

OIO No: 204/ADC/SRV/O&A/2024-25
F. No. VIII/10-103/SVPIA-C/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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DIN No. 20241271MN00000ED20

PREAMBLE

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|-----|--|---|---|
| A | फ़ाइल संख्या/ File No. | : | VIII/10-103/SVPIA-C/O&A/HQ/ 2024-25 |
| B | कारणबताओनोटिससंख्या- तारीख / Show Cause Notice No. and Date | : | VIII/10-103/SVPIA-C/O&A/HQ/ 2024-25 dated: 20.06.2024 |
| C | मूलआदेशसंख्या/ Order-In-Original No. | : | 204/ADC/SRV/O&A/2024-25 |
| D | आदेशतिथि/ Date of Order-In- Original | : | 19.12.2024 |
| E | जारीकरनेकीतारीख/ Date of Issue | : | 19.12.2024 |
| F | द्वारापारित/ Passed By | : | Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad. |
| G | आयातककानामऔरपता / Name and Address of Importer / Passenger | : | Shri Shri Ahatsham, E-3965, Moti Dungri, Madina Hotel, Bharuch-392001, Gujarat |
| (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 टिकट लगा होना चाहिए और इसके साथ होना चाहिए: | | |

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| (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 Ahatsham S/o Shri Mohd Yusuf, (DOB: 25.07.1976), holding Indian Passport bearing No. W2036737, residing at Vill-Kotwal, Alampur, PO- Jhabrera, Haridwar, Uttrakhand- 247665, arrived by Air Arabia Flight no. G9 418 from Sharjah to Ahmedabad on 13.03.2024 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific intelligence, the passenger was intercepted by the officers of DRI Ahmedabad Zonal unit and Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 13.03.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying a black-colored trolley bag as his Checked-in baggage.

2. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The officers informed the passenger that he would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then the

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officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes. Thereafter the passenger, removed the metallic substances from his body such as mobile, purse etc., and kept it in a tray placed on the table there and after that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound is heard. Thereafter, the baggage of the passenger was scanned in the X-Ray Bag Scanning Machine (BSM) installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad to which nothing objectionable is found in his baggage.

Thereafter, the officers of AIU & DRI, the said passenger and the Panchas moved to the AIU office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. During frisking, the passenger Shri Ahatsham was examined thoroughly by the officers. The officers asked the said passenger to change all his clothes. During examination of his clothes, the officers find that the belt portion of brown colored pant worn by the passenger is unusually heavy. On further examination it is found that the said belt part of the pant has two layers stitched on the inner side. The officer in presence of the panchas and the passenger cut opens the stitched layer wherein two long strips covered with white colored adhesive tape is found. On being asked, the passenger Shri Ahatsham tells the

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officer that the said long strips have semi solid paste of gold and chemical mix.

3. The officers informed the Panchas that the said long strips contain semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad - 380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said long strips of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 399.97 grams (weight inclusive of long strips).

4. Thereafter, the Government approved valuer, Shri Kartikey Vasantrai Soni started the process of converting the said semi solid substances into solid gold. After completion of the procedure, the Government Approved Valuer informed that 01 Gold bar weighing **329.97** grams having purity 999.0/24 Kt. is derived from the said semi solid substance containing gold paste and chemical mix. After testing the said gold bar, the Government Approved Valuer confirms that it is pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 1525/2023-24 dated 13.03.2024 certifies that the extracted gold bar is having purity 999.0/24kt, tariff value of

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Rs.18,98,524/- and Market value of **Rs.22,23,998/-**. The value of the gold bar has been calculated as per the Notification No. 17/2024-Customs (N.T.) dated 06.03.2024 (gold) and Notification No. 18/2024-Customs (N.T.) dated 07.03.2024 (exchange rate)
The details of item recovered from the passenger are as under:

| S. No. | Details of items | Net weight in grams | Purity | Market value (Rs.) | Tariff value (Rs.) |
|--------|------------------|---------------------|------------------|--------------------|--------------------|
| 1 | 01 Gold Bar | 329.97 | 999.0/ 24 Kt. | 22,23,998/- | 18,98,524/- |

The photograph of the extracted gold bar is as follows:



5. The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates. The following documents produced by the passenger were withdrawn under the Panchnama dated 13.03.2024:

- i) Copy of Passport No. W2036737 issued at Dehradun on 12.09.2022 valid up to 11.09.2032.
- ii) Boarding pass of Air Arabia Flight No. G9 418 from Sharjah to Ahmedabad dated 13.03.2024.

