SHOW CAUSE NOTICE

On the basis of suspicious movement, a passenger named Shri DhanPal Kalal holding Indian Passport No. P 9489418 (hereinafter also referred as “the Passenger” for the sake of brevity) who had arrived at Terminal-2, SVPI Airport, Ahmedabad by Indigo Airline flight No. 6E 1754 from Kuwait to Ahmedabad on 07.02.2020 was intercepted by the officers of Customs-AIU, SVPI Airport, Ahmedabad for detailed checking after clearance through green channel. The passenger was inquired whether he was having any dutiable/restricted items to declare before Customs, in response to which the passenger replied in negative. The Customs-AIU officers offered their personal search to the passenger but the passenger denied saying that he was having full trust on the AIU officers.

2. The Custom officer asked Shri DhanPal Kalal holding Indian Passport No. P 9489418 aged 31 years to put his one blue trolley checked-in baggage and two carton boxes through the scanner but nothing objectionable was found. He was then asked to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he was wearing on his body. Thereafter the passenger, readily removed the metallic substances from his body such as belt, wallet, mobile and a chain hidden under his grey jacket and keeps them in a plastic tray and thereafter passed through the DFMD machine. On his passing through the DFMD machine, a beep sound was generated from the DFMD machine. He then removes a Gold Kada which he had worn on his arm hidden under his jacket. The AIU Officer then passed the plastic tray containing Kadda and Kadiwali Chain through the X-ray machine to which a dark black coloured image with yellow outline appeared which suggested that there might be some heavy metal like gold. The officer asks whether the Kadda and kadiwali Chain were made of 24 Carat gold, to which the passenger confess that the said Kadda and kadiwali Chain were in Raw form and made out from Gold Biscuit.
3. Thereafter, the AIU Officers and the passenger came at the Office of Air Intelligence Unit located opposite Belt No. 5 in the Arrival Hall of Terminal 2 Building, SVPI, Airport, Ahmedabad alongwith all the baggages of the passenger.

4. The said gold coloured Kadda and kadiwali Chain recovered from the passenger appeared to be gold which needed to be ascertained with respect to its purity, exact weight and value. Therefore, Government Approved Valuer was called telephonically by the AIU officer for Testing and Valuation of the above gold coloured metal recovered from the said passenger.

5. The AIU officer took the photograph of the said gold coloured chain recovered from the Passenger is reproduced as under:-

![Image of a gold coloured chain]

6. After some time, Shri Kartikey Vasantrai Soni, Government Approved Valuer came with his laptop, weighing scale and testing kit. After testing the said metal in the form of gold coloured Kadda and Kadiwali Chain, he confirmed that it was pure gold having purity 24 carat. He informed and also submitted valuation report dated 07.02.2020 that the said gold coloured Kadda and Kadiwali Chain was 24 carat Gold having purity 999.0 and was totally weighing 250.000 Grams, Tariff valued at Rs. 9,16,300/- [Tariff Value] (Rupees Nine Lakh Sixteen thousand three hundred only) and Market Valued at Rs.10,50,000/- [Market Value] (Rupees Ten Lakh Fifty thousand only). The valuation report for the same as detailed in Annexure – ‘A’ to the panchnama dtd.07.02.2020 is reproduced here below.

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Details of Items</th>
<th>Pcs</th>
<th>Gross Weight (In Gram)</th>
<th>Net Weight (In Gram)</th>
<th>Purity</th>
<th>Market Value (Rs.)</th>
<th>Tariff Value (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gold Kadu</td>
<td>1</td>
<td>125.000</td>
<td>125.000</td>
<td>999.0 24 Kt</td>
<td>525000</td>
<td>458150</td>
</tr>
<tr>
<td></td>
<td>Gold Kadi Wali Chain</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>---</td>
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<tr>
<td>2</td>
<td></td>
<td>1</td>
<td>125,000</td>
<td>125,000</td>
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<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24 Kt</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>525000</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>458150</td>
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<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>2</td>
<td>250,000</td>
<td>250,000</td>
<td>Rs.</td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td>1050000</td>
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<td></td>
<td></td>
<td></td>
<td>916300</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Above value was calculated as per the Notification No.08/2020-Customs (N.T.) dated 31.01.2020 (Gold) and Notification No.11/2020-Customs (N.T.) dated 06.02.2020 (Exchange Rate). The passenger also put his dated signature on the above said valuation report as a token of agreement to the pattern of valuation and result of the valuation report.

