

OIO No:205/ADC/SRV/O&A/2024-25
F. No. VIII/10-53 & 67/SVPIA/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद -380009.

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DIN No. 20241271MN000000C5A7

PREAMBLE

A	फ़ाइल संख्या/ File No.	: VIII/10-53 & 67/SVPIA/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या- तारीख / Show Cause Notice No. and Date	: VIII/10-53 & 67/SVPIA/O&A/HQ/2024-25 dated: 18.06.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 205/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In- Original	: 23.12.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 23.12.2024
F	द्वारापारित/ Passed By	: Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: Shri Suresh Patidar, VPO Paraheda, The Garhi, Banswara, Rajasthan-327022, India
(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	

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	और इसके साथ होना चाहिए:
(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case: -

Shri Suresh Patidar, S/o Shri Dhula Patidar (herein after referred to as the 'passenger/ Noticee') residing at VPO- Paraheda, the Garhi, Banswara, PIN - 327022, Rajasthan, India holding Indian Passport bearing No. X2748445 arrived from Kuwait by Indigo Flight No. 6E 1667 at SVP International Airport, Ahmedabad on 29.02.2024. Based on suspicious movement, a Passenger was suspected to be restricted/ prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search was required to be carried out.

2. On the basis of suspicious movement of a passenger, the custom batch officers under Panchnama proceedings dated 29.02.2024 in presence of two independent witnesses intercepted (01) Pax that one passenger namely Shri Suresh Patidar S/o Shri Dhula Patidar at Red Channel who was suspected to be carrying high value dutiable goods and therefore a thorough search of all the baggage of the passenger as well as his personal search was required to be carried out. On being asked about his identity by the officers, the passenger identified himself as Shri Suresh Patidar S/o Shri Dhula Patidar, showing his Passport bearing No. X2748445. The Officer thereafter asked the passenger, Shri Suresh Patidar, whether he was carrying any dutiable goods, to

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which the passenger denied. Thereafter, the officer once again asked the passenger whether he wanted to declare any item, in reply to which the passenger replied that he has nothing to declare. The officer informed the passenger that he along with other officers wished to verify the contents of the baggage carried by the passenger namely Shri Suresh Patidar. The passenger agreed to get his belongings verified and requested the officers to search/ verify his baggage. The officers scanned the baggage at Baggage Scanning Machine (BSM) situated at Red Channel and observed that suspicious Images seemed to be in one bag. On being asked about the suspicious image, the passenger bring forth 15 Gold cut bars, rolled in tissue paper from the baggage. The baggage of the passenger was rescanned after removing the above said gold bars and nothing objectionable was found.

2.1 Further, the Batch officers handed over the passenger along with 15 Gold cut bars at the Green Channel to the AIU, SVPI, Ahmedabad for further process in presence of panchas. The AIU Officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. Thereafter, the AIU Officers offered their personal search to the passenger, but the passenger denied saying that he had full trust in the AIU Officers. Thereafter, the AIU officers asked the passenger whether he wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave his consent to be searched in front of the Superintendent of Customs. The AIU officers offered their personal search to the passenger, but he denied saying that he was having full trust in the AIU officers. The AIU officers asked the passenger whether he wanted that his baggage to be checked

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in front of executive magistrate or Superintendent of Customs, in reply to which the said passenger gave his consent for his baggage may be searched in front of the Superintendent of Customs.

2.2 The AIU officers again asked the passenger whether he had anything else dutiable to declare to the Customs authorities, to which the said passenger denied again. Further, The AIU Officers thoroughly checked all items of the baggage of the passenger. Now, the AIU officer asked the passenger again if he had anything dutiable which was required to be declared to the Customs to which the said passenger once again denied. Thereafter, the AIU officers informed the panchas that they doubt that the said passenger is carrying some high value dutiable goods. The AIU officer asked the passenger 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/ clothes. Thereafter, the passengers readily removed the metallic substances from his body such as mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked them to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound/ alert was generated.

2.3. Further, in front of the Panchas, the officers asked the passenger about the 15 cut gold bars which were found in his baggage, in reply to which he stated that these gold cut bars belonged to him. Therefore, to ensure the correctness of purity, weight and value of the gold recovered from the possession of Shri Suresh Patidar, the Government approved valuer was called. After some time, one person appeared at the AIU office who introduced

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himself as Shri Soni Kartikey Vasantrai, Government Approved Valuer. In the presence of the panchas, the Government Approved Valuer showed that he had brought his laptop, weighing scale and testing kit. After testing the said recovered gold from Shri Suresh Patidar, he confirmed that the said recovered gold contains 15 Gold cut Bars weighing 1300.00 grams having purity 999.0/ 24Kt.

