

OIO No:105/ADC/SRV/O&A/2025-26  
F. No. VIII/10-274/SVPIA-C/O&A/HQ/24-25



**प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद**  
,"सीमाशुल्कभवन" पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद- 380009.  
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DIN No. 20250771MN0000919216

**PREAMBLE**

A	फ़ाइल संख्या/ File No.	:	VIII/10-274/SVPIA-C/O&A/HQ/24-25
B	कारणबताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-274/SVPIA-C/O&A/HQ/24-25 dated: 02.04.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>105/ADC/SRV/O&amp;A/2025-26</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>30.07.2025</b>
E	जारी करने की तारीख/ Date of Issue	:	<b>30.07.2025</b>
F	द्वारा पारित/ Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	<b>Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal,</b> residing at Room No.25, Sankalp Society, Anand Gad, Park Site, Vikhroli, Mumbai-400079, Maharashtra, India <b>Alternate Address:-</b> <b>Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal</b> residing at Room No.103, Siddhivinayak Plaza, Dombiwali East, Pin-421 201, Mumbai
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील (चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद) में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		

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(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या 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।
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### **Brief facts of the case: -**

On the basis of specific input that one passenger namely Shri Jeevan Vikram Singh alias Shri Rakesh Kumar Jaiswal arriving from Kolkata via domestic flight was suspected of carrying smuggled gold either in his baggage or concealed in his clothes/ body cavity, the Officers of Air Intelligence Unit (AIU), SVPIA, Customs Ahmedabad, intercepted a male passenger named Shri Rakesh Kumar Jaiswal (Name as per passport is Shri Jeevan Vikram Singh) (D.O.B. 14.10.1983) (hereinafter referred to as the said "passenger/Noticee"), residing at Room No.25, Sankalp Society, Anand Gad, Park Site, Vikhroli, Mumbai (address as per passport), holding an Indian Passport No. Y3075395, arriving from Kolkata (CCU) to Ahmedabad (AHD) on 19.10.2024 via Indigo Airlines flight No. 6E318 (Seat No. 31C), while he was deboarding the said Aircraft at Terminal -I (Domestic Airport), SVPI, Ahmedabad. Passenger's personal search and examination of his baggage was conducted at Arrival Hall of Terminal-2, SVPI Airport, Ahmedabad, in presence of two independent witnesses and the proceedings thereof were recorded under the Panchnama dated 19/20.10.2024.

**2.** Whereas, the passenger was questioned by the AIU Officers as to whether he was carrying any contraband/dutiable goods in person or in baggage to which he denied. The Officers asked/ informed the passenger that a search of his baggage as well his personal search was to be carried out and give him an option to carry out the search in presence of a magistrate or a gazetted officer of Customs to which the Passenger desired to be searched in presence of a gazetted Customs officer. Before commencing the search, the officers offered themselves to the said passenger for conducting their personal search, which was declined by the said passenger imposing faith in the Officers.

**2.1** The AIU officers then asked the passenger to put his baggage in the X-Ray baggage scanning machine, installed near Green Channel at Arrival Hall, Terminal-II, SVPI Airport, Ahmedabad. The Officers found nothing objectionable in the baggage. The passenger, Shri Jeevan Vikram Singh alias Rakesh Kumar Jaiswal was then made to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal -2 building, after removing all metallic objects from his body/ clothes. However, even during this process, no beep sound was heard indicating any presence of

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objectionable/ dutiable items on his body/ clothes. Further, in presence of the panchas, the AIU Officers interrogated the said passenger and on sustained interrogation and repeated questioning, the passenger Shri Jeevan Vikram Singh alias Rakesh Kumar Jaiswal confessed that he is carrying total three Gold and Chemical mix paste capsules covered with black tape. Further, he stated that out of these three capsules, two are concealed inside his innerwears/underwears and the third one is concealed inside rectum. The AIU officers then conducted detailed frisking/ personal search of the said passenger and recovered the two capsules each covered with black tape found concealed inside his two inner wears/ under wears that he was wearing so as to hold the weight of two capsules. The Officers then led the passenger to the washroom located opposite baggage scanning machine outside AIU office at Arrival hall, Terminal-2, SVPI Airport, Ahmedabad. After sometime the passenger came out of the washroom with One capsule that too wrapped with black tape. On being asked about the reason of carrying one capsule in rectum and the remaining two concealed inside the inner wears, the passenger replied that he had some medical problem upon insertion of one capsule, so the remaining two could not be inserted inside the rectum and brought by way of concealment under the inner wears.

**2.2** Thereafter, the AIU Officer called the Government Approved Valuer and informed him that three capsules covered with black tape have been recovered from the passenger and as per the passenger these capsules are consisting of gold and chemical mix paste and that he needed to come to the Airport for verification, examination and valuation of the recovered item. In reply, the Government Approved Valuer informed the Officers that the testing of the material is possible only at his workshop as gold has to be extracted from such semi solid paste form by melting it and also informed the address of his workshop.