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5.1 Accordingly, gold bar having purity 999.0/24 Kt. weighing 329.97 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Shri Ahatsham was seized vide Panchnama dated 13.03.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made thereunder.

A statement of Shri Ahatsham was recorded on 13.03.2024, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:-

- (i) he is engaged in labor work in Sharjah;
- (ii) he went to Sharjah on 17.01.2024 and returned back on 13.03.2024 by Air Arabia flight No. G9 418; that he had never indulged in any smuggling activity in the past and this was first time he had carried gold;
- (iii) he purchased the gold in semi solid paste form in two long strips and then covered it in white adhesive tape, so that it could not identified easily by Customs Authorities.
- (iv) he had been present during the entire course of the Panchnama dated 13.03.2024 and he confirmed the events narrated in the said panchnama drawn on 13.03.2024 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) he was aware that smuggling of gold without payment of Customs duty is an offence; he was well aware of the gold concealed in 02 plastic long strips containing gold and chemical mix in semi-solid form but he did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty.

6. The above said gold bar weighing 329.970 grams recovered from the said passenger was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by

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way of concealing the same in the form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 329.970 grams is attempted to be smuggled by the said passenger, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 329.970 grams derived from the above said semi solid gold paste with chemical mix and its packing material i.e. white adhesive tape used to conceal the semi solid gold paste in long strips, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 13.03.2024

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;

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(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;"

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;

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- (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;"*

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*

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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 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) The passenger Shri Ahatsham had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 329.970 grams having purity 999.0/24 Kt. derived from semi solid gold paste and having Tariff value of Rs.18,98,524/- and Market value of Rs.22,23,998/-. The said semi solid gold paste was concealed in 02 long strips containing gold and chemical mix in semi-solid form and not declared to the Customs. The passenger opted green channel to exit the Airport with 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. Thus, the element of mens rea appears to have been established beyond doubt. Therefore, the

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improperly imported gold bar weighing 329.970 grams of purity 999.0/24 Kt. by Shri Ahatsham by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger 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)** By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c)** The improperly imported gold by the passenger found concealed in 02 long strips containing gold and chemical mix in semi-solid form, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (d)** As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

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- (e) Shri Ahatsham 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.
- (f) As per Section 123 of the Customs Act 1962, the burden of proving that the gold bar weighing 329.970 grams of purity 999.0/24 Kt., derived from semi solid gold paste concealed in 02 long strips containing gold and chemical mix in semi-solid form, without declaring it to the Customs, is not smuggled goods, is upon the passenger.

09. Accordingly, a Show Cause Notice was issued to **Shri Ahatsham** S/o Shri Mohd Yusuf, (DOB: 25.07.1976), holding Indian Passport bearing No. W2036737, residing at Vill-Kotwal, Alampur, PO- Jhabrera, Haridwar, Uttrakhand- 247665, as to why:

- i) One Gold Bar weighing **329.970** grams having purity 999.0/24 Kt. and having Tariff value of **Rs.18,98,524/-** and Market value of **Rs.22,23,998/-**, derived from semi solid gold paste containing gold and chemical mix in semi-solid form by the passenger and placed under seizure under panchnama proceedings dated 13.03.2024 and Seizure Memo Order dated 13.03.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) The packing material i.e. White colored plastic adhesive tapes used for concealment of semi solid gold paste, seized under panchnama dated 13.03.2024 and Seizure memo order dated 13.03.2024, should not be

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confiscated under Section 119 of the Customs Act, 1962
and

- iii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

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 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense. 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.