7. The following travelling documents and identity documents were recovered from the Passenger and withdrawn for further investigation:-
   i) Boarding Pass, in original, Seat No.20 B; from Kuwait to Ahmedabad of Indigo flight No. 6E 1754 dated 07.02.2020,
   ii) PNR No. HGVPVC and Checked in Luggage tag in original of Indigo flight No.6E 1754 in the name of Shri DhanPal Kalal.
   iii) Photocopy of stamped pages of Indian Passport No. P 9489418 issued from Kuwait on 21.02.2017 and valid up to 20.02.2027;
   iv) Copy of Manifest of Indigo Flight No.6E 1754 dated 07.02.2020 wherein the name of Shri DhanPal Kalal, fall at Sequence No. 124.

8. The said Gold Kadda and Kadi Wali Gold Chain was 24kt Gold purity 999.0 and were totally weighing 250,000 Grams, Tariff valued at Rs. 9,16,300/- [Tariff Value] (Rupees Nine Lakh Sixteen thousand three hundred Only) and Market Valued at Rs.10,50,000/- [(Market Value)] (Rupees Ten Lakh Fifty thousand only) recovered from the passenger was attempted to be smuggled inside India with an intent to evade payment of Customs duty and was a clear violation of the provisions of Customs Act, 1962. Thus, having a reasonable belief that the said Gold in form of Gold Kadda and Kadi Wali Gold Chain was attempted to be smuggled by Shri DhanPal Kalal was liable for confiscation under the provisions of Customs Act, 1962; hence, they were placed under seizure vide Panchnama dated 07.02.2020 drawn by the Officer of Customs under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962. Further, the Gold Kadda and Kadi Wali Gold Chain recovered from Shri DhanPal Kalal was placed under seizure vide Panchnama dated 07.02.2020 drawn by the Officer of Customs-AIU at SVPI, Airport, Ahmedabad.

9. A statement of Shri DhanPal Kalal was recorded on 07.02.2020 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he arrived from Kuwait on 07.02.2020 at Sardar Vallabhbhai Patel International Airport,
Ahmedabad by Indigo Flight No.6E 1754; he stated that the Gold Chain And Gold Kada were given to him alongwith two bills and do not know the person who gave it to him. He deposed that on arrival, he was told that somebody will call him on his mobile and will collect the gold from him. Further, he told that he did not know the person to whom he had to handover the same. He was given free ticket to carry the said gold. He further stated that he had intentionally not declared the said substance before the Customs Authorities on his arrival at SVPI Airport, Ahmedabad and wanted to clear it illicitly and evade payment of duty. He was fully aware that clearing gold articles without declaring before Customs, with an intent to evade payment of customs duty was an offence under the provisions of Customs Act, 1962 and regulations framed thereunder. He agreed that he had evaded Customs duty on 24 kt. Gold Kadda and Kadiwali Gold chain totally weighing 250,000 Grams, Tariff valued at Rs. 9,16,300/- [Tariff Value] (Rupees Nine Lakh Sixteen thousand three hundred Only) and Market Valued at Rs.10,50,000/- [ (Market Value)] (Rupees Ten Lakh Fifty thousand only) was recovered from him.

10. The said Gold Kadda and Kadi Wali Gold Chain recovered from the passenger was placed under seizure under Panchnama dated 07.02.2020. As the passenger did not declare the goods i.e. Gold Kadda and Kadi Wali Gold Chain, before the Customs officials at SVP International Airport, Ahmedabad and thereby attempted to smuggle the same without payment of appropriate Customs duty.

11. It is seen that the passenger was carrying the above gold articles personally. As per Section 123 of Customs Act, 1962, gold is a notified item, hence the same is liable for seizure 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 which have been seized. Since, the pax could not produce any documents showing the legitimate import of the said gold pieces into India on payment of duty or regarding its lawful possession, it appears that the said gold of foreign origin 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(l), and 111(m) of the Customs Act, 1962. From the statement dated 07.02.2020 of the said passenger, it also appears that he was actively involved in the smuggling of the said gold. Hence, Shri DhanPal Kalal has rendered himself also liable for penal action under the provisions of section 112(a) and 112 (b) of the Customs Act, 1962.

12. In the absence of any import documents evidencing legitimate import of the said gold, the same appears to be smuggled gold 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 Gold Kadda and Kadi Wali Gold Chain by the said passenger, it appears that the passenger was fully aware that the said Gold Kadda and Kadi Wali Gold Chain was 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 DhanPal Kalal, in his statement dated 07.02.2020, had admitted that he stated that the Gold Chain And Gold Kada were given to him alongwith two bills and do not know the person who gave it to him, and brought it with him. Therefore, it appears that he had 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. The acts of omission and commission on the part of Shri DhanPal Kalal, appears to have rendered himself liable for penal action under the provisions of section 112(a) and 112 (b) of the Customs Act, 1962.

13. From the foregoing paras, it appears that Shri DhanPal Kalal, had attempted to smuggle the Gold Kadda and Kadi Wali Gold Chain was of 24 kt of purity 999.0 totally weighing 250.000 Grams, Tariff valued at Rs. 9,16,300/- [Tariff Value] (Rupees Nine Lakh Sixteen thousand three hundred Only) and Market Valued at Rs.10,50,000/- [ (Market Value)] (Rupees Ten Lakh Fifty thousand only) placed under seizure under panchnama dated 07.02.2020 which were concealed by Shri DhanPal Kalal, by not declaring the said gold Kadda and Kadi Wali Gold Chain, had an intention to evade payment of customs duty and thereby he has violated the provisions contained in the Customs Act, 1962, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

14. From the facts and circumstances discussed above, it appears that Shri DhanPal Kalal had attempted to smuggle Gold Kadda and Kadi Wali Gold Chain having purity 999.0 (24 Kt.) into India, totally weighing at 250.000 Grams with an intention to evade payment of customs duty. The Gold Kadda and Kadi Wali Gold Chain having purity 999.0 (24 Kt), totally weighing at 250.000 Grams, cannot be construed as 'bonafide baggage' within the meaning of Section 79 of the Act read with Para 2.26 of the Foreign Trade Policy, 2015-2020. As per Para 2.26 of the Foreign Trade Policy, a passenger is allowed to import bonafide household and personal effect only, as his bonafide baggage. It also appears that the passenger attempted to smuggle the gold without filing the customs declaration form, which
appears to be in contravention of Section 77 of the Act read with the Baggage Rules, 2016 ('Baggage Rules') and Regulation 3 of the Customs Baggage Declaration Regulations, 2013 ('Baggage Regulations') read with Section 81 of the Customs Act, 1962. The above act on the part of the passengers appears to be amounting to smuggling within the meaning of Section 2(39) of the Act. It also appears that the gold is to be construed as 'prohibited', in terms of the provisions of Section 2(33) of the Act.

15. The passenger has contravened the following provisions, which are reproduced as under:

- **Section 77 and Section 79** of the Act as Passenger had failed to make a declaration of the imported gold, which cannot be termed as 'bonafide baggage' concealed which were recovered from the possession of the passenger; the relevant portion of the same is reproduced:

**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.

**SECTION 79. Bona fide baggage exempted from duty.** - (1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir, provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

(2) the Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify –

(a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);

(b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);

(c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.

(3) Different rules may be made under sub-section (2) for different classes of persons.
• Rule 11 of the Foreign Trade (Regulation) Rules, 1993 as failed to declare the value, quantity and description of the gold imported by him; the relevant portion of the same is reproduced:

**Rule 11. Declaration as to value and quality of imported goods.** -
On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

• Para 2.26 of the Foreign Trade Policy 2015-2020 as he has acted contrary to the restrictions imposed and imported non bonafide baggage; the relevant portion of the same is reproduced:

**Para 2.26 Passenger Baggage:**
(a) Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.
(b) Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation.
(c) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorisation.

• Regulation 3 of the Customs Baggage Declaration Regulations, 2013 (‘Baggage Regulations’) read with Section 81 of the Customs Act, 1962; the relevant portion of the same is reproduced:

**Regulation 3. Method of Declaration of Baggage.**
All passengers who come to India shall declare their accompanied baggage in Form I appended to this regulation.

**Section 81. Regulations in respect of baggage.**—The Board may make regulations,
(a) providing for the manner of declaring the contents of any baggage;
(b) providing for the custody, examination, assessment to duty and clearance of baggage;
(c) providing for the transit or transhipment of baggage from one customs station to another or to a place outside India.

• Section 111(d), 111(l), 111(l) and 111(m) of the Customs Act, 1962:
SECTION 111. Confiscation of improperly imported goods, etc. -
The following goods brought from a place outside India shall be liable
to confiscation:

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

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

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

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

• Section 112 of the Customs Act, 1962:

SECTION 112. Penalty for improper importation of goods, etc.-
Any person, -

(a) who, in relation to any goods, does or omits to do any act which
act or omission would render such goods liable to confiscation under
section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying,
removing, depositing, harbouring, keeping, concealing, selling or
purchasing, or in any other manner dealing with any goods which he
knows or has reason to believe are liable to confiscation under section
111, shall be liable, -

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

(ii) in the case of dutiable goods, other than prohibited goods,
to a penalty not exceeding the duty sought to be evaded on such
goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in
the entry made under this Act or in the case of baggage, in the
declaration made under section 77 (in either case hereafter in
this section referred to as the declared value) is higher than the
value thereof, to a penalty not exceeding the difference between
the declared value and the value thereof or five thousand
rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to
a penalty not exceeding the value of the goods or the difference
between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

16. It appears that Shri DhanPal Kalal had not filed the baggage declaration form for the said Gold Kadda and Kadi Wali. Gold Chain concealed by him and the same was recovered from his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Baggage Regulations. It also appears that the import of said gold was for non bonafide purpose too. It therefore, appears that all the above acts of contravention on the part of the passenger has rendered the seized gold liable for confiscation, under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Act. It further appears that Gold Kadda and Kadi Wali. Gold Chain having purity 999.0 (24 Kt.), imported by the passenger is to be construed as 'smuggling' within the meaning of Section 2(39) of the Act and the said gold also appear to be 'prohibited' within the meaning of Section 2(33) of the Act. It is admitted by him in his deposition dated 07.02.2020 that he was fully aware that the gold would be offending in nature on its import, that he has knowingly carried the said gold and also failed to declare it on his arrival at the airport. It appears that he has involved himself in carrying, keeping, concealing and has dealt with the offending goods in a manner which he knew or had reasons to believe were liable for confiscation under the Act. It, therefore, appears that Shri DhanPal Kalal has rendered himself liable for penal action, under the provisions of Section 112(a) and 112(b) of the Act.

17. Now, therefore, Shri DhanPal Kalal, is hereby called upon to show cause in writing to the Deputy/Asst. Commissioner of Customs, Sardar Vallabhbhai Patel International Airport Ahmedabad, Terminal-2, Ahmedabad – 380004, within 30 days from the receipt of this notice as to why:

(i) The said Gold Kadda and Kadiwali Gold chain recovered from the passenger of 24 kt of purity 999.0 totally weighing 250.000 Grams, Tariff valued at Rs. 9,16,300/- [Tariff Value] (Rupees Nine Lakh Sixteen thousand three hundred Only) and Market Valued at Rs.10,50,000/- [ (Market Value)] (Rupees Ten Lakh Fifty thousand only) placed under seizure under panchnrama dated 07.02.2020 should not absolutely be confiscated under Section 111(d), 111(i), 111(l), and 111(m) of the Customs Act,1962;
(ii) Penalty should not be imposed on him under Section 112(a) and 112(b) of the Customs Act, 1962.

18. The noticee should produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defense and must state in his written reply to this notice as to whether he desires to be heard in person. If no reply to this notice is received within 30 (thirty) days from the date of receipt of this notice or if they fail to appear for the personal hearing on the date and time intimated to him, the case is liable to be decided on the basis of merits and evidences available, without any further reference to him.

19. This notice is issued without prejudice to any other action that may be taken against the noticee or any other person under the provisions of the Customs Act, 1962 and the Rules and Regulations made there-under or any other law for the time being in force.

20. This notice is issued relying on the documents as listed in the Annexure “A” to this show cause notice.

By REGD POST A.D./HAND DELIVERY

F. No. : VIII/10-105/AIU/C/2019-20

Date: 05.2020

To:-

Shri Dhanpal Kantial Kalal,
V.P.O. Peeth,
Dist : Dungarpur,
Rajasthan – 314406.

Copy to:-

(1) The Deputy/Assistant Commissioner of Customs, SVPI Airport, Ahmedabad.
(2) Guard File.

Deputy Commissioner
Customs, Ahmedabad.
## ANNEXURE “A” TO SHOW CAUSE NOTICE

List of relied upon documents in the case of Shri Dhanpal Kalal.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Description of documents</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.</td>
<td>Panchanama dated 07.02.2020 drawn at SVPI Air Port, Ahmedabad.</td>
<td>Copy already provided</td>
</tr>
<tr>
<td>02.</td>
<td>Statement dated 07.02.2020 of Shri Dhanpal Kantilal Kalal, aged 31 years (DoB 05.06.1988), son of Kantilal Kalal, holding Indian Passport No. P 9489418 and residing at V.P.O. Peeth, Dist : Dingarpur, Rajasthan Pin – 314406.</td>
<td>Copy enclosed</td>
</tr>
<tr>
<td>03.</td>
<td>Valuation Reports dated 07.02.2020 of Shri Soni Kartikey Vasantrai, Government Approved Valuer</td>
<td>Copy already provided</td>
</tr>
<tr>
<td>04.</td>
<td>Copy of Order under Section 110 (1) and (3) of the Customs Act, 1962 dated 07.02.2020.</td>
<td>Copy enclosed</td>
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</table>