client, but rather from beneath the seat allotted to him. She argued that the Department failed to record the statements of the co-passengers. Further, she submitted that her client cannot be held liable merely on the basis that the gold was found under his seat. She asserted that her client in no way connected to Shri Ismail Kacheri Kunnummal and he was not a member of any botim app and not a single message was produced by the Department against her client. There is no involvement of her client in any smuggling. Furthermore, she noted that the seizure did not take place in her client's presence and that the matter contains numerous absurdities.

Noticee No. 2: Shri Jaman/Zaman Sharif @ Dubai: The noticee was given opportunity for personal hearing on 22.06.2026, 29.06.2026 and 21.07.2026 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.

Noticee No. 3: Shri Ismail Kacheri Kunnummal S/o Shri Kunhipocker:

The noticee was given opportunity for personal hearing on 22.06.2026, 29.06.2026 and 21.07.2026. Shri Mohammed Zahir, Advocate and Authorized representative on behalf Shri Ismail Kacheri Kunnummal attended the personal hearing on 22.07.2026 through video conferencing being internet connectivity issue on 21.07.2026, the day fixed for personal hearing. He reiterated the contents of the written submission. He submitted that the panchnama is not meant to record statement of noticee admitting his guilt. It is a formal document meant for recording the actions of seizing officers as seen by the independent witnesses. Further, the valuation certificate does not mention any process of extraction of gold from 04 capsules seized, hence it appeared that the gold seized is not the one that is weighed and tested for purity. Further, the statement of Noticee No. 1 (Shri Abdul Nassir Thottathil) is not followed by any hand written endorsement, therefore, the same cannot be relied upon and cannot be admitted as evidence. He stated that the case has been framed basing upon purported statements and some screenshots exchanged in a Botim group namely Restro. Further, no gold seized from the possession of his client. The case booked against his client on assumptions, presumptions and surmises and requested to absolve from all offences as per SCN. Further vide mail dated 28.07.2026, Shri Mohammed Zahir requested to take the following note in PH sheet that is:-"Screenshots of messages exchanged between four members of the Restro botim group is made a RUD to the subject case. But no investigation has been conducted to verify the identity of people and their mobile numbers with the mobile phone service provider. In the absence of the same the authenticity of these Screenshots falls to ground."

Noticee No. 4: Shri Althaf Usman S/o Shri Usman Kutty:

The noticee was given opportunity for personal hearing on 22.06.2026 & 29.06.2026. On 29.06.2026 he himself appeared for personal hearing through video conferencing. He re-iterated his written submission.

He denied all allegation levelled against him in Show Cause Notice. He submitted that he has nothing to add apart from his written submission.

Noticee No. 5: Shri Sandeep Mstrao S/o Shri Bhanwarlal Mstrao:

The noticee was given opportunity for personal hearing on 22.06.2026. He himself attended the personal hearing on 22.06.2026 in person instead of video conferencing. He re-iterated his written submission. He denied all allegation levelled against him in Show Cause Notice. He further stated that the goods were neither found in his possession at the time of seizure nor were received from him at any point of time during the investigation. He further mentioned that the seized goods (gold) were not belong to him and he will never claim ownership on gold at any time in future. He requested to drop the proceedings initiated against him in the Show Cause Notice.

Discussion and Findings:

17. I have carefully gone through the case records, the Show Cause Notice, the documents relied upon therein, and the statements of the noticees, along with the written submissions made by the noticees or their authorized representatives, both in writing and during the personal hearings held on various dates. Further, sufficient opportunities of being heard were provided to all the noticees in accordance with the principles of natural justice.

17.1. I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to Shri Jaman/Zaman Sharif @ Dubai but he did not participate in the adjudication proceedings inspite of the fact that service of letters for personal hearings was also done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: —

a) *by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;*

b) *by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*

c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

d) by making it available on the common portal;

e) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;

f) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticee through Notice Board of Customs House, Ahmedabad, but he did not respond as if he did not have anything to submit in his defense.

17.2. I find that Shri Jaman/Zaman Sharif @ Dubai have failed to appear for Personal Hearing, inspite of being given opportunity to appear in person or through video conferencing several times as detailed in foregoing para for defending his case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

17.3. With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws:

17.3.1. Hon'ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs & C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.) has held that:

> 19. No doubt hearing includes written submissions and personal hearing as well but the principle of *Audi Alteram Partem* does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing

the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another* v. *M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

17.3.2. Hon'ble Tribunal of Mumbai in the case of Sumit Wool Processors v. CC, Nhava Sheva reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai) has observed as under:

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an *alibi* to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

In view of the discussion held in Para 17.1 to 17.3.2. above, in case of Noticee i.e. Shri Jaman/Zaman Sharif @ Dubai, I proceed to adjudicate the Show Cause Notice No. DRI/AZU/GI-02/ENQ-74/2025 dated 08.05.2026 ex parte.

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

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

ii. Whether, seized gold bar weighing 1246.48 Grams (4 capsules covered with white tape) having a market value of Rs. 1,62,04,240/- is liable for confiscation under Section 111 (d), (e) and (l) of the Customs Act, 1962.

iii. Whether, packing materials used to conceal the above said gold bars of purity 999/24 Kt., totally weighing 1246.48 grams is liable for confiscation under Section 119 of the Customs Act, 1962.

iv. Whether, Total quantity of about 9 kilograms of gold smuggled during the 9 previous journeys involving aggregate market value of about 11.398 crore rupees notwithstanding their present unavailability as they were smuggled in violation of the various provisions of Customs Act, 1962 is liable for confiscation under Section 111 (d), (e) and (l) of the Customs Act, 1962.

v. Whether the act of the Noticee No. 1 to Noticee No. 5 of SCN renders themselves to be penalized discretionarily under Section 112 (a) and 112(b) of the Customs Act, 1962;

19. Regarding prohibition of the goods, I note that Section 2(33) of the Customs Act, 1962 defines 'prohibited goods' as '*any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with*'. The said definition implies that in cases where the conditions applicable for import of goods are not complied with, such goods would fall under the category of 'prohibited goods'. In the instant case, the gold has not been brought in India by a nominated agency notified by the RBI or DGFT, as the case maybe and as such the same would be covered under the category of 'prohibited goods'. My above finding is aptly supported by the case law of **Om Prakash Bhatia reported at 2003 (155) ELT 423 (SC)** wherein it has been held by the Hon'ble Supreme Court as under:

> *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 the 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 goods are not complied with, it would be considered to be prohibited***

goods. *This would also be clear from Section 11 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 purposes specified in sub-section (2).* ***Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*** *This is also made clear by this Court in Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negatived the said contention and held thus:-*

'…What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. ***Any restriction on import or export is to an extent a prohibition.*** *The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (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 the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues."*

The above judgment has been followed by the Hon'ble High Court of Gujarat in the case of **Bhargavraj Rameshkumar Mehta reported at 2018 (361) ELT 260 (Guj)** wherein it has been observed as under:

15.*We may recall, the contention of the Counsel for the petitioner in this respect was that the gold at the relevant time was freely importable. Import of gold was not prohibited. Case of the petitioner would therefore, fall under clause (ii) of Section 112 and penalty not exceeding 10% of the duty sought to be evaded would be the maximum penalty imposable. Such contention shall have to be examined in the light of the statutory provisions noted above. As noted, Section 111 of the Act provides for various eventualities in which the goods brought from a place outside India would be liable for confiscation. As per clause (d) of Section 111, goods which are imported or attempted to be imported or are brought within the Customs quarters for import contrary to any prohibition imposed by or under the Act or any other law for the time being in force, would be liable for confiscation. Similarly, for dutiable or prohibited goods found concealed in any manner in any conveyance would also be liable to confiscation. As per Section 2(39) the term 'smuggling' would mean in relation to any goods, any act or omission which will render such goods liable to confiscation under Section 111 or Section 113.* ***Thus, clearly Section 111 of the Customs Act prohibits any attempt at concealment of goods and bringing the same within the territory of India without declaration and payment of prescribed duty.*** *Term 'prohibited goods' as defined under Section 2(33) means any goods, the import or export of which is subject to any prohibition under the 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. This definition therefore, comes in two parts. The first part of the definition explains the term 'prohibited goods' as to mean those goods, import or export of which is subject to any prohibition under the law. The second part is exclusionary in nature and excludes from the term 'prohibited*

goods', in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. From the definition of term 'prohibited goods', in case of goods, import of which is permitted would be excluded subject to satisfaction of the condition that conditions for export have been complied with. ***By necessary implication therefore in case of goods, import of which is conditional, would fall within the definition of prohibited goods if such conditions are not complied with.***

16. *Further clarity in this respect would be available when one refers to the term 'dutiable goods' as to mean any goods which are chargeable to duty and on which duty has not been paid. We refer to this definition since Section 112 makes the distinction in respect of goods in respect of which any prohibition is imposed and dutiable goods other than prohibited goods. When clause (ii) of Section 112 therefor, refers to dutiable goods other than prohibited goods, it shall necessarily have the reference to the goods, import of which is not prohibited or of which import is permissible subject to fulfilment of conditions and such conditions have been complied with. Condition of declaration of dutiable goods, their assessment and payment of customs duties and other charges is a fundamental and essential condition for import of dutiable goods within the country. Attempt to smuggle the goods would breach all these conditions. When clearly the goods are sought to be brought within the territory of India concealed in some other goods which may be carrying no duty or lesser duty, there is clear breach of conditions of import of goods though per se import of goods may not be prohibited.*

Further, in case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."

Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of Kiran Juneja Vs. Union of India & Ors. has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is affected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods"*. Relying on the ratio of the judgments cited above, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods" within the meaning assigned to the term under Section 2(33) of the Customs Act, 1962.

20. Before addressing the allegations leveled in the impugned Show Cause Notice against the noticees, it is necessary to consider the preliminary contentions raised by Noticee Shri Abdul Nassir Thottathil, Shri

Sandeep Mstrao, Shri Althaf Usman, and Shri Ismail Kacheri Kunnummal, who argue that their statements cannot be treated as valid admissions and were fabricated. Specifically, Shri Abdul Nassir Thottathil alleges that his statement was recorded under illegal confinement and coercion, claiming that his signature was forcefully obtained on several typed sheets without an opportunity to read their contents. In support of this contention, he relies on the dictum laid down by the Hon'ble High Court of Kerala in Assistant Commissioner of Customs Vs. Edwin Andrew Minihan [2023 (7) KHC 512]. Furthermore, Shri Abdul Nassir Thottathil and Shri Ismail Kacheri Kunnummal argue that despite stating they could write in English, no reason was assigned as to why their statements were not obtained in their own handwriting, thereby rendering the statements liable for rejection. They also contend that their purported statements do not mention the name or designation of the officer who typed them, placing reliance on the judgment of the Hon'ble Tribunal (Mumbai) in Leonardo Villarico Vs. Collector of Customs [1991 (56) E.L.T. 765]. Finally, Shri Abdul Nassir Thottathil submits that the statements lack any written endorsement acknowledging their truthfulness and voluntariness, thereby failing the triple test of truthfulness, voluntariness, and reliability as enunciated by the Hon'ble Bombay High Court in Union of India Vs. Kisan Ratan Singh and Others.

In this regard, on a careful perusal of the statements tendered by all the noticees, I find that they have explicitly admitted in their respective statements that they were given voluntarily, without any inducement, threat, coercion, or improper means, and were recorded as per their own narrations. Furthermore, noticees Shri Ismail Kacheri Kunnummal, Shri Althaf Usman, and Shri Sandeep Mstrao endorsed their respective statements with self-handwritten notes, confirming that the statements were recorded as per their say and were factually correct. The statements were typed in English on a computer by the recording officer at the specific request of the noticees; therefore, the contentions raised by Shri Abdul Nassir Thottathil and Shri Ismail Kacheri Kunnummal that they were not allowed to write or type their statements themselves hold no ground and are legally untenable. A review of these handwritten, dated signatures demonstrates that the noticees signed their statements with full presence of mind, only after going through the text and verifying its factual accuracy. Consequently, the allegation that they were not allowed to read the

statements and that their signatures were forced onto pre-typed sheets is nothing but an afterthought, devoid of any credence. In this context, the Latin maxim ***"Verba volant, scripta manent"*** (spoken words fly away, but written words remain) is squarely applicable.

The law presumes that a statement recorded under Section 108 of the Customs Act, 1962, is voluntary unless cogent evidence to the contrary is presented, and the person giving it is under no obligation to endorse a typed statement if it was indeed obtained under coercion. If a statement is obtained under duress, it is reasonably expected that the noticee would retract it immediately, or at least within a reasonable time, backed by supporting documentary evidence. In the present case, the statements of the noticees were recorded on 14.11.2025, 20.11.2025, and 22.11.2025, yet the allegations of coercion and fabrication were raised for the very first time in their respective written submissions in June 2026, after an inordinate lapse of more than six months. The noticees never filed any retraction before the Customs officers who recorded their statements, despite having ample opportunity to do so, and it is highly implausible that they took over six months to evaluate that their statements were involuntary.

This conduct strongly indicates that the statements were made without duress, and the delayed challenge is a calculated attempt to mislead the proceedings and extricate themselves from the consequences of their admissions. A review of the statements reveals detailed and intricate disclosures regarding the noticees' business activities, family backgrounds, and educational qualifications, which could only have been furnished from their personal knowledge and could not have been invented by the recording officers. Furthermore, the voluntary admissions made by the noticees are fully supported by the contemporaneous *Panchnama*, which records the actual physical recovery of the undeclared gold in the presence of independent witnesses, leaving nothing on record to cast the slightest doubt on the voluntariness of these statements.

With regard to the noticees' reliance on the judgments in *Leonardo Villarico Vs. Collector of Customs* [1991 (56) E.L.T. 765 (Tribunal-Mumbai)], *Assistant Commissioner of Customs Vs. Edwin Andrew Minihan* [2023 (7) KHC 512 (Kerala HC)], and *Union of India Vs. Kisan Ratan Singh and Others* [2020 SCC Online Bom 39], I find that the facts and legal ratios of these cited cases are distinguishable from the instant matter. The primary ratio in *Leonardo Villarico* dictates that if a person knows how to write English, typing the statement without recording reasons for doing so, alongside a

failure to mention the name and designation of the typist, gives rise to suspicion. In the present case, however, the statements were typed on a computer at the explicit request of the noticees, and the recording officers actively signed the statements while clearly displaying both their names and designations. Similarly, the judgments in *Edwin Andrew Minihan* and *Kisan Ratan Singh* deal with instances where signatures were obtained under proven illegal confinement or failed the tests of truthfulness and reliability due to an established lack of voluntariness. In the present matter, the noticees have failed to furnish any credible documentary evidence to substantiate their claims of duress or fabrication, and a bare, uncorroborated retraction made after six months cannot override a validly recorded statement under Section 108. Moreover, no formal retraction has filed by any of the noticees and only alleged only at the time of their written submission and at the time of personal hearing.

I find that the Hon'ble Supreme Court in *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate* unequivocally held that a confession recorded under Section 108 of the Customs Act is admissible evidence, and it is not required that every minute detail of the statement be corroborated by independent evidence. Apart from making a bare, delayed retraction, all the noticees have failed to submit any corroborative evidence in support of their allegations. Moreover, by virtue of their own admissions, no further corroboration is required, as reliance is placed on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Madras Vs. M/s Systems & Components Pvt. Ltd.* [2004 (165) E.L.T. 136], wherein it was held as a basic and settled principle of law that what has been admitted need not be proved. Therefore, the case laws cited by the noticees are not squarely applicable to the facts of the instant case, are distinguishable, and the statements remain valid, admissible in evidence, and binding on the noticees. The detailed, consistent, and corroborated nature of their statements, coupled with the lack of prompt retraction or supporting evidence for their claims, leads to the conclusion that their statements were voluntary and admissible under Section 108 of the Customs Act, 1962. I further find that the mere fact that a statement has been retracted does not imply that the statement loses its evidentiary value. I hold that the statements of noticees Shri Abdul Nassir Thottathil, Shri Ismail Kacheri Kunnummal, Shri Althaf Usman and Shri Sandeep Mstrao are voluntary, credible, and admissible in evidence. In support of my view, I relied on the following judgements:

(i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that ***evidence- confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA***.

(ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that ***"Statement recorded by a Customs Officer under Section 108 is 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) 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."***

(v) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

> ***Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued.***

(vi) 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 "ln 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."

(vii) In the case of **K. P. Abdul Majeed reported at 2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. ***As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily.*** *When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view.*

(viii) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. ***At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained****.* ***It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted****. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."*

(emphasis supplied)

(ix) Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30**.

21. Further, I note that Noticee Shri Abdul Nassir Thottathil and Shri Ismail Kacheri Kunnummal in their written submission as well as during the Personal Hearing alleged that panchnama is not meant to record statement of noticee admitting his guilt. It is a formal document meant for recording the actions of seizing officers as seen by the independent witnesses. The Panchnama describes what the independent witnesses saw during a search or seizure and is not an interrogation log. The recording of statement in panchnama points at the sanctity of the content of panchnama and further invalidates the statement purportedly recorded from them. The moment a panchnama starts recording a statement its losses its evidentiary value and placed reliance on the dictum of Hon'ble Supreme Court in Ramanand @ Nandlal Bharti Vs. State of U.P (2022 SSC Online SC 1396).

However, on a careful perusal of the case law cited by the noticees, I find that the facts and legal context of the judgment in *Ramanand @ Nandlal Bharti* are completely distinguishable from the present case. The judgment in *Ramanand @ Nandlal Bharti* was delivered strictly within the framework of regular criminal investigations conducted by police officers under the Code of Criminal Procedure (CrPC) and the Indian Evidence Act, where confessions made in police custody suffer from an absolute statutory bar under Sections 25 and 26. Furthermore, that case involved a murder investigation where the independent *Panch* witnesses failed to reiterate or corroborate the actual physical process recorded in the recovery *Panchnama* under which the weapon was found, leading the Hon'ble Court to discard its evidentiary value.