**2.3** Thereafter, the AIU Officers, along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer, located at 301, Golden Signature, Behind Ratnam Complex, C.G.Road, Ahmedabad-380 006. On reaching the above-mentioned premises, the officers introduced the panchas as well as the passenger to one person namely Shri Kartikey Soni Vasantrai, Government Approved Valuer. Shri Kartikey Soni, weighed the two capsules covered with black colour plastic tape that were recovered from the inner wear of the passenger and one capsule covered with black colour plastic tape that was recovered from the rectum of the passenger. After weighing the said capsules on his weighing scale, Shri Kartikey Vasantrai Soni informed that the two capsules covered with black plastic tape contain semi solid substance consisting of Gold and chemical mix having Gross weight 893.03 grams and the

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third capsule covered with black plastic tape contain semi solid substance consisting of Gold and Chemical mix having Gross weight 442.39 grams. The photographs of both the weighments are as under:



**3.** Thereafter, the Government Approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Shri Kartikey Soni removed the plastic tape from all the three capsules and started the process of converting the semi solid paste into solid gold by putting it into the furnace and upon heating the substance turned into liquid material. The said substance consisting of gold in liquid state was then taken out of furnace and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, the Government Approved Valuer vide its report No. 1084/2024-25 dated 19.10.2024 informed that 01 (One) gold bar totally weighing 1202.41

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Grams having purity 999.0/24 Kt. has been derived from the 1335.42 grams (893.03 gms. + 442.39 gms.) of semi solid paste substance recovered from 03 capsules consisting of gold paste and chemical mix. The Government Approved Valuer further confirmed that it is pure gold having purity 999.0/24kt and Market Value of the same is Rs.96,52,947/- (Rupees Ninety-Six Lakh Fifty-two Thousand Nine Hundred Forty-Seven only) and Tariff value at Rs.86,66,550/- (Rupees Eighty-Six lakhs Sixty-Six Thousand Five Hundred Fifty only). The value of the said gold bar has been calculated as per the Notification No.66/2024-Customs (N.T.) dated 15.10.2024 (gold) and Notification No.45/2024-Customs (N.T.) dated 20.06.2024 (exchange rate). The valuation provided by the said Govt. Approved Valuer is summarized as under :

Details of Items	PCS	Gross Weight of 03 gold paste capsules (In Gram)	Net Weight of gold bar derived from the gold paste capsules (in Gram)	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold bar (derived from the gold paste capsules (03 Nos)	1	1335.42	1202.41	999.0 24Kt.	96,52,947/-	86,66,550/-

**3.1** The photograph of the gold bar derived after above process is as under :



**3.2** Thereafter, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the completion of the extraction of gold at the workshop of Govt. Approved Valuer, along with the extracted gold bar weighing 1202.41 grams derived from the semi solid paste having gross

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weight of 1335.42 grams that was found concealed in the innerwear and rectum of the passenger, Shri Jeevan Vikram Singh, on 19/20.10.2024.

**SEIZURE OF THE ABOVE GOLD BAR:-**

4. The said 01 Gold Bar totally weighing 1202.41 Grams that was derived from the semi solid paste concealed in the form of 03 capsules, that were recovered, from the underwears and rectum of the passenger without any legitimate Import documents inside the Customs Area, therefore the same fall under the category of Smuggled Goods and stand liable for confiscation under the Customs Act, 1962. Therefore, the said gold bar totally weighing 1202.41 grams having purity 999 and having the Market Value of the same is Rs.96,52,947/- (Rupees Ninety Six Lakh Fifty two thousand Nine hundred Forty Seven only) and Tariff value at Rs.86,66,550/- (Rupees Eighty Six lakhs Sixty Six thousands Five hundred Fifty only) was placed under seizure vide Order dated 20.10.2024 issued under the provisions of Section 110(1) and (3) of the Customs Act, 1962 under reasonable belief that the subject Gold bar is liable for confiscation under Section 111 of the Customs Act, 1962. Further, the 2 pieces of inner wears/underwears and the black-coloured plastic tape were also seized as items used as concealing and covering material of the semi solid paste consisting of gold mixed with chemical substance.

**Statement of Shri Jeevan Vikram Singh @Shri Rakesh Kumar Jaiswal :**

5. Statement of Shri Jeevan Vikram Singh @Shri Rakesh Kumar Jaiswal was recorded on 20.10.2024, wherein he inter alia stated that his personal details like name, address and family details as mentioned in the statement are true and correct and that he is a driver by profession and is studied upto Class 12<sup>th</sup>. He further confirmed that his correct name is as shown in the passport i.e. Shri Jeevan Vikram Singh and that another name Shri Rakesh Kumar Jaiswal used in the booking of his tickets from Kolkata to Ahmedabad and mentioned in the AADHAR Card bearing No.945029626053 is fake. This AADHAR Card was given to him when he came from Dhaka to Kolkata; that, his real/original Aadhar is having No. 354327774236, where his name is mentioned as Shri Jeevan Vikram Singh, D.O.B.- 14.10.1983, address- S/o Vikram Singh, Near Datt Mandir, Room No.25, Sankalp Soc., Anand Gad, Park site, Vikhroli, Mumbai, PIN-400079

5.1 He further stated that his present residential address is Room No.103, Siddhivinayak Plaza, Dombiwali East, Pin-421 201, Mumbai and that his email is [Jeevanvsingh@gmail.com](mailto:Jeevanvsingh@gmail.com).

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**5.2** On being asked regarding his overseas travel, the passenger stated that he had travelled from Dhaka to Ahmedabad via Kolkata. One person, the name of whom he did not recollect, asked him to go to Dhaka and collect the gold paste capsules at outside Dhaka Airport and bring the gold via Kolkata Airport to SVPI Airport, Ahmedabad, India, in lieu of some monetary consideration. Accordingly, in execution of this planning, he first travelled from Kolkata to Dhaka via Indigo Flight No.6E1107 (departure time 6:35 hrs.), on 18.10.2024. On reaching Dhaka Airport, he collected the three capsules containing gold mixed with chemical substance in semisolid paste, from one person named Shri Yogesh Jethwa, outside the airport area and got the ticket to travel from Kolkata to Ahmedabad in the name of Shri Rakesh Kumar Jaiswal. Thereafter, he arrived Kolkata by crossing the VOMRA (also known as Bhomra) land Check Post of Bangladesh and Ghojadanga Check post of West Bengal, on 19.10.2024. On arriving Kolkata, he took the domestic Indigo flight No. 6E318 from Netaji Subhash Chandra Bose International Airport and arrived at T-1 of SVPI Airport, Ahmedabad, on 19.10.2024 at about 16:25 hrs. He further stated that he has done this work for monetary consideration of Rs.8,000/- which he was to get from the unknown person in lieu of supplying these three capsules containing gold mixed with chemical substance in semi solid paste at Ahmedabad.