Discussion and Findings:

12. I have carefully gone through the facts of this case and the submissions made by the noticee in his written submission as well as during the personal hearing and documents submitted. 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 329.97 grams of 01 gold bar (derived from

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semisolid paste of gold and chemical mix in long strips covered with white adhesive tape concealed inside inner layer of the pant) of 24KT(999.0 purity), having Tariff Value of **Rs.18,98,524/-** and Market Value of **Rs.22,23,998/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 13.03.2024 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 input that Shri Shri Ahatsham 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 under Panchnama proceedings dated 13.03.2024 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 checked the baggage, however nothing objectionable was found. After thorough interrogation, the noticee admitted/confessed that he was carrying semi-solid substance consisting of Gold and Chemical mix in two long strips covered with white colored adhesive tape concealed in belt part of the pant.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said semi-solid

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substance of Gold and Chemical mix and after completion of extraction, the Government Approved Valuer informed that 01 gold bar weighing **329.97** Grams having purity 999.0/24KT is derived from semi solid substance of gold and chemical mix in two strips concealed in belt part of pant. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar is **Rs.18,98,524/-** and Market value is **Rs.22,23,998/-**. 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 Bar(Derived from Semi solid paste substance) | 1 | 329.97 | 999.0/24Kt | 22,23,998/- | 18,98,524/- |

16. Accordingly, the said 01 gold bar (derived from semi solid substance) having purity 999.0/24 Kt. weighing 329.97 grams, recovered from noticee was seized vide Panchnama dated 13.03.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold 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 329.97 grams of 01 gold bar(derived from semi solid substance), having Tariff Value of **Rs.18,98,524/-** and Market value is **Rs.22,23,998/-** carried by the passenger appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is

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admitted by the passenger in his statement recorded on 13.03.2024 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 in form of paste was purchased by him and concealed in form of two strips in belt part of pant. He clearly admitted that he was fully aware that gold was concealed in semi solid form in belt part of his pant. I find that under statement, he admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. He clearly mentioned in his statement that to avoid the payment of customs duty, he opted this illegal smuggling of gold paste. His intention was to earn fast money, 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

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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 01 gold bar (derived from semi solid substance wrapped in white tape concealed in belt part of pant), ('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/ 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 329.97 grams, while arriving from

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Sharjah 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 329.97 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 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 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

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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 329.97 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 329.97 grams, having Tariff Value of Rs.18,98,524/- and Market Value of Rs.22,23,998/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 13.03.2024 liable to confiscation under the provisions of Sections 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 semi solid substance containing gold and chemical mix in form of long strip and concealed in belt part of the pant, 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

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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 329.97 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 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.

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The said gold bar weighing 329.97 grams, having Tariff Value of Rs.18,98,524/- and Market Value of Rs.22,23,998/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 13.03.2024. 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 bar weighing 329.97 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 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 329.97 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 semi solid paste containing gold and chemical mix in

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long strips concealed in belt part of the pant. 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. 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 semi solid form containing gold and chemical mix wrapped in white tape as long strip concealed in belt part of the pant with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 329.97 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 13.03.2024 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 in semi solid form in belt part of pant in form of long strips. ***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.***

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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]

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

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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).

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

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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 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*

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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 gold bar weighing 329.97 grams (derived from semi solid substance wrapped in white tape concealed in belt part of pant), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 329.97 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.**

32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 329.97 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold paste concealed in belt part of pant from Sharjah 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 329.97 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,

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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 one gold bar weighing **329.97** grams having purity of 999.0 (24KT.) recovered/ derived from semi solid substance of gold and chemical mix wrapped in white tape concealed in belt part of pant, having Market value of **Rs.22,23,998/-** (Rupees Twenty Two Lakhs Twenty-Three Thousand Nine Hundred and ninety Eight only) and Tariff Value of **Rs.18,98,524/-** (Rupees Eighteen Lakhs Ninety Eight Thousand Five Hundred and Twenty four only), placed under seizure under Panchnama dated 13.03.2024 and seizure memo order dated 13.03.2024, 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 order absolute confiscation of packing material i.e. White colored plastic adhesive tapes used for concealment of semi solid gold paste, seized under panchnama dated 13.03.2024 and Seizure memo order dated 13.03.2024, under Section 119 of the Customs Act, 1962
- iii) I impose a penalty of **Rs. 6,00,000/- (Rupees Six Lakh Only)** on **Shri Shri Ahatsham** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

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34. Accordingly, the Show Cause Notice No. VIII/10-103/SVPIA-C/O&A/HQ/2024-25 dated 20.06.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20241271MN000000ED20

BY SPEED POST AD

To,

Ahatsham S/o Shri Mohd Yusuf,
Vill-Kotwal, Alampur, PO- Jhabrera,
Haridwar, Uttrakhand- 247665

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.