प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन ,"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-192/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-192/SVPIA-D/O&A/HQ/2023-24 dated: 29.01.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**39/ADC/VM/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**27.05.2024**
E	जारीकरनेकीतारीख/ Date of Issue	:	**27.05.2024**
F	द्वारापारित/ Passed By	:	**Vishal Malani**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	To, **Shri Sultan Sathik Batcha**, O No: 105, N No: 48, Portuguese Church Street, Seven Wells, Chennai-600001, Tamil Nadu, India.

(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), ४वि मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**
(3)	**अपील के साथ केवल पांच (५.00) 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 (५.00) 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 ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**

Brief facts of the case: -

Shri Sultan Sathik Batcha (hereinafter referred to as the said "passenger/ Noticee"), residential address as per passport is O No:105, N No: 48, Portuguese Church Street, Seven Wells, Chennai-600001, Tamil Nadu, India, holding Indian Passport No. P2318944, arrived by Etihad Flight having number EY 284 on 04.10.2023 having seat no. 30A from Abu Dhabi to Ahmedabad on 04.10.2023 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific input of DRI, Trichy Regional Unit, the passenger was intercepted by the officers of Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 04.10.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying a blue colored trolley bag as his Checked-in baggage.

2. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of the Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes. Thereafter the passenger, removed the metallic substances from his body such as mobile, purse etc., and kept it in a tray placed on the table there and after that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound was heard indicating that nothing objectionable/ dutiable was on his body/

clothes. Further, the AIU officers asked the passenger to keep his baggage into X-Ray Baggage Scanning Machine installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. The passenger kept his baggage into X-Ray Baggage Scanning Machine for scanning of his baggage. On scanning of his baggage, no suspicious image appeared on the screen of the X-Ray machine.

Thereafter, the officers, in presence of the Panchas, asked the passenger whether he has concealed any substance in his body, to which he replies in negative. After thorough interrogation by the officers, Shri Sultan Sathik Batcha accepted that he is hiding two capsules covered with black plastic tape inside his rectum and the capsules contain gold paste with chemical mix in semi solid form. The officers, then lead the passenger to the washroom located near belt No. 5 of Arrival Hall, Terminal 2, SVPI Airport, Ahmedabad and the passenger comes out of the washroom with two capsules wrapped in black colored plastic adhesive tape.

2.1 The officers informed the Panchas that the capsules recovered from Shri Sultan Sathik Batcha contains semi solid substance apparently comprising of gold and chemical mix, which is required to be confirmed. Also, its purity and weight are to be ascertained. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the Panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad-380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said 02 capsules of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 633.970 grams (weight inclusive of black colored adhesive tape). The photograph of the same is as under :

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said semi solid substances concealed in the said capsules into solid gold. After completion of the procedure, Government Approved Valuer informed that 1 Gold bar weighing **596.360** grams having purity 999.0/24 Kt. is derived from the above mentioned 633.970 grams of 02 capsules containing gold paste and chemical mix.

The photograph of the extracted gold bar is as under:

After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 648/2023-24 dated 04.10.2023 certified that the gold

bar is having purity 999.0/24kt, Market Value at **Rs.35,15,542/-** (Rupees Thirty-Five Lakhs Fifteen Thousand Five Hundred and Forty-Two only) and tariff value at **Rs.30,22,481/-** (Rupees Thirty Lakhs Twenty-Two Thousand Four Hundred and Eighty-One only). The value of the gold bar has been calculated as per the Notification No. 71/2023-Customs (N.T.) dated 29.09.2023 (gold) and Notification No. 68/2023-Customs (N.T.) dated 04.10.2023 (exchange rate).

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent Panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 648/2023-24 dated 04.10.2023 given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates. The following documents produced by the passenger – Shri Sultan Sathik Batcha were withdrawn under the Panchnama dated 04.10.2023.

i) Boarding pass of Etihad Flight having number EY 284 on 04.10.2023 having seat no. 30A from Abu Dhabi to Ahmedabad dated 04.10.2023.
ii) Copy of Passport No. P2318944 issued at Chennai on 08.08.2016 valid up to 31.07.2026.