It is a well-settled principle of law that Customs and DRI officers are not "police officers" within the meaning of the Indian Evidence Act, and departmental proceedings under the Customs Act, 1962, are independent, distinct quasi-judicial proceedings that do not operate on the same footing as a regular criminal trial. To reinforce this position, reliance is placed upon the landmark Constitution Bench judgment of the Hon'ble Supreme Court in ***Romesh Chandra Mehta Vs. State of West Bengal*** [1968(10)LCX0002], and recently again affirmed by the Apex Court in ***Amad Noormamad Bakali***

Vs. State of Gujarat [2026(02)LCX0279]. These rulings unequivocally clarify that Customs/DRI officers are not "police officers" under the Evidence Act, meaning the rigid restrictions governing police-authored confessions or the statutory bars against custodial narratives do not apply to Customs proceedings.

A *Panchnama* drawn by Customs or DRI officers is a contemporaneous, spot-recorded chronicle of a search and seizure operation. Any spontaneous, factual disclosure or spot-explanation made by a passenger during interception such as explaining the importation of gold in the form of four capsules and the subsequent concealment of the same beneath his seat forms an inseparable part of the *res gestae* (things done in the course of the transaction) under Section 6 of the Indian Evidence Act. Such a spot-explanation merely captures the reality of the recovery and does not turn the *Panchnama* into a custodial interrogation log, nor does it reduce the document to an inadmissible confession.

The contemporaneous *Panchnama* dated 14.11.2025 on record clearly establishes that the independent *panchas* (witnesses) were actively involved throughout the entire recovery process at the airport and the valuer's premises. The document was generated sequentially on a computer as the events unfolded and was read over and explained to both the noticee and the *panchas* in their vernacular language before signatures were affixed. The noticee's spot-clarification regarding the four capsules hidden under seat 30F was a factual verification recorded in real time, not a pre-drafted narrative or a forced confession. Furthermore, the physical recovery of **1246.48 grams of 24Kt pure gold** valued at **Rs. 1,62,04,240/-** provides unassailable physical corroboration to the search proceedings. Therefore, the restrictive principles laid down in the case cited by the noticees regarding police narratives do not apply here, the absolute legal sanctity of the *Panchnama* stands fully preserved, and the contemporaneous evidence remains entirely valid and binding upon the noticees.

22. Further, it is impertive to mention that the Noticee Shri Abdul Nassir Thottathil asked for cross examination of co-noticee Shri Ismil Kacheri Kunnummal.

I find that it is not mandatroy to allow cross examination during adjudication proceedings under Section 138B(2) of the Customs Act, 1962. In the instant case, as detailed in the preceding paras, the facts and events

have been establsihed not only through statements but also through documentary evidences/digital evdiences. I find that cross examination is not expressly mentioned in Section 124 and Section 122 of Customs Act, 1962. I further find that the source of cross examination lies in the statute in Section 138B of the Customs Act. Sub-Section 138(B)(2) above uses the words "shall so far as may be" which suggests the primacy and desirability of exercise of power for permitting cross-examination in the interest of justice. It is explicit that cross-examination is not a mandatory requirement and the discretion has to be applied cautiously. The relevance of cross-examination, the identity of the person sought to be cross-examined, the context of their statements, and the nature of the dispute are all critical considerations. In taxation matters, which are civil in nature, the standard for appreciating evidence is based on the principle of *preponderance of probability*, unlike criminal proceedings where the strict provisions of the Indian Evidence Act apply. I find that statements recorded under Section 108 of Customs Act are voluntary/ confessional in nature. The statements tendered by Shri Abdul Nassir Thottathil and Shri Ismail Kaccheri Kunnummal, under Section 108 of the Customs Act, 1962, contain details, which were exclusively known to them only and thus the statement is to be construed as voluntary. It is to be noted that there is a distinction between retraction and coercion. At no point has any evidence of threat or coercion in recording the statements been brought on record. Considering that the statement under Section 108 of Customs Act before a Customs Officer is distinct from a statement before a police officer. It is on the prniciple of natural justice that both sides should be heared fairly and reasonably, that if any reliance is placed on evidence or record against a person, then the evidence or record must be placed before him for his information, to comment and criticism. However, natural justice does not necessarily mandate formal cross-examination in every case. So long as the party charged has a fair and reasonable opportunity, to see, comment and criticise the evidence, statement or record on which the charge has been made against him, the demand and test of the natural justice statisfied. Cross examination in that sense is not the technical cross examination in a court of Law in the witness box, as held in judgment of Kishanlal Agarwal vs. Collector of Land Customs, AIR 1967. Further, it is held that denial of cross examination does not lead to violation of principles of natural justice. The following case laws are relevant and further support the above view:-

(i) Poddar Tyres (Pvt) Ltd vs. Commissioner-2000 (126) E.L.T 737:- wherein it has been held that cross examination not a part of natural justice but only that of procedural justice and not a 'sine qua non'.

(ii) Kumar jagdish Ch. Sinha Vs. Collector-2000 (124) E.L.T 118 (Cal H.C)- in this case it has been held that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.

(iii) A.K Hanbeen Motarred Vs. Collector-2000(125) E.L.T 173 (Mad H.C):- wherein it has been held that the strict rule of the burden of proof applicable to criminal prosecution may not be applicable to proceedings before customs authorities.

(iv) Shivom Ply N-wood Pvt Ltd Vs. Commissioner of Customs & Central Excise, Aurangabad-2004 (177) E.L.T 1150 (Tri. Mumbai):- wherein it has been held that cross examination not to be claimed as a matter of right.

Furthermore, I find that it is a well settled position that proceedings before a quasi-judicial authority are not on the same footing as proceedings before a court of law. It is within the discretion of the quasi-judicial authority to decide whether or not to allow request of cross examination, based on the requirements of natural justice in a given case. Denial of such a request has consistently been held not to violate the principles of natural justice in quasi-judicial proceedings, as upheld in the following case laws:

a. In the case of kanungo & co. Vs. Collector of Customs, Calcutta and others [1993 (13) E.L.T 1486 (S.C)] wherein it was unequivocally held that for proceedings under Customs Act, the right to compliance to the principle of natural justice does not cover the right to cross examination witnesses. Relevant para is reproduced wherein the Hon'ble Supreme Court observed as follows:-

"in our opinion, the principles of natural justice donot require that in matters like this the person who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordinlgy, I hold that there is no force in the third contention of the appellant."

b. In the case of Suman Silk Mills Pvt Ltd vs. Commissioner of Customs & C.ex, Baroda [2002 (142) E.L.T 640 (Tri. Mumbai)] Tribunal observed that-

"Natural Justice- Cross Examination-Confessional Statements- No Infraction of Principle of Natural Justice where witnesses not crossed examined when statement admitting evasion were confessional."

c. In the case of Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) E.L.T 433 (Tri.) it was held- *" In a quasi judicial*

proceeding, strict rules of evidences need not to be followed. Cross examination cannot be claimed as a matter of right."

d. In the case of Patel Engg. Ltd Vs. UOI reported in 2014 (307) E.L.T 862 (Bom), Hon'ble Bombay High Court has held that :- *" Adjudication-Cross Examination- Denial of -held does not amount to violation of principle of natural justice in every case, instead it depends on the particular facts and circumstances-thus right of cross examination cannot be asserted in all inquires and which rule or principle of natural justice must be followed depends upon several factors- futher, even if cross examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated."*

e. Hon'ble Punjab and Haryana High Court in its decision in case of Azad Engg Works vs. Commissioner of Customs and Central Excise, reported as 2006 (2002) ELT 423 held that :- *".....it is well settled that no rigid rule can be laid as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interferences with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble Supreme Court in K.L Tripathi Vs State Bank of India and others, AIR 1984 SC 273."*

f. Hon'ble Tribunal in case of P Pratap Rao Sait Vs. Commissioner of Customs reported as 1988 (33) ELT (Tri) has held that *".....the plea of the learnt counsel that the appellant was not permitted to cross examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable".*

g. Similarly in A.L Jalauddin Vs. Enforcement Director reported as 2010 (261) ELT 84 (Mad HC) the Hon'ble High Court held that:- *".....therefore, we do not agree that the principle of natural justice have been violated by not allowing the appellant to cross examine these two persons. We may refer to the paragraph in AIR 1972(SC) 2136=1983 (13)ELT 1486(SC) (Kanungo & Co.Vs Collector of Customs, Calcutta)"*

h. In the case of Liyakat Shah Vs. CCE [2000(120) ELT 556], the CESTAT held that Cross examination can be denied if it just delaying tactics to avoid justice.

i. In case of GTC industries Ltd Vs.Commissioner of Customs New Delhi [2011 (264) ELT 433 (Tri-Del.) it has been held that:- "Evidence in adjudication proceeding need not be like the one in criminal cases- Findings in the adjudication based on preponderance of probability- witnesses found to be not innocent but well conversant with the appellants' trade-Statement of witnesses voluntary and not retracted-Reply to SCN not filed and merely rasied filmsy plea for cross examination prematurely-Right to Cross Examination not required when circumstancial evidence provide reliable

basis corroborating statements-witnesses not having enmity with appellant and such witnessess not required to put to cross examination- No right to seek cross examination on filmsy plea when burden of proof discharged by revenue- Natural Justice not violated."

I also observe that statements recorded under Section 108 of the Customs Act are voluntary and confessional in nature, therefore denial of cross examination does not violate principles of natural justice. Request for cross examination of co-noticee who have made voluntary statements during the investigation is not accepatble in view of following case law:-

a) In the case of Jagdish Shanker trivedi vs. Commissioner of Customs, Kanpur [2006 (194) E.L.T 290 (Tri.Delhi)] tribunal Observed that – *" Confessional statements of noticee- retraction thereof, which was otherwise unacceptable would not entitle them to claim cross examination of witnesses on aspect which were confessed by them- there is no violation of natural justice principles in such a course...."*

b) In the case of Surjeet Singh Chhabra Vs. UOI reported in 1997 (89) ELT 646(S.C)] it was held that- *" Customs officials are not police officers and admission made before them though retracted binds the deponent. In view of voluntary statements recorded and such statements not retracted did not warrant cross examination when other circumstantial provided reliable basis corroborating the statement. When nothing surfaced that the witnesses had any enmity with appellant, those were not liable to be discarded nor required to be put to cross examination".*

22.1. Further, I find that the cross-examination of the co-noticee cannot be granted as the noticees failed to provide any cogent or valid reason for the cross-examination of co-noticee Shri Ismail Kacheri Kunnummal. In support of my view, I rely on the following judgments:-

- *Union Of India V. Rajendra Bajaj Reported In 2010 (253) E.L.T. (Bom.);*
- *Jagdish Shankar Trivedi V. Commissioner Of Customs, Kanpur Reported In 2006 (194) E.L.T. 290 (Tri. Delhi);*
- *N.S.Mahesh V. CC, Cochin (Supra)*
- *Laxmi V. Collector Of Customs, Lucknow, Reported In 2001 (138) E.L.T. 1090;*
- *M/S. Om International V. CC, New Delhi Reported In 2007 (217) E.L.T. 88 (Tri. Del);*
- *Liyakat Shah V. Commissioner Of C.Ex. Indore-Ii (Bhopal) Reported In 2000 (120) E.L.T. 556;*

- *Shri Ranchhodbhai M. Patel V. Central Board Of Revenue, New Delhi Reported In 2000 (125) E.L.T. 281 (Punj);*
- *Harinder Pal Singh Shergill V. Commissioner Reported In 2010 (259) E.L.T. A19 (SC);*
- *M/S. Erode Annai Spinning Mills (Pvt.) Ltd. Reported In 2019 (366) E.L.T. 647 (T).*

22.2 I also find that Cross Examiantion sought without indicating specific reasons, is also not admissible in view of following case laws:-

1) In the case of Fortune Impex vs. Commissioner of Customs, Calcutta [2001(138) ELT 556 (Tri. Kolkata)] Hon'ble Tribunal observed that:- "……it is not required that in each and every case, cross examination should necessarily be allowed. There is no absolute right of cross examination provided in the Customs Act. The Advocate had given a lsit of 26 persons for cross examoination without indicating the specific reason for cross examination. The ……it cannot be said that there was violation of principles of natural justice by not allowing the cross examination of the person sought.". This view taken by the tribunal has been affirmed by the Hon'ble Supreme Court-2004 (164) ELT 4 (S.C) & 2004 (167) ELTA 134 (S.C).
2) Hon'ble CESTAT, Kolkata in its decision in Dipu Das Vs. Commissioner of Customs, Kolkata reported as 2010 (261) ELT 408 (Tri.Del) has held that:- *"……in adjudication proceedings, cross examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same."*

I find that the Noticee Shri Abdul Nassir Thottathil, in his written submission, has requested cross-examination of the co-noticee Shri Ismail Kacheri Kunnummal, stating that "***Since I donot know the person named Ismail, I have all reasons to believe that my name was cropped up in Statement of Ismail only at instance of the officer. Hence in order to prove my innocence, I request this authority to permit me to cross examine the 3rd noticee, Ismail***." I find that this contention is entirely baseless and contractually contradicted by the evidence on record.

On perusal of the voluntary statement given by Shri Abdul Nassir Thottathil under Section 108 of the Customs Act on 14.11.2025, specifically in response to Question No. 5 (*"Who gave you the foreign-origin gold?"*), he explicitly stated: *"My friend namely Ismail gave me 04 (four) capsules of foreign origin gold wrapped in pairs at Kerala Market, Jeddah. On being asked, I state that Ismail's mobile number is (+966 555931879). His*

WhatsApp number is +966 555931879. He has given a domestic SIM having number 9061270873. I further asked, that I donot know the whereabouts of Ismail. " Furthermore, in response to Question No. 7, when asked why he carried the foreign-origin gold to Ahmedabad, he categorically replied: *"Ismail told me to hide the gold beneath my seat No. 30F and asked me to get off at Ahmedabad Airport. On being asked, I state that I do not know who was to remove/take the gold."*

This direct link is firmly corroborated by co-noticee Shri Ismail Kacheri Kunnummal in his own voluntary statement dated 20.11.2025, wherein he admitted to handing over the four capsules of gold to Shri Abdul Nassir Thottathil in his presence. Crucially, in response to Question No. 10 of his statement, when asked if he was aware of the events that transpired on 14.11.2025 regarding the gold carried by Shri Abdul Nassir Thottathil, Shri Ismail replied: *"Yes, Sir, as informed by Althaf in the group namely 'restro' in the Botim App that the parcel was caught by AIU from seat no. 30F. Further, the wife of Abdul Nasir Thottathil informed me directly that he has been arrested."*

The admissions from both noticees make it abundantly clear that they share a deep-rooted personal and operational acquaintance. It is highly implausible and defies standard human logic that a person who allegedly does not know another would possess that stranger's foreign mobile number, WhatsApp details, and local SIM card. It is equally absurd to suggest that upon the interception of the passenger at the airport, his wife would call this supposedly "unknown" person to inform him of the arrest. Therefore, the noticee's request to cross-examine co-noticee Shri Ismail Kacheri Kunnummal on the non-cogent ground that they are strangers is nothing but a groundless, delayed tactic engineered to escape the clutches of the law.

Moreover, I find that the noticee has not provided any specific grounds or legal justification to support this request. There is absolutely no mention of any procedural lapse, irregularity, or deficiency in the manner in which the statements were recorded by the officers that could potentially affect the admissibility or credibility of the evidence relied upon against them. Cross-examination is a strategic tool designed to challenge or test the veracity of a witness's statement or the reliability of evidence brought against an individual. Because a co-noticee stands on the same footing as an accused and is not an independent prosecution witness, such a request

lacks a sound legal basis and appears entirely misconceived. Furthermore, I find that the denial of cross-examination of the co-noticee does not in any manner diminish the evidentiary value of the contemporaneous documentary evidence such as the *Panchnama* and the valuer's certificate or the voluntarily recorded statements already existing on record. The facts speak for themselves, and the request for cross-examination is hereby rejected as legally unsustainable.

23. Further, I find that the noticee Shri Ismail Kacheri Kunnummal, contented that the panchnama was prepared without following the guidelines issued by CBIC (Anti Smuggling Unit) vide F.No. 394/97/2015-Cus (AS) dated 01.12.2015 regarding handling and Storage of Valuable Goods that are seized and confiscated and raises serious doubts as to whether the seized goods subsitituted, contaninated or altered between the time of seizure and the time it reached the assayer. He further contened that the valuation cerificate does not mention any process for extarction of gold and certificate simply states purity of gold as 999.0/24kt without mentioing the method adopted for determining its purity. Therefore, the valuer report is likely to be rejected because there is no legal proof that the gold tested by the assayer is exact same gold seized from the passenger.

In this regard, I find that the contentions raised by noticee Shri Ismail Kacheri Kunnummal alleging that the guidelines issued by the CBIC (Anti-Smuggling Unit) vide F.No. 394/97/2015-Cus (AS) dated 01.12.2015 regarding the handling and storage of valuable goods were not followed, and that the valuation certificate fails to mention the exact methodology or chemical process adopted to test the purity of the gold are completely speculative, unfounded, and legally untenable. The noticee has raised a baseless apprehension that the seized gold paste could have been substituted, contaminated, or altered between the time of seizure at the airport and its subsequent testing by the approved assayer.

