



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट की सामने, नवरंगपुरा, अहमदाबाद -380009.

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PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-210/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-210/SVPIA-A/O&A/HQ/2024-25 dated: 06.09.2024
C	मूलआदेशसंख्या / Order-In-Original No.	:	226/ADC/SRV/O&A/2024-25
D	आदेशतिथि / Date of Order-In-Original	:	10.01.2025
E	जारीकरनेकीतारीख / Date of Issue	:	10.01.2025
F	द्वारापारित / Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानाम और पता / Name and Address of Importer / Passenger	:	Shri Irfan Dastgir Desai, At Post Lengare, Tal-Khanapur, Sangli, Pin: 415309, Maharashtra, India
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील (चौथी मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ज्यूटी 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 Irfan Dastgir Desai S/o Shri Dastgir Chand Desai, Age: 46 years (DOB: 01.06.1978), having Indian Passport No. M2908579, residing at Post Lengare, Tal-Khanapur, Sangli, Pin: 415309, Maharashtra, India, arrived from Bangkok to Ahmedabad on 19.04.2024 by Thai Airways Flight No. TG343. On the basis of specific input that this male passenger

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was carrying dutiable/contraband goods, the passenger was intercepted by the DRI officers and Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration to the Customs, under the **Panchnama dated 19.04.2024** in presence of two independent witnesses for passenger's personal search and examination of his baggage.

2. The pax was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. Not being satisfied with the reply of the suspected passenger, the officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival hall of Terminal 2 building; however no beep sound was heard.

2.1 The officers conducted sustained interrogation, the passenger Shri Irfan Dastgir Desai confessed that he was carrying three capsules containing gold paste concealed in his rectum. He was taken to the washroom opposite belt no. 1 of arrival hall, Terminal 2 by the Officer, where above said the passenger removed all capsules covered with black tape containing gold paste from his rectum.

2.2 Thereafter, the DRI officer called the Government Approved Valuer and informed him that three capsules have been recovered from a passenger and the passenger has informed that it is gold in semi-solid paste form and hence, he needs to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informs the Officer that the testing of the said material is only possible at his workshop as gold has to be extracted from such semi-solid paste form by melting it and also informs the address of his workshop.

2.3 Thereafter the panchas along with the passenger and the Officers of leave the Airport premises in a Government Vehicle and reach the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad-380 006. On reaching the above referred premises, the AIU officer introduces the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. Here, after weighing the

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said semi-solid substance (covered with black rubber) on his weighing scale, Shri Kartikey Vasantrai Soni informs that the three capsules containing gold paste covered in black rubber weighed **936.270 Grams**. The officer took photograph of the said capsules which is as under:



3. Thereafter, Shri Kartikey Vasantrai Soni started the process of converting the three capsules containing semi-solid substance consisting of gold and chemical mix recovered from Shri Irfan Dastgir Desai, into solid gold. The black rubber of three capsules was removed and brown coloured semi-solid paste packed in transparent tape was obtained which was put into the furnace and upon heating the said substance, it turned into liquid material. The said substance in liquid state was taken out of furnace, and poured into a mould and after cooling for some time, it turned into golden coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer took weight of the said golden coloured bar which was derived from the **936.270 grams** of 3 capsules containing semi-solid substance consisting DRI officers which came to **843.640 Grams**. The officer took photograph of the above said bar which is as under:

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4. The Government Approved Valuer, confirmed that it is 24 Kt. gold having purity of 999, weighing **843.640 Grams** and having market value of Rs. 64,20,100/- (Rupees Sixty Four Lakhs Twenty thousand One Hundred only) and having tariff value of Rs. 55,04,009/- (Fifty Five lakhs Four thousand Nine rupees only). The value of the gold bar was calculated as per the Notification No. 29/2024-Customs (N.T.) DTD. 15-04-2024 (Gold) and Notification No. 30/2024-Customs (N.T.) dtd. 18-04-2024 (exchange Rate). The valuer submitted his valuation report to the Officer vide certificate no 074/2023-24 dated 20.04.2024 which is in Annexure-A and Annexure-B. The details of the Valuation of the said gold bar is tabulated in below table:

Sl. No.	Details of Items	PCS	Gross Weight in Gram	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	936.270	843.640	999.0 24Kt.	64,20,100/-	55,04,009/-

Upon completion of valuation proceedings, the panchas, the Officers and the passenger returned to the Airport in government vehicle alongwith the extracted gold bar.