3. The Government Approved Valuer informed that the gold recovered from Shri Suresh Patidar was weighing **1300.00** Grams are of 24 KT (999.0 Purity) is having market value of **Rs.83,59,000/-** (Rupees Eighty-Three Lakhs Fifty-Nine Thousand Only) and Tariff Value of **Rs.69,69,573/-** (Rupees Sixty-nine Lakhs Sixty-Nine Thousand Five Hundred Seventy-Three Only). The Market Value is calculated as per the Notification No. 12/2024-Customs (N.T.) dated 15.02.2024 (gold) and Notification No. 13/2024-Customs (N.T.) dated 15.02.2024 (Exchange Rate).

Name of Passenger	Details of Article/ Items	PCS/ NOS	Net Weight (In Grams)	Purity	Market Value (In Rs.)	Tariff Value (In Rs.)
Shri Suresh Patidar	Gold Cut Bars	15	1300.00	999.0 24KT	83,59,000/-	69,69,573/-

4. The said 15 gold cut bars weighing 1300.00 grams have a purity of 999.0/24kt and market value of Rs.83,59,000/- (Rupees Eighty-Three Lakhs Fifty-Nine Thousand Only) and Tariff Value of Rs.69,69,573/- (Rupees Sixty-nine Lakhs Sixty-Nine Thousand Five Hundred Seventy-Three Only). The said gold recovered from the passenger was attempted to be smuggled inside India with intent to evade payment of Customs duty and was a clear violation of the provisions of the Customs Act, 1962. Thus, having a

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reasonable belief that the said gold totally weighing 1300.00 Grams was attempted to be smuggled by the passenger, were liable for confiscation under the provisions of the Customs Act, 1962; they were placed under seizure vide Panchnama dated 29.02.2024 drawn by the Officer of Customs (AIU) 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 (Seizure Report dated 29.02.2024). Further, the gold, recovered from the passenger, was placed under seizure under Section 110 of the Customs Act, 1962 vide Panchnama dated 29.02.2024 drawn by the Officer of Customs, AIU, at SVPI Airport, Ahmedabad.

The following travelling documents and identity documents of the passenger were recovered and withdrawn for further investigation:

- (i) Copy of Passport No. X2748445 issued at Ahmedabad on 30.01.2024 and valid up to 29.01.2026.
- (ii) Boarding pass of Indigo Flight number 6E 1667 having seat no. 12F from Kuwait to Ahmedabad dated 29.02.2024.
- (iii) Passenger Manifest of Indigo Flight number 6E 1667 from Kuwait to Ahmedabad dated 29.02.2024 depicting name of Shri Suresh Patidar

5. A statement of the passenger was recorded on 29.02.2024 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he arrived from Indigo Flight number 6E 1667 on 29.02.2024 having seat no. 12F, having Passport No. X2748445 at Sardar Vallabhbhai Patel International Airport, Ahmedabad. Furthermore, the passenger accepted that the said 15 Gold Cut

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Bars having weight 1300.00 Grams hidden/ concealed inside check-in baggage which was carried by him, and these gold bars belonged to his friends who are living in Kuwait they have purchased that gold in Kuwait and given to him for hand over these cut bars to their relatives for making jewellery living in India. These cut bars were carried by him for free of cost for his friends. Under his statement, the passenger admitted that he was aware that the bringing gold by way of concealment to India is illegal and it is an offence. His intention was to help his friends but not do any illegal activity of carrying of gold of 24 Kt. in commercial quantity in India without declaration. However, the quantity brought was clearly meant for commercial purposes and hence does not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before the Customs by the pax. He stated that 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 the Green Channel, so that he could attempt to smuggle the Gold without paying Customs duty. Further, he again confirmed the recovery of gold weighing 1300.00 grams of 999.0/ 24 Kt purity valued at Rs.69,69,573/- (Tariff value) and Rs.83,59,000/- (Market value) from him during the course of Panchnama dated 29.02.2024.

6. Therefore, on the basis of facts narrated above, the said gold weighing 1300.00 grams of 999.0/24 Kt purity valued at Rs.69,69,573/- (Tariff value) and Rs.83,59,000/- (Market value), appeared liable for confiscation, was placed under seizure under Panchnama dated 29.02.2024 as said gold totally weighing

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1300.00 grams seized under Panchnama dated 29.02.2024 was "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. It also appeared that the said pax has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 29.02.2024 under Section 108 of the Customs Act, 1962. He has committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962.

