



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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DIN No.20250271MN000000EA01

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-137/SVPIA-D/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या- तारीख / Show Cause Notice No. and Date	:	VIII/10-137/SVPIA-D/O&A/HQ/2024-25 dated 15.07.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	269/ADC/SRV/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	27.02.2025
E	जारी करनेकी तारीख/ Date of Issue	:	27.02.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	“Whom so ever it may concern” (1) To be pasted on the Notice Board of Custom House, Navrangpura, Ahmedabad – 380 009. (2) To be pasted on the Notice Board of Customs, SVPI Airport, Ahmedabad.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case :

The Customs officers of Air Intelligence Unit (AIU), Sardar Vallabhbhai Patel International Airport, Ahmedabad received an input from Shri Rajat

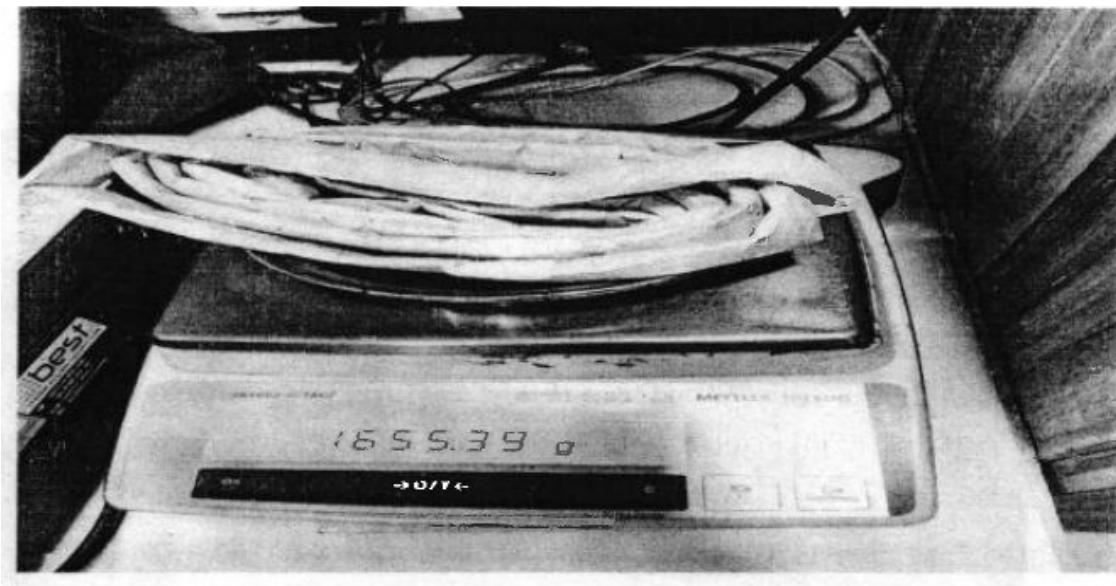
Bajpayee, In-charge of Indigo Airlines ground staff, SVPI Airport, Ahmedabad that the Indigo Airlines Security staff during security checking and cleaning of Indigo Flight No. 6E 1432, which landed at Ahmedabad at 05:45 am on 03/05/2024 from Abu Dhabi to Ahmedabad, found some suspicious semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D of the aircraft.

2. On the basis of the said input the Customs officers of Air Intelligence Unit (AIU), Sardar Vallabhbhai Patel International Airport, Ahmedabad along with two independent Panch witnesses reached the bay, where the Indigo Flight No. 6E 1432 was stationed, for examination and search proceedings under Customs Act, 1962 under Panchnama proceedings dated 03/05/2024. There Shri Rajat Bajpayee, In-charge of Indigo Airlines ground staff was present at the entrance of the Flight. After all necessary formalities the officers alongwith Panch witnesses and Shri Rajat Bajpayee, In-charge of Indigo Airlines ground staff entered in the Flight and reached to Seat No. 29D, where Shri Vivek Giri, Officer- Security of Indigo was present and it was informed that Shri Vivek Giri, Officer- Security of Indigo had found the said semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D. Shri Vivek Giri, Officer- Security of Indigo in presence of the independent panch witnesses informed that the cylinder of the life jacket which was present below the seat no. 29D was taken out from the life jacket pouch by some passenger and was put in net pocket present in front of seat 29D and while checking the airplane he has found that cylinder in net pocket, he further checked the life jacket pouch below the seat 29D, while searching the life jacket in life jacket pouch he also found a rope like semi-solid paste substance covered with black cloth and brown tape and taken out the same and handed over the same to the officers for further proceedings. The officers in presence of the independent panch witnesses found/recovered like semi-solid paste substance covered with black cloth and brown tape. Thereafter, the flight was rummaged thoroughly by the Customs officers in presence of the Panch witnesses, Shri Rajat Bajpayee, In-charge of Indigo Airlines ground staff and Shri Vivek Giri, Officer- Security of Indigo and found nothing incriminating other than the said semi-solid paste substance.