**5.3** He also stated that the gold concealed and recovered from his possession i.e. three capsules of gold mixed with chemical in semisolid substance (one in the rectum and two concealed in the inner wears) were intentionally concealed so as to evade payment of Customs duty and engage in smuggling of gold as per the direction of the person named Shri Yogesh Jethwa. The gold bar totally weighing 1202.41 grams, derived from the gold mixed with chemical in semi solid substance in the form of three capsules, was seized by the Officers under Panchnama dated 19/20.10.2024 under the provisions of the Customs Act, 1962. He was also aware that import of gold by way of concealment and evasion of duty is an offence and that he had done this job for money as he was in financial constraint. He also admitted that during his previous foreign visit to Dhaka, Bangladesh from CSMI, Airport, Mumbai, on the two occasions, in the month of June-July, 2024, he had smuggled gold by way of concealing capsules consisting of mixture of gold and chemicals, in his rectum.

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**5.4** He perused the Panchnama dated 19/20.10.2024 and stated that the facts narrated therein are true and correct.

**5.5.** The passenger Shri Jeevan Vikram Singh @Rakesh Kumar Jaiswal during recording of the statement, admitted that he had been involved in smuggling of gold in past also and that he had smuggled 03 capsules having gold and chemical mixed semi solid substance having net quantity of about 900 grams on 22.6.2024 and 2 capsules having net quantity of about 750 grams on 01.07.2024, during his previous visits from CSMI Airport, Mumbai to Shahjalal International Airport, Dhaka, Bangladesh in addition to the 3 capsules having net weight 1202.41 grams brought during the present visit i.e. on 19.10.2024. Thus, the passenger had committed an offence punishable under Section 135 of the Customs Act, 1962 in relation to smuggling of eight capsules having net weight of 2852.41 grams and having the market value exceeding Rs. One Crore for all the three offences. Taking into consideration all the three gold smuggling instances, the passenger Shri Jeevan Vikram Singh @Rakesh Kumar Jaiswal was arrested on 21.10.2024 under the provisions of Section 104 of the Customs Act, 1962 and put in the custody of jail superintendent, Sabarmati Central Jail, Ahmedabad on 22.10.2024. The passenger has subsequently been granted bail by the City Civil and Sessions Court, Ahmedabad, on 21.11.2024.

**5.6** From the investigation conducted in the case, it appears that the aforesaid gold was imported into India in violation of the provisions of the Baggage Rules, 2016, as amended, in as much as gold or silver in any form, other than ornaments is not allowed to be imported free of duty. In the instant case, 01 gold bar totally weighing 1202.410 gms having purity of 24Kt/999.0 was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 1335.420 Grams i.e 3 capsules covered with black plastic tape, 2 capsules found concealed inside the underwears/ innerwears and 01 capsule found concealed inside the rectum by the passenger, Shri Jeevan Vikram Singh alias Rakesh Kumar Jaiswal, who had brought the said gold from Dhaka- Bangladesh to Ahmedabad via Kolkata by Indigo Flight No. 6E318, at Terminal-1 (Domestic) of SVPIA Ahmedabad. Further, the said quantity of gold is more than the permissible limit allowed to a passenger under the Baggage Rules and for these reasons alone it cannot be considered as a Bonafide Baggage under the Customs Baggage Rules, 2016.

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**5.7** According to Section 77 of the Customs Act, 1962, the owner of any baggage, for the purpose of clearing it, is required to make a declaration of its contents to the proper Officer. In the instant case, the passenger had malafide intention and therefore brought the gold from Dhaka-Bangladesh to Kolkata by land route and from Kolkata to Ahmedabad by boarding domestic flight with fake identity and fake Aadhar card. He had not declared the said gold items totally weighing 1202.410 grams having purity of 24 Kt/999.0 at Kolkata and brought the same by way of concealment because of malafide intention and thereby contravened the provisions of Section 77 of the Customs Act, 1962. It therefore, appears that the said gold items totally weighing 1202.410 gms having purity of 24 Kt/999.0 recovered from Shri Jeevan Vikram Singh, were attempted to be smuggled into India with an intention to clear the same without discharging duty payable thereon. It, therefore, appears that the said gold items totally weighing 1202.410 grams having purity of 24 Kt/999.0 is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Consequently, 01 gold bar totally weighing 1202.410 gms having purity of 24Kt/999.0 derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 1335.420 Grams (3 capsules covered with black colour plastic tape), found concealed inside the rectum and also inside the underwears worn by the passenger, Shri Jeevan Vikram Singh, who had arrived from Kolkata to Ahmedabad on 19.10.2024 via Indigo Flight No. 6E318, at Terminal-1 of SVPIA Ahmedabad was placed under seizure vide Panchnama dated 19/20.10.2024 and Seizure Order dated 20.02.2024 by the AIU Officers of Customs under the reasonable belief that the subject Gold is liable for confiscation.

**Summation :**

**6.** The aforementioned proceedings indicates that Shri Jeevan Vikram Singh @Rakesh Kumar Jaiswal had attempted to smuggle the aforesaid gold into India and thereby rendered the aforesaid gold having the Market Value of Rs.96,52,947/- (Rupees Ninety Six Lakh Fifty two thousand Nine hundred Forty Seven only) and Tariff value of Rs.86,66,550/- (Rupees Eighty Six lakhs Sixty Six thousands Five hundred Fifty only), liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore the same were placed under seizure vide Order dated 20.10.2024 issued under the Provisions of Section 110(1) and (3)

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of the Customs Act, 1962 under reasonable belief that the subject Gold Bar is liable for confiscation under Section 111 of the Customs Act, 1962.

## **7. Legal provisions relevant to the case:**

### **Foreign Trade Policy 2015-20 and Foreign Trade (Development and Regulation) Act, 1992**

- 7.1 In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-20, 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. Gold can be imported by the banks (Authorized by the RBI) and agencies nominated for the said purpose under Para 4.41 of the Chapter 4 of the Foreign Trade Policy or any eligible passenger as per the provisions of Notification no. 50/2017-Customs dated 30.06.2017 (Sr. No. 356). As per the said notification "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.
- 7.2 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.
- 7.3 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.
- 7.4 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.

**The Customs Act, 1962:**

- 7.5 As per Section 2(3) – “baggage includes unaccompanied baggage but does not include motor vehicles.
- 7.6 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;
- 7.7 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.
- 7.8 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.
- 7.9 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.
- 7.10 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.
- 7.11 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.
- 7.12 Section 111. Confiscation of improperly imported goods, etc.:

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

*(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*

*(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*

*(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*

*(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;*

*(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*

*(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*

*(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*

*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

*(j) 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;*

*(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods*

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*required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;*

*(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];*

*(n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*(p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.*

7.13 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, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

7.14 As per Section 123 of Customs Act 1962,

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*(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.*

7.15 All dutiable goods imported into India by a passenger in his baggage are classified under CTH 9803.

#### **Customs Baggage Rules and Regulations:**

7.16 As per Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification no. 31/2016 (NT) dated 01.03.2016, 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 under Section 77 of the Customs Act, 1962.

7.17 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 the bonafide baggage of jewellery upto weight, of twenty grams with a value cap of Rs. 50,000/- if brought by a gentlemen passenger and forty grams with a value cap of one lakh rupees, if brought by a lady passenger.

#### **Notifications under Foreign Trade Policy and The Customs Act, 1962:**

7.18 As per Notification no. 49/2015-2020 dated 05.01.2022, gold in any form includes gold in any form above 22 carats

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under Chapter 71 of the ITC (HS), 2017, Schedule-1 (Import Policy) and import of the same is restricted.

7.19 Notification No. 50 /2017 –Customs New Delhi, the 30th June, 2017 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

	Chapter or Heading or sub-	Description of goods	Standard rate	Condition No.

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	heading or tariff item			
356.	71or 98	(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 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10%	41

**Condition no. 41 of the Notification:**

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

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duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

- 8 From the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22 kt.) was restricted as per DGFT notification and import was permitted only by nominated agencies. Further, it appears that import of goods whereas it 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. As such import of gold is not permitted under Baggage and therefore the same is liable to be held as prohibited goods.

### **CONTRAVENTION AND VIOLATION OF LAWS**

9. It therefore appears that:

- (a) The passenger, Shri Jeevan Vikram Singh alias Shri Rakesh Kumar had attempted to smuggle gold bar having net weight of 1202.41 gram in the form of three capsules having gold and chemical mix semi solid substance by hiding them inside his innerwears as well as rectum. As per Section 123 of Customs Act, 1962, gold is a notified item. Hence the same is liable for confiscation under the Customs Act, 1962, on the reasonable belief that these are smuggled goods, and the burden to prove that these are not smuggled, would be on the person from whose possession and/or who claimed ownership of the goods. Further, the passenger brought the gold in concealment from Dhaka, Bangladesh and travelled from Dhaka to Kolkata by road and from Kolkata to Ahmedabad by Indigo Flight No.6E318. As per Section 111(k) of the Customs Act, 1962, *“any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein, are liable for confiscation”*. Since, the passenger could not produce any documents showing the legitimate import of the said gold bar weighing 1202.41 grams (

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derived from the 3 capsules consisting of gold and chemical mix semi solid paste) into India on payment of duty of regarding its lawful possession, it appears that the said gold weighing 1202.41 gms was imported in contravention of the provisions of Customs Act, 1962 and the same is, therefore, liable for confiscation under Section 111(d), 111(i), 111(j), 111(k), 111(l) and 111(m) of the Customs Act, 1962 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.

- (b) Whereas, in the absence of any import documents evidencing legitimate import of 1202.41 grams of gold, the same appears to be smuggled in terms of the provisions of Section 2(39) of the customs Act 1962. 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 for confiscation under Section 111 or section 113." From the manner of concealment of the said 1202.41 grams of gold by the said passenger, Shri Jeevan Vikram Singh, it appears that he was fully aware that the said 1202.41 of gold is of foreign origin and import of the same is prohibited /restricted under the Customs Act and other allied Foreign Trade Regulations. Further, the passenger, Shri Jeevan Vikram Singh has admitted in his statement dated 20.10.2024, that he had brought the three capsules consisting of gold and chemical mix semi solid paste by way of concealing the same inside his inner wears and rectum from Dhaka, Bangladesh to Kolkata by road. He further stated that in respect of gold concealed by him was intentional so as to evade payment of Customs duty and he is engaged in smuggling of gold in this manner for monetary consideration. Thus, the element of mens-rea appears to have been established beyond doubt. Therefore, it appears that Shri Jeevan Vikram Singh has knowingly dealt with the said goods i.e. carrying, keeping, concealing or in any other manner dealing with the goods which he knew or had reason to believe that the same were liable for confiscation under the Customs Act,1962. The acts of omission and commission on the part of Shri Jeevan Vikram Singh appears to have rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act 1962.
- (c) Further, Shri Jeevan Vikram Singh @ Shri Rakesh Kumar

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Jaiswal had attempted to smuggle/improperly import 01 Gold Bar totally weighing 1202.410 Grams having purity 24KT /999.0 and having the Market Value of Rs.96,52,947/- (Rupees Ninety Six Lakh Fifty two thousand Nine hundred Forty Seven only) and Tariff value of Rs.86,66,550/- (Rupees Eighty Six lakhs Sixty Six thousands Five hundred Fifty only) recovered from the semi solid substance consisting of Gold and Chemical mix having Gross weight 1202.410 Grams (3 capsules covered with black plastic tape), found concealed inside the inner wears and rectum by the passenger, with a deliberate intention to evade 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 said passenger, **Shri Jeevan Vikram Singh** had knowingly and intentionally smuggled the said gold by way of concealment from Dhaka, Bangladesh to Kolkata and cleared the same through land border without payment of duty and thereby arrived at T-1 (Domestic) SVPI Airport, Ahmedabad by Indigo Flight. No.6E318 with fake identity in the name of Shri Rakesh Kumar Jaiswal., with an intent to clear it illicitly to evade payment of Customs duty. Therefore, the improperly imported gold by **Shri Jeevan Vikram Singh**, by way of concealment and without declaring it to Customs on arrival in India cannot be treated as Bonafide household goods or personal effects. **Shri Jeevan Vikram Singh** 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, as amended.

- (d) **Shri Jeevan Vikram Singh** by not declaring the gold brought by him in the form of 3 capsules consisting of gold and chemical mix paste which was then converted to 01 gold bar totally weighing 1202.41 gms having purity of 24Kt/999.0 by way of concealment inside the innerwears and rectum by the passenger, which included dutiable and prohibited goods to the proper officer of the Customs, while crossing the land border from Dhaka to Kolkata, has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (e) As per Section 123 of Customs Act 1962, the burden of

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proving that the said Gold bar totally weighing 1202.410 grams that was derived from semi solid substance consisting of Gold and Chemical mix having Gross weight 1335.420 Grams (3 capsules covered with black plastic tape), found concealed inside the underwears and rectum by the passenger, **Shri Jeevan Vikram Singh** who arrived from Dhaka-Bangladesh to Kolkata by land route and from Kolkata (CCU) to Ahmedabad via Indigo Flight No. 6E318 at Domestic Terminal -1, SVPIA Ahmedabad on 19.10.2024 are not smuggled goods, is upon **Shri Jeevan Vikram Singh** who is the Noticee in this case.

**10.** Accordingly, a Show Cause Notice was issued to **Shri Jeevan Vikram Singh alias Shri Rakesh Kumar Jaiswal, residing at Room No.25, Sankalp Society, Anand Gad, Park Site, Vikhroli, Mumbai-400079, Maharashtra, holding an Indian Passport No. Y3075395**, as to why:

- (i) One (01) Gold Bar, having purity 999.0/24 Kt., weighing 1202.410 grams (Net Weight ) and having the Market Value of **Rs.96,52,947/-** (Rupees Ninety Six Lakh Fifty Two Thousand Nine Hundred Forty Seven only) and Tariff value of **Rs.86,66,550/-** (Rupees Eighty Six lakhs Sixty Six Thousand Five Hundred Fifty Only) derived from the semi solid substance consisting of Gold and Chemical mix having Gross weight 1335.420 Grams in form of 03 capsules covered with black plastic tape, out of which 02 capsules concealed in innerwears worn by passenger and 01 capsule concealed in rectum by the passenger, **Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal**, who arrived from Dhaka-Bangladesh to Ahmedabad via Kolkata on 19.10.2024 by Indigo Flight No. 6E318, at Domestic Terminal-1 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 19/20.10.2024 and Seizure Memo Order dated 20.10.2024, should not be confiscated under the provision of Section under Section 111(d), 111(i), 111(j), 111(k), 111(l) and 111(m) of the Customs Act, 1962 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.

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- (ii) Penalty should not be imposed upon **Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal**, under the provisions of Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

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

**11.** The noticee has not submitted any written submission to the Show Cause Notice issued to him.

**12.** The noticee was given opportunity for personal hearing on 26.06.2025, 07.07.2025 & 18.07.2025 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 neither appeared for personal hearing nor asked for any adjournment in the matter. 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. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

**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*

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*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]*

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**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.*

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*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 the case. Though sufficient opportunity for filing reply and for appearing in personal hearing had been given to the noticee, however, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing for the opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

**14.** In the instant case, I find that the main issue to be decided is whether the 1202.410 grams of 01 gold bar of purity of 24KT (999.0 purity) and having Tariff Value of Rs. 86,66,550/- and Market Value of Rs. 96,52,947/-, derived from the semi solid substance consisting of Gold and Chemical mix having Gross weight 1335.420 Grams in form of 03 capsules covered with black plastic tape, out of which 02 capsules concealed in innerwears worn by passenger and 01 capsule concealed in rectum by the passenger and seized vide Seizure Memo/ Order under Panchnama proceedings both dated 19/20.10.2024 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as ‘the Act’) or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

**15.** I find that the Panchnama dated 19/20.10.2024 has clearly drawn out of the fact that on the basis of specific information regarding Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal who was suspected to be carrying restricted/prohibited goods while arriving from Kolkata to Ahmedabad via domestic flight and therefore, the passenger was intercepted by the AIU officers while he was deboarding the said Indigo Airlines flight No. 6E318 (Seat No. 31C) at Terminal -I (Domestic Airport), SVPI, Ahmedabad and accordingly, a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 19/20.10.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare before the Customs