6.1 In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items, or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold amounted to Rs.83,59,000/-, total weighing 1300.00 grams recovered from Shri Suresh Patidar is more than Rs.50,00,000/-, hence this case is fit for arrest of the said passenger under Section 104 of the Customs Act, 1962. The provisions of Section 104 (6) & (7) of the Customs Act, 1962 are reproduced as under:-

(6) Notwithstanding anything contained in the Code of [(6) Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to –
(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

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*(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.*

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.

Therefore, the passenger was arrested on 29.02.2024.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. —*In this Act, unless the context otherwise requires, —*

(22) "goods" includes-

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

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(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;

(39) "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;"

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II) Section 11A – Definitions -*In this Chapter, unless the context otherwise requires,*

(a) *"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"*

III) 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."*

IV) Section 110 – Seizure of goods, documents and things.—(1) *If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

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

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(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;"

VI) 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 know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

VII) Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation."

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, 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."*

II) Section 3(3) - *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."*

III) Section 11(1) - *No export or import shall be made by*

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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."

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

CONTRAVENTION AND VIOLATION OF LAWS

- 8.** It therefore appears that -
- a. Shri Suresh Patidar improperly imported the 15 gold cut bars weighing 1300.00 grams have purity 999.0/24kt and market value of Rs.83,59,000/- (Rupees Eighty-Three Lakhs Fifty-Nine Thousand Only) and Tariff Value of Rs.69,69,573/- (Rupees Sixty-nine Lakhs Sixty-Nine Thousand Five Hundred Seventy-Three Only) concealed/ hidden inside the baggage (as discussed herein above), without declaring it to the Customs by denying that he has nothing to declare to Customs with a deliberate intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The passenger had knowingly and intentionally imported the said gold improperly without declaring the same to the Customs authority under temptation to evade Customs Duty. Therefore, the gold imported by the passenger which was not declared to the Customs on arrival in India

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cannot be treated as bonafide household goods or personal effects. Shri Suresh Patidar 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.

- b. The passenger, by not declaring the contents of his baggage which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- c. The improperly imported 15 gold cut bars hidden/concealed inside the baggage by the passenger without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(i) and 111(j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- d. The passenger, by his above-described acts of omission and commission on his part, has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- e. As per Section 123 of the Customs Act, 1962, the burden of proving that the 15 gold cut bars, weighing 1300.00 grams have purity 999.0/24kt and market value of Rs.83,59,000/- (Rupees Eighty-Three Lakhs Fifty-Nine Thousand Only) and Tariff Value of Rs.69,69,573/- (Rupees Sixty-nine Lakhs Sixty-Nine

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Thousand Five Hundred Seventy-Three Only) hidden in the baggage by the passenger without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Suresh Patidar.

09. Accordingly, a Show Cause Notice was issued to **Shri Suresh Patidar**, resident of Village Rajpur, Dungarpur, Rajasthan holding Indian Passport bearing No. X2748445, as to why:

- (i) The **15 gold cut bars**, weighing **1300.00** grams having purity 999.0 (24KT) having Market Value at **Rs.83,59,000/-** (Rupees Fifty-Four Lakhs Ninety-Eight Thousand Two Hundred Eighty-Seven only) and tariff value at **Rs.69,69,573/-** (Rupees Forty-Seven Lakhs Seven Thousand Two Hundred and Fifty-Four only) placed under seizure under panchnama dated 29.02.2024 and seizure memo order dated 29.02.2024 should not be confiscated under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) The penalty should not be imposed upon the passenger, under Section 112(a) and 112(b) of the Customs Act, 1962.

Defense reply and record of personal hearing:

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

11. The noticee was given opportunity for personal hearing on 14.11.2024, 28.11.2024 & 16.12.2024. The noticee has attended the PH himself on 16.12.2024 with a request to attend the PH in

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person instead of video conferencing. He submitted that he is working as an electrician in Kuwait since last 19 years. He submitted that he is ready to pay the applicable duty, fine and penalty and requested to release the gold.

Discussion and Findings:

12. I have carefully gone through the facts of this case and the submissions made by the noticee in personal hearing. I find that the noticee has attended the PH and requests for release of gold in lieu of payment of applicable duty/tax, fine and penalty, however, the noticee has not submitted any defense reply alongwith any documentary evidences which establishes his claim for the gold. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the 1300.00 grams of 15 gold bars (hidden/concealed in check-in baggage) of 24KT (999.0 purity), having Tariff Value of **Rs. 69,69,573/-** and Market Value of **Rs. 83,59,000/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 29.02.2024 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.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of specific input that Shri Suresh Patidar was suspected to be carrying restricted/prohibited goods and therefore 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

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under Panchnama proceedings dated 29.02.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he is not carrying any high valued dutiable goods. Thereafter, the officers scanned the baggage at Baggage Scanning Machine (BSM) situated at Red Channel and observed that suspicious Images seemed to be in one bag. On being asked about the suspicious image, the passenger bring forth 15 Gold cut bars, rolled in tissue paper from the baggage. The baggage of the passenger was rescanned after removing the above said gold bars and nothing objectionable was found.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said 15 gold cut bars and informed that the weight of said bars is **1300.00** Grams having purity 999.0/24KT which are hidden/concealed in check in baggage. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said derived 15 Gold cut bars is **Rs.69,69,573/-** and Market value is **Rs.83,59,000/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PC S	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold cut bars	15	1300.00	999.0/24Kt	83,59,000/-	69,69,573/-

16. Accordingly, the said 15 Gold cut bars (hidden/concealed in check in baggage) having purity 999.0/24 Kt. weighing 1300.00

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grams, recovered from noticee was seized vide Panchnama dated 29.02.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 15 Gold cut bars 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 1300.00 grams of 15 Gold cut bars, having Tariff Value of **Rs.69,69,573/-** and Market value is **Rs.83,59,000/-** 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 29.02.2024 under Section 108 of the Customs Act, 1962.

17. 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 passenger. In fact, in his statement, he has clearly admitted that the said gold bars were purchased by his friends who lives in Kuwait and asked to handover to their relatives on reaching India and gives free service to handover. He further admitted that the gold cut bars were not belonging to him and not purchased by him. He was fully aware that the gold cut bars were concealed in check in baggage. I find that under the statement, he admitted that he was aware that the bringing gold by way of concealment to India was illegal and it

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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 commercial 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.

18. Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said 15 Gold cut bars, ('the said gold' for short), which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/

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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. 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.

19. From the facts discussed above, it is evident that noticee had carried the said gold weighing 1300.00 grams, while arriving from Kuwait to Ahmedabad, 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 1300.00 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold cut bars and not declaring the same before the Customs, it is established that the noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention 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.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage

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declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017-Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 1300.00 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 1300.00 grams, having Tariff Value of Rs.69,69,573/- and Market Value of Rs.83,59,000/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 29.02.2024 liable to confiscation under the provisions of Sections

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111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him in form of gold cut bars concealed in check in baggage, it is observed that the noticee was fully aware that the import of said goods is offending in nature. 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 Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

21. I find that the Noticee confessed of carrying the said gold of 1300.00 grams concealed by him and attempted to remove the said gold from the 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

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complied with. The improperly imported gold by the passenger 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.

22. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bars weighing 1300.00 grams, having Tariff Value of Rs.69,69,573/- and Market Value of Rs.83,59,000/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 29.02.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bars weighing 1300.00 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

23. 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

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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 make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 1300.00 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 passenger concealed the said gold in cut bars form concealed/hide in his baggage. 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 passenger.

24. In view of the above discussions, I find that the manner of concealment, in this case 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 to prove licit import of the seized gold bars, 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 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 cut bars in his baggage wrapped in paper with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that

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the said gold bars weighing 1300.00 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 29.02.2024 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 and that too by concealment of the said gold cut bars in baggage. ***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.***

25. 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]

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

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

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

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28. 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.

29. 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

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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”.

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

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

*“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.**”*

31. Given the facts of the present case before me and the judgements and rulings cited above, the said 15 gold bars weighing 1300.00 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 15 Gold cut bars weighing 1300.00 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.**

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32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bars weighing 1300.00 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold cut bars concealed in his baggage from Kuwait to Ahmedabad. 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 1300.00 grams, having purity 999.0 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. Therefore, I find that the passenger is liable for penal action under Sections 112 of the Act and I hold accordingly.

33. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of 15 gold cut bars weighing **1300.00** grams having purity of 999.0 (24KT.) recovered from check in baggage, having Market value of **Rs.83,59,000/-** and Tariff Value of **Rs.69,69,573/-**, placed under seizure under Panchnama dated 29.02.2024 and seizure memo order dated 29.02.2024, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) I impose a penalty of **Rs. 21,00,000/- (Rupees Twenty One Lakh Only)** on **Shri Suresh Patidar** under the provisions of Section 112(a)(i) and 112(b)(i) of the

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Customs Act, 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-53 & 67/SVPIA/O&A/HQ/2024-25 dated 18.06.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20241271MN000000C5A7

BY SPEED POST AD

To,
Shri Suresh Patidar,
VPO Paraheda, The Garhi, Banswara,
Rajasthan-327022, India

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, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusamd@gov.in
6. Guard File.