2.1 Thereafter, the Customs officers, Panch witnesses, Shri Rajat Bajpayee and Shri Vivek Giri came to the Office of Air Intelligence Unit (AIU) located opposite of Belt No. 2 in the Arrival Hall of Terminal 2 Building along with recovered semi-solid paste substance covered with black cloth and brown tape.

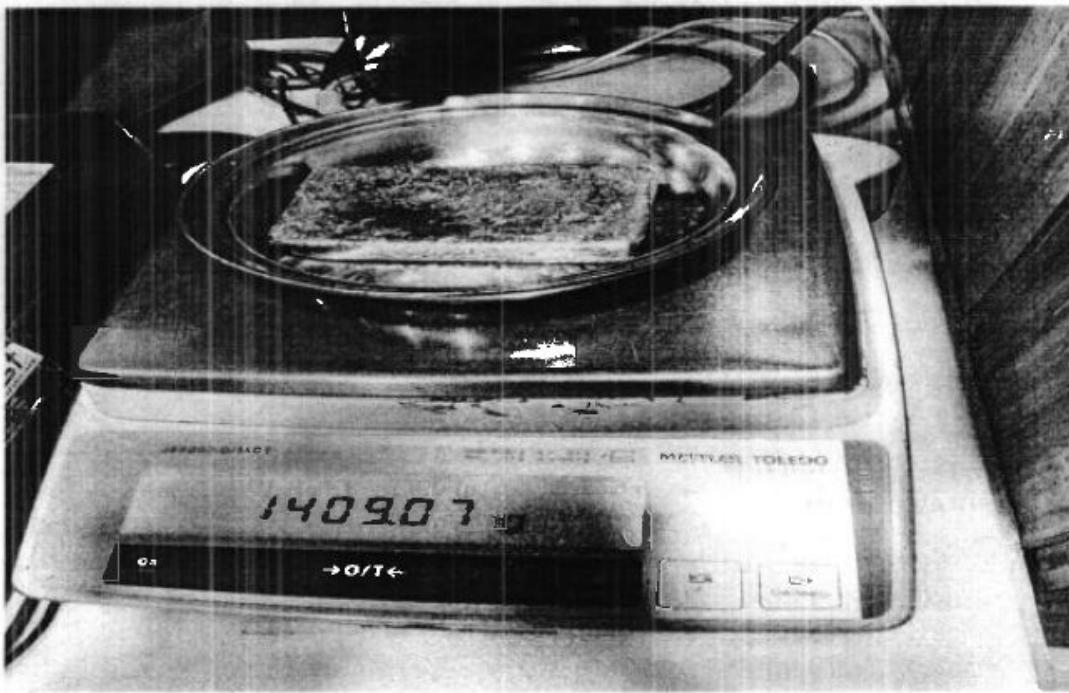
In presence of the panch witnesses, the officers removed the semi-solid paste substance covered with black cloth and brown tape. The officers before the Panch witnesses Shri Rajat Bajpayee and Shri Vivek Giri found the paste further covered with white tape and sealed in a transparent pouch. Looking into the modus of sealing of the of paste, the officers informed the Panch witnesses, Shri Rajat Bajpayee and Shri Vivek Giri that it may contain gold and chemical mix substance and may have some quantity of gold and it needs to be confirmed and its purity and weight also needs to be ascertained. Therefore, Government Approved Valuer was called by the AIU officer for determination of valuation and purity of the semi-solid paste substance recovered from the Indigo Flight No. 6E 1432 below the Seat No. 29D. The Government Approved Valuer, Shri Soni Kartikey Vasantrai in reply informed the officer that the testing of the material is possible only at his workshop as gold has to be extracted from semi-solid paste form by melting it and also informed the address of his workshop.

2.2 Thereafter, the panchas along with Shri Rajat Bajpayee, Shri Vivek Giri and the AIU officers reached at the referred premises. The Government Approved valuer, at the premises of the work shop, weighed the said semi-solid paste substance on his weighing scale. Shri Soni Kartikey Vasantrai informed that the semi-solid paste substance consisting of gold & chemical mix covered with white plastic tape contain semi solid paste substance consisting of Gold & chemical mix weighed 1655.390 grams. The photograph of the same is as under:-



The Valuer then converting the said semi solid paste substance recovered from Indigo Flight No. 6E 1432 into solid gold by melting in furnace. After completion of the procedure, Government Approved Valuer informed that one Solid bar weighing 1409.070 grams having purity 999.0/24 Kt. is retrieved

/derived from 1655.390 grams of semi-solid paste substance consisting of gold & chemical mix wrapped in the white coloured plastic tape. The photograph of the same is as under:-



2.3 On completion of testing and extraction process the Government Approved Valuer submitted Valuation Report in form of certificate no. 126/2024-25 dated 03.05.2024, wherein it certified that one gold bar retrieved/derived from the semi solid paste substance recovered from Indigo Flight No. 6E 1432, totally weighing 1409.070 grams is of 999.0/24KT and had Market Value of Rs. 1,03,55,255/- (Rupees One Crore, Three Lakhs, Fifty-Five Thousand, Two Hundred and Fifty-Five only) and Tariff Value of Rs. 89,26,015/- (Rupees Eighty-Nine Lakhs, Twenty- Six Thousand and Fifteen only). The value of the gold bar was calculated as per the Notification No. 32/2024- Customs (N.T.) dated 30/04/2024 (Gold) and Notification No. 34/2024-Customs (N.T.) dated 02/05/2024 (Exchange Rate). Shri Rajat Bajpayee, Shri Vivek Giri and the Panch witnesses were satisfied and agreed with the testing and Valuation Report given by Government Approved Valuer and they put their dated signature on the said valuation report as a token of the fact that everything was done before them in a perfect manner. The outcome of the said testing is summarized in below table:

S. No.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1	1 Gold Bar	1409.070 Grams	999.0/24 Kt.	1,03,55,255/-	89,26,015/-

2.4 Thereafter, the panchas along with Shri Rajat Bajpayee, Shri Vivek Giri and the AIU officers reached the Customs AIU office at SVP International Airport, Ahmedabad. The Customs Officers explained the panch witnesses, Shri Rajat Bajpayee and Shri Vivek Giri that as the said semi solid paste was recovered from Indigo Flight No. 6E 1432 below the seat No. 29D after deplaning of all the passenger and after passing almost 1 hour of deplaning of passengers, it was not possible to identify as to who was the owner of the recovered Gold therefore as there was no claimant for the said one gold bar retrieved/derived from the semi solid paste, it was unable to identify any proper and legitimate claimant of the Gold Bar and therefore the recovered Gold was required to be termed as 'Unclaimed'.

2.5 Since the recovered one gold Bar totally weighing 1409.070 Grams was found to be Unclaimed but was recovered without any legitimate Import documents inside the Aircraft coming from Abu Dhabi to Ahmedabad, the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said 1 Gold bar weighing 1409.070 Grams having purity 999.0/24KT with Local Market Value of Rs. 1,03,55,255/- (Rupees One Crore, Three Lakhs, Fifty-Five Thousand, Two Hundred and Fifty-Five only) and Tariff Value of Rs. 89,26,015/- (Rupees Eighty-Nine Lakhs, Twenty- Six Thousand and Fifteen only) was placed under seizure under Panchnama dated 03/05/2024 and Seizure Memo/Order dated 03/05/2024 by the Officers of Customs under the reasonable belief that the subject Unclaimed Gold is liable for confiscation.

EFFORTS MADE TO LOCATE THE ACTUAL OWNER OF THE SEIZED GOLD BAR RETRIEVED/DERIVED FROM THE SEMI SOLID PASTE SUBSTANCE:

3. Since one gold bar retrieved/derived from the semi solid paste substance recovered from Indigo Flight No. 6E 1432 was Unclaimed but same was recovered from the international flight No. 6E 1432 coming from Abu Dhabi to Ahmedabad; therefore, the same appeared to be imported illegally by any international passenger and hide below seat No. 29D of the flight when flight was under international route. Accordingly, efforts were made to locate the actual owner of the recovered unclaimed Gold and accordingly statement of the on-duty security officer of the airlines was recorded.

4. Statement of Shri Vivek Giri, Security Officer of M/s. Inter Globe Aviation Limited (Known as 'Indigo'), Sardar Vallabhbhai International Airport,

Ahmedabad, Gujarat was recorded under Section 108 of the Customs Act, 1962 on 15/06/2024; wherein he *inter alia* stated that:

- He was present during the said panchnama proceedings dated 03/05/2024. He stated that he was fully agree with the contents mentioned in the panchnama dated 03/05/2024; that during the course of Panchnama proceedings, semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D was recovered from Indigo Flight No. 6E 1432 which arrived from Abu Dhabi to Ahmedabad at 5:45 am on 03/05/2024 at Terminal 2 of Ahmedabad Airport; that during the proceedings, the Government approved valuer was called upon for examining the authenticity and purity of said semi solid paste. The Government Approved Valuer in reply informed the officer that the testing of the material would possible only at his workshop as gold has to be extracted from semi-solid paste form by melting. The Government Approved valuer at the premises of the work shop converted the said semi solid paste recovered from flight into solid gold by melting in furnace. After completion of the procedure, Government Approved Valuer submitted Valuation Reports dated 03/05/2024 wherein it stated that one gold bar retrieved/derived from the paste recovered from the flight, totally weighing 1409.070 Grams having purity 999 Kt and Tariff Value of Rs. 89,26,015/- and market value of Rs. 1,03,55,255/-.
- On being asked he stated that the said Indigo Flight after arrival from Abu Dhabi to Ahmedabad was schedule to be operating as domestic flight on 03/05/2024 from Ahmedabad to Mumbai; that every Aircraft has a specific International Registration Number (also known as 'Call Sign') and the said aircraft was assigned the International Registration Number (Call Sign) as 'VT-ISL'; that every concerned airlines and jurisdictional Civil Aviation Authorities identify the aircraft through the International Registration Number (Call Sign) assigned to each aircraft during allotment of route to the Aircraft; that on the basis of the said International Registration Number (Call Sign) the said Aircraft bearing Registration No. 'VT-ISL' came from Abu Dhabi on 03/05/2024 at 5:45 am at SVPI Airport, Ahmedabad as flight No. 6E 1432. Later, on 03/05/2024 the said Aircraft was assigned the flight No. 6E 2046 and was schedule to fly to Mumbai at 0740 Hrs.

- On being asked he stated that initially security check of the flight is done after arrival of a flight in case of international flight and thereafter normal cleaning is done in case the flight is to fly/turn around within short period. In case of base arrival, deep cleaning is also done after security check of the flight. The Flight No. 6E 1432 came from Abu Dhabi to Ahmedabad at 5:45 Hrs and was assigned Ahmedabad to Mumbai route as Flight No. 6E 2046 and same was schedule to fly at 0740 hrs on 03/05/2024. The aircraft was to fly/turn around within short period therefore only security check and normal cleaning of the aircraft was required. During security check of the aircraft he found a semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D. Normally the Life Jacket along with cylinder lies in yellow plastic pouch under the respective seat of the aircraft; however, in case of Life Jacket of seat No. 29D on that day, he found the Life Jacket in pouch below the seat and cylinder of the life jacket in the net pocket of seat no. 29D. He thought that any passenger had taken out the cylinder from the life jacket pouch and put the same in net pocket present in front of seat 29D. But when he checked the life jacket to put the cylinder in the pouch properly, he found a rope like semi-solid substance covered with black cloth and brown tape inside the pouch along with the life jacket; that he found the semi-solid substance suspicious as same was not the part of the life jacket and thought it might contain any restricted /prohibited goods, therefore he informed his superior Shri Rajat Bajpai. After that Shri Rajat Bajpai informed the Customs Air Intelligence Unit Office to verify the said suspicious substance and for further necessary action.
- The officers of Customs, Air Intelligence Unit, SVPI Airport, Ahmedabad verified the semi-solid substance covered with black cloth and brown tape and suspected that the said goods may carry Gold in paste form mixed with some chemical. The Customs Officers removed the cloth and brown tape of semi-solid paste/substance and found that the paste was further covered with white tape and sealed in a transparent pouch and informed that it may contain gold and chemical mix substance and may have some quantity of gold. Thereafter, the paste was converted in solid Gold at the workshop of the Govt. approved valuer under proper panchnama proceedings. The Govt. approved valuer after completion of the procedure submitted the Valuation /Test Report confirming that 01 Gold bar, totally weighing 1409.070 grams having total Tariff Value of

Rs.89,26,015/- and Local Market Value of Rs. 1,03,55,255/- was derived/retrieved from the semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams recovered from the Indigo Flight No. 6E 1432.

- The Customs officers informed that the said Gold Bar retrieved/derived from the semi solid paste substance recovered from Indigo Flight No. 6E 1432 was unclaimed but same was recovered from the international flight No. 6E 1432 coming from Abu Dhabi to Ahmedabad; therefore, the same appeared to be imported illegally by any international passenger and hide below seat No. 29D of the flight when flight was under international route. The officers also informed that the said semi-solid paste substance was suspected to be smuggled in India, with an intent to evade payment of Customs duty and with violation of provisions of Customs Act, 1962 and therefore same are liable for confiscation as per the provisions of Customs Act, 1962, and hence, the same were placed under seizure under Panchnama proceedings dated 03/05/2024 and Seizure Memo dated 03/05/2024.
- He reconfirmed that 1655.390 grams of semi-solid paste substance was recovered (unclaimed) from Flight No. 6E 1432 on 03/05/2024 under Panchnama proceeding dated 03/05/2024 and same was converted into Gold bar totally weighing 1409.070 grams, having purity 999.0 (24KT), having Tariff Value of Rs.89,26,015/- and Local Market Value of Rs. 1,03,55,255/-, by the Govt Approved Valuer under proper panchnama proceedings.
- Further on being specifically asked whether crew members of Indigo Flight No. 6E 1432 came from Abu Dhabi on 03/05/2024 at SVPI Airport, Ahmedabad informed to ground/security staff of airlines at SVPI Airport about any suspicious activity of any passenger during boarding at Abu Dhabi Airport or during deplaning at SVPI Airport, Ahmedabad, he stated that normally crew members inform the flight security in-charge about any suspicious activity of any onboard passenger, however on 03/05/2024 the crew members of Indigo Flight No. 6E 1432 had not informed about any such activity.

5. In view of above, it appears that no concrete/substantial evidences came forward during the investigation carried out in the case which indicate or

establish that any particular international passenger is the actual owner of the seized gold. Further, neither of the international passengers nor any other person had claimed the ownership of the said Semi-solid gold paste substance. Further, the Security Officer of the Airlines in his statement recorded on 15/06/2024 stated that on 03/05/2024 the crew members of flight No. 6E 1432 had not informed the Security In-charge/supervisor about any suspicious activity of any onboard passenger. Further, the said seized one gold bar retrieved/derived from the semi solid paste substance recovered from international Indigo Flight No. 6E 1432 below the seat No. 29D after deplaning of all the passenger and no claimant for the said seized Gold Bar has come forward, therefore it is not possible to identify any proper and legitimate claimant of the seized Gold Bar and therefore the seized Gold Bar is required to be termed as 'Unclaimed'.

5.1 Further, it has been observed from the Passenger Manifesto of Flight No. 6E 1432 that seat Nos. 29D & 29E were not assigned to any passenger during the flight on 03/05/2024. Therefore, it is not possible to trace out who had placed the said gold paste under seat No. 29D and who is the actual owner of the seized gold.

6. Whereas, the one gold bar retrieved/derived from the semi solid paste recovered from Indigo Flight No. 6E 1432 was not claimed by any passenger/person. The said gold was intentionally not declared before the Customs Authorities on arrival at SVP International Airport, Ahmedabad and had hidden it below the seat in the aircraft, as the unknown person/passenger wanted to clear it illicitly and to evade payment of applicable Customs duty; that the unknown person/passenger was fully aware that clearing gold without declaring before Customs with an intent to evade payment of Customs duty, is an offence, under the provisions of Customs Act, 1962 and Regulations framed thereunder. From this, it appears that the unknown person/passenger had brought the said gold by hiding below the seat No. 29D of air craft and not declared the same to Customs with an intention to clear the same illicitly and to evade payment of Customs Duty and thus had tried to smuggle the Gold into India.

7. Legal Provisions Relevant to the Case

(a) As per para 2.27 of Foreign Trade Policy 2023 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 Ministry of Finance.

(b) As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

(c) As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

(d) 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 this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

(e) As per Section 11(3) of the Customs Act, 1962 Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

(f) As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

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

(g) As per Section 2(33) of 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.

(h) As per 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 of the Customs Act 1962.

g. As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

h. As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

i. Any goods which are imported or attempted to be imported or 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 shall be liable to confiscation under section 111 (d) of the Customs Act 1962.

j. Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.

k. Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under Section 111 (j) of the Customs Act 1962.

l. As per Section 112 of the Customs Act 1962 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 manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

- m. As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- n. As per Section 123 of Customs Act 1962 (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.
- q. As per Customs Baggage Declaration Regulations, 2013 all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

Contravention and violation of Laws

8. It therefore appears that:

- (a)** The unknown person/passenger had attempted to smuggle/improperly import semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams having total value of Rs.1,03,55,255/- [Market Value] and Rs.89,26,015/- [Tariff Value] with a deliberate intention to evade the payment of

customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. The gold imported by the said unknown person/passenger was not declared to Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The unknown person/passenger has thus contravened the Foreign Trade Policy 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

(b) The unknown person/passenger, by not declaring the contents of his baggage which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold by the passenger, the unknown person/passenger, found hidden below the seat of aircraft without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(i) and 111(j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(d) The unknown person/passenger, by his above described acts of omission/commission and/or abetment has rendered himself liable to penalty under Section 112 of Customs Act, 1962.

(e) As per Section 123 of Customs Act 1962, the burden of proving that the said one gold bar having purity of 999.0/24KT, weighing 1409.070 Grams having total value of Rs.1,03,55,255/- [Market Value] and Rs.89,26,015/- [Tariff Value] retrieved from semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams recovered from Indigo Flight No. 6E 1432 (hidden below the seat No. 29D) without declaring it to the Customs, are not smuggled goods, is upon the said unknown person/passenger and Noticee(s).

9. The ownership of the semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams had not been claimed by

anybody so far. In view of the aforesaid provisions of Customs Act, 1962, whosoever claims the ownership of the one gold bar having purity of 999.0/24KT weighing 1409.070 Grams retrieved/derived from semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams recovered from Indigo Flight No. 6E 1432 coming from Abu Dhabi to Ahmedabad, is also liable for penal action under Section 112 of the Customs Act, 1962, for the acts of omission and commission in importing the 1409.070 Grams gold bar into the country.

10. Accordingly, a Show Cause Notice was issued to the unknown passenger/original importer and/or any other claimant of the aforesaid 01 Gold bar totally weighing **1409.070** grams derived/retrieved from the semi-solid paste substance, totally weighing 1655.390 grams recovered from the Indigo Flight No. 6E 1432 below the seat No. 29D, as to why:

- (i) The 01 Gold bar, totally weighing **1409.070** grams having total Tariff Value of **Rs.89,26,015/-** (Rupees Eighty-Nine Lakhs, Twenty- Six Thousand and Fifteen only) and Market Value of **Rs.1,03,55,255/-** (Rupees One Crore, Three Lakhs, Fifty-Five Thousand, Two Hundred and Fifty-Five only) derived/retrieved from the semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams recovered from the Indigo Flight No. 6E 1432 below the seat No. 29D placed under seizure vide panchnama dated 03.05.2024 and Seizure memo/order dated 03.05.2024, should not be confiscated under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon unknown passenger/original importer and whoever claiming the ownership of the said gold under Sections 112 of the Customs Act, 1962, for the omissions and commissions mentioned here in above;

Defense reply and record of personal hearing: -

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

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

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

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

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

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

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

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

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

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

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

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

Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

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

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

f). The Hon'ble High Court of Jharkhand in W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that

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

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

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

Discussion and Findings:

13. I have carefully gone through the facts of this case. Further, after granting sufficient opportunities to be heard in person, no one came forward to claim the goods and did not appear in personal hearing as well as filed any written reply to the Show Cause Notice. The adjudication proceedings cannot wait until the Noticee(s)/Unknown Passenger makes it convenient to file

his/their submissions and appear for the personal hearing. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

14. In the instant case, I find that the main issues that are to be decided is whether the Gold totally weighing **1409.070** grams, having Tariff Value of Rs.**89,26,015/-** (Rupees Eighty-Nine Lakhs, Twenty- Six Thousand and Fifteen only) and Market Value of Rs. **1,03,55,255/-** (Rupees One Crore, Three Lakhs, Fifty-Five Thousand, Two Hundred and Fifty-Five only) derived from semi-solid paste substance consisting of Gold & other Chemical Mix weighing 1655.390 grams recovered from unknown person(s)/passenger(s), which were seized vide Seizure Order/Memo under Panchnama proceedings both dated 03.05.2024, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the unknown person(s)/ passenger(s) is liable for penalty under the provisions of Section 112 of the Act .

15. I find that the Panchnama clearly draws out the fact that on the basis of information/input provided by Shri Rajat Bajpayee, In-charge of Indigo Airlines ground staff, SVPI Airport regarding some suspicious semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D of the aircraft, the AIU officer alongwith two independent Panch witnesses reached the bay, where the Indigo Flight No. 6E 1432 was stationed, for examination and search proceedings under Customs Act, 1962 and under Panchnama proceedings dated 03/05/2024. After all necessary formalities the officers alongwith Panch witnesses and Shri Rajat Bajpayee, In-charge of Indigo Airlines ground staff entered in the Flight and reached to Seat No. 29D, where Shri Vivek Giri, Officer- Security of Indigo was present and it was informed that Shri Vivek Giri, Officer- Security of Indigo had found the said semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D. Shri Vivek Giri, Officer- Security of Indigo in presence of the independent panch witnesses informed that the cylinder of the life jacket which was present below the seat no. 29D was taken out from the life jacket pouch by some passenger and was put in net pocket present in front of seat 29D and while checking the airplane he has found that cylinder in net pocket, he further checked the life jacket pouch below the seat 29D, while searching the life jacket in life jacket pouch he also found a rope like semi-solid paste substance covered with black cloth and brown tape and taken out the same and handed over the same to the

officers for further proceedings. The officers in presence of the independent panch witnesses found/recovered like semi-solid paste substance covered with black cloth and brown tape. Thereafter, the flight was rummaged thoroughly by the Customs officers before the Panch witnesses, Shri Rajat Bajpayee, In-charge of Indigo Airlines ground staff and Shri Vivek Giri, Officer- Security of Indigo and found nothing incriminating other than the said semi-solid paste substance.

16. I also find that the Customs officers alongwith Panch witnesses and Shri Rajat Bajpayee and Shri Vivek Giri (both staff of Indigo Airlines) came to the Office of Air Intelligence Unit (AIU) located opposite of Belt No. 2 in the Arrival Hall of Terminal 2 Building with recovered semi-solid paste substance covered with black cloth and brown tape. In presence of the panch witnesses, the officers removed the semi-solid paste substance covered with black cloth and brown tape. The officers before the Panch witnesses, Shri Rajat Bajpayee and Shri Vivek Giri found the paste further covered with white tape and sealed in a transparent pouch. Entire proceedings were recorded under Panchnama dated 03.05.2024.

17. It is on the record that the government approved valuer weighed the said goods/ material and reported the weight as 1655.390 grams. It is also on record that the Govt. Approved Valuer extracted gold bar from the said gold paste & chemical mix and after completion of process, the Government Approved valuer certified that, said gold bar is of 24 Kt./999.0 purity, weighing 1409.070 grams having market value of Rs.1,03,55,255/- (Rupees One Crore Three Lakh Fifty-Five Thousand Two Hundred Fifty Five Only) and Tariff Value of Rs.89,26,015/- (Rupees Eighty Nine Lakhs Twenty Six Thousand and Fifteen Only), which were seized vide Seizure Memo/ Order under Panchnama proceedings both dated 03.05.2024 , in the presence of the Panchas.

18. I also find that unknown passenger(s)/ importer, has neither questioned the manner of the Panchnama proceedings nor controverted the facts detailed in the Panchnama. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas. It is found that the unknown passenger had concealed the semi-solid substance under the Seat 29D in life jacket pouch, from which 1409.070 Grams of gold bar was extracted. The gold bar was recovered from a semi solid paste which was hidden in the pouch of the Life Jacket placed under the Seat no. 29D of the aircraft of Indigo Flight No. 6E 1432 from Abu- Dhabi to Ahmedabad with an

intent to clear it illicitly and evade payment of Customs duty and thereby, contravening the provisions of the Customs Act, 1962 and the Rules and Regulations made under it. Also, from the Statement of Shri Vivek Giri, Security Officer of M/s. Inter- Globe Aviation Limited (Known as 'Indigo') dated 15.06.2024, it is evident that the proceeding under panchnama was well documented and as per the rules and regulation and he stated that the said semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D of Indigo Flight No. 6E 1432 which was arrived from Abu Dhabi to Ahmedabad at 5:45 am on 03/05/2024 at Terminal 2 of Ahmedabad Airport.

Further, in his statement, he mentioned that initially security check of the flight was done after arrival of a flight in case of international flight and thereafter normal cleaning was done in case the flight is to fly/turn around within short period. In case of base arrival, deep cleaning was also done after security check of the flight. The Flight No. 6E 1432 came from Abu Dhabi to Ahmedabad at 5:45 Hrs and was assigned Ahmedabad to Mumbai route as Flight No. 6E 2046 and same was schedule to fly at 07:40 Hrs on 03/05/2024. The aircraft was to fly/turn around within short period therefore only security check and normal cleaning of the aircraft was required. During security check of the aircraft he found a semi-solid paste substance covered with black cloth and brown tape concealed inside the life jacket pouch below the seat No. 29D. Normally the Life Jacket along with cylinder lies in yellow plastic pouch under the respective seat of the aircraft; however, in case of Life Jacket of seat No. 29D on that day, he found the Life Jacket in pouch below the seat and cylinder of the life jacket in the net pocket of seat no. 29D. He thought that any passenger had taken out the cylinder from the life jacket pouch and put the same in net pocket present in front of seat 29D. But when he checked the life jacket to put the cylinder in the pouch properly, he found a rope like semi-solid substance covered with black cloth and brown tape inside the pouch along with the life jacket. He further mentioned that he found the semi-solid substance suspicious as same was not the part of the life jacket and thought it might contain any restricted /prohibited goods, therefore he informed his superior Shri Rajat Bajpai. After that Shri Rajat Bajpai informed the Customs Air Intelligence Unit Office to verify the said suspicious substance and for further necessary action. He mentioned that as the said gold bar retrieved/derived from the semi solid paste substance recovered from Indigo Flight No. 6E 1432 was unclaimed but same was recovered from the international flight No. 6E 1432 coming from Abu Dhabi to Ahmedabad and therefore, the same appeared to be imported illegally by any international passenger and hide below seat No. 29D of the

flight. I find that he also reconfirmed that 1655.390 grams of semi-solid paste substance recovered (unclaimed) from Flight No. 6E 1432 on 03/05/2024 under Panchnama proceeding dated 03/05/2024 and same was converted into Gold bar totally weighing 1409.070 grams, having purity 999.0 (24KT), having Tariff Value of Rs.89,26,015/- and Local Market Value of Rs. 1,03,55,255/-, by the Govt Approved Valuer under proper panchnama proceedings.

19. I find that, the gold bar recovered after purifying the said semi solid substance weighing 1655.390 grams consisting of Gold & Chemical mix, gold bar weighing 1409.070 Grams is of 999.0/24 Kt. Purity. Further, I find that the unknown passenger has improperly imported the said gold, by concealing/hiding it in the pouch of the Life Jacket placed under the Seat no. 29D of the aircraft of Indigo Flight No. 6E 1432 from Abu- Dhabi to Ahmedabad, in the form of semi-solid substance, from which 1409.070 Grams gold was extracted. By such an act of improperly importation/ smuggling of gold, the unknown passenger has contravened the provisions of Para 2.26 of the Foreign Trade Policy 2015-20 and section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of the Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

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

“Further, Section 2(33) of the Act defines “Prohibited Goods” as under: - Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with.” From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either ‘absolutely’ or ‘subject to such conditions’ to be

fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others I(1970) 2 SSC 728 wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negated the said contention and held thus:- ... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition. Relying on the ratio of the judgment stated above, I find that the goods brought by the unknown person(s), are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.

21. From the facts discussed above, it is proved that all the above acts of contravention on the part of the said unknown passenger (s)/original importer have rendered the said gold weighing 1409.070 grams of 24 Kt/999.00 purity having tariff value of Rs.89,26,015/- and market Value of Rs. 1,03,55,255/- placed under seizure under Panchnama dated 03.05.2024, liable for confiscation under the provisions of Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. By using the modus of concealment of the said gold, it is observed that the unknown passenger(s)/importer(s) was fully aware that the goods are offending in nature on its import. It is seen that the unknown passenger(s)/importer(s) has involved himself in carrying, keeping, concealing

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

22. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.. It is also observed in the instant case that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 1409.070 grams derived/retrieved from the semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams concealed in Black cloth and brown tape recovered from the pouch of the Life Jacket kept under the seat No. 29D of aircraft, cannot be treated as bonafide household goods or personal effects. The noticee(s)/passenger(s)/Unknown Person(s) has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

23. I find that the said 01 gold bar of 24 Kt., totally weighing 1409.070 grams derived from gold paste carried and concealed in Black cloth and brown tape weighing 1655.390 grams recovered from the pouch of the Life Jacket kept under the seat No. 29D of aircraft, as discussed above, was to smuggle without declaring it to Customs authorities and by this act, the unknown passenger(s)/importer(s) or any other claimant has held the said goods liable for confiscation. **I, therefore, refrain from using my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Customs Act, 1962.**

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

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

25. Further I find that in a case decided by the ***Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUSin respect of Malabar Diamond Gallery Pvt Ltd***, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that “restriction” also means prohibition. In Para 89 of the order, it was recorded as under;

“89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, “restriction”, also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).”

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

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

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

27. In [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No.375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

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

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

24.....

25.....

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

29. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the unknown passenger (s) had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no one has come forward to claim the ownership of the seized goods and /or has submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Thus, the unknown passenger (s) has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement of Shri Vivek Giri, Security Officer of M/s. InterGlobe Aviation Limited, I find that the manner of concealment of the gold is **ingenious** in nature, as the same was derived from semi solid paste covered with black cloth and brown tape recovered from the pouch of the Life Jacket kept under Seat

No. 29D of Indigo Flight No. 6E 1432 with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 1409.070 grams of 24Kt./999.0 purity in form of gold bar, derived from semi solid paste covered with black cloth and brown tape recovered from the pouch of the Life Jacket kept under Seat No. 29D of Indigo Flight No. 6E 1432 is therefore, liable to be **confiscated absolutely**. I therefore hold in unequivocal terms that the gold weighing 1409.070 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(i) and 111(j) of the Act.

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

31. Accordingly, I pass the following Order.

ORDER

- i. I order **absolute confiscation** of 1 Gold Bar of 24 Kt./999 purity gold, totally weighing **1409.070 grams**, having Market Value of **Rs.1,03,55,255/-** (Rupees One Crore Three Lakh Fifty-Five Thousand Two Hundred Fifty Five Only) and Tariff Value of **Rs.89,26,015/-** (Rupees Eighty Nine Lakhs Twenty Six Thousand and Fifteen Only), derived/retrieved from the semi-solid paste substance consisting of Gold & other Chemical Mix, totally weighing 1655.390 grams concealed in Black cloth and brown tape recovered from the pouch of the Life Jacket kept under Seat No. 29D of Indigo Flight No. 6E 1432 under the provisions of Sections 111(d), 111(i) and 111 (j) of the Customs Act, 1962;
- ii. I refrain from imposing the penalty on unknown person(s)/passenger(s)/or other claimant under Section 112 of Customs Act, 1962.

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32. Accordingly, the Show Cause Notice No. VIII/10-137/SVPIA-D/O&A/HQ/2024-25 dated 15.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

DIN: 20250271MN000000EA01

F. No. VIII/10-137/SVPIA-D/O&A/HQ/2024-25

Date:27.02.2025

To,

“Whom so ever it may concern”

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

Copy to:-

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