However, a meticulous review of the contemporaneous *Panchnama* dated 14.11.2025 swiftly demolishes this narrative. The documentary record explicitly demonstrates an unbroken and completely transparent chain of custody. The *Panchnama* chronicles that immediately upon recovery of 04 capsules appears to have gold from beneath of Seat No. 30F during rummaging of Flight, the officers intercepted that passenger Shri Abdul Nassir Thottathil at 03:50 Hrs. To ensure absolute accuracy in extraction,

weighment and valuation, the officers, along with the independent *panch* witnesses and the passenger proceeded directly to the business premises of the Government Approved Valuer, Shri Soni Kartikey Vasantrai, at 05:20 Hrs of 14.11.2025 with the recovered 04 capsules. The entire extraction, purification, and weighing process took place on the spot in the direct physical presence of the passenger and the *panchas*. The valuer, via valuation certificate no. 705/2025-26 dated 14.11.2025, certified that the gold bar extracted from the semi-solid paste and chemical mix possessed a net weight of 1246.480 grams with a purity of 999.0/24Kt. The valuer further certified its market value at Rs. 1,62,04,240/- and its tariff value at Rs. 1,43,35,455/-, calculated in terms of Notification No. 76/2025-Customs (N.T.) dated 31.10.2025 and Exchange Rate Notification No. 41/2025 dated 07.11.2025. This certificate was explicitly read, seen, and endorsed on the spot by the noticee Shri Abdul Nassir Thottathil and both independent *panch* witnesses.

Immediately after the extraction process, the pure gold bar was placed into plastic Container 'A' and the remnants of the packing material were secured in Container 'B'. In strict accordance with the prescribed statutory safeguards, a detailed packing list was placed inside both transparent containers, which were then tied with white thread and securely sealed with the official Customs lac seal. This sealing was executed in a manner that makes it physically impossible to open the containers without tampering with the official seal. This entire process was witnessed and signed on the spot by the panchas and the passenger himself. The sealed boxes were subsequently deposited into the safe custody of the Warehouse In-charge at SVPI Airport, Ahmedabad, under official Entry Nos. 7806 and 7807.

The noticee’s argument that the valuation report must be rejected due to non mentioing of the method adopted for extraction of gold bar and determining its purity is legally fallacious. The report was issued by a Government Approved Valuer possessing specialized technical expertise. In quasi-judicial proceedings, a certificate issued by an expert authorized by the department carries absolute evidentiary weight unless successfully rebutted by cogent, contrary expert evidence. The noticee has failed to produce any alternative expert report to challenge the valuer's definitive findings. A bare allegation of substitution or administrative guideline mismatch, devoid of concrete proof, cannot override a meticulous, contemporaneous Panchnama and an unassailable physical chain of

custody. Therefore, the allegation of substitution or contamination is dismissed as a groundless afterthought, and the valuation report is held to be fully valid, credible, and binding on the noticees.

As I have already discussed the validity of the statements of the noticee and co-noticees, as well as the requirement of cross-examination and evidentiary value of Valuation Certificate issued by Government approved valuer, I will now examine allegation in SCN with the submission made by the noticees one by one as per the relevant law and as per the provisions: -

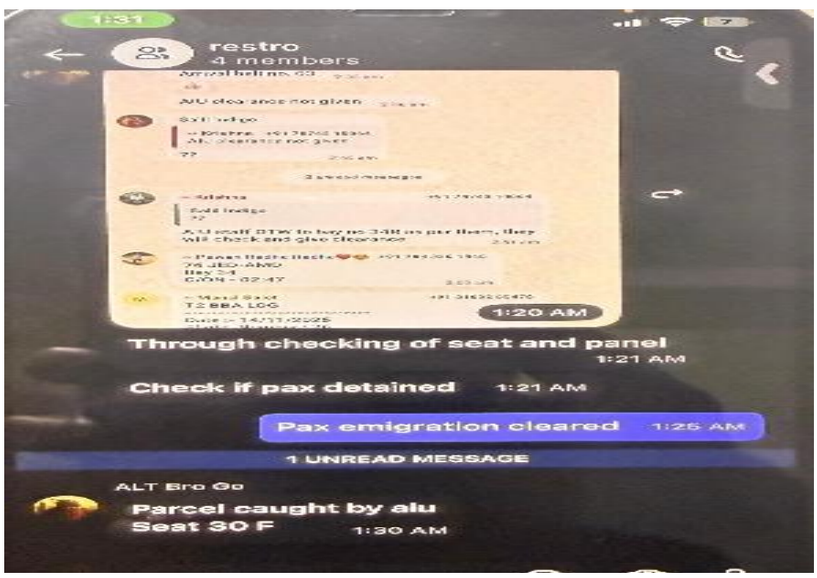
24 Whether the derived gold bar weighing 1246.480 grams of foreign origin smuggled from Jeddah and seized at SVPI Airport on 14.11.2025, having a market value of Rs. 1,62,04,240/- should not be confiscated under Section 111 (d), (e) and (l) of the Customs Act, 1962?

I find that the Panchnama dated 14.11.2025 was clearly drawn as a direct consequence of a precise search operation executed on the basis of specific intelligence. The intelligence indicated that a passenger arriving from Jeddah to Ahmedabad via Flight No. 6E-76 was carrying contraband or dutiable goods and might conceal them beneath his seat inside the aircraft. Acting on this credible information, and in the continuous presence of two independent *panch* witnesses, the officers boarded the aircraft and systematically inspected each seat for any hidden contraband. This thorough rummaging of the flight culminated in the recovery of four capsules wrapped in pairs with white tape, hidden inside the life jacket pouch placed directly beneath Seat No. 30F. The flight manifest obtained from the ground staff conclusively revealed that Seat No. 30F was allotted to Shri Abdul Nassir Thottathil who was subsequently intercepted by the officers while he was trying to exit through green channel. When explicitly questioned by the officers in the presence of the *panchas* as to whether he was carrying any dutiable, restricted, or prohibited goods, or any items requiring mandatory declaration to Customs, the noticee chose to reply in the negative.

The contemporaneous *Panchnama* explicitly records that the officers formally apprised the noticee of their intention to conduct a personal frisking and a detailed examination of his baggage. Crucially, in strict compliance with the statutory mandates, the noticee was explicitly offered the option of having his personal search conducted either in the presence of an Executive Magistrate or a Gazetted Officer, namely a Superintendent of Customs. The

noticee voluntarily gave his clear consent to be searched before the Superintendent of Customs in presence of Panchas. Therefore, the noticee's belated allegation that the officers conducted his personal search and baggage examination arbitrarily without acceding to his entreaties is entirely frivolous, legally untenable, and far from the truth. Every stage of the enforcement proceeding, was conducted transparently and recorded meticulously under the watchful eyes of two independent *panch* witnesses who have attested to the veracity of the events by placing their signatures on the spot.

24.1 I note that during the physical search of Shri Abdul Nassir Thottathil, although no objectionable items were found on his person, and no objectionable goods were recovered from his luggage. However, on being questioned regarding the four capsules found beneath his seat 30F, Shri Abdul Nassir Thottathil confessed that the said four capsules wrapped in pairs with white tape carried by him while travelling from Jeddah to Ahmedabad, and that he had hidden them under his seat inside the pouch of the life-saving jacket as per the instructions of Shri Ismail Kacheri Kunnummal. Further, the fact of the passenger carrying the gold on seat 30F is firmly established from the recovered digital chats held in the "Restro" group on the Botim application. In this group, co-noticee Shri Althaf Usman posted a real-time message regarding the recovery of the gold from the aircraft, stating: ***"Parcel Caught by AIU, Seat 30F".*** The screenshot of the said chat forms part of the contemporaneous records of this case.

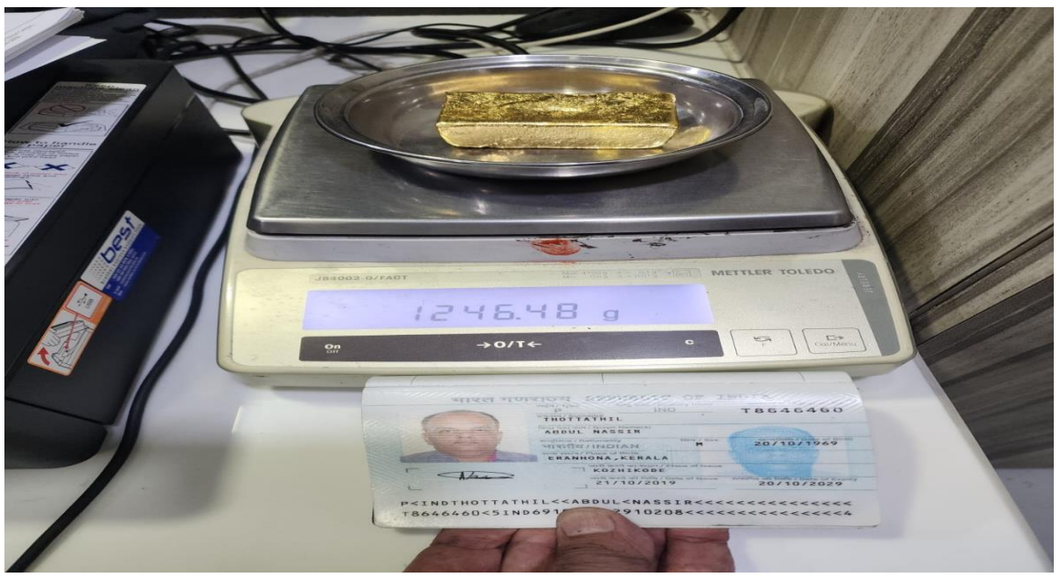


I further find that the statement of Shri Abdul Nassir Thottathil was recorded on 14.11.2025 under Section 108 of the Customs Act, 1962, wherein he, inter alia, confirmed that the facts narrated in the *Panchnama*

dated 14.11.2025 were completely true and correct. It is an uncontested fact that the gold paste, recovered from the life-jacket pouch directly beneath Seat No. 30F the very seat assigned to the noticee as per the flight manifest was never declared before the Customs authorities under Section 77 of the Customs Act, 1962. Instead, the noticee actively attempted to clear the airport exit through the Green Channel to evade duty. As no declaration form was filed, and since the noticee does not fulfill the conditions of an "eligible passenger" to import such a commercial quantity under the Foreign Trade Policy, the impugned gold paste cannot be treated as "bona fide baggage" under Section 79 of the Customs Act, 1962. It constitutes "prohibited goods" by virtue of Section 2(33) and is legally liable to absolute confiscation under Sections 111(d), 111(e), and 111(l) of the Customs Act, 1962.

24.2 It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, conducted the extraction, testing, and valuation procedure at his designated melting facility in the presence of independent Panchas and noticee Shri Abdul Nassir Thottathil. He submitted his testing/valuation report under Annexure-A and Certificate No. 705/2025-26 dated 14.11.2025. The valuation was properly derived in compliance with Notification No. 72/2025-Customs (N.T.) dated 31.10.2025 (for gold tariff value) and Notification No. 41/2025-Customs (N.T.) dated 07.11.2025 (for exchange rates). The crux of the examination report with relevant photograph is reproduced hereunder for better understanding of the facts of the case:

S No	**Details of Items**	**PCS**	**Net Weight in Gram**	**Purity**	**Market value (Rs)**	**Tariff Value (Rs)**
1	Gold extracted from the 4 (Four) capsules wrapped in pairs with white tape recovered from Shri Abdul Nassir Thottathil	1	1246.48	999.0/ 24Kt	1,62,04,240	1,43,35,455
	Total	**1**	**1246.48**		**1,62,04,240**	**1,43,35,455**



(Image-I: Showing Weighment of gold bar derived from the 04 capsules recovered from beneath of Seat No. 30F, which were originally brought from Jeddah by Shri Abdul Nassir Thottathil and left under his seat)

24.3 I note that the said gold bar, having a net weight of 1246.48 grams and purity 999.0/24kt, with a market value of Rs. 1,62,04,240/-, was completely concealed and withheld from the Customs authorities. The noticee argues that because the gold was recovered from the aircraft seat panel and not from his physical person, the statutory burden under Section 123 of the Customs Act, 1962 does not apply to him. This defense is legally untenable. Section 123 places the burden of proof firmly on the person from whose possession the goods were seized or any person who claims ownership. The noticee's travel on Seat No. 30F is established by the PNR manifest, and the operational modus operandi of leaving the gold under the seat for airline accomplices to retrieve has been fully laid bare by the digital forensics. The act of concealing contraband in an aircraft to bypass border control falls squarely within the definition of "smuggling" under Section 2(39). Therefore, the gold bar along with its packing materials were correctly placed under seizure under Section 110 vide memo F.No. DRI/AZU/GI-02/ENQ-74/2025 dated 14.11.2025.

24.4. I observe that the passenger/noticee neither questioned the manner of the panchnama proceedings at the material time nor controverted any facts detailed therein during the recording of his statement. Every procedure conducted by the officers under the panchnama was meticulously documented in presence of independent panchas and the noticee himself. In his (Shri Abdul Nassir Thottathil) voluntary statement recorded under Section 108 of the Customs Act, 1962, the noticee explicitly admitted that

the gold was not purchased by him and that he possessed no purchase invoice, bill, or legitimate document to prove lawful possession or import, thereby confirming the gold was brought solely for smuggling purposes. He clearly stated that the four capsules, wrapped in pairs with white tape and containing gold in paste form, were handed over to him at Jeddah by his friend, Shri Ismail Kacheri Kunnummal, to be carried into India in exchange for a consideration of 500 Saudi Riyals. Furthermore, in his written submission, the noticee has expressly stated that he lays no claim over the seized gold and has no objection to its proposed confiscation. Thus, the physical recovery of the four capsules containing gold paste from beneath Seat No. 30F remains entirely undisputed, and the noticee's role as an active carrier stands fully established by his own admissions, which are further corroborated by the statement of Shri Ismail Kacheri Kunnummal confirming the transaction and the digital evidences recovered from the mobile phones of Shri Ismail Kacheri Kunnummal and others.

25. For the purpose of customs clearance for arriving international passengers, a strict two-channel system is operationalized at the airport, the Green Channel is reserved exclusively for passengers carrying no dutiable or restricted goods, while the Red Channel mandates entry for passengers carrying such items. All passengers are bound by law to file a true and correct declaration of their accompanied baggage.

I find that the noticee, Shri Abdul Nassir Thottathil, completely failed to file a baggage declaration form or declare the gold paste in his possession, directly violating Section 77 of the Customs Act, 1962, read with the Baggage Rules, 2016 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013. In strict compliance with the syndicate's operational modus operandi, he deliberately left the four capsules of gold paste concealed beneath his aircraft seat and attempted to walk out of the terminal through the Green Channel. This deceptive conduct conclusively demonstrates that the noticee actively executed a critical phase of the smuggling conspiracy with the clear intent to evade the payment of applicable customs duty.

Furthermore, under Notification No. 50/2017-Customs dated 30.06.2017, the concessionary import of gold is restricted strictly to an "eligible passenger" (defined as a passenger of Indian origin or holding a valid Indian passport who is returning to India after a stay abroad of not less than six months), provided the import is for bona fide household use. Since the noticee acted merely as a hired carrier, intentionally abandoned commercial-

purity gold within the aircraft to facilitate illicit retrieval, and completely bypassed mandatory declaration channels, the derived gold bar weighing 1,246.480 grams can under no legal interpretation be classified as "bona fide household goods or personal effects" under Section 79 of the Act. By improperly importing and concealing this restricted merchandise, the noticee has directly contravened the provisions of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, read with Sections 3(2) and 3(3) of the said Act.

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

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

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

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

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

1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,-
(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 clearly appeared that the conditions stipulated for lawful import of gold were not fulfilled. As per the statements of Shri Abdul Nassir Thottathil and Shri Ismail Kacheri Kunnummal, recorded under Section 108 of the Customs Act, 1962, I find that Shri Abdul Nassir Thottathil claimed that he was working as laborer in Master Company in Jeddah and returned to India on 14.11.2026 before completing the stipulated minimum period of stay required for eligibility under the relevant exemption provisions. I find that well defined and exhaustive conditions and restrictions are imposed on the import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/ premier or star trading houses/SEZ units/EOUs. These conditions function as restrictions on the import of gold, and any failure to comply amounts to a violation of such restrictions. In the present case, it is evident that none of the applicable conditions were satisfied, rendering this a clear case of smuggling. It is pertinent to mention here that the Hon'ble Supreme Court of India, in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] *clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition.* Accordingly, the restrictions imposed on the import of various forms of gold are to be treated as prohibitions to that extent, and any violation of these restrictions renders the goods, in this case, a derived gold bar, liable for confiscation under Section 111(d) of the Customs Act, 1962.

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

(e) any dutiable or prohibited goods found concealed in any manner in any ***conveyance****;*

In terms of Section 111(e) of the Customs Act, 1962, any dutiable or prohibited goods found concealed in any manner in any conveyance brought from a place outside India are liable to confiscation. The facts on record conclusively establish that the noticee, Shri Abdul Nassir Thottathil, travelled from Jeddah to Ahmedabad carrying four capsules wrapped in pairs with white tape. These capsules, containing foreign-origin gold in paste form,

were handed over to him in Jeddah for a monetary consideration of 500 Saudi Riyals. As part of the syndicate's established operational modus operandi, the noticee deliberately concealed the contraband inside the life-saving jacket pouch beneath Seat No. 30F before disembarking. The premeditated design of this operation required the carrier passenger to leave the hidden gold inside the aircraft so that internal syndicate members could exploit their airport access to retrieve the parcel, clear it illicitly from the airport terminal, and deliver it to individuals nominated by the overseas handler, Shri Jaman/Zaman Sharif.

I find that the noticee intentionally hid the contraband under the seat, and completely failed to declare the recovered gold paste or the derived gold bar in the prescribed declaration form as required under Section 77 of the Act, the items fail to qualify as bona fide baggage. The illicit act of hiding commercial-quantity gold inside an aircraft compartment squarely satisfies the statutory trigger of being "found concealed in a conveyance". Consequently, I hold that the recovered gold bar, weighing 1,246.48 grams and valued at Rs. 1,62,04,240/-, constitutes prohibited goods and is legally liable to confiscation under Section 111(e) of the Customs Act, 1962.

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

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

Section 77 casts an absolute statutory obligation upon the owner/carrier of any passenger baggage to make a true and complete declaration of its contents to the proper officer for the purpose of clearance. The evidentiary record conclusively demonstrates that upon landing at SVPI Airport, Ahmedabad, the noticee deliberately walked past the red channel and actively attempted to exit through the Green Channel, which is reserved strictly for passengers carrying no dutiable or restricted items. When explicitly enquired by the intercepting DRI officers whether he had any goods to declare, the noticee provided a flat denial.