3. Accordingly, gold bar having purity 999.0/24 Kt. weighing 596.360 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Shri Sultan Sathik Batcha was seized vide Panchnama dated 04.10.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made there under. A statement of Shri Sultan Sathik Batcha was recorded on 04.10.2023, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that -

(i) He is engaged in the uncle's readymade garment shop since last 4 years;
(ii) He has travelled on 26.09.2023 from Trichi to Sharjah for purchasing clothes from there to India. Further, after reaching there He has stayed in a hotel room where He has received the Gold Capsule for taking that to Ahmedabad. He has purchased

a return ticket from Abu Dhabi to Ahmedabad dated 03.10.2023 of Emirates airlines having number EY 284 by which He has travelled to Ahmedabad by concealing that Gold capsule in my rectum. He doesn't know the name of person who have delivered the Gold capsule, He has to deliver that capsule to one person who contact me at Ahmedabad;

(iii) He has to deliver these capsules which are containing Gold paste to some person at Ahmedabad who would contact him later on in Ahmedabad, and my friend will give Rs. 10,000/- for this whole episode after completion;

(iv) he had been present during the entire course of the Panchnama dated 04.10.2023 and he confirmed the events narrated in the said panchnama drawn on 04.10.2023 at Terminal-2, SVPI Airport, Ahmedabad;

(v) he is aware that smuggling of gold without payment of Custom duty is an offence; he is well aware of the gold concealed in 02 capsules containing gold and chemical mix in semi-solid form in his rectum but he did not make any declarations in this regard with an intention to smuggle the same without payment of Custom duty.

4. The above said gold bar weighing 596.360 grams recovered from Shri Sultan Sathik Batcha, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the Gold bar weighing 596.360 grams is attempted to be smuggled by Shri Sultan Sathik Batcha, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 596.360 grams derived from the above said semi solid gold paste with chemical mix weighing 633.970 grams along with its packing material used to conceal the semi solid gold paste in 02 capsules, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 04.10.2023.

5. 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) Section11A – Definitions *-In this Chapter, unless the context otherwise requires,*

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

III) "Section 77 – Declaration by owner of baggage.— *The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."*

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

V) "Section 111 – Confiscation of improperly imported goods, etc.–*The following goods brought from a place outside India shall be liable to confiscation: -*

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
(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;"

VI) "Section 112 – Penalty for improper importation of goods, etc.– *Any person,-*

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

VII) Section 119 in the Customs Act, 1962 :
119. Confiscation of goods used for concealing smuggled goods. —Any goods used for concealing smuggled goods shall also be liable to confiscation.

B. <u>THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;</u>

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. <u>THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:</u>

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.*

<u>Contravention and violation of law:</u>

6. It therefore appears that:

(a) The passenger Shri Sultan Sathik Batcha had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing **596.360** grams having purity 999.0/24kt, Market Value at **Rs.35,15,542/-** (Rupees Thirty-Five Lakhs Fifteen Thousand Five Hundred and Forty-Two only) and tariff value at **Rs.30,22,481/-** (Rupees Thirty Lakhs Twenty-Two Thousand Four Hundred and Eighty-One only). The said semi solid gold paste was concealed in 02 capsules covered with black adhesive plastic tape containing gold and chemical mix in semi-solid paste form and not declared to the Customs. The passenger opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 596.360 grams of purity 999.0/24 Kt. by Shri Sultan Sathik Batcha 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 Shri Sultan Sathik Batcha, found concealed in 02 capsules containing gold and chemical mix in semi-solid paste form without

declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

(d) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

(e) Shri Sultan Sathik Batcha by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

(f) As per Section 123 of the Customs Act 1962, the burden of proving that the gold bar weighing 596.360 grams having purity 999.0/24kt, Market Value at Rs.35,15,542/- (Rupees Thirty-Five Lakhs Fifteen Thousand Five Hundred and Forty-Two only) and tariff value at Rs.30,22,481/- (Rupees Thirty Lakhs Twenty-Two Thousand Four Hundred and Eighty-One only), derived from semi solid gold paste concealed in 02 capsules containing gold and chemical mix in semi-solid paste form in rectum, without declaring it to the Customs, is not smuggled goods, is upon the passenger Shri Sultan Sathik Batcha.