5. The Officers find that the recovered gold bar of 24Kt. with purity 999.0 weighing 843.640 Grams having market value of Rs. 64,20,100/- (Rupees Sixty-Four Lakhs Twenty Thousand One Hundred Six only) and having tariff value of Rs. 55,04,009/- (Fifty-Five lakhs Four thousand Nine only) recovered from the above said passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus,

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the officer finds determines that there existed a reasonable belief that the above said Gold was being attempted to be smuggled by Shri Irfan Dastgir Desai and the same was liable for confiscation as per the provisions of Customs Act, 1962; hence, the said gold bar along with packing material was placed under seizure vide Seizure Memo dated 20.04.2024.

6. A statement of the passenger Shri Irfan Dastgir Desai S/o Shri Dastgir Chand Desai was recorded on 20.04.2024 was recorded under Section 108 of the Customs Act, 1962 wherein he stated that:

- i. He was engaged in trading of clothes. He understood Hindi and Marathi very well.
- ii. There are 5 members in his family comprising of his aged mother, two kids, himself, and his wife. He was the only earning member of his family.
- iii. he stated that he was engaged in small trading of Dry fruits. He was also a driver and casually doing the driving work. This was his Second visit of Bangkok. He stated that his Passport was issued on 21.10.2014 and valid upto 20.10.2024. He went to Bangkok on 21.03.2024 to work in Hotel and worked for almost one month but his Visa was about to expire on 19.04.2024 and therefore he decided to return back to India. Accordingly, he booked flight ticket from Bangkok to Ahmedabad for 19.04.2024. There in Bangkok he came in contact with a guide working in Bangkok and he enquired about his ticket from Bangkok to Ahmedabad. When he told the said person that he had booked his flight ticket, the said person suggested him to carry some gold item in paste form as Gold capsule in rectum and promised him to reimburse the flight ticket expenses and Rs.20,000/- as carrying charges. Since he was in need of money, he accepted the proposal and agreed to carry as suggested. The same unknown person in Bangkok handed over three gold paste capsules and explained the procedure to insert the same in rectum. As explained, he inserted the gold capsule wrapped with rubber in his rectum on 19.04.2024 and boarded the flight of Thai Airways TG 343 for Ahmedabad International Airport. He was told that a person would contact him at the SVPI Airport, Ahmedabad on his arrival. He stated that he had not been given any contact details of any person who would contact him at the Airport, Ahmedabad. He stated that this was his first attempt of

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smuggling of Gold capsules in the form of Gold paste by way of concealment in rectum.

- iv. On being asked he stated that he did not have any contact number of any person connected with the instant case of smuggling of Gold in the form of Gold paste.
- v. He further stated that he was not a regular and frequent flier but he visited Bangkok 02 -03 times where he worked in a Hotel. He stated that this was his second visit of Bangkok.
- vi. He further stated that he had perused the said Panchnama Dated 20.04.2024 drawn at Terminal-2 of SVP International Airport, Ahmedabad and that I was present during the entire course of the said panchnama proceedings and he agreed with the contents of the said Panchnama. He had been explained the said Panchnama in Hindi Language too. Upon perusal of the panchnama, in token of its correctness, he put his dated signature on each page of the Panchnama.
- vii. On being asked he further stated that probably that unknown person who had handed over the gold paste mixed with chemicals at Bangkok to me had purchased the Gold paste in the form of Gold Capsules hence he did not have any purchase bill. He stated that no purchase bill was handed over to him at Bangkok by the owner of the Gold capsules.
- viii. On being asked he further stated that in greed of earning quick money he opted this illegal smuggling of Gold by way of concealment in the rectum though he was fully aware that smuggling of gold without payment of Custom duty is an offence. He was in possession of the Gold paste in the form of Gold capsules concealed in rectum but he did not make any declarations in this regard to evade the Custom duty. He confirmed the recovery of 843.640 grams, tariff value of Rs.55,04,009/- and Market value of Rs.64,20,100/- having purity 999.0/24 KT as narrated under the Panchnama dated 20.04.2024. He had opted for green channel so that he could smuggle the gold without paying custom duty.
- ix. On being further asked, he stated that he was informed that on his arrival at SVPI Airport, Ahmedabad a person will call him and he will have to deliver/hand over the Gold capsules which were concealed in rectum. On being asked he stated that he was not given any mobile number or contact number for the purpose of delivery of the smuggled gold in the form of Gold capsules.