The subsequent search and recovery of the four capsules hidden inside the life-jacket pouch beneath Seat No. 30F which yielded a gold bar of 1,246.48 grams valued at Rs. 1,62,04,240/- fully exposes the noticee's fraudulent intent to suppress the truth. The noticee cannot claim the benefit

of "bona fide baggage" under Section 79 as the goods were hidden, completely undeclared, and far exceeded any permissible limits under the Baggage Rules, 2016. Since this highly valuable, dutiable contraband was intentionally excluded from the mandatory passenger declaration, the statutory triggers of Section 111(l) are fully operational. I therefore hold that the seized gold bar is liable to confiscation under Section 111(l) of the Customs Act, 1962.

26. It is an undisputed fact that the noticee, Shri Abdul Nassir Thottathil, has failed to produce a single shred of documentary evidence to support the legal acquisition, possession, or lawful importation of the recovered gold. Under Section 123 of the Customs Act, 1962, when specific goods explicitly including gold and manufactures thereof are seized under a reasonable belief that they are smuggled, the statutory burden of proving that the goods are not smuggled rests squarely upon the person from whose possession they were seized, or any person claiming ownership.

In this case, the four capsules of gold paste were recovered from the life-jacket pouch directly beneath the aircraft seat allotted to the noticee Shri Abdul Nassir Thottathil, where he had intentionally hidden them to execute the syndicate's smuggling scheme. Furthermore, the official valuation report certifies that the extracted gold bar possesses a purity of **999.0/24Kt**, a standard characteristic of foreign-origin gold and highly inconsistent with locally traded gold. These factors amply satisfy the "reasonable belief" threshold required for a valid seizure under Section 110 of Customs Act, 1962.

In his voluntary statement recorded under Section 108 of the Act, the noticee explicitly admitted that the gold paste was handed to him in Jeddah without any invoice or bill of purchase. This admission is further reinforced by his written submission, wherein he expressly stated that he has no legal claim over the property and does not object to its confiscation. By concealing the merchandise, omitting it from the mandatory Indian Customs Declaration Form under Section 77, and failing to supply any import credentials, the noticee has completely failed to discharge the statutory onus cast upon him by Section 123. Applying the legal principles settled by the Hon'ble Supreme Court in Om Prakash Bhatia Vs. Commissioner of Customs [2003 (6) SCC 161] and the Hon'ble High Court of Madras in Samynathan Murugesan Vs. Commissioner of Customs [2010 (254) ELT A015], I find that the imported merchandise fails to qualify as bona fide baggage.

Consequently, the smuggled gold bar, weighing 1,246.480 grams and having a market value of Rs. 1,62,04,240/-, constitutes prohibited goods and is liable to confiscation under Sections 111(d), 111(e), and 111(l) of the Customs Act, 1962.

26.1 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 Bar weighing 1246.480 grams of foreign origin was seized under Section 110 of the Customs Act, 1962 on reasonable belief that the gold was smuggled in to India from Jeddah. I find from the statement of Noticee Shri Abdul Nassir Thottathil recorded under Section 108 of Customs Act, 1962, that the said gold paste was given to him by his friend namely Shri Ismail alongwith Shri Zaman/Jaman Sharif at Jeddah for smuggling into India. This fact is fully corroborated by the voluntary admission of Shri Ismail Kacheri Kunnummal and digital evidences.

26.2 I find that the noticee, Shri Abdul Nassir Thottathil, failed to produce any valid legal document to justify the procurement, transit, or possession of the recovered foreign-origin gold. In his voluntary statement recorded under Section 108 of the Customs Act, 1962, the noticee explicitly admitted his full awareness that the gold paste he was transporting was being smuggled into India from Jeddah, and that he knowingly carried the contraband to Ahmedabad solely for personal monetary gain. This unambiguous admission conclusively demonstrates his deliberate and conscious involvement in carrying, concealing, and handling foreign-origin gold which he knew, or had absolute reason to believe, was liable to confiscation under Section 111 of the Act. Furthermore, his intentional omission to make any disclosure in the prescribed Customs Declaration Form directly violates the statutory mandates of Section 77 of the Customs Act, 1962, read with the Customs Baggage Declaration Regulations, 2013, as amended.

27. It stands, therefore, unequivocally established that by the aforesaid acts of contravention, the passenger/noticee has rendered the gold of 24 kt having 999.0 purity weighing 1246.480 gms., in form of derived bar, having market Value of Rs.1,62,04,240/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 14.11.2025 liable to confiscation under the provisions of Sections 111(d), 111(e) and 111(l) of the Customs Act, 1962. By utilizing the modus operandi of carrying the gold in form of 04

capsules containing gold and chemical mix, and hiding the same in pouch of life saving jacket under his seat, the Noticee actively facilitated the syndicate's operational chain. It is clear that he knowingly carried the gold and deliberately hid the gold under his seat to evade detection and failed to declare it to customs upon arrival at the airport. The case records demonstrates that he actively involved himself in carrying, possessing, concealing, and dealing with the impugned goods in a manner where he knew, or had reasons to believe, that the items were liable to confiscation under the Act. This act was executed with a clear, willful intent to smuggle the impugned gold into India. Consequently, it is proved beyond doubt that the noticee has committed an offence of the nature described under Section 112 of the Customs Act, 1962, thereby rendering himself liable to a penalty under the said section.

27.1 In view of the detailed discussions hereinabove, I find that the meticulous and clandestine manner of concealment employed in this case clearly demonstrates a pre-meditated attempt by the Noticee, Shri Abdul Nassir Thottathil, to smuggle the seized gold into the country by deliberately evading detection by the Customs authorities. Furthermore, no evidence has been produced to prove licit import of the seized gold at the time of interception. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. A harmonious reading of the Show Cause Notice, the Panchnama, the voluntary statements and the digital evidences in form of chats on record makes it abundantly clear that the Noticee harbored a deliberate intent not to declare the said gold bar, with the sole objective of smuggling it into India. I find that it is settled by the judgment of Hon'ble Supreme Court in the case of Garg Wollen Mills (P) Ltd Vs. Additional Collector Customs, New Delhi [1998 (104) ELT 306(S.C)] *that the option to release 'Prohibited goods' on redemption fine is discretionary*. In the case of Raj Grow Impex (Supra), the Hon'ble Supreme Court has held that *"that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant consideration.*". Also, Hon'ble Delhi High Court has, in case of Raju Sharma [2020(372) ELT 249 (Del.)] held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interferences only where the exercise is perverse or tainted by the patent illegality, or is tainted by oblique motive."* Also, in a recent judgment the Hon'ble Delhi High Court in its order dated 21.08.23 in W.P (C) Nos. 8902/2021, 9561/2021, 13131/2022, 531/2022 &

8083/2023 held that *"---- an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of Adjudicating Officer."* Therefore, taking into consideration the binding judicial pronouncements cited above, the deceptive nature of the concealment inside the aircraft structure, the active operational role of the international smuggling syndicate, and the specific facts of the present case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold weighing 1246.480 grams on payment of redemption fine, as envisaged under Section 125 of the Act.*** Further, to support my view, I also relied upon the following judgment which are as :-

27.2. 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]

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

27.4. 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).

27.5 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.

27.6. 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".

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

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

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*"**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**."*

28. Given the factual matrix of the present case, alongside the binding judicial precedents and rulings cited hereinabove, I find that the deliberate, sophisticated manner of concealment clearly demonstrates the Noticee's explicit intent to smuggle the seized gold and successfully evade detection by the Customs authorities. I also find it established that the Noticee, **Shri Abdul Nassir Thottathil**, acted as a designated carrier within a highly organized international smuggling syndicate, where his specific role was restricted to physically transporting the contraband from Jeddah to India and subsequently concealing it beneath his assigned seat (Seat No. 30F) prior to deboarding the aircraft.

Therefore, the foreign-origin gold net weighing **1246.48 grams** with a certified purity of **24 Karat / 999.0**, which was brought into India in the form of four capsules containing gold paste mixed with chemical substances in a semi-solid form and intentionally concealed by the Noticee, constitutes 'prohibited goods' imported in flagrant violation of the law. As a result, it is completely ineligible for standard clearance or redemption.

Accordingly, I hold in unequivocal terms that the said seized pure gold bar weighing 1246.48 grams is liable to absolute confiscation under the provisions of Sections 111(d), 111(e), and 111(l) of the Customs Act, 1962. Furthermore, in strict adherence to the statutory mandates

of the law, I also hold that the packing and packaging materials used for concealing the said gold paste are liable to absolute confiscation under the provisions of Section 119 of the Customs Act, 1962.

29. Based upon a comprehensive evaluation of the evidence gathered in the form of the contemporaneous Panchnama, the voluntary statements of the various Noticees recorded under Section 108 of the Customs Act, 1962, and the incriminating digital forensic data extracted and retrieved from the respective mobile phones, I find that the international syndicate created and controlled by Shri Jaman/Zaman Sharif attempted to illicitly smuggle 1246.48 grams of pure gold on 14.11.2025 through the SVPI Airport, Ahmedabad. This illegal enterprise was executed with the active facilitation of coordinator Shri Ismail Kacheri Kunnummal and the direct insider connivance of Indian nationals Shri Althaf Usman and Shri Sandeep Mstrao, both serving as employees of Indigo Airlines. From the **totality of facts, circumstances, voluntary statements, digital evidence,** it is conclusively established that:

- The seized gold, i.e. one gold bar derived from the semi solid paste containing gold and chemical mix in 04 capsules, is of **foreign origin**;
- Shri Ismail Kacheri booked the ticket of Shri Abdul Nassir Thottathil from Jeddah to Ahmedabad and handed over the 04 capsules to him on instruction of Shri Jaman/Zaman Sharif to carry the same in India for a monetary consideration of 500 Saudi Riyal;
- At the instruction of Shri Ismail Kacheri Kunnummal, he deliberately concealed the four gold capsules inside the life-jacket pouch located beneath his designated Seat No. 30F prior to disembarking from the aircraft;
- Shri Jaman/Zaman Sharif / Shri Ismail Kacheri Kunnummal share the details of Seat Number alongwith the number of pouches in the Restro Group in Botim App
- Shri Althaf Usman shared the details regarding seizure of gold pouches from the Seat No. 30F which was allotted to Shri Abdul Nassir Thottathil in real time;
- Shri Abdul Nassir Thottathil in his voluntary statement recorded on 14.11.2025 unequivocally admitted his conscious involvement in the physical transportation and concealment of the gold for personal pecuniary enrichment;
- Shri Ismail Kacheri, Shri Althaf Usman and Shri Sandeep Mstrao actively participated in smuggling of gold in active collusion with Shri Jaman/Zaman for mutual illicit financial gain;
- None of the Noticee have claimed ownership of the seized gold i.e. derived gold bar weighing 1246.480 grams. They all have failed to produce any legitimate invoice, import license, or valid statutory documentation to claim lawful

ownership or prove licit import of the seized gold bar weighing **1246.48 grams**, thereby failing to discharge the statutory burden of proof cast upon them under **Section 123 of the Customs Act, 1962**;

- The attempt to smuggle and clear the gold without declaration constitutes a **willful and deliberate violation** of Section 111 (d) (e) & (l) of the Customs Act, 1962;

30. Whether approx. 9 Kgs of gold having tariff value of Rs. 11.398 crore smuggled into India on earlier occasions and in contravention of the provisions of the Customs Act, 1962 should not be held liable to confiscation under the provisions of Sections 111(d), (e) and (l) of the Customs Act, 1962?

30.1 I note that apart from the attempt of smuggling of gold having quantity of 1246.480 grams which was seized vide seizure order dated 14.11.2025 under Panchnama proceedings dated 14.11.2025, the digital evidence, including chats of Restro Group on BOTIM App, data retrieved from the mobile phones of Shri Ismail Kacheri Kunnummal by Digital Forensic Engineer, M/s. ECS infotech Pvt Ltd, Ahmedabad as well as their voluntary statements recorded under Section 108 of the Customs Act, 1962, clearly indicate that all individual i.e Shri Ismail Kacheri Kunnummal, Shri Althaf Usman, Shri Sandeep Mstrao and Shri Jaman/Zaman Sharif @ Dubai played a crucial role in the smuggling activities previously carried out by the organized syndicate led by Shri Jaman/Zaman Sharif and Shri Ismail Kacheri Kunnummal with the help of Shri Althaf Usman and Shri Sandeep Mstrao. The mechanism, scale, and continuity of this illicit operation are exposed through the data extracted which includes un-tampered, real-time message logs within a closed communication group named "Restro" on the BOTIM application. From the available records, I find that about 9kgs of gold, during 09 previous journeys having an aggregate market value of **Rs. 11.398 Crore**, was smuggled into India by this syndicate. The smuggling of gold was planned and managed by the masterminds Shri Jaman/Zaman Sharif @ Dubai and Shri Ismail Kacheri Kunnummal with the active assistance of Shri Althaf Usman, Shri Sandeep Mstrao and carrier passengers. I further find that the said quantity of gold was smuggled into India over Nine distinct instances, the details of which are summarized in the table below:

Sr. No.	Flight No.	Arrival Date	Arriving from	Quantity Involved (as per statement) (In Grams)	Notification No.	Tariff Value @1000 (In Rs.)	Market Value @1000 (In Rs.)
1	6E-1432	16.10.2025	Abu Dabhi	700 to 1000	Notification No. 65/2025-CUSTOMS (N.T.) / Exchange Rate Notification No.: 39/2025	11903190.00	13050000.00
2	6E-1432	17.10.2025	Abu Dabhi	700 to 1000	Notification No. 65/2025-CUSTOMS (N.T.) / Exchange Rate Notification No.: 40/2025	11770490.00	13100000.00
3	6E-1432	19.10.2025	Abu Dabhi	700 to 1000		11770490.00	13100000.00
4	6E-76	20.10.2025	Jeddah	700 to 1000		11770490.00	13050000.00
5	6E-1432	07.11.2025	Abu Dabhi	700 to 1000	Notification No. 72/2025-CUSTOMS (N.T.) / Exchange Rate Notification No.: 41/2025	11500750.00	12210000.00
6	6E-1432	08.11.2025	Abu Dabhi	700 to 1000		11500750.00	12250000.00
7	6E-1432	09.11.2025	Abu Dabhi	700 to 1000		11500750.00	12210000.00
8	6E-76	10.11.2025	Jeddah	700 to 1000		11500750.00	12310000.00
9	6E-76	11.11.2025	Jeddah	700 to 1000		11500750.00	12700000.00
Total				**6300 to 9000**		**104718410.00**	**113980000.00**

From the above, I note that the smuggling of gold was carried out from 16.10.2025 to 11.11.2025 in less than a month's time. I further find that the above-mentioned smuggled gold in the past was proposed to be confiscated under Section 111(d), (e) and (l) of the Customs Act, 1962 for violation of the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications.

30.2 From the records available in form of digital evidences/chats held in the group named "Restro" in Botim App recovered from the Mobile phone of

Shri Ismail Kunnummal Kacheri as well as the individual statements tendered by all noticee, I find that a closed group named "Restro" was created on the BOTIM application. This platform, a multi-functional communication application used for encrypted, high-definition audio and video calling was created on 03.10.2025 by Shri Althaf Usman (whose name was saved as "ALT Bro Go" in Shri Ismail Kacheri Kunnummal's mobile phone). He subsequently added three participants: Shri Jaman/Zaman Sharif (saved as "Zaman HRD DXB"), Shri Ismail Kacheri Kunnummal, and Shri Sandeep Mstrao (saved as "Sand Bro Go"). As admitted by Shri Ismail Kacheri Kunnummal in his voluntary statement, the explicit purpose of creating this encrypted group was to manage their gold smuggling activities easily and secretly to evade detection by Customs and other security agencies. The entire operation was conducted in a highly planned and coordinated manner, with each participant executing a well-defined role within the conspiracy. Shri Ismail Kacheri Kunnummal acted as the coordinator, recruiter and communication link within India and abroad. He identified, lured, and recruited international passengers by offering them monetary compensation and covering their travel expenses, including flight tickets. Shri Jaman/Zaman Sharif acted as the primary investor, foreign-side supplier, and arranger of the foreign-origin gold. He managed the overall operations from abroad, issued real-time instructions through the BOTIM group regarding flight schedules, seat numbers, concealment locations, and delivery timelines. The role of carriers to physically brought the gold into India and concealed it in the aircraft as per the Modus. Shri Althaf Usman and Shri Sandeep Mstrao exploited their airport access and operational position to retrieve the gold from the aircraft and ensure its movement outside the airport.

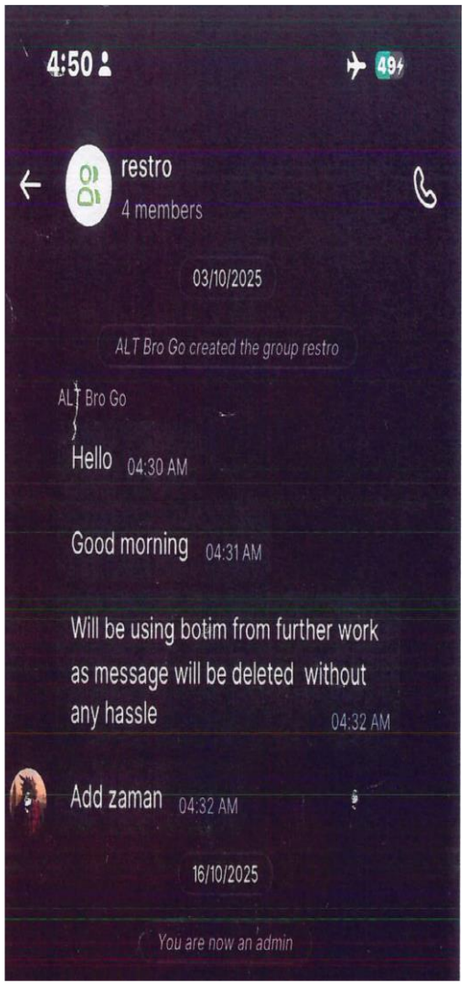
A meticulous review of the retrieved chat logs reveals that the members systematically communicated using specific alphanumeric code words to mask their illicit operations. The investigation has established that the code word "**Thirty Fox**" was used to indicate **seat No. 30F**, "**Twenty Elephant**" denoted seat **No. 20E**, and "**Sixteen Apple**" denoted seat No. **16A**.