7. Now, therefore, **Shri Sultan Sathik Batcha**, residing at O No: 105, N No: 48, Portuguese Church Street, Seven Wells, Chennai-600001, Tamil Nadu, India, holding Indian Passport No. P2318944, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Customs House, Opp. Old High Court, Navrangpura, Ahmedabad-380009, as to why:

(i) One Gold Bar weighing **596.360** grams having purity 999.0/24kt, Market Value at **Rs.35,15,542/-** (Rupees Thirty-Five Lakhs Fifteen Thousand Five Hundred and Forty-Two only)

and tariff value at **Rs.30,22,481/-** (Rupees Thirty Lakhs Twenty-Two Thousand Four Hundred and Eighty-One only), derived from semi solid gold paste concealed in 02 capsules containing gold and chemical mix in semi-solid paste form in rectum by the passenger and placed under seizure under Panchnama proceedings dated 04.10.2023 and Seizure Memo Order dated 04.10.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

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

Defence Reply and Personal Hearing:

8. Shri Sultan Sathik Batcha has not submitted written reply to the Show Cause Notice.

8.1. Shri Sultan Sathik Batcha was given opportunity to appear for personal hearing on 02.05.2024; 05.05.2024 and 10.05.2024 but he did not appear for personal hearing on the given dates.

Discussion and Findings:

9. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

10. In the instant case, I find that the main issue to be decided is whether the 596.360 grams of gold bar, obtained from the paste of gold and chemical mixture weighing 633.970 grams, having Tariff

Value of Rs.30,22,481 (Rupees Thirty Lakhs Twenty-Two Thousand Four Hundred Eighty-One Only) and Market Value of Rs.35,15,542/- (Rupees Thirty-Five Lakhs Fifteen Thousand Five Hundred Fourty-Two Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 04.10.2023, 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.

11. I find that the Panchnama has clearly drawn out the fact that on the basis of specific input of DRI, Trichy Regional Unit, the passenger was intercepted by the officers of Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes and on passing through DFMD machine, no beep sound was heard indicating that nothing objectionable/ dutiable was on his body/ clothes. Further, on scanning of his baggage, no suspicious image noticed on the screen of the X-Ray machine.

12. After thorough interrogation by the officers, Shri Sultan Sathik Batcha accepted that he is hiding two capsules covered with black plastic tape inside his rectum and the capsules contain gold paste with chemical mix in semi solid form. The officers, then lead the passenger to the washroom and the passenger came out of the washroom with two capsules wrapped in black colored plastic adhesive tape.

I also find that the said 596.360 grams of gold bar obtained from the 633.970 Grams of gold paste having Tariff Value of Rs.30,22,481 and Market Value of Rs.35,15,542/- carried by the passenger Shri Sultan Sathik Batcha 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 04.10.2023 under Section 108 of the Customs Act, 1962.

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 his 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 in his body 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 paste concealed in his body 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 gold paste 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 paste 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, 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 Shri Sultan Sathik Batcha had carried gold paste weighing 633.970 grams, (wherefrom 596.360 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste) while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 596.360 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 paste in his body 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 filed the baggage declaration form and had not declared the said gold paste 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 paste weighing 633.970 grams concealed in his body i.e. rectum (extracted gold bar of 596.360 grams) by the passenger without declaring 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.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the gold bar weighing 596.360 grams (derived from the gold paste, totally weighing 633.970 grams), having Tariff Value of Rs.30,22,481/- and Market Value of Rs.35,15,542/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 04.10.2023 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 paste concealed in his body, 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 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.

17. I find that the Noticee confessed of carrying the said gold paste of 633.970 grams concealed in his body (extracted gold bar of 596.360 grams having purity 999.0) 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.

18. 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

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 bar weighing 596.360 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 633.970 grams, having Tariff Value of Rs.30,22,481/- and Market Value of Rs.35,15,542/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 04.10.2023. Despite having knowledge that the 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 Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 633.970 grams (Gold bar weighing 596.360 grams derived from the same) 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 provisions of Section 112 of the Customs Act, 1962.

19. 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. Gold bar weighing 596.360 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 633.970 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, passenger concealed the said gold paste in his body. 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.

20. In view of the above discussions, I hold that the said gold bar weighing 596.360 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 633.970 grams), carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the Noticee in his statement dated 04.10.2023 stated that he has carried the gold by concealment in his body (rectum) 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 in the body. 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.

21. 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."*

22. 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.

23. 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).*

24. 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.*

25. 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 7-10-2019 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 10-5-1993 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".

26. Given the facts of the present case before me and the judgements and rulings cited above, gold bar weighing 596.360 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 633.970 grams carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that gold bar weighing 596.360 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.

27. I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 596.360 grams, carried by him. He has agreed and admitted in his statement that he travelled with gold paste consisting of Gold & Chemical Mix, totally weighing 633.970 grams from Abu Dhabi to Ahmedabad. Despite his knowledge and belