



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-64/SVPIA-D/O&A/HQ/2024-25
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by the Pax.
C	मूल आदेश संख्या / Order-In-Original No.	:	69/ADC/VM/O&A/2024-25
D	आदेश तिथि / Date of Order-In-Original	:	13.06.2024
E	जारी करने की तारीख / Date of Issue	:	13.06.2024
F	द्वारा पारित / Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयात कक्षानाम और पता / Name and Address of Importer / Passenger	:	To, Shri Prakash Jiwatram Tewani, Seema Apartment, Flat No. 15, 2 nd Floor, Khemani Road, Ulhasnagar, Thane, Maharashtra, Pin – 421 002.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), छवि मंजिल, हुड्को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (५.००) रुपये पे न्यायलय 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 साथकेवल पांच (५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी 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, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case :

On the basis of specific intelligence DRI AZU, the AIU and DRI officers intercepted one passenger **Shri Prakash Jiwatram Tewani** having Indian Passport No. X8595988 who arrived by Spice Jet Flight No. SG 16 from Dubai to Ahmedabad on dated 25.02.2024. The pax was trying to exit green channel without declaring any contraband goods. the Customs officer interrogate him and again ask him if he is carrying any dutiable goods with him, even on sustained interrogation, the said passenger does not confess that he is carrying any high valued dutiable goods. However, on the basis of input received from DRI, AZU that said passenger might be carrying high value dutiable/contraband goods concealed in his clothes. Accordingly, the above said passenger was taken to the AIU Room, situated opposite side of Belt No. 2 at Sardar Vallabhbhai Patel International Airport. Where the passenger namely Shri Prakash Jiwatram Tewani is thoroughly searched and during search it is noticed that gold in the form of semisolid substance consisting of gold and chemical mix concealed in lower pants. the passenger namely Shri Prakash Jiwatram Tewani after removing all the metallic items like watches, coins, gold chain, gold kada was asked to pass through the Door Frame Metal Detector placed in the hall in front of Belt No.2 near green channel in the arrival hall of Terminal-2, SVPI Airport and his checked in and hand bags was scanned through the X-Ray Baggage Inspection machine, but nothing objectionable is observed.

2. Thereafter, AIU Officer called the Govt valuer for detailed examination of Goods received from Pax. Shri Soni Kartikey Vasantrai, Government Approved Valuer after detailed examination and testing submitted a valuation Report as Annexure-A and B dated 25.02.2024 wherein he provided weight of after weighing the gross weight of said semisolid like substance is 162.730 Grams. Gold bar weighing 142.410 Grams having purity 999.0/24 kt is derived from the 162.730 Grams of semisolid paste substance consisting of gold paste and chemical mix related to Shri Prakash Jiwatram Tewani and that the gross weight of Gold Chain and Gold Kada of Shri Prakash Jiwatram Tewani is 97.750 Grams and Market Value at Rs. 9,15,269/- (Rupees Nine Lakhs Fifteen

Thousand and Two Hundred Sixty-Nine only) and tariff value at Rs.7,63,490/- (Rupees Seven Lakhs Sixty-Three Thousand Four Hundred and Ninety only). Further the rest of gold having chain and kada is having net weigh 97.75 Grams is having purity 916.0/22kt and Market Value at Rs.5,75,886/- (Rupees Five Lakhs Seventy Five Thousand and Eight Hundred Eighty Six only) and tariff value at Rs.4,80,387/- (Rupees Four Lakhs Eighty Thousand Three Hundred and Eighty Seven only) The value of the gold bar has been calculated as per the Notification No. 12/2024-Customs (N.T.) dated 15.02.2024 (gold) and Notification No. 13/2024-Customs (N.T.) dated 15.02.2024 (exchange rate). The details of the gold received from the said passenger is as mentioned below :

TABLE - I

Sr. No.	Details of items	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	142.410	999.0/ 24 Kt.	9,15,269/-	7,63,490/-
2.	Gold Chain	1	57.690	916.0/ 22 Kt.	3,39,876/-	2,83,514/-
3.	Gold Kada	1	40.060	916.0/ 24 Kt.	2,36,010/-	1,96,873/-
	TOTAL	3	240.160		14,91,155/-	12,43,877/-

3. In view of the above, the above said gold totally weighing **240.160** grams of 999.0/ 24 Kt. & 916.0 & 22 Kt. purity, having tariff value of **Rs.12,43,877/-** and market value of **Rs.14,91,155/-** seized under Panchnama dated 25.02.2024 is to be treated as "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. It also appears that the said passenger had conspired to smuggle the said gold into India. The offence committed has been admitted by the passenger in his statement recorded on 25.02.2024 under Section 108 of the Customs Act, 1962. The pax, therefore, committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962 and therefore, liable to be arrested under Section 104 of the Customs Act, 1962.

4. LEGAL PROVISIONS RELEVANT TO THE CASE:

a) As per para 2.26 of Foreign Trade Policy 2015-20 Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.

- b)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.
- c)** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- d)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.
- e)** As per Section 11(3) of the Customs Act, 1962 Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- f)** As per Section 2(3) — "baggage" includes unaccompanied baggage but does not include motor vehicles
- g)** As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
 - a. vessels, aircrafts and vehicles;
 - b. stores;
 - c. baggage;
 - d. currency and negotiable instruments; and
 - e. any other kind of movable property;
- h)** As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- i)** As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- j)** As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

- k)** As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.
- l)** Any goods which are imported or attempted to be imported or 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 shall be liable to confiscation under section 111(d) of the Customs Act, 1962.
- m)** Any dutiable or prohibited goods required to be mentioned under the regulation in an arrival manifest, import manifest or import report which are no so mentioned are liable to confiscation under Section 111(f) of the Customs Act 1962.
- n)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111(i) of the Customs Act, 1962.
- o)** 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 are liable to confiscation under Section 111(j) of the Customs Act, 1962.
- p)** 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 are liable to confiscation under Section 111(l) of the Customs Act, 1962.
- q)** 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 are liable to confiscation under Section 111(m) of the Customs Act, 1962.
- r)** As per Section 112 of the Customs Act, 1962 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.
- s)** As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

t) As per Section 123 of the Customs Act, 1962 (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

- (a) in a case where such seizure is made from the possession of any person –
- (i) on the person from whose possession the goods were seized;

and

- (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

u) As per Customs Baggage Declaration Regulations, 2013 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.

CONTRAVIEN T AND VIOLATION OF LAWS

5. It therefore appears that:

- a) Shri Prakash Jiwatram Tewani had actively involved herself in the instant case of smuggling of gold into India. Shri Prakash Jiwatram Tewani had improperly imported the said gold, (as mentioned in Table-I above), totally weighing **240.160** grams made of 24kt/ 999.00 purity gold, having **tariff value of Rs.12,43,877/-** (Rupees Twelve Lakhs Fourty-Three Thousand Eight Hundred Seventy-Seven only) and **market value of Rs.14,91,155/-** (Rupees Fourteen Lakhs Ninety-One Thousand One Hundred Fifty-Five only) by concealing in the form of gold paste & gold articles, concealed in the Baggage, without declaring it to the Customs. He opted for Green Channel to exit the Airport with a deliberate intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules, and Regulations. Therefore, the improperly imported gold paste & gold articles, by the passenger, by way of concealment without declaring it to the Customs on arrival in India cannot be treated as

bonafide household goods or personal effects. Shri Prakash Jiwatram Tewani 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 has violated the provisions of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- c) The improperly imported gold by the passenger, Shri Prakash Jiwatram Tewani, found concealed without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- d) Shri Prakash Jiwatram Tewani, by his above-described acts of omission/ commission and/ or abetment 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 said improperly imported gold, totally weighing 240.160 grams having tariff value of Rs.12,43,877/- and market value of Rs.14,91,155/- by way of concealment in the form of gold paste & gold articles, concealed in the Baggage, without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Prakash Jiwatram Tewani.

6. The passenger, Shri Prakash Jiwatram Tewani vide his letter dated 03.05.2024, forwarded through her Advocate Shri Rishikesh J Mehra, Advocate submitted that she is cooperating in investigation and claiming the ownership of the gold recovered from him. He understood the charges levelled against him. He requested to adjudicate the case without issuance of Show Cause Notice.

7. PERSONAL HEARING:

Personal Hearing in this case was fixed on 12.06.2024. Shri Rishikesh J Mehra, Advocate appeared for personal hearing. Shri Rishikesh Mehra submitted written submissions dated 03.05.2024 and reiterated the same. He submitted that his client has purchased the gold from her personal savings and borrowed money from her friends. He reiterated that his client brought Gold for her personal and family use. This is the first time she brought gold, i.e. gold in paste form having purity of 24 Kt. and one gold mangal sutra & four gold bangles having purity of 22 Kt. Due to ignorance of law the gold was not declared by the passenger. He further submitted that his client is ready to pay applicable Customs Duty, fine and penalty and requested for release of seized gold. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

DISCUSSION & FINDINGS:

8. I have carefully gone through the facts of the case. I find that the passenger had requested for waiver of Show Cause Notice. The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

9. In the instant case, I find that the main issues that are to be decided is whether the one gold bar (derived from gold paste) of 999.0/ 24 purity & other gold articles, of 916.00/ 22 Kt. purity, totally weighing 240.160 grams, as mentioned in Table-I ('the said gold' for short), and having total tariff value of Rs.12,43,877/- (Rupees Twelve Lakhs Fourty-Three Thousand Eight Hundred Seventy-Seven only) and market value of Rs.14,91,155/- (Rupees Fourteen Lakhs Ninety-One Thousand One Hundred Fifty-Five only) carried by the passenger, which was seized vide Seizure Order dated 25.02.2024 under the Panchnama proceedings dated 25.02.2024 on the reasonable belief that the said goods were smuggled into India, 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 penalty under the provisions of Section 112 of the Act or not.

10. I find that the passenger Shri Prakash Jiwatram Tewani, was asked by the Customs officers whether he was having anything dutiable to declare to the Customs, to which he had replied that he has nothing to declare. On the basis of input received from DRI, AZU that said passenger might be carrying high value dutiable/ contraband goods concealed in his clothes, he was taken to the AIU Room, where was thoroughly checked and during the search/ check, it was noticed that gold in the form of semisolid substance consisting of gold and chemical mix concealed in lower pants. On testing and valuation, the government approved valuer confirmed that the said recovered gold is of purity 999.0/24Kt. & 916.00/ 22 Kt., totally weighting 240.160 Grams ('the said gold' for short) having Tariff value of Rs.12,43,877/- and Market value of Rs.14,91,155/-. The said gold was seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 25.02.2024.

Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty which is also admitted by him in his statement dated 25.02.2024. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in the present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

11. In this regard, I find that the Customs Baggage Rules, 2016 nowhere mentions about carrying gold in commercial quantity. It simply mentions about the restrictions on gold carried by the international passengers. Further, the Hon'ble Apex Court in Om Prakash Bhatia case reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such

conditions are not fulfilled. In the instant case, the passenger had concealed/ hidden the gold and did not declare the same even after asking by the Customs officers until the same was detected. Hence, I find that in view of the above-mentioned case citing, the passenger by his act of concealing the gold with an intention of clearing the same illicitly from Customs area by not declaring the same to Customs has held the impugned gold liable for confiscation under Section 111 of the Customs Act, 1962.

12. I find that the said gold was placed under seizure vide Seizure Order dated 25.02.2024 under Panchnama proceedings dated 25.02.2024. The seizure was made under Section 110 of the Customs Act, 1962 on a reasonable belief that the said goods were attempted to be smuggled into India and liable for confiscation. In the statement recorded on 25.02.2024, the passenger had admitted that he did not want to declare the seized gold carried by him to the Customs on his arrival in the SVPI Airport so that he could clear it illicitly and evade the payment of Customs duty payable thereon. It is also on record that the Government Approved Valuer has tested and certified that the said gold was made of 24Kt/999.0 purity, totally weighing 240.160 Grams, having tariff value of Rs.12,43,877/- and market value of Rs.14,91,155/-. The recovered gold was accordingly seized vide Seizure Order dated 25.02.2024 under Panchnama proceedings dated 25.02.2024 in the presence of the passenger and the Panchas.

13. I also find that the passenger 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 her statement, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wants to save Customs duty, he had concealed the same with an intention to clear the gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development &

Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy, 2015-2020.

14. Further, the passenger has accepted that he had not declared the said gold concealed/ hidden 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 gold 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 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, 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.

15. From the facts discussed above, it is evident that the passenger had carried the said gold weighing 240.160 grams, while arriving from Dubai 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 & 22 Kt./ 916.0 purity totally weighing 240.160 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 passenger 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.

16. It is seen that the Noticee had not filled 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. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 240.160 grams concealed by the passenger 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.

17. It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold weighing 240.160 grams, recovered, and seized from the passenger vide Seizure Memo/ Order dated 25.02.2024 under Panchnama proceedings dated 25.02.2024, 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/ hidden, it is observed that the passenger 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 Airport.

18. It is seen that he has involved himself in carrying, keeping, concealing, hiding 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 passenger 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.

19. I find that based on the intelligence of DRI, Shri Prakash Jiwatram Tewani, he was intercepted at green channel when he was trying to exit through green channel. At the time of scanning of his baggage, it was found that the passenger has concealed/ hidden the said gold, totally weighing 240.160 grams concealed in cloth (lower

pant). Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty which is also admitted by him in his statement dated 25.02.2024. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

20. I find that the passenger confessed of carrying the said gold of 240.160 grams, concealed/ hidden are made up of 24 Kt. & 22 Kt. gold having purity 999.0 & 916.00 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 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.

21. It is quite clear from the above discussions that the impugned gold was concealed/ hidden and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign destination with the wilful intention to smuggle the impugned goods. The said gold totally weighing 240.160 grams, having Tariff Value of Rs.12,43,877/- and Market Value of

Rs.14,91,155/- recovered and seized from the passenger vide Seizure Memo/ Order dated 25.02.2024 under the Pachamama proceedings dated 25.02.2024. Despite having knowledge that the said gold/ goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said gold, totally weighing 240.160 grams by deliberately not declaring the same by him on arrival at the 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.

22. 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 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, totally weighing 240.160 grams, made up of 24 Kt. & 22 Kt. gold having purity 999.0 & 916.0, in the form of gold paste & gold articles, was recovered from his possession and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. 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.

23. In view of the above discussions, in respect of the gold bar weighing 142.410 grams, I hold that the said gold bar weighing 142.410 grams having purity of 999.0/ 24 Kt. derived from gold paste, having Tariff Value of Rs.7,63,490/- and Market Value of Rs.9,15,269/- out of the total gold weighing 240.160 grams, carried and undeclared by the passenger with an intention to clear the same illicitly from the

Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the passenger has carried the said gold by concealing/ hidden to evade payment of Customs duty, to earn easy money. In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the said gold bar weighing 142.410 grams on payment of redemption fine, as envisaged under Section 125 of the Act.

24. Further, before the Hon'ble 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."

25. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble 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 Hon'ble 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.

26. 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*).

27. The Hon'ble High Court of Madras in the matter of Commissioner of Customs reported in (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.

28. I further find that the recovery of gold from the possession of the passenger which was hidden and not declared to the Customs with an intention to illicitly clear it from the Airport to evade the payment of

Customs duty is an act of smuggling and the same is conclusively proved. By his above act of commission, it is proved beyond doubt that the passenger has violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find that the gold imported by the passenger was purchased by him, however the same has not been declared before the Customs to evade payment of tax. Therefore, the gold imported by the passenger, viz. one Gold Chain, weighing 57.690 grams, having purity of 22 Kt./ 916.00, having tariff value of Rs.2,83,514/- & market value of Rs.3,39,876/- & one Gold Kada, having purity of 22 Kt./ 916.00, weighing 40.060 grams, having tariff value of Rs.1,96,873/- & market value of Rs.2,36,010/-, and deliberately not declared before the Customs on his arrival in India cannot be treated as a bonafide household goods and thus the passenger has contravened the Para 2.26 of the Foreign Trade Policy 2015-20 and thereby 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 read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

29. 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;

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).

30. Given the facts of the present case before me and the judgements and rulings cited above, one gold chain weighing 57.690 grams & one gold kada weighing 40.060, made of 22 kt/916.0 purity gold, recovered from the said passenger, that was kept undeclared and placed under seizure would be liable to confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act. I find that the passenger is not a carrier and the said gold was brought by him for his personal use which is not in a commercial quantity, and not carried on behalf of some other person with a profit motive.

31. I further find that the passenger had involved himself and abetted the act of carrying the said gold, i.e. one Gold Chain, weighing 57.690 grams, having purity of 22 Kt./ 916.00, having tariff value of Rs.2,83,514/- & market value of Rs.3,39,876/- & one Gold Kada, having purity of 22 Kt./ 916.00, weighing 40.060 grams, having tariff value of Rs.1,96,873/- & market value of Rs.2,36,010/-. He has agreed and admitted in the statement recorded that he travelled with the said gold from Dubai to Ahmedabad. Despite his knowledge and belief that the gold carried and undeclared by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to clear the said gold without making any declaration. The passenger in his statement dated 24.03.2024 stated that he did not declare the impugned gold as he wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has actively involved himself in carrying, removing, keeping 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 provisions of Sections 112 of the Act and I hold accordingly.

32. I also refer, CBIC Circular No: 495/5/92-Cus. VI dated 10.05.1993 which talks about the concealment of gold in order to smuggle it into India. So, I find that ingenious concealment is one of

the important aspects of deciding on redemption/ non-redemption of the goods. Accordingly, I proceed to decide the issue.

33. In view of the above discussions, I hold that the said gold, i.e. one Gold Chain, weighing 57.690 grams, having purity of 22 Kt./ 916.00, having tariff value of Rs.2,83,514/- & market value of Rs.3,39,876/- & one Gold Kada, having purity of 22 Kt./ 916.00, weighing 40.060 grams, having tariff value of Rs.1,96,873/- & market value of Rs.2,36,010/-, recovered from the Noticee/ passenger is liable for confiscation. However, the impugned gold carried by the passenger was for personal use, not in a commercial quantity, and not brought for another person for profit motive. As such, I use my discretion to give an option to redeem the impugned seized gold on payment of redemption fine, as provided under Section 125 of the Act.

34. I find that this issue of re-demption of gold has travelled through various appellate fora. I find that in the following cases, Hon'ble Supreme Courts, High Courts, the appellate fora allowed redemption of seized goods;

- i. *Sapna Sanjeev Kohli vs. Commissioner - 2010(253) E.L.T.A52(S.C.).*
- ii *Union of India vs. Dhanak M Ramji - 2010(252) E. L. T. A102(S.C.)*
- iii *Shaikh Jamal Basha Vs. G.O.I. - 1997(91) E. L. T. 277(A. P.)*
- iv *Commissioner of Cust. & C. Ex. Nagpir-I Vs. Mohd. Ashraf Armar - 2019(369) E. L. T. 1654 (Tri. Mumbai)*
- v *Shri R. P. Sharma, Additional Secretary in RE Ashok Kumar Verma - 2019(369) E. L. T. 1677 (G. O. I.)*
- vi *Suresh Bhosle Vs. Commissioner of Customs (Rev.) Kolkatta - 2009(246) E. L. T. 77 (Cal.)*
- vii *T. Elavarasan Versus Commissioner of Customs (Airport), Chennai reported at 2011 (266) E.L.T. 167 (Mad.)*

35. I find that when there are judgements favouring redemption, there are contra judgement which provide for absolute confiscation of seized gold attempted to be smuggled into India as follows;

- i. *Abdul Razak Vs., U. O. I. - 2012(275)E. L. T. 300 (Ker.) maintained by Hon'ble Supreme Court - 2017(350) E. L. T. A173(SC)*

36. I further find that ingenious concealment is one of the important aspects for deciding on the redemption/ non-redemption of the goods. Further, while deciding the case, the CBIC Circular/ Instruction F. No: 275/17/2015-CX. 8A dated 11.03.2015 is also looked into, which emphasized that Judicial discipline should be followed while deciding pending show cause notices/ appeals.

37. I find that, the option to redemption has been granted and absolute confiscation is set-a-side vide order No. 12/2021-CUS(WZ)/ASAR dated 18.01.2021 by the Revision authority, GOI issued under F. No: 371/44/B/2015-RA/785 dated 29.01.2021. Similar view was taken by Revision Authority vide Order No. 287/2022-CUS(WZ)/ASAR/Mumbai dated 10.10.2022; Order No. 245/2021-CUS(WZ)/ASAR dated 29.09.2021 issued under F. No: 371/44/B/15-RA/2020 dated 06.10.2021 and Order No: 314/2022-Cus (WZ)/ASAR/Mumbai dated 31.10.2022 issued from F. No: 371/273/B/WZ/2018 dated 03.11.2022. Further, the above mentioned 3 orders of RA has been accepted by the department.

38. I also find that in Order No. 345/2022-CUS(WZ)/ASRA/ MUMBAI dated 25.11.2022, in the case of Mrs. Manju Tahelani Vs. Principal Commissioner of Customs, Ahmedabad, passed by the Revision Authority, Government of India, Mumbai in which it was held in para 13 that –

"In the instant case, the quantum of gold under import is small and is not of commercial quantity. The impugned gold jewellery had been worn by the applicant on her person and Government observes that sometimes passengers resort to such methods to keep their valuables/ precious possessions safe. There are no allegations that the applicant is habitual offender and was involved in similar offence earlier. The fact of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling of commercial consideration."

39. I also find that in Order No. 245/2021-CUS(WZ)/ASAR/MUMBAI dated 29.09.2021 in case of Shri Memon Anjum, the Revisionary Authority set aside the order of absolute confiscation. The Revisionary Authority in Para 14 observed as under:

"Government notes that there is no past history of such offence/violation by the applicant. The part of impugned gold

jewellery was concealed but this at times is resorted to by travellers with a view to keep the precious goods secure and safe. The quantity/type of gold being in form of gold chain and 3 rings is jewellery and is not commercial in nature. Under the circumstance, the Government opines that the order of absolute confiscation in the impugned case is in excess and unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allowed redemption on suitable redemption fine and penalty."

40. I further find that the Hon'ble High Court of Delhi in a recent judgement dated 21.08.2023 in the case of Nidhi Kapoor and others, in para 156 of its order observed that –

"The Court holds that an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudicating Officer. For reasons aforesaid, the Court finds no illegality in the individual orders passed by the Adjudicating Officer and which were impugned in these writ petitions."

41. I find that hiding the seized goods cannot be considered as an ingenious concealment even though the charge of non-declaration of the seized gold is established. Further, the ownership of the seized gold by the passenger cannot be denied, as he claims ownership of seized gold. Further, he brought the said gold for the first time and hence it is not a case of habitual offender. Looking to the facts that this is not a case of ingenious concealment, I am of the considered opinion that under Section 125 of the Customs Act, 1962, the option for redemption can be granted.

42. Given the facts of the present case before me and the judgements and rulings cited above, the said one gold bar, weighing 142.410 derived from gold paste, made up of 24 Kt. having purity 999.0, carried by the passenger is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that said one gold bar derived from gold paste, totally weighing 142.410 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.

43. Further, as per the facts of the present case before me and the judgements and rulings cited above, the said gold, i.e. one gold bar, weighing 142.410 derived from gold paste, made up of 24 Kt. having purity 999.0, carried by the passenger is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that said one gold bar derived from gold paste, totally weighing 142.410 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.

44. Given the facts of the present case before me and the judgements and rulings cited above, the said gold articles, i.e. one Gold Chain, weighing 57.690 grams, having purity of 22 Kt./ 916.00, having tariff value of Rs.2,83,514/- & market value of Rs.3,39,876/- & one Gold Kada, having purity of 22 Kt./ 916.00, weighing 40.060 grams, having tariff value of Rs.1,96,873/- & market value of Rs.2,36,010/-, carried by the passenger is, therefore, liable to be confiscated. I, therefore, hold in unequivocal terms that the said gold articles, placed under seizure would be liable to confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

45. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold paste & gold articles carried by him. He has agreed and admitted in his statement that he travelled with said gold, totally weighing 240.160 grams from Dubai 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 Passenger attempted to smuggle the said gold of 240.160 grams by concealing/ hiding in the form of gold paste & gold articles. Thus, it is clear that the passenger 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 Section 112(a)(i) of the Act and I hold accordingly.

46. Accordingly, I pass the following Order:

O R D E R

- (i) I order confiscation of the gold, in the form of gold articles, of 916.0/ 22 Kt. purity gold i.e. one Gold Chain, weighing 57.690 grams, having purity of 22 Kt./ 916.00, having tariff value of Rs.2,83,514/- & market value of Rs.3,39,876/- & one Gold Kada, having purity of 22 Kt./ 916.00, weighing 40.060 grams, having tariff value of Rs.1,96,873/- & market value of Rs.2,36,010/-, hidden/concealed in cloth, recovered and seized from the passenger **Shri Prakash Jiwatram Tewani** vide Seizure Order dated 25.02.2024 under Panchnama proceedings dated 25.02.2024 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- (ii) I give an option to redeem the said gold articles, as discussed in para (i) above, on payment of redemption fine of **Rs.1,50,000/-** (Rupees One Lakh Fifty-Thousand only) under Section 125(1) of the Customs Act, 1962. In addition to redemption fine, the passenger would be liable for payment of applicable duties and other levies/ charges in terms of Section 125(2) of the Customs Act, 1962;
- (iii) I order absolute confiscation of one gold bar, derived from gold paste, of 999.0/ 24Kt. purity gold (as mentioned in Table-I), having weight of **142.410 Grams** hidden/concealed in cloth and having total tariff value of **Rs.7,63,490/-** (Rupees Seven Lakhs Seventy-One Thousand Fourty-Nine only) and market value of **Rs.9,15,269/-** (Rupees Nine Lakhs Twenty-Four Thousand Three Hundred Thirty-One only) recovered and seized from the passenger **Shri Prakash Jiwatram Tewani** vide Seizure Order dated 25.02.2024 under Panchnama proceedings dated 25.02.2024 under the

provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

(iv) I impose a penalty of **Rs.1,00,000/-** (Rupees One Lakh Only) on Shri Prakash Jiwatram Tewani under the provisions of Section 112(a)(i) of the Customs Act, 1962.

32. This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

Vishal
13/6/24

(Vishal Malani)

Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-64/SVPIA-D/O&A/HQ/2024-25 Date: 13.06.2024
DIN: 20240671MN0000222AE8

BY SPEED POST A.D.

To,

Shri Prakash Jiwatram Tewani,
Seema Apartment, Flat No. 15, 2nd Floor,
Khemani Road, Ulhasnagar,
Thane, Maharashtra, Pin – 421 002.

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
- (v) Guard File.