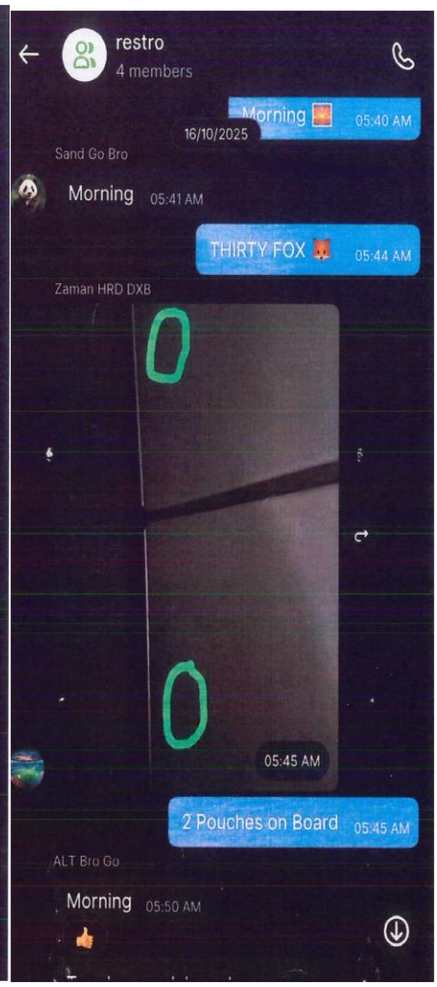
Furthermore, the conspirators frequently exchanged messages regarding local enforcement levels and security protocols. Operational phrases such as "**Port cleared for jed and auh tmmrw**" were used by airline insiders to signal safe arrival windows, while tracking updates like "**JED PAX READY TO BOARD**" and "**JED PAX READY TO BOARD**" confirmed carrier status. Threat assessments, such as "**DELHI BLAST, any security issues**

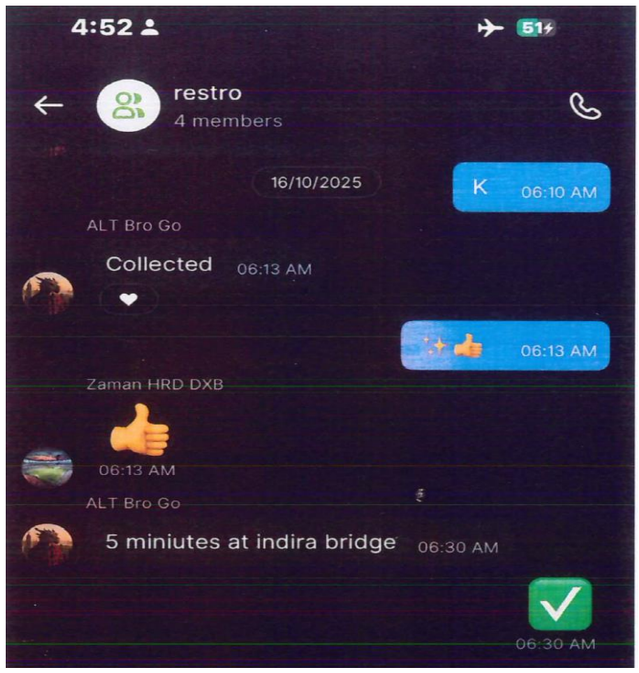
in AMD?" and the response "**Negative**", were interchanged in real time to evaluate security risks at the terminal. The syndicate maintained continuous, real-time communication from the moment the gold was placed on board the flight, through its concealment and insider retrieval, up until its successful clearance past the airport perimeter and final handover to individuals designated by Shri Jaman/Zaman Sharif. Now, I would proceed to discuss these nine instances one by one.

1. <u>GOLD SMUGGLED ON DATE 16.10.2025:-</u>

The digital evidence retrieved from the "**Restro**" BOTIM group chat shows that the group was originally created on 03.10.2025, as evidenced by the system-generated log: ***"ALT Bro Go created the group restro."*** On the same day, Shri Althaf Usman (saved as *"ALT Bro Go"*) informed the members that this platform would be used for their future operations to ensure that messages could be deleted without administrative hassle. On 16.10.2025, the chat logs reveal that Shri Ismail Kacheri Kunnummal transmitted the coded phrase "**Thirty Fox**" to convey that the carrier passenger was seated on **Seat No. 30F**. In response, **Shri Jaman/Zaman Sharif** (saved as *"Zaman HRD DXB"*) uploaded photographs of the specific gold paste pouches being carried on board. **Shri Althaf Usman** acknowledged these details with a thumbs-up emoji, signalling his operational readiness. Subsequent real-time messages confirm that Shri Althaf Usman physically retrieved the contraband from the aircraft post-landing and delivered it to the pre-decided drop zone as instructed by Shri Jaman/Zaman Sharif. The deep structural involvement of the airline insiders is further highlighted by a specific text from Shri Althaf Usman, who advised the overseas handler on concealment packaging techniques, stating: *"Suggestion: Try to stick only one tape exact on the middle of package."* For better clarification, I shared the screen Shot of the same is as:-



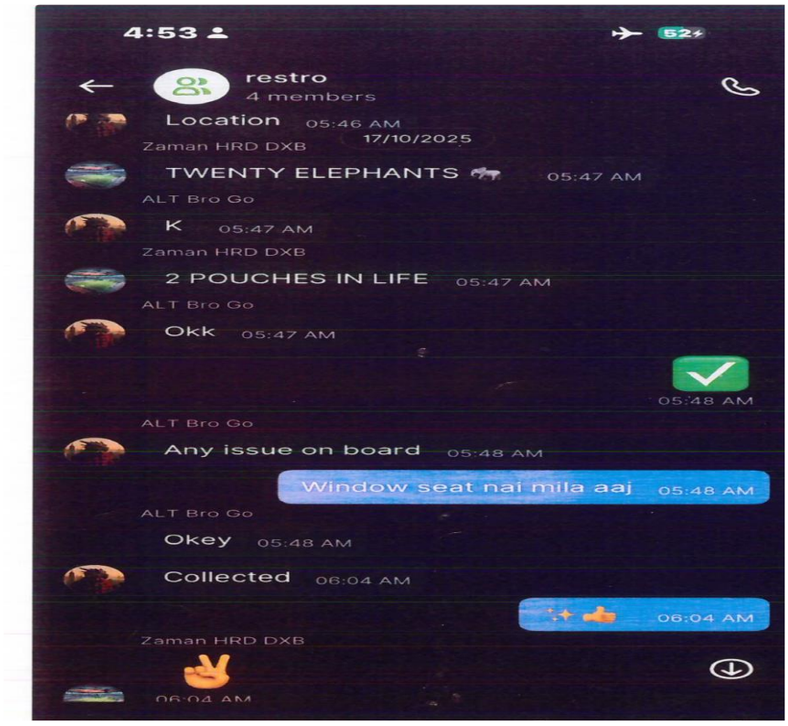




2. GOLD SMUGGLED ON DATE 17.10.2025:-

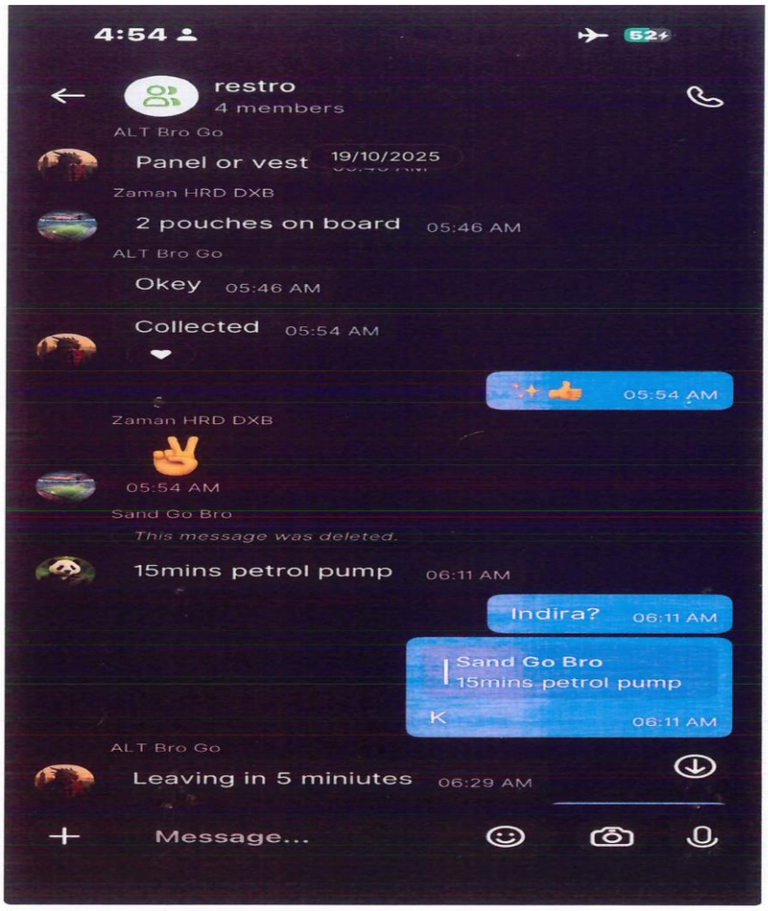
A review of the BOTIM group logs from 17.10.2025 reveals that **Shri Jaman/Zaman Sharif** transmitted the alphanumeric code "**TWENTY ELEPHANTS**" to identify **Seat No. 20E** as the concealment location for that day's consignment, alongside specific details of the pouches on

board. **Shri Althaf Usman** gave his operational consent to the arrangement. After successfully boarding the aircraft post-disembarkation and recovering the gold pouches, he updated the syndicate by text-logging the single-word confirmation: "**Collected.**" The screen shot of the said chats on 17.10.2025 are as:-



3. GOLD SMUGGLED ON DATE 19.10.2025:-

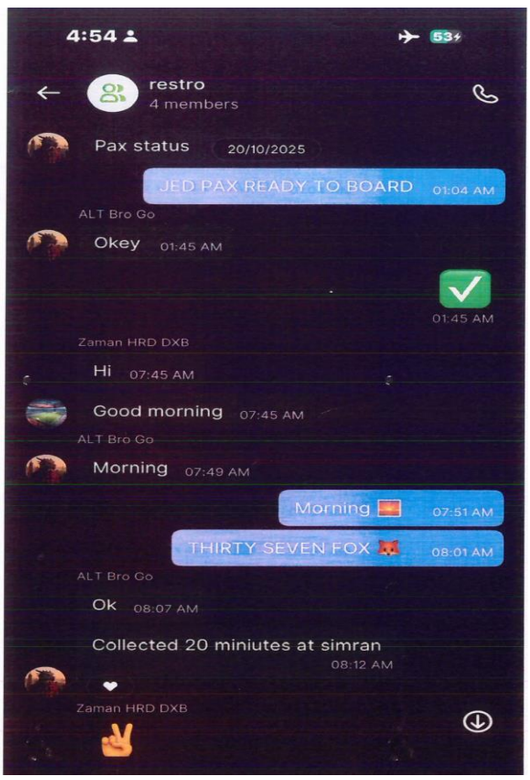
The retrieved data for 19.10.2025 demonstrates that **Shri Jaman/Zaman Sharif** uploaded the necessary pouch counts and tracking parameters, which were acknowledged by **Shri Althaf Usman**, who later send message "**Collected**" upon retrieving the contraband. The chat logs on this date also record active logistical coordination between the two airline staff members. **Shri Sandeep Mstrao** designated the exact domestic drop zone, and Shri Althaf Usman responded in real time by texting: *"leaving in 5 min,"* confirming he was departing the airport perimeter to complete the delivery. The screenshot of the said chats on 19.10.2025 are as:-

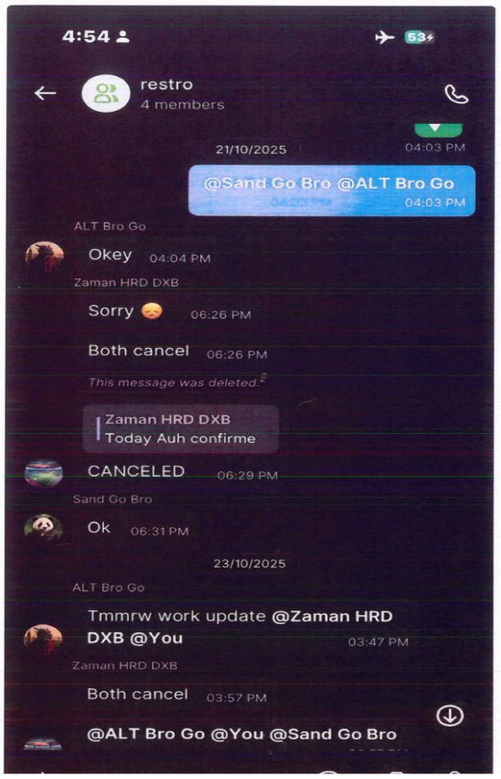


4. GOLD SMUGGLED ON DATE 20.10.2025:-

On 20.10.2025, **Shri Althaf Usman** is seen initiating an inquiry regarding the transit status of the courier passenger, to which **Shri Jaman/Zaman Sharif** replied: "**JED PAX READY TO BOARD.**" Following the passenger's embarkation, **Shri Ismail Kacheri Kunnummal** shared the coded seating identifier "**THIRTY SEVEN FOX**", directing the airline insiders to **Seat No. 37F**. Following retrieval, Shri Althaf Usman updated the group regarding his transit to the designated drop zone outside the terminal by texting: "**Collected 20 Minutes at Simran.**"

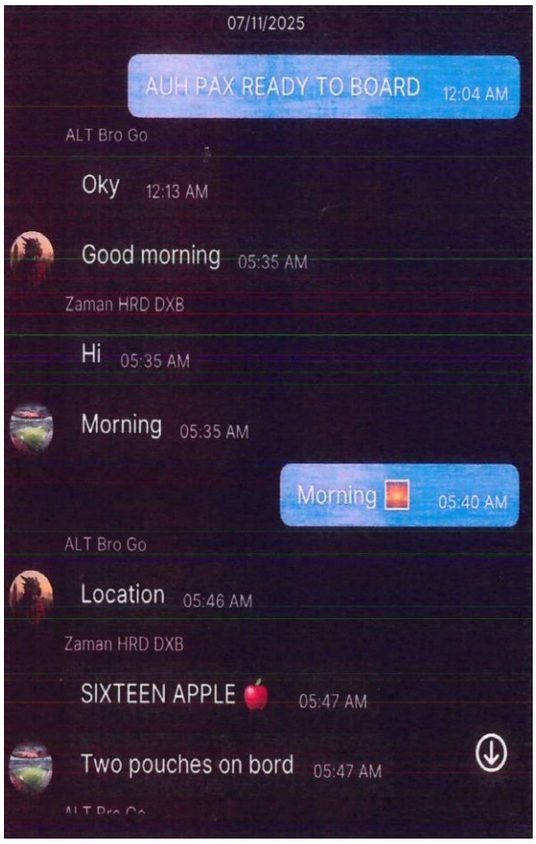
The chat records from this period also demonstrate the syndicate's daily operational updates, tracking cancellations and adjustments in real time. For instance, on 21.10.2025 and 23.10.2025, scheduled operations were aborted due to the cancellation. The screenshot of the said chats on 20.10.2025/21.10.2025/23.10.2025 are as:-

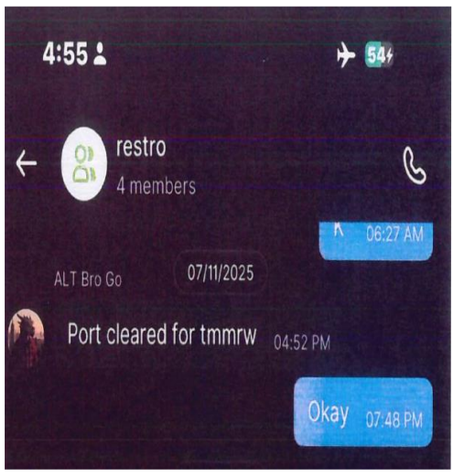




5. <u>GOLD SMUGGLED ON DATE 07.11.2025:-</u>

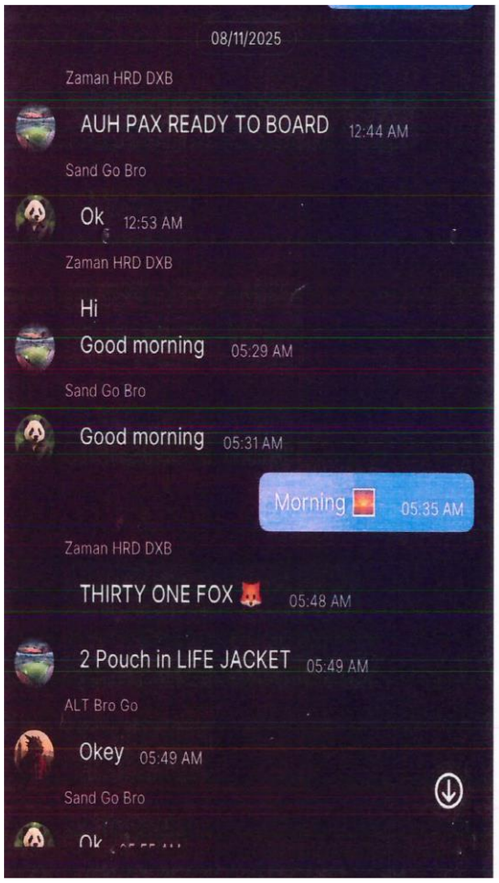
The communication logs from 07.11.2025 record Shri Ismail Kacheri Kunnummal tracking the flight's departure by texting: "**AUH PAX READY TO BOARD.**" Shri Althaf Usman requested the precise location of the hidden packages inside the cabin. In response, Shri Jaman/Zaman Sharif provided the code word "**SIXTEEN APPLE**" to designate Seat No. 16A and confirmed the payload by texting: "**Two Pouches on board.**" Later that evening, at 04:52 PM, Shri Althaf Usman performed a routine security risk assessment and flagged the feasibility of the next day's operation by texting: "**Port cleared for tmmrw,**" which was acknowledged by Shri Ismail Kacheri Kunnummal. The screenshot of the said chats on 07.11.2025 are as:-

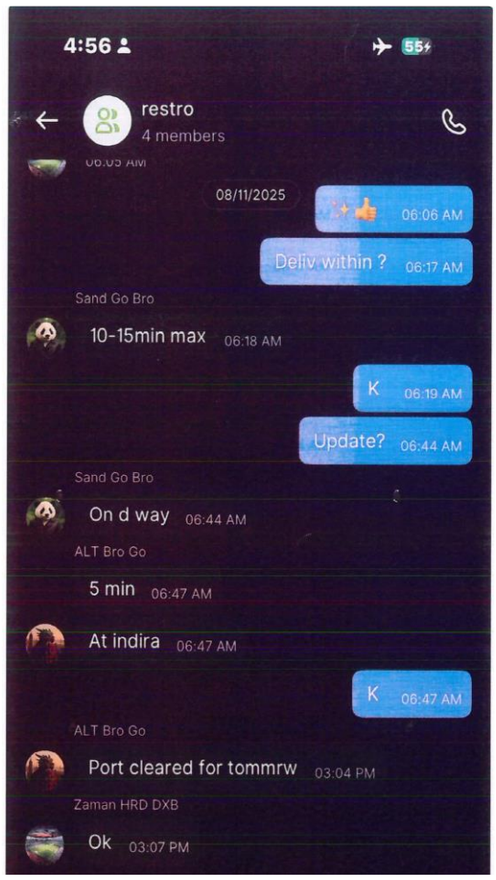




6. <u>GOLD SMUGGLED ON DATE 08.11.2025:-</u>

On 08.11.2025, **Shri Jaman/Zaman Sharif** initiated the transit sequence by log-texting: "**AUH PAX READY TO BOARD.**" He subsequently transmitted the carrier's seating coordinates and the exact location of the contraband: "**THIRTY-ONE FOX**" and "**02 pouch in Life Jacket**", directing the facilitators to **Seat No. 31F**. Following the flight's arrival, **Shri Ismail Kacheri Kunnummal** requested a status update on the domestic delivery leg. **Shri Sandeep Mstrao** responded that the delivery would be completed in *"10-15 minutes max,"* while **Shri Althaf Usman** updated his location by texting that he would reach the drop zone at **Indira Bridge** within five minutes. The screenshot of the said chats on 08.11.2025 are as:-

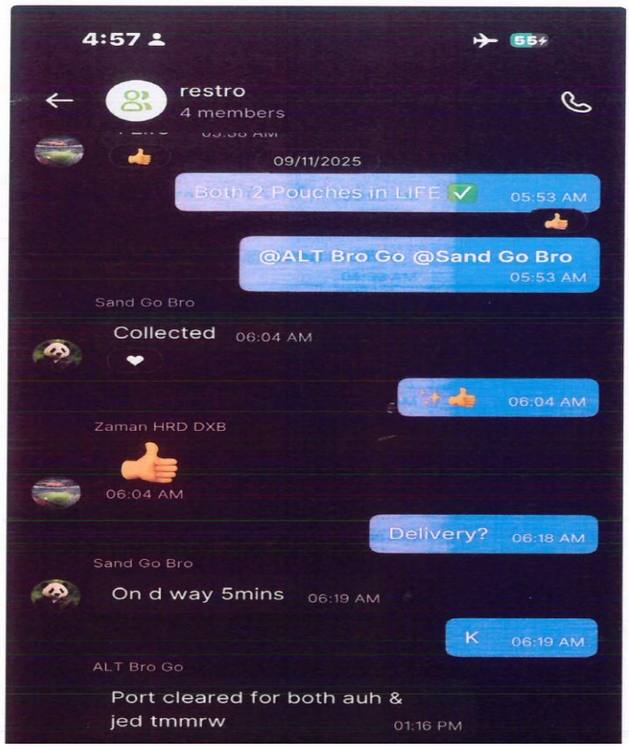




7. <u>GOLD SMUGGLED ON DATE 09.11.2025:-</u>

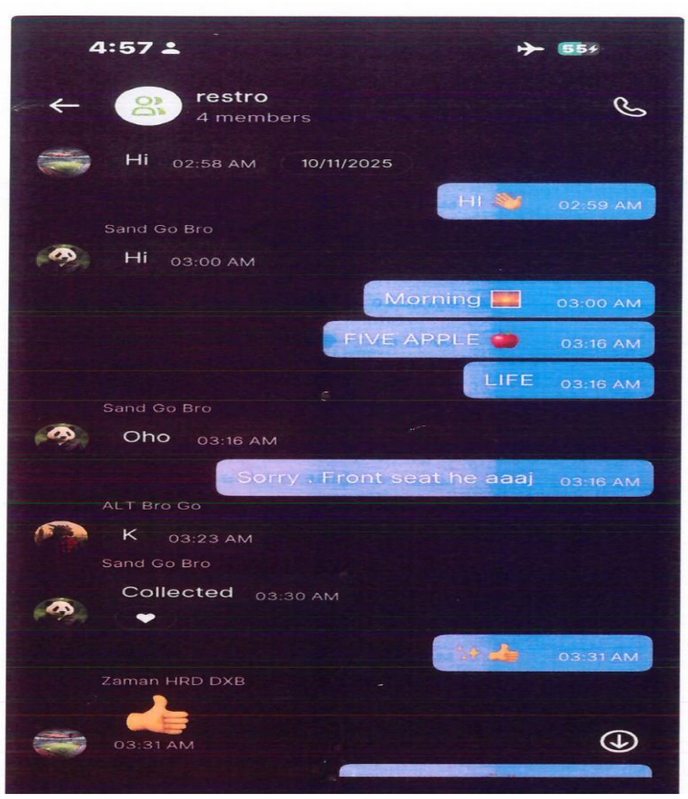
The chat logs from 09.11.2025 show Shri Jaman/Zaman Sharif tracking the flight by texting: "**AUH PAX READY TO BOARD.**" Shri Ismail Kacheri Kunnummal confirmed the internal concealment parameters by log-texting: "**Both 2 pouches in LIFE,**" indicating that the gold pouches remained hidden within the life-jacket pouch of the designated seat. When Shri Ismail Kacheri Kunnummal inquired about the domestic delivery status, Shri Sandeep Mstrao (operating under the handle "Sand Go Bro") confirmed he was en route to the drop zone and would arrive within five minutes. Shri Althaf Usman performed a routine security risk assessment and flagged the feasibility of the next day's operation by texting: "**Port cleared for both auh & jed tmmrw,**". The screenshot of the said chats on 09.11.2025 are as:-





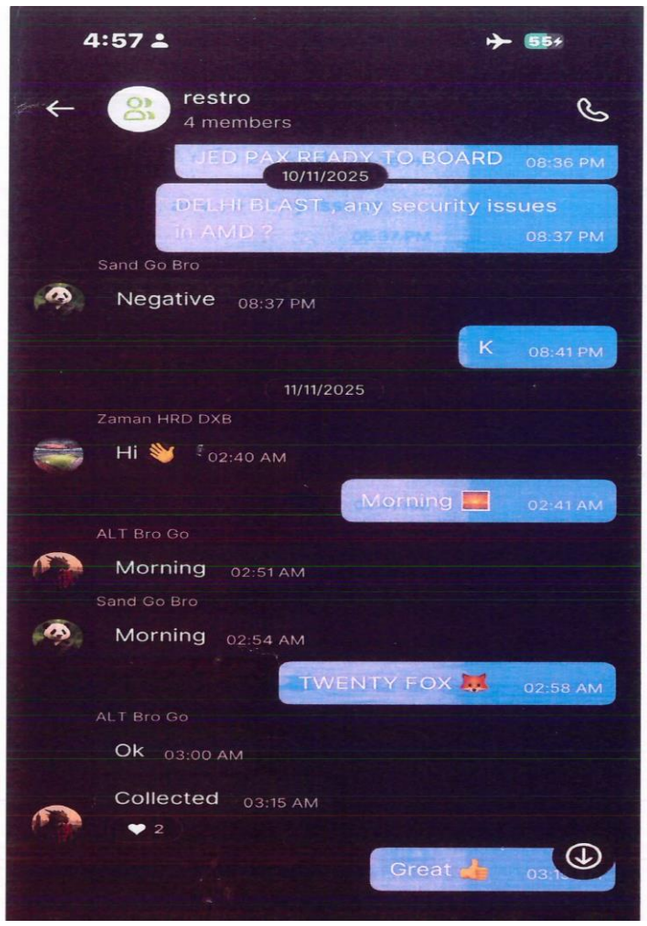
8. <u>GOLD SMUGGLED ON DATE 10.11.2025:-</u>

On 10.11.2025, the logs record the syndicate executing another smuggling operation on the Jeddah route. **Shri Ismail Kacheri Kunnummal** transmitted the coded seat details to the group as "**FIVE APPLE**", directing the operators to **Seat No. 5A**. Following the arrival of the aircraft and the extraction of gold, **Shri Sandeep Mstrao** updated the group by text-logging the confirmation: "**Collected.**" The screenshot of the said chats on 10.11.2025 are as:-



9. <u>GOLD SMUGGLED ON DATE 11.11.2025:-</u>

The retrieved communications spanning 10.11.2025 and 11.11.2025 demonstrate the syndicate executing its another successful smuggling operation prior to their interception by the DRI. Shri Ismail Kacheri Kunnummal logged the initial carrier boarding readiness. To assess potential enforcement threats at the terminal, he transmitted the coded message: “DELHI BLAST, any security issues in AMD?” Shri Sandeep Mstrao replied with "Negative", confirming that security parameters at the terminal remained standard and clear for the operation. Shri Ismail Kacheri Kunnummal then provided the final seating coordinates via the code word "TWENTY FOX" (Seat No. 20F). Following the landing of the aircraft, Shri Althaf Usman performed the extraction and logged the final confirmation entry: "Collected." The screenshot of the said chats on 10/11.11.2025 are as:-



30.3 In view of the cumulative circumstantial evidence, digital evidence, contemporaneous documentary records, and the mutually corroborative voluntary statements of the Noticees, it stands fully established that a well-organized international smuggling syndicate was actively engaged in the systematic smuggling of foreign-origin gold into India. This syndicate was

masterminded by **Shri Jaman/Zaman Sharif** and **Shri Ismail Kacheri Kunnummal**, with the deliberate involvement, institutional facilitation, and active assistance of airline employees **Shri Althaf Usman** and **Shri Sandeep Mstrao**. I hold that this syndicate successfully smuggled a total quantity of approximately **9 kilograms of foreign-origin gold** into India across nine distinct historical instances, involving an aggregate **tariff value of Rs. 10,47,18,410/-** and a total **market value of Rs. 11,39,80,000/-**. This gold was brought into the territory of India with a clear, pre-planned intent to fraudulently circumvent statutory restrictions and completely evade the payment of applicable customs duties.

The evidence on record reveals a repeated, identical pattern of smuggling activity characterized by the deliberate concealment of gold in pouches inside aircraft cabins beneath passenger seats or life-jacket pouches as per the syndicate's established *modus operandi*. This was systematically followed by the illicit extraction of the contraband by compromised airline security and managerial staff who exploited their specialized airport access. Once cleared past the airport perimeter through domestic exit channels to bypass customs checks, the gold was promptly handed over to recipients designated by the overseas handler. This structured execution is incontrovertibly confirmed through the un-tampered BOTIM application group chats and the detailed, voluntary admissions made under Section 108 of the Customs Act, 1962.

The chronological evaluation of these nine individual instances clearly establishes a repeated, systematic, and continuous design of smuggling. The consistent use of encrypted, alphanumeric coded communication channels, the institutional infiltration of commercial aviation security functions, and pre-arranged domestic distribution networks conclusively prove that the Noticees operated as a cohesive, deeply entrenched unlawful syndicate. The digital evidence provides an unbroken, authenticated record of these transactions, fully substantiating the statutory liability to confiscation of the **9 kilograms of gold** smuggled during these nine previous journeys.

Accordingly, I hold that the said smuggled goods, having an aggregate market value of **Rs. 11,39,80,000/-**, are liable for confiscation under the provisions of **Sections 111(d), 111(e), and 111(l) of the Customs Act, 1962**. Although the aforementioned goods have already entered domestic commercial streams and are not physically available for formal seizure and confiscation, a redemption fine remains legally imposable. This principle is robustly supported by the landmark judgment of the Hon'ble High Court of Madras in the case of

M/s. Visteon Automotive Systems India Ltd. v. CESTAT **[2018 (9) G.S.T.L. 142] wherein the Hon'ble High Court of Madras** has observed as under:

> *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

Further, Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held interalia as under:-

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> ***174. .....*** *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*
>
> > *"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the*

physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).“

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

30.4 I note that the provisions of Section 65B of the erstwhile Indian Evidence Act, 1872, are *pari materia* to Section 138C(4) of the Customs Act, 1962. Both provisions prescribe essential conditions for the admissibility of electronic records. They require that the source of the document be identified, the manner of its production clearly described, and that it be accompanied by a certificate issued by a person occupying a responsible official position relative to the operation of the device or the management of the relevant activities. These statutory safeguards are intended to ensure the authenticity and integrity of digital records used as evidence. In the present case involving the organized smuggling of foreign-origin gold through SVPI Airport, Ahmedabad, several items of digital evidence were relied upon during the investigation. Smartphones, which are capable of storing, transmitting, and receiving digital content through applications such as WhatsApp and BOTIM, are functionally equivalent to computers for the purposes of Sections 65B and 138C. These devices served as the primary conduits for communication, coordination, and data storage in this illicit operation. I find that there is nothing on record to suggest, even remotely, that the data storage devices seized from noticees were tampered with prior to or after its submission to the DRI officers. Shri Ismail Kacheri Kunnummal voluntarily provided screenshots of Restro group chats of BOTIM App exchanged with each other, which form a crucial part of the digital evidence in this case. These screenshots were duly supported by a certificate issued under Section 65B of the Indian Evidence Act as well as under Section 138C(4) of the Customs Act, thereby satisfying the evidentiary requirement for admissibility. I further observe that with the enactment of the **Bhartiya Sakshya Adhiniyam, 2023**, which replaced the Indian Evidence Act, the admissibility of electronic records continues to be governed by similarly structured but modernized provisions. Section 61 of the said Adhiniyam clearly provides that ***no electronic or digital record shall be denied admissibility solely on the ground of being digital in nature***. It further affirms that such records shall, subject to Section 63,

carry the same legal weight and enforceability as traditional documentary evidence. Section 63(4) corresponds to the earlier Section 65B(4), reiterating the requirement of a certification by a responsible person attesting to the manner of production, device integrity, and source reliability. Moreover, the Act expands the definition of electronic evidence under Section 2(1)(d), bringing it in line with evolving technological usage. In light of the above statutory provisions and factual circumstances, and considering the corroborative value of the digital evidence with other materials on record, such as physical recovery of gold, travel data, and voluntary statements, I am satisfied that the digital evidence including Botim App chats (Restro Group), and images, is both admissible and reliable. These pieces of evidence not only meet the legal threshold for admissibility but also substantively establish the complicity and coordination among the noticees in the present gold smuggling case. Accordingly, I hold that the digital evidence gathered during the investigation is admissible and carries significant probative value in this case.

30.5 In view of the above, I find that the evidence collected during the course of the investigation is sufficient to conclusively establish that a well-organized smuggling syndicate was engaged in the systematic smuggling of foreign-origin gold into India. I also note that in ***Collector of Customs, Madras & others v. Bhoormull***, **1983 (13) ELT 1546 (SC)**, the Hon'ble Supreme Court, in the context of the burden on the Department to prove the factum of smuggled goods, held that the law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. In the present case, I have already discussed various pieces of evidence available on record which clearly establish the smuggling of gold weighing **1246.48 grams (derived from 04 capsule found concealed beneath Seat No. 30F)** as well as **09 kilograms** on previous instances by **Shri Jaman/Zaman Sharif**, **Shri Ismail Kacheri Kunnummal**, and their accomplices.