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authorities, to which the said noticee replied in negative. The AIU officer asked the noticee to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he has nothing objectional/dutiabale goods on his body and clothes. Further, no objectionable / dutiabale item was found from the baggage of the said noticee. However, upon sustained interrogation and repeated questioning, the said noticee confessed that he was carrying total three Gold and Chemical mix paste capsules covered with black tape. Further, he stated that out of these three capsules, two were concealed inside his innerwears/underwears and the third one was concealed inside rectum. The AIU officers then conducted detailed frisking/ personal search of the said noticee and recovered the two capsules each covered with black tape found concealed inside his two inner wears/ under wears that he was wearing so as to hold the weight of two capsules. Thereafter, on being asked the noticee removed the capsule containing gold paste in the washroom from his body and handed over the same to the AIU officers.

**16.** It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said 03 capsules wrapped with black tape consisting of gold and chemical mix and informed that the gross weight of said capsules was **1335.42** Grams. After completion of process of extraction of gold from the gold and chemical mix paste, the govt. approved valuer informed that 01 gold bar was derived having purity 999.0/24KT and weight of said gold bar was 1202.410 grams. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said derived 01 gold bar was **Rs.86,66,550/-** and Market value is **Rs.96,52,947/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	01	1202.410	999.0/24Kt	96,52,947/-	86,66,550/-

**17.** Accordingly, the said 01 gold bar (derived from gold and chemical mix in form of 03 capsules out of which 02 capsules were concealed in his innerwear and 01 capsules was concealed in his rectum) having purity 999.0/24 Kt. weighing 1202.410 grams, recovered from noticee was seized vide Panchnama dated 19/20.10.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold

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bar was smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 1202.410 grams of 01 gold bar, having Tariff Value of **Rs.86,66,550/-** and Market value is **Rs.96,52,947/-** carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 20.10.2024 under Section 108 of the Customs Act, 1962.

**18.** I also find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the noticee. In fact, in his statement, he has clearly admitted of smuggling of gold. He admitted that a person whose name he was unable to recollect asked him to go to Dhaka and bring the gold in paste form in lieu of monetary consideration. He further mentioned that to execute the plan he first travelled to Dhaka from Kolkata via Indigo Flight No. 6E 117 on 18.10.2024 and collected 03 capsules containing gold mixed with some chemical substance from a person named Shri Yogesh Jethwa from outside of the Airport alongwith the ticket from Kolkata to Ahmedabad in name of Shri Rakesh Kumar Jaiswal. He further confirmed that he travelled by road from Dhaka to Kolkata by crossing the VOMRA (also known as Bhomra) land check post of Bangladesh and Ghojadanga check post of West Bengal on 19.10.2024, however not made any declaration of the said gold at the check post and removed the gold clandestinely without declaration before the Customs Officers at the Land Customs Station and thereafter, board the domestic flight of Indigo bearing no. 6E318 from Kolkata to Ahmedabad. He clearly admitted that he had done this illegal activity of smuggling of gold for monetary consideration of Rs. 8000/- which he would get after successful delivery at Ahmedabad. He further admitted that the gold in form of capsules was neither belong to him nor purchased by him. He was fully aware that the gold in form of 03 capsules was carried by him out of which 02 capsules were concealed in his underwear and 01 capsule was concealed

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in his rectum. I find in his statement, that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. His intention was to evade the customs duty, so he had done this illegal carrying of gold of 24KT. in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for smuggling purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020 as amended.

**19.** 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'. Further, I also note that 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***

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**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 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 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:

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**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**

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***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".

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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. I find that the noticee has clearly admitted in his statement that on behalf of someone else and for his personal enrichment, he brought the said gold in for paste containing in 03 capsules from Dhaka and travelled to Kolkata by road crossing the VOMRA (also known as Bhomra) land check post of Bangladesh and Ghojadanga check post of West Bengal on 19.10.2024 and not declared the said gold before Customs Authority at land customs station which is the required in terms of Section 77 of Customs Act, 1962 read with the provision of Baggage Rules, 2016 for every passengers who arrived from any foreign destination. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20 as amended. I find that the fact of non-declaration of gold at Land Customs Station of Indo-Bangladesh Border and manner of Concealment makes it evident that it was a pre-mediated attempt of smuggling.

Further, the test report submitted by the Government approved valuer also confirmed that the gold was of purity of 999.0/24Kt which is not in conformity with locally available gold but similar to the gold generally imported from foreign countries. The test report and confessional statement of noticee conclusively proved that the gold was of foreign origin and not procured through legal channel and locally. Therefore, it is crystal clear that the gold in question is of foreign origin. Further, I find that to bypass the restriction imposed for importation of gold, the smugglers generally converted the gold in paste form by some chemical method for concealing the same by changing the physical appearance of the gold which was generally a solid metal. Conversion of the metal into paste makes the detection difficult by metal detector or scanner. Further, he put this gold paste in capsules and concealed them in his underwear and in his rectum in a way so that the customs officer could have never suspected that he was carrying something with him. It appears that the noticee wilfully did this to hoodwink the Customs Authority with the intention to evade payment of Customs Duty. The

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nature of concealment reveals the mindset of the noticee to not only evade duty but smuggle the gold. It also reveals that the act committed by the noticees was conscious and pre-meditated.

**21.** Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. Section 123 of Custom Act, 1962 read as follows:-

**Section 123. Burden of proof in certain cases. -**

<sup>1</sup> [(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, <sup>2</sup> [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

Hence, in respect of gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, the noticee has failed to produce any evidences that the gold recovered from him was not smuggled.

**22.** I find that the importation of gold into India is highly regulated and bulk importation of gold item could only be effected by the nominated banks, agencies or business houses in the manner laid down by various DGFT regulations as well as the RBI circular or **by the eligible passengers in the manner provided by the relevant regulations** as the main object of the Customs Act is to prohibit smuggling of goods and

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sternly deal with the same as can be gathered/evident on a conjoint reading of Section 2(25),11(2)(c), 111 and 112 of the Act. Since the conditions for import of gold as per the notification issued by DGFT and the restrictions imposed by RBI have been violated, the gold in question has to be treated as 'prohibited goods' under Section 2(33). Consequently, it would fall within the definition of 'smuggling ' under Section 2(39) which will render such goods liable to confiscation under Section 111 of the Act and this act of smuggling was clearly admitted by the noticee in his voluntary statement tendered under Section 108 of Customs Act, 1962.

I also find that import of gold is restricted under Foreign Trade (Development and Regulation) Act, 1992 except by authorized banks and nationalized agencies. In terms of the Circular No. 34/2013-Cus. issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT which are as follows:

- a) *Metals and Minerals Trading Corporation Limited (MMTC);*
- b) *Handicraft and Handloom Export Corporation (HHEC);*
- c) *State Trading Corporation (STC);*
- d) *Project and Equipment Corporation of India Ltd. (PEC);*
- e) *STC Ltd.;*
- f) *MSTC Ltd.;*
- g) *Diamond India Ltd. (DIL);*
- h) *Gems and Jewellery Export Promotion Council (G & J EPC);*
- i) *A star Trading House or a Premier Trading House under Paragraph 3.10.2 of the Foreign Trade Policy and*
- j) *Any other authorized by Reserve Bank of India (RBI).*

Hence, the import of gold by any other persons/agencies other than the above, is prohibited as mentioned in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion.

**23.** Further, 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*

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*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.*

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

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the Noticee as the noticee visited Dhaka on 18.10.2024 and returned to India on 19.10.2024, therefore, the condition of staying more than six months for becoming eligible passenger was not fulfilled in the instant case. *I find that a well-defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling.* It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject gold in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

**(II)** In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –  
*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

I find that the said gold paste containing in capsules concealed in his rectum as well as in his underwear and was not declared to the Customs under Section 77 of the Customs Act, 1962 while arriving from

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Dhaka with the said gold and crossed the border without any declaration before Customs Authority. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold in form of gold paste which were found concealed and recovered in manner as described above, was made by the Noticee, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which is liable for confiscation under Section 111 (l) of the Customs Act, 1962.

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

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

In this regard, I find that total 1202.410 grams of derived gold bar of foreign origin gold which was recovered from possession of Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal and admittedly smuggled into India. On test, the gold was found to be of purity of 999.0/24kt. Moreover, I find that the noticees could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal, thus failing to discharge the "burden of proof" that the gold was legally imported/possessed. They had also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

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

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal in prescribed declaration form and hence the said gold is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

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

*(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under [section 109](#) is not produced or which do not correspond in any material particular with the specification contained therein;*

I find that the said gold paste containing in capsules concealed in his rectum as well as in his underwear and was brought into India while arriving from Dhaka by road and crossed the border without any declaration before Customs Authority and without any order permitted any clearance of the said gold as required by the noticee. As per the facts of the case available on record and as discussed above, no such permission of the impugned goods, namely gold in form of gold paste which were found concealed and recovered in manner as described above, was submitted by the Noticee, in the prescribed form before the Land Customs Station and subsequently failed to declare at the Airport. Hence, the same constitute prohibited goods, which is liable for confiscation under Section 111 (k) of the Customs Act, 1962.

**24.** From the facts discussed above, it is evident that noticee had carried the said gold weighing 1202.410 grams, while arriving from Dhaka to Ahmedabad via Kolkata, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold bar of 24KT/999.00 purity totally weighing 1202.410 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By concealing the said gold in form of paste of gold and chemical in form of capsules in his rectum and underwear and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely in order to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. *It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act.* It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs

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Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**25.** I find that the said gold was concealed in an inconspicuous location to avoid being detected by any agency and was intended to be handed over to some unknown person at Ahmedabad Airport. As remuneration for the service he had rendered, he was about to receive Rs 8,000/-. The facts of the case clearly suggest that the apprehended noticee had knowingly engaged himself in the illicit trade of smuggled gold from Dhaka for earning quick and easy money. Additionally, I find that the noticee was found to travel with a Fake identity. His boarding pass for the flight from Kolkata to Ahmedabad was found to be issued under the hoax name of Shri Rakesh Kumar Jaiswal. He was also found to carry fake Aadhaar Cards with a fake residential address in the name of Shri Rakesh Kumar Jaiswal and Shri Nikhil Raviendra Goyal and clearly admitted in his voluntary statement. The idea of using a hoax identity was the brainchild of Yogesh Jethwa as mentioned in the voluntary statement dated 20.10.2024 by Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal and the same was allegedly adopted as an instrument of deception to evade interception by the Custom Officials. The recovery of the boarding pass with fake name and fake Aadhaar Cards (Aadhaar Card no. 9450 2962 6053 & 4905 9163 7025) both under the hoax identity of Shri Rakesh Kumar Jaiswal and Shri Nikhil Raviendra Goyal testifies to the fact that the noticee had indeed adopted deception using hoax name as a method to evade interception by the Custom Authorities albeit unsuccessfully.