6.1 In view of the above, Gold bar of 24Kt. with purity 999.0 weighing 843.640 Grams having market value of Rs. 64,20,100/- (Rupees Sixty Four Lakhs Twenty thousand One Hundred Six only) and having tariff value of Rs. 55,04,009/- (Fifty Five lakhs Four thousand Nine only) was placed under Seizure under panchnama proceedings dated 20.04.2024 and Seizure Memo dated 20.04.2024 on the reasonable ground that the same are liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally. The seized goods i.e. one gold bar weighing 843.640 grams having purity 999.0 (24 Kt.) recovered/derived from the aforesaid capsules hidden in the rectum of the said passenger was handed over to the warehouse in-charge for safe keeping vide Warehouse Entry No.6211 dated 20.04.2024.

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;”

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 79. Bona fide baggage exempted from duty. -

(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –

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

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

V) 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:”*

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

VII) 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.*

VIII) 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 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.*

CONTRAVICTION AND VIOLATION OF LAWS

8. It therefore appears that:

- (a) The passenger viz. Shri Irfan Dastgir Desai had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing **843.640 gram** having purity 999.0/24Kt under Panchnama dated 20.04.2024 derived from semi solid gold paste concealed in his rectum and having Market value of Rs. 64,20,100/- (Rupees Sixty-Four Lakhs Twenty Thousand One

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Hundred Six only) and having tariff value of Rs. 55,04,009/- (Fifty-Five lakhs Four thousand Nine only). The said semi solid gold paste was concealed in his rectum and not declared to the Customs. The passenger opted for the green channel to exit the Airport with the deliberate intention to evade the payment of Customs Duty and fraudulently circumvent 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 improperly imported gold bar weighing **843.640** grams having purity 999.0/24Kt derived from semi solid gold paste concealed in his rectum and having Market value of Rs. 64,20,100/- (Rupees Sixty-Four Lakhs Twenty Thousand One Hundred Six only) and having tariff value of Rs. 55,04,009/- (Fifty-Five lakhs Four thousand Nine only) by Shri Irfan Dastgir Desai 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 viz. Shri Irfan Dastgir Desai consisting of gold and chemical mix paste found concealed in his rectum, 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) Shri Irfan Dastgir Desai 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 Customs Act 1962, the burden of proving that the gold bar weighing **843.640** grams having purity 999.0/24Kt derived from semi solid gold paste concealed in his rectum and having Market value of Rs. 64,20,100/- (Rupees Sixty-Four Lakhs Twenty Thousand One Hundred Six only) and having tariff value of Rs. 55,04,009/- (Fifty-Five lakhs Four thousand Nine only), without declaring it to the Customs, is not smuggled goods, is upon the passenger Shri Irfan Dastgir Desai.

09. Accordingly, a Show Cause Notice was issued to **Shri Irfan Dastgir Desai**, holding Indian Passport No.M2908579, residing at Post Lengare, Tal-Khanapur, Sangli, Pin: 415309, Maharashtra, as to why:

- i. One gold bar weighing **843.640** grams having purity 999.0/24Kt derived from semi solid gold paste concealed in his rectum and having Market value of Rs. **64,20,100/- (Rupees Sixty-Four Lakhs Twenty Thousand One Hundred Six only)** and having tariff value of Rs. **55,04,009/- (Fifty-Five lakhs Four thousand Nine only)**, which has been calculated as per the Notification No. 29/2024-Customs (N.T.) DTD. 15-04-2024 (Gold) and Notification No. 30/2024-Customs (N.T.) dtd. 18-04-2024 (exchange Rate), should not be confiscated under the provisions of Sections 111(d), 111 (f), 111(i), 111 (j) and 111 (l) and 111(m)of the Customs Act, 1962 and;
- ii. Penalty should not be imposed upon the passenger under Section 112 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 20.12.2024, 27.12.2024 & 03.01.2025 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he 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 843.640 grams of 01 gold bar of 24KT(999.0 purity), recovered/ derived from semi solid gold paste concealed in his rectum, having Tariff Value of **Rs.55,04,009/-** and Market Value of **Rs.64,20,100/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 19.04.2024, 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 Irfan Dastgir Desai 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 19.04.2024 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. After thorough interrogation, the noticee admitted/confessed that he was carrying high valued dutiable goods in form of semi solid substance containing gold and chemical mix in the form of capsules concealed in his rectum..

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said semi-solid substance (covered with black rubber) and after completion of extraction, the Government Approved Valuer informed that 01 gold bar weighing **843.640** Grams having purity 999.0/24KT is derived from three capsules covered with

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black tape containing gold and chemical mix concealed in his rectum. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar is **Rs.55,04,009/-** and Market value is **Rs.64,20,100/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	843.640	999.0/ 24Kt	64,20,100/-	55,04,009/-

16. Accordingly, the said 01 gold bar having purity 999.0/24 Kt. weighing 843.640 grams, recovered from noticee was seized vide Panchnama dated 19.04.2024, 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 843.640 grams of 01 gold bar, having Tariff Value of **Rs.55,04,009/-** and Market value is **Rs.64,20,100/-** 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 19.04.2024 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 he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. Further, he also stated that the gold was not his and also not purchased by him. One unknown person in Bangkok contacted him and asked to carry some gold item in paste form as gold capsule in rectum, which was purchased the said unknown person. He clearly mentioned in his statement that in temptation of earning money, 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

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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 01 gold bar, ('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 843.640 grams, while arriving from Bangkok to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24KT/999.00 purity totally weighing 843.640 grams, liable for

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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 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 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 843.640 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 843.640 grams, having Tariff Value of Rs.55,04,009/- and Market Value of Rs.64,20,100/- recovered

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and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 19.04.2024 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 concealed in his rectum in form of capsules, 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 843.640 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

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wilful intention to smuggle the impugned goods. The said gold bar weighing 843.640 grams, having Tariff Value of Rs.55,04,009/- and Market Value of Rs.64,20,100/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 19.04.2024. 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 843.640 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 843.640 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 form containing gold and chemical mix concealed in his rectum in form of 3 capsules. 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

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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 in his rectum in form of capsules with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 843.640 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 19.04.2024 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 his rectum. ***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]

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.

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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).

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.

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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 prohibited nature of the goods and proved his guilt knowledge/mens-reas.”

*“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 843.640 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 843.640 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 843.640 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Bangkok to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of

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the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 843.640 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:

O R D E R

- i) I order absolute confiscation of one gold bar weighing 843.640 grams having purity of 999.0 (24KT.) recovered/ derived from semi solid paste in 3 capsules concealed in his rectum, having Market value of Rs.64,20,100/- (Rupees Sixty-Four Lakhs Twenty Thousand One Hundred Six only) and Tariff Value of Rs.55,04,009/- (Fifty-Five lakhs Four thousand Nine only), placed under seizure under Panchnama dated 19.04.2024 and seizure memo order dated 19.04.2024, 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. 16,00,000/- (Rupees Sixteen Lakh Only) on Shri Irfan Dastgir Desai under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-210/SVPIA-A/O&A/HQ/2024-25 dated 06.09.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-210/SVPIA-A/O&A/HQ/2024-25 Date:10.01.2025

DIN: 20250171MN0000020192

BY SPEED POST AD

To,
Shri Irfan Dastgir Desai,
Post Lengare, Tal-Khanapur,
Sangli, Pin: 415309,
Maharashtra, India

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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-ccocusam@gov.in
6. Guard File.