30.6 It needs to be appreciated that in proceedings under tax legislation like the Customs Act, the prosecution is not required to adhere to the principles of burden of proof beyond reasonable doubt. It is a settled principle of law that the department is not required to prove their case with mathematical accuracy but the theory of preponderance of probability holds good in such cases where the assessee have acted in an unscrupulous

manner. My above finding is aptly supported by the following judicial pronouncements:

a) **M.P Goenka reported at 2015 (318) ELT 409 (Del)** which has been affirmed by the Hon'ble Supreme Court as reported at **2015 (324) ELT A81 (SC).** The Hon'ble High Court of Delhi had held as under:

Here, this Court notes that proceedings under tax legislation such as the FCRA or the ***Customs Act do not require the prosecution to discharge the criminal-law burden of proof beyond reasonable doubt****. Under such proceedings, a balance of probabilities is satisfactory. In Radheyshyam Kejriwal v. State of West Bengal, (2011) 3 SCC 581 = 2011 (266) E.L.T. 294 (S.C.) the Supreme Court held:*
"A person held liable to pay penalty in adjudication proceeding can not necessarily be held guilty in criminal trial. ***Adjudication proceedings are decided on the basis of preponderance of evidence*** *of a little higher degree whereas in a criminal case entire burden to prove beyond all reasonable doubt lies on the prosecution... it is trite that standard of proof required in criminal proceedings is higher than that required before adjudicating authority."*

b) **M/s Ramachandra Rexins P Ltd. reported at 2013 (295) ELT 116 (T)** which was upheld by the Hon'ble Supreme Court as reported at **2014 (302) ELT A61 (SC).** The Hon'ble Tribunal had held as under:

In a case of clandestine activity involving suppression of production and clandestine removal, ***it is not expected that such evasion has to be established by the Department in a mathematical precision.*** *After all, a person indulging in clandestine activity takes sufficient precaution to hide/ destroy the evidence. The evidence available shall be those left in spite of the best care taken by the persons involved in such clandestine activity. In such a situation, the entire facts and circumstances of the case have to be looked into and a* ***decision has to be arrived at on the yardstick of 'preponderance of probability' and not on the yardstick of 'beyond reasonable doubt'****, as the decision is being rendered in quasi-judicial proceedings.*

30.7 I further find that the Noticees had formed a clear understanding with **Shri Jaman/Zaman Sharif** and **Shri Ismail Kacheri Kunnummal**, hatching a deeply entrenched conspiracy to smuggle foreign-origin gold into India. The deliberate manner in which these individuals conspired with each other has been discussed at length hereinabove. The carrier passengers physically transported the concealed gold into India, while **Shri Sandeep Mstrao** and **Shri Althaf Usman**, leveraging their positions as airline staff, played a crucial role in clearing the contraband from the airport premises to evade Customs duty. All the individuals who have tendered inculpatory statements are active participants in this conspiracy, working

toward the common interest of smuggling gold into India. Consequently, any admission made by them regarding their common intention within the conspiracy is admissible against all co-conspirators. My findings to this effect are aptly supported by the decision of Hon'ble High Court of Delhi in the case of **S K Jain reported at 2016 (333) ELT 89 (Del)** wherein it has been held as under:

> *"In the case at hand, there is a recovery of foreign currency from the co-accused. The relationship of employer and employee has been admitted both by the petitioner and the co-accused.* ***The statement of the co-accused and the other documents seized show that the co-accused was acting on the behest of the petitioner.*** *At this stage, the Court will not dissect the evidence against each accused and come to the conclusion that the only evidence against the petitioner is the statement of the co-accused and that being not substantive evidence, no charge can be framed against him.* ***It is well settled that in a case of conspiracy if there is reasonable ground to believe that two or more persons have conspired together to commit an offence then by virtue of Section 10 of the Evidence Act, anything said, done or written by one of such persons in reference to their common intention, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy****, as for the purpose of showing that any such person was a party to it."*

31. Additionally, the records indicate that the smuggling operations were not limited to the present case involving 1246.48 grams of gold. The investigation has revealed that an organized smuggling syndicate was continuously operating under the direct instructions of masterminds Shri Jaman/Zaman Sharif and Shri Ismail Kacheri Kunnummal. From the above findings, I conclude that Shri Jaman/Zaman Sharif and Shri Ismail Kacheri Kunnummal, in connivance with the other co-noticees and carrier passengers, knowingly acquired possession of, carried, removed, kept, concealed, and delivered smuggled gold into India. These illegal activities were systematically undertaken for personal monetary gain, without the knowledge of the Customs authorities, without any valid declaration under Section 77, and without payment of the applicable Customs duty. Accordingly, I find and hold that Shri Jaman/Zaman Sharif and Shri Ismail Kacheri Kunnummal actively organized and managed the systematic smuggling of (i) a Gold bars weighing **1246.48 grams** (derived from the four capsules covered with white tape and recovered from beneath Seat No. 30F) and (ii) previously smuggled gold weighing approx. 09 Kgs into India for their personal enrichment. I further find and hold that their joint acts of omission and commission have rendered both the physically seized gold bar

and the previously smuggled gold liable to absolute confiscation and confiscation respectively under the provisions of **Sections 111(d), 111(e), and 111(l) of the Customs Act, 1962**.

32. Further, I find that the noticee Shri Abdul Nassir Thottathil and Shri Ismail Kacheri Kunnummal in their written submission stated that no gold was recovered from their possession and therefore, they have not claimed the right/ownership on the seized gold. This line of defense is mirrored by the written submissions of the other co-noticees **Shri Sandeep Mstrao**, Assistant Manager and **Shri Althaf Usman** Senior Security Executive both working in Indigo Airline and all of them have expressly disowned the contraband and stated that they do not claim any right, title, or ownership over the seized gold bar weighing **1246.48 grams**.

This collective strategy of complete disownership by the Noticees is a calculated legal maneuver designed to distance themselves from the contraband and escape the penal consequences of the Customs Act, 1962. However, from a quasi-judicial perspective, this absolute silence and abandonment of highly valuable commercial merchandise serves as strong circumstantial evidence that confirms the illicit and smuggled nature of the goods. As a matter of law, I find that in intricate clandestine operations such as the smuggling of gold, the role of a co-noticee's involvement may extend beyond direct possession of the smuggled goods, encompassing various roles such as facilitator by procuring the goods, facilitating transportation or providing logistical support. Gold is a highly valuable asset with stable market liquidity; it defies standard human logic and ordinary commercial prudence that any individual would legitimately procure, transit, and import such a significant quantity of precious metal valued at **Rs. 1,62,04,240/-** and then completely abandon their financial interest upon its interception by law enforcement.

If this gold had been imported through legitimate channels, the rightful owner or importer would have immediately come forward. They would have produced lawful procurement invoices, banking or valuation records, cross-border transit authorizations, and declaration documents required under Section 77 to claim the property and safeguard their financial investment. Conversely, in the present case, the absolute failure of any Noticee to claim ownership, coupled with their explicit statements disowning the gold bar, demonstrates that the gold bar was brought into India through a fraudulent, pre-planned conspiracy. This was done with the sole intent of

evading border regulations and customs duties, which brings the items strictly within the definition of "smuggling" under Section 2(39) of the Act.

The Noticees' argument that Section 123 cannot be applied to them because they do not claim ownership is legally incorrect. Section 123 of the Customs Act, 1962, places the burden of proof firmly on the person from whose possession the goods were seized, or any person who claims ownership. In smuggling cases executed through an organized syndicate, physical possession must be interpreted alongside the operational reality of the offense. The four capsules of gold paste were physically recovered from the life-jacket pouch directly beneath Seat No. 30F the exact seat assigned to the carrier passenger, Shri Abdul Nassir Thottathil, as confirmed by the flight manifest. The investigation and digital forensic logs from the "**Restro**" **group on the BOTIM application** conclusively establish that this seat panel was selected as a temporary concealment point to allow the inside airline facilitators, Shri Althaf Usman and Shri Sandeep Mstrao, to safely retrieve the parcel post-disembarkation under the coordination of Shri Ismail Kacheri Kunnummal.

When high-purity foreign-origin gold is recovered from an unusual hiding place inside an aircraft cabin and is subsequently disowned by all individuals linked to its transit, the "reasonable belief" threshold for a valid seizure under Section 110 is fully satisfied. Once the physical recovery is established and the goods are shown to be restricted under the Foreign Trade Policy, the statutory onus shifts to the operators of the importation chain to prove that the goods are not smuggled. By completely abandoning the derived gold bar and failing to produce any legitimate import credentials or procurement records, the Noticees have failed to discharge the statutory burden of proof. Consequently, the derived pure gold bar weighing **1246.48 grams** is held to be un-declared, prohibited goods, rendering it liable to absolute confiscation under Sections 111(d), 111(e), and 111(l) of the Customs Act, 1962, and the defenses raised on this count are rejected.

33. The SCN also proposes penalty under Section 112(a) & (b) of the Customs Act, 1962 on Shri Abdul Nassir Thottathil, Shri Ismail Kacheri Kunnummal, Shri Zaman/Jaman Sharif, Shri Althaf Usman and Shri Sandeep Mstrao. I note that Section 112 of the Customs Act, 1962 prescribes penalties for improper importation of goods, etc. The relevant portion is reproduced below for reference:

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,*

33.1 In view of the above detailed evaluations, I find that the principle of mens rea (guilty mind) on the part of the Noticees is fully and unassailably established in the instant case. The facts on record clearly demonstrate that all the Noticees completely failed to follow the mandatory statutory procedures prescribed for the legal importation of baggage under Section 77 of the Customs Act, 1962, and instead consciously and intentionally involved themselves in the clandestine smuggling of foreign-origin gold into India. The entire operation represents a premeditated and highly organized smuggling syndicate operated by **Shri Jaman/Zaman Sharif** and **Shri Ismail Kacheri Kunnummal**, with the active institutional involvement, operational assistance, and facilitation of airline employees **Shri Sandeep Mstrao** and **Shri Althaf Usman**. This network was specifically designed to systematically traffic commercial quantities of gold through the security perimeter of SVPI Airport, Ahmedabad, in a planned and coordinated manner. The elaborate use of the encrypted BOTIM application group "**Restro**", the implementation of highly guarded alphanumeric code words (such as *"Thirty Fox"* and *"Twenty Elephant"*) to mark target seating panels, and the calculated deployment of carrier passengers to abandon contraband in flight cabins for subsequent insider retrieval all highlight a sophisticated scheme engineered exclusively to hoodwink the Customs authorities and evade border regulations. Such a repeated, systemic bypass of the provisions of the Customs Act, 1962, the Foreign Exchange Management Act (FEMA), 1999, and the FEMA Regulations, 2015-20, entirely refutes any plea of an innocent or technical breach. It underscores a shared, willful intention among the syndicate members to illicitly clear prohibited goods for personal enrichment. Consequently, their *mens rea* stands proved beyond doubt on the basis of a high degree of preponderance of probability, thereby fully validating the confirmation of absolute confiscation and the subsequent imposition of penal liabilities under Section 112 of the Customs Act, 1962.

33.2 I find that the noticee Shri Abdul Nassir Thottathil and Shri Ismail Kacheri Kunnummal in their respective submission contended that the proposal to impose penalties under Section 112 of the Customs Act, 1962, is highly uncertain, ambiguous, and legally unsustainable. They rely on the judgment of the **Hon'ble High Court of Madras in B. Lakshmichand v. Government of India [1983 (12) ELT 322 (Mad)]** to contend that the Show Cause Notice must specify with precision which exact clause either 112(a) or 112(b) is attracted, and that a failure to provide distinct findings under specific clauses invalidates the penal proceedings.

In this regard, I note that although the legal propositions laid down in B. Lakshmichand are well-established, however, the Noticee's reliance on it is misplaced because the facts of the present case are entirely distinguishable. In the said case law, there was no mentioning of specific sub section of 112 in Show Cause Notice as well as in the order, however, the present case is under adjudication process. The ratio in B. Lakshmichand applies to cases where the order was issued without detailing the underlying omissions or commissions, leaving the noticee guessing as to the charges against them. In sharp contrast, the Show Cause Notice dated 08.05.2026 in the present proceedings outlines specific, individualised allegations supported by clear documentary and digital evidence. It details precisely how the specific acts of omission and commission by each Noticee simultaneously attract the ingredients of clauses of Section 112. In an organized smuggling syndicate, a noticee can concurrently act as an abettor under clause (a) (by facilitating the rendering of goods liable to confiscation) and actively deal with the contraband under clause (b) (by acquiring, concealing, or carrying goods known to be liable to confiscation). I find that there is no bar in the Customs Act upon simultaneous penalty under Section 112 (a) and (b). Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under *"does or omits to do any act which act or omission render such goods liable to confiscation under Section 111, or abets the doing or omission of such act"* covered under Section 112(a) of the Customs Act, 1962 and *Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962*. To support my view, I placed reliance on judgment of Hon'ble High Court of Kerela in matter of Southern Refineries Ltd. vs. Commissioner of Customs, Cochin 2019 (367) E.L.T. 122 (Ker.) (DB) wherein Hon'ble Court held that:-

10. *The further contention taken is on the strength of the Madras High Court's decision reported in 1983 (12) E.L.T. 322 (Mad.), B. Lakshmichand v. Government of India. That was a case in which the penalty was set aside on the ground that the provision alleged under Section 112 was not specified. We do not think such a defect exists in the present case. We have to at first notice, the show cause notice produced at Annexure-C, wherein direction to show cause was on why the goods be not confiscated under Section 111(d) of the Customs Act and why no penal action is taken under Section 112.*

11. *Section 111(d) is as extracted herein :*

S. 111. Confiscation of improperly imported goods, etc. *— The following goods bought from a place outside India shall be liable to confiscation :-*

(a) .....

(b) .....

[(c) .....]

(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;

12. *When proceeding for confiscation under Section 111(d) what would be applicable is penalty under Section 112(a)(i) :*

S. 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"

xxx xxx xxx

shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;

13. *There is absolutely no ambiguity insofar as the provision applicable under Section 112, which though not specifically mentioned is clear from the reference to Section 111(d). We also notice that the penalty imposed is in lieu of confiscation for reason of the goods not being available for confiscation. It is the admitted position that after the re-export was declined, the goods stored in containers in the premises of the appellant leaked out and the appellant's factory itself is closed down. We also notice the fact that the Bill of Entry dated 12-12-1996 produced as Annexure-A shows a total cost of Rs.*

10,62,612/-. In such circumstances, the penalty imposed in lieu of confiscation is in fact a flea bite on the appellant, who was liable to confiscation of the goods imported.

33.3 Further, I note that, it is a settled legal position that ratio of one case law should not be blindly applied to another case without examining the facts & circumstances of each case. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori tobacco products [2004 (170) ELT 135 (SC)] has stressed the need to discuss how the facts of decision relied upon first factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that *one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper*. Again, in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)],* it has been observed by the Hon'ble Supreme Court that, *the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.* Further, while 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."*

33.4 I find that Shri Abdul Nassir Thottathil was an international passenger returning to India from Jeddah on Flight No. 6E-76. Lured by the financial promises of Shri Ismail Kacheri Kunnummal, he knowingly acted as a paid carrier for the syndicate in exchange for a consideration of 500 Saudi Riyals. In strict compliance with the syndicate's modus operandi, his specific role was limited to physically bringing the gold paste capsules into India, concealing them inside the life-jacket pouch directly beneath his allotted Seat No. 30F before landing, and quietly disembarking upon arrival

to let the inside airline accomplices retrieve the said gold pouches. This fact is reinforced by the real-time message posted by Shri Althaf Usman in the "Restro" group regarding the interception of four capsules wrapped in pairs with white tape, which were recovered from the pouch found below Seat No. 30F where the lifesaving jacket was placed. In the instant case, it has been established beyond any shadow of doubt that the gold in form of paste in four capsules was kept entirely undeclared and was systematically concealed inside the life-jacket pouch directly beneath his allotted Seat No. 30F to deliberately evade detection. By failing to satisfy the mandatory regulatory conditions for import, the seized gold acquired the character of 'prohibited goods' in toto, and the Noticee's premeditated act of attempting to smuggle the same without a statutory declaration falls squarely within the definition of 'smuggling' under Section 2(39) of the Act. On the gravity of such offenses, the Hon'ble Supreme Court in the case of Dropti Devi & Anr. Vs. Union of India [(2012) 6 S.C.R. 307] has taken a remarkably stringent view regarding the deleterious impact of smuggling activities on the economic fabric of the nation.

I find that Shri Abdul Nassir Thottathil, has contended in his written submission that he was never a member of the "Restro" BOTIM application group, that his phone numbers do not appear in any electronic logs, and that there is absolutely no evidence on record to show his involvement in smuggling of 09 kilograms of gold on previous occasions. In this regard, I find that the digital forensics report and recovered chat logs demonstrate that the closed "Restro" group comprised exactly four members: Shri Jaman/Zaman Sharif, Shri Ismail Kacheri Kunnummal, Shri Althaf Usman, and Shri Sandeep Mstrao, who operated the core logistical and administrative infrastructure of the syndicate. The modus operandi adopted by the members reveals that, apart from these four group members, they lured various international passengers to carry gold by offering monetary benefits and bearing their travel expenses. The investigation reveals that Shri Abdul Nassir Thottathil acted as a carrier passenger for the gold weighing **1246.48 grams** which was seized by the officers. However, no records or statements of co-noticees establish his involvement in past smuggling operations. Therefore, I find and hold that Shri Abdul Nassir Thottathil had no involvement in, and cannot be held liable for, the past smuggling of the 9 kilograms of gold.

However, his liability regarding the seized gold weighing 1246.48 grams of pure gold (market value of Rs. 1,62,04,240/-) remains absolute and

unassailable. Bringing into India goods which contravene the provisions of Customs Act and omitting to declare the same under Section 77 of the Customs Act, 1962 are clearly covered under "does or omits to do any act which act or omission render such goods liable to confiscation under Section 111, or abets the doing or omission of such act" covered under Section 112(a) of the Customs Act, 1962 and *Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Section 112(b) of the Customs Act, 1962*.

The noticee Shri Abdul Nassir Thottathil had failed to disclose the true identity of the goods at the point of import; the non-declaration stands as a gross act of omission on his part. Furthermore, the noticee admitted in his voluntary statement that he travelled from Jeddah to Ahmedabad with the gold in form of four capsules actively concealed under his seat inside the life-jacket pouch as per the modus operandi. Despite knowing that transporting gold in this manner is an offense, he chose to carry, keep, conceal, and deal with the smuggled commodity, possessing absolute reason to believe it was liable to confiscation under Section 111. Accordingly, I find that the noticee Shri Abdul Nassir Thottathil is liable for the penalty under Section 112(b)(i) of the Customs Act,1962 and I hold accordingly.

33.5 The oral, documentary, and forensic evidence on record establishes that Shri Ismail Kacheri Kunnummal was the primary domestic anchor and coordinator of the international smuggling syndicate. His role was central to both in the instant seizure of 1246.48 grams of gold and the previous smuggling of approximately 09 kilograms of gold. He was an active administrator of the encrypted "Restro" BOTIM chat group, which was set up specifically to manage their smuggling operations secretly and easily. The Noticee's specific role involved luring and recruiting financially vulnerable international passengers to serve as carriers, organizing their travel itineraries, and coordinating with the overseas supplier i.e Shri Zaman/Jaman Sharif. He acted as the primary communication link, translating carrier seat manifests into coded data (e.g., "Thirty Fox", "Twenty Elephant", "Sixteen Apple") and transmitting them to compromised airline staff to facilitate inside cabin recoveries. Furthermore, he actively managed the post-airport offloading sequence by deploying local distribution partners to receive the smuggled gold at pre-arranged drop zones near the Indra Bridge and Simran Hotel areas.

By systematically planning the illegal entry of smuggling of gold, hiring carriers, and orchestrating an insider airport bypass mechanism to completely evade customs screening and duty payments for personal enrichment, his actions represent the highest degree of deliberate defiance of law. His organized abetment of illegal importations and extensive handling of smuggled goods across multiple shipments make him a prime offender under the Act. Consequently, I hold that Shri Ismail Kacheri Kunnummal is liable to penalty under Section 112(b)(i) of the Customs Act, 1962, for his role in smuggling of gold 1246.48 grams and previous smuggled gold of about 09 kgs.

33.6 From a meticulous review of the digital communication trails, forensic data, and the voluntary statements recorded under Section 108 of the Customs Act, 1962, it stands unequivocally established that Shri Jaman/Zaman Sharif (operating under the BOTIM profile "Zaman HRD DXB") was the principal architect and mastermind behind a highly organized international syndicate engaged in the systematic and repeated smuggling of foreign-origin gold into India from the UAE and Saudi Arabia. The operational control, strategic planning, logistical coordination, and execution of these illicit activities were conceptualized and executed under his direct supervision and instructions. He funded the procurement of gold in foreign markets, managed its conversion into a concealed paste form, and oversaw its packaging into compact capsules to facilitate cross-border smuggling through the Sardar Vallabhbhai Patel International (SVPI) Airport, Ahmedabad.

33.6.1 The modus operandi adopted by this syndicate reflects a high level of planning, sophistication, and compartmentalization. The record reveals that Shri Jaman/Zaman Sharif, in active connivance with the local coordinator, Shri Ismail Kacheri Kunnummal, systematically identified and targeted individuals holding valid Indian passports who were travelling from the Gulf region to India. These individuals were lured with monetary inducements to act as gold carriers. Once a carrier was recruited, the syndicate arranged their flight tickets and logistical movement. Shri Jaman/Zaman Sharif, either directly or through Shri Ismail Kacheri Kunnummal, then coordinated the overseas delivery of the gold to the carrier. For instance, in the case of the seized consignment, the statement of the passenger, Shri Abdul Nassir Thottathil, confirms that Shri Jaman/Zaman Sharif personally handed over the four gold capsules wrapped in white tape at a residence in Jeddah, in the presence of Shri Ismail Kacheri Kunnummal.

33.6.2 The carriers were explicitly instructed to conceal the contraband inside the aircraft (specifically inside life-jacket pouches or side panels near their assigned seats) and disembark without declaring the goods to Customs. To ensure safe passage through the Customs barriers at the SVPI Airport, Shri Jaman/Zaman Sharif utilized the active connivance and inside access of serving airline employees, Shri Sandeep Mstrao and Shri Althaf Usman. These airline staffers exploited their Airport Entry Permits (AEP) to board the aircraft post-disembarkation, retrieve the concealed gold from the seats, bypass security screening by exiting through domestic staff gates, and deliver the illicit gold to designated syndicate members at predetermined spots, such as Indira Bridge or near the Simran Hotel. Forensic data extracted from the mobile devices reveals that the syndicate formed a closed, encrypted group named "RESTRO" on the Botim application to transmit real-time images of the gold packets, share coded seat details (such as "THIRTY FOX" for Seat 30F and "TWENTY FOX" for Seat 20F), and monitor law enforcement movements. The deliberate use of alternate communication platforms with end-to-end encryption features clearly demonstrates a calculated intent to evade detection by law enforcement agencies.

33.6.3 The corroborative electronic evidence, combined with the detailed date-wise flight charts and admissions contained in the cross-verified statements of the co-accused, establishes beyond doubt that this was not a isolated incident but a continuous, structured racket. The syndicate successfully executed **09 past instances of gold smuggling** between October and November 2025, involving an aggregate quantity of approx. **09 Kgs of gold** valued at approximately **Rs. 11.398 Crores**, in addition to the live seizure of **1246.48 grams of pure gold** valued at **Rs.1,62,04,240/-**. It is pertinent to note that despite the issuance of the Show Cause Notice and the extension of multiple personal hearing opportunities to defend his case, the Noticee, Shri Jaman/Zaman Sharif, chose to remain absent from the adjudication proceedings. By failing to appear or submit any written defense, the Noticee has failed to discharge the statutory burden of proof cast upon him under Section 123 of the Customs Act, 1962, thereby confirming that he has no valid defense to offer against the unassailable electronic and documentary evidence on record.

33.6.4 As the chief supplier, financier, and controller of the entire smuggling supply chain, his acts of commission, omission, and abetment have directly rendered the seized gold, as well as the gold smuggled in past instances, liable to confiscation under Sections 111(d), 111(e), and 111(l) of the

Customs Act, 1962. Accordingly, these acts simultaneously trigger the absolute penal provisions of the Act. I, therefore, hold Shri Jaman/Zaman Sharif fully liable for personal penalty under Section 112(a)(i) for acts rendering the goods liable to confiscation, and under Section 112(b)(i) of the Customs Act, 1962, for knowingly dealing with and facilitating the movement of prohibited, smuggled goods.

33.7 A cumulative and exhaustive analysis of the digital communication trails, forensic data, and the chat transcripts of the "Restro" group on the Botim application, retrieved from the mobile device of, Shri Ismail Kacheri Kunnummal, systematically establishes the active, direct, and deep-seated complicity of Shri Althaf Usman in the operations of the international gold smuggling syndicate. The evidence on record conclusively proves that he was a crucial member in this organized machine, facilitating the systematic and repeated smuggling of foreign-origin gold into India from the UAE and Saudi Arabia.

Shri Althaf Usman, by virtue of his employment as Senior Executive Security with Indigo Airlines at the SVPI Airport, Ahmedabad, completely compromised his official position, breached the security credentials entrusted to him, and violated the absolute trust reposed in him by virtue of his security profile. The forensic extraction reveals that he operated within the encrypted Botim network under the alias "ALT Bro Go". Far from being a mere passive participant, he was the individual who originally created the "Restro" chat group on 03.10.2025, with the explicit and pre-meditated intent to orchestrate, coordinate, and execute these clandestine smuggling activities while attempting to evade detection by law enforcement agencies.

33.7.1 His specific, highly critical role within the syndicate was to exploit his airline credentials and his authorized Airport Entry Permit (AEP) to provide unhindered, safe passage to the contraband. He acted as the eyes and ears of the syndicate inside the airport ecosystem. His tasks included monitoring local enforcement/security alert statuses and issuing risk-clearance signals to the overseas handlers, such as his message: ***"port cleared for jed and auh tmmrw".*** Once an international flight landed and the passengers disembarked, he weaponized his unrestricted access to cross the customs screening barriers, board the target aircraft, and physically retrieve the concealed gold paste capsules from beneath the seats or the life-jacket pouches. He then utilized airline ramp vehicles to transport the illicit pouch containing gold across the tarmac area to the domestic terminal,

purposefully exploiting his internal access to exit through domestic staff gates. This calculated maneuver allowed him to completely bypass the mandatory international customs arrival checks, as no effective counter-screening was conducted on individuals moving through domestic channels. Furthermore, he personally managed the logistical chain outside the airport perimeter, delivering the cleared gold to designated receivers at spots like Indira Bridge or near the Simran Hotel. His deep involvement is further underscored by the fact that he actively counselled the overseas mastermind, Shri Jaman/Zaman Sharif, on how to optimize the wrapping parameters (suggesting the use of a single tape in the middle of the package).

33.7.2 His active, real-time participation in the syndicate's operations is further reinforced by the electronic trail recorded on 14.11.2025. Immediately after the Air Intelligence Unit (AIU) / DRI officers intercepted the live consignment, Shri Althaf Usman transmitted a real-time advisory within the "Restro" group stating, *"Parcel caught by AIU Seat 30F"*. This immediate broadcast unequivocally demonstrates that he was continuously monitoring the movements and operational counter-measures of the enforcement officers at the airport around the clock, acting as a look-out to shield the syndicate from legal jeopardy. Having served as a Senior Executive Security official at the SVPI Airport for three consecutive years, the Noticee possessed intimate, granular knowledge of the airport's blind spots, vulnerability points, and exit routes where security screening was either absent or minimal. He intentionally leveraged this institutional knowledge to ensure the smooth entrance for illicitly smuggled gold.

33.7.3 In quasi-judicial customs proceedings, insider facilitation by an active airport security professional represents the highest degree of systemic compromise and constitutes a grave, aggravated breach of the law. The Noticee acted with clear mens rea (guilty mind) and deliberate intent, serving as the vital, trusted insider link required to clear both the current intercepted shipment of 1246.48 grams of pure gold (valued at Rs.1,62,04,240/-) and the massive quantity of about 09Kgs of gold successfully smuggled across nine previous instances between October and November 2025, which carried a combined market value of approximately Rs.11.398 Crores.

Ample corroborative evidence, including the cross-verified voluntary statements recorded under Section 108 of the Customs Act, 1962, demonstrates that for his illegal services, Shri Althaf Usman regularly received substantial monetary rewards from the syndicate, dividing the illicit

payouts equally with his co-conspirator, Assistant Manager Shri Sandeep Mstrao.

It is therefore established beyond a shadow of doubt that Shri Althaf Usman knowingly, deliberately, and repeatedly engaged himself in the acquisition, possession, transportation, concealment, and clearance of smuggled, foreign-origin gold, which he knew and had absolute reason to believe was liable to confiscation under Section 111 of the Act. By misusing his official stature, leveraging his AEP access to breach high-security zones, maintaining continuous digital contact with international handlers, and physically handling the contraband for pecuniary gain, he has acted as an active facilitator. Consequently, I find and hold that Shri Althaf Usman has rendered himself fully and absolutely liable to a severe personal penalty under the provisions of Section 112(b)(i) of the Customs Act, 1962.

33.8 A comprehensive and critical evaluation of the digital communication trails, forensic data, and the chat transcripts of the "Restro" group on the Botim application, retrieved from the mobile device of Shri Ismail Kacheri Kunnummal, unequivocally establishes the active, deliberate, and deep-seated complicity of Shri Sandeep Mstrao as an insider facilitator for this international gold smuggling syndicate. The electronic evidence and cross-verified statements on record conclusively demonstrate that he was a key operational anchor of the syndicate, ensuring the systematic, repeated, and unhindered smuggling of foreign-origin gold into India from the UAE and Saudi Arabia.

Shri Sandeep Mstrao, by virtue of his deployment as Assistant Manager with Indigo Airlines at the SVPI Airport, Ahmedabad, completely compromised his official position, abdicated his corporate responsibilities, and flagrantly violated the high-level security clearances and trust reposed in him by the airport ecosystem. The forensic extraction reveals that he operated within the encrypted Botim network under the alias "**Sand Go Bro**" and was an active member of the closed four-member group created on 03.10.2025 specifically for coordinating smuggling runs. Instead of enforcing standard operating procedures (SOPs) and supervising airline staff to maintain compliance, the Noticee weaponized his high-level managerial authority and institutional inside access to systematically insulate and protect the syndicate's illicit shipments from detection by enforcement agencies.

33.8.1 His specific, highly critical role within the syndicate was executed in seamless collusion with Senior Executive Security, Shri Althaf Usman. The operational blueprint reveals that Shri Sandeep Mstrao utilized his senior executive status and his Airport Entry Permit (AEP) to board incoming international flights post-passenger disembarkation under the false guise of conducting administrative routine checks. He then physically extracted the concealed gold paste capsules from their pre-determined hiding spots such as life-jacket pouches or side panels beneath the target seats based on the flight and seat details transmitted in coded form within the Botim chat group. Once the contraband was retrieved, Shri Sandeep Mstrao took active charge of the highly vulnerable transit leg within the airport perimeter. He utilized airline-authorized ramp vehicles to transport the smuggled gold from the international tarmac area directly to Terminal 1, subsequently exiting through the Staff Gate or the ATC Tower Gate. By doing so, he deliberately exploited his managerial stature and the absence of stringent counter-screening on domestic staff movements to completely bypass the mandatory international customs arrival barriers. The Noticee then personally executed the final high-risk domestic logistics leg, utilizing his personal vehicle a Hyundai Accent car to transport and deliver the cleared gold to the designated persons, at pre-designated drop points outside the airport boundaries, specifically near the Indira Bridge Circle, Bharat Petrol Pump, and the Simran Hotel areas.

33.8.2 Furthermore, his voluntary confession recorded under Section 108 of the Customs Act, 1962, confirms that he was so deeply embedded in the operations that he deleted the Botim application from his mobile device on 20.11.2025 in a calculated attempt to destroy incriminating electronic evidence when summoned by the DRI. In quasi-judicial customs proceedings, insider facilitation by a serving airline manager represents a severe, aggravated breach of national economic security. The Noticee knowingly and repeatedly acted as a trusted insider link to secure the illicit entry and domestic clearance of both the current intercepted gold of 1246.48 grams (valued at Rs.1,62,04,240/-) and the massive quantity of about 09 Kgs of gold successfully smuggled across nine previous instances between October and November 2025, carrying an aggregate market value of approximately Rs.11.398 Crores. Ample corroborative evidence, backed by detailed financial admissions, confirms that Shri Sandeep Mstrao was motivated entirely by illicit pecuniary gain, receiving a substantial

commission of Rs.50,000/- for each successful delivery, which he divided equally with his co-conspirator, Shri Althaf Usman.

Consequently, it stands established beyond a shadow of doubt that Shri Sandeep Mstrao knowingly and deliberately concerned himself in carrying, removing, depositing, keeping, concealing, and dealing with smuggled, foreign-origin gold, which he had absolute knowledge and reason to believe was liable to confiscation under Section 111 of the Act. His actions demonstrate a continuous, calculated pattern of handling prohibited merchandise for financial profit. I, therefore, find and hold that Shri Sandeep Mstrao has rendered himself fully, jointly, and severally liable to a severe personal penalty under the provisions of Section 112(b)(i) of the Customs Act, 1962.

34. Accordingly, I pass the following Order:

O R D E R

i. I order **absolute confiscation** of 01 Gold bar weighing 1246.480 Grams extracted from the gold paste found concealed in four capsules wrapped in white tape having a market value of **Rs. 1,62,04,240/- (Rupees One Crore Sixty-Two Lakhs Four Thousand Two Hundred and Forty only)** which was recovered and placed under seizure under panchnama dated 14.11.2025 and seizure memo order dated 14.11.2025 under Section 111(d),111(e) and 111(l) of the Customs Act, 1962;

ii. I order absolute confiscation of Packing materials used for the concealment of gold in paste/semi-solid form, under Section 119 of the Customs Act, 1962 read with Section 123 of Customs Act, 1962.

iii. I order **confiscation** of about 9 kilograms of gold smuggled during the 9 previous journeys involving aggregate market value of **Rs. 11.398 Crore,** which was smuggled by Shri Zaman/Jaman Sharif, Shri Ismail Kacheri Kunnummal, Shri Althaf Usman and Shri Sandeep Mstrao under Section 111(d),111(e) and 111(l) of the Customs Act, 1962; However, as the said 09 Kgs gold is not physically available for confiscation, I impose redemption fine of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** in lieu of confiscation under Section 125 of the Customs Act, 1962;

iv. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on **Shri Zaman/Jaman Sharif @ Dubai** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.

v. I impose a penalty of **Rs.30,00,000/- (Rupees Thirty Lakh Only)** on **Shri Abdul Nassir Thottathil** under the provisions of Section 112(b)(i) of the Customs Act 1962.

vi. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on **Shri Ismail Kacheri Kunnummal** under the provisions of Section 112(b)(i) of the Customs Act 1962.

vii. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on **Shri Althaf Usman** under the provisions of Section 112(b)(i) of the Customs Act 1962.

viii. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on **Shri Sandeep Mstrao** under the provisions of Section 112(b)(i) of the Customs Act 1962.

35. Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-74/2025 dated 08.05.2026 stands disposed of.

Digitally signed by SHREE RAM VISHNOI
Date: 02.11.2026 15:30:06

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-06/DRI/SVPIA/O&A/HQ/2026-27 Date:02.11.2026
DIN: 20261171MN000061A0EC
By SPEED POST A.D.
To,

(i) Shri Abdul Nassir Thottathil, S/o Shri Imbichi Moyi Eranhona residing at Kunnummal House, Avilora PO, Kizhakkoth, Kozhikode, Kerala-673572, email id-

(ii) Shri Jaman/Zaman Sharif @ Dubai,

(iii) Shri Ismail Kacheri Kunnummal S/o Shri Kunhipocker, residing at Kacheri Kunnummal, Elettil Post, Thamarassery, Kozhikode, Kerala-673572, email id- ismayil2003@gmail.com

(iv) Shri Althaf Usman S/o Shri Usman Kutty, residing at 376, Jawahar Nagar, Aradhya Apartment, Indore, Madhya Pradesh-452012, email id- althaf.usman@yahoo.com and

(v) Shri Sandeep Mstrao S/o Shri Bhanwarlal Mstrao residing at G-904, Murlidhar Heights, Muthiya, Ahmedabad, email id- sandeeprao934@gmail.com

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)

2. The Dy./Asstt. Director, DRI, AZU, Ahmedabad.
3. The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
4. The Dy./Asstt. Commissioner of Customs (TRC), 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.