**25.1** I also find from the confessional statement of noticee that this was not his first instance of smuggling of gold, but also involved in the smuggling of gold in similar manner by concealing the gold paste containing in capsules in his rectum and travelled from Dhaka to West Bengal with the said gold by road on 21/22.06.2024 and 30.06.2024/01.07.2024 and same is evident from the stamp of immigration/ check post authority in his passport. Further, he was also involved in smuggling of Foreign Origin Cigarettes in commercial quantity alongwith mobile, laptop and dry fruits through the route of Mumbai-Dubai-Nepal-Mumbai during the period 10.08.2024 to 13.08.2024. From the above deposition, it is evidently clear that the noticee is a habitual offender. Such Modus Operandi clearly suggests

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that noticee is a seasoned and professional smuggler who smuggled the gold and other prohibited goods for his personal enrichment. Further, failure to produce any document in support of acquiring/possessing/Carrying of the said quantity of gold by the noticee further strengthens the fact that those were attempted to be brought into the country surreptitiously by flouting all the extant procedures that are required to be observed in importing gold from abroad. Furthermore, it to be noted that all attempts at communicating with the accused has met with failure. The letters have been returned stamped 'Left'. The email/s sent to the accused had been left un-responded. The repeated refusals on the part of the accused to acknowledge/respond to any correspondence made from our end is a further testimony to his already established guilt in this premeditated act of smuggling.

**26.** I find that the Noticee confessed of carrying the said gold of 1202.410 grams concealed by him and attempted to remove the said gold from the land customs stations and subsequently from Airport without declaring it to the Customs Authorities violating the 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 Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013 as amended. As per Section 2(33) “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. The improperly imported gold by the noticee without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

**27.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would

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make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the noticee, trying to smuggle it and was not eligible passenger to bring it in India or import gold into India in baggage as per the prescribed conditions. The said gold bar weighing 1202.410 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the noticee concealed the said gold in his rectum in form of 01 capsules containing gold and chemical mix and concealed 02 capsules containing gold paste in his underwear. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the noticee.

**28.** In view of the above discussions, I find that the manner of concealment, in this case is clever and premediated and clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. **Further, no evidence has been produced/submitted to prove licit import of the seized gold bar, which shows that the noticee has nothing to submit in his defense and sole purpose of the noticee to smuggle the same into India and to avoid the payment of duty without declaring the same before customs authority at Land Customs Station as well as Airport. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123.** Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in form of capsules in his rectum as well as inside his underwear with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 1202.410 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 20.10.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit/personal benefit and that too by concealment of the said gold in form of paste in capsules in his rectum as well as in his underwear. **I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.**

**29.** Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

*"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."*

*The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]*

**30.** 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.

**31.** 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,*

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*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).*

**32.** 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.*

**33.** 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".

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

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

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

**35.** Given the facts of the present case before me and the judgements and rulings cited above, the said 01 gold bar weighing 1202.410 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 1202.410 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(i), 111(j), 111(k), 111(l) and 111(m) of the Customs Act, 1962.**

**36.** As regard imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal, I find that in the instant case, the principle of mens-rea on behalf of noticee is clearly established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold and deliberately concealed the gold paste containing in 03 capsules in his rectum as well as in his underwear, thus, established that the concealment of said gold is ingenious in nature. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting

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to smuggled the gold bar and attempting to evade the Customs Duty by not declaring the gold weighing 1202.410 grams having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said 01 gold bar weighing 1202.410 grams, carried by him. He has agreed and admitted in his statement that he brought the gold from Dhaka and travelled to Kolkata from Dhaka (Bangladesh) by road and crossed the check post without declaring the gold and subsequently travelled from Kolkata to Ahmedabad via Flight No. 6E318 dated 19.10.2024 with the said gold in paste form containing in capsules concealed in his rectum and his underwear. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 1202.410 grams, having purity 999.0/24kt by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee is liable for the penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962 and I hold accordingly.

**37.** Accordingly, I pass the following Order:

### **ORDER**

- i) I order **absolute confiscation** of 01 gold bar weighing **1202.410** grams with purity of 999.0 (24KT.) and having Market value of **Rs.96,52,947/-** and Tariff Value of **Rs.86,66,550/-** which was derived from the semi solid substance consisting of Gold and Chemical mix having Gross weight 1335.420 Grams in form of 03 capsules covered with black plastic tape, out of which 02 capsules concealed in innerwears worn by passenger and 01 capsule concealed in rectum by the passenger, **Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal**, who arrived from Dhaka-Bangladesh to Ahmedabad via Kolkata on 19.10.2024 by Indigo Flight No. 6E318, at Domestic Terminal-1 of SVPIA Ahmedabad, placed under seizure under panchnama proceedings dated 19/20.10.2024 and Seizure Memo Order dated 20.10.2024,

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under the provisions of Section **111(d), 111(i), 111(j), 111(k), 111(l) and 111(m)** of the Customs Act, 1962;

- ii) I impose a penalty of **Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only)** on **Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

**38.** Accordingly, the Show Cause Notice No. VIII/10-274/SVPIA-C/O&A/HQ/24-25 dated 02.04.2025 stands disposed of.

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

F. No: VIII/10-274/SVPIA-C/O&A/HQ/24-25 Date:30.07.2025

**DIN: 20250771MN0000919216**

**BY SPEED POST AD**

To,

- i) Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal, residing at Room No.25, Sankalp Society, Anand Gad, Park Site, Vikhroli, Mumbai-400079, Maharashtra, India(address as per passport)
- ii) Shri Jeevan Vikram Singh @ Rakesh Kumar Jaiswal residing at Room No.103, Siddhivinayak Plaza, Dombiwali East, Pin- 421 201, Mumbai (present address as per statement) and
- iii) THRU EMAIL at email i.d. [Jeevanvsingh@gmail.com](mailto:Jeevanvsingh@gmail.com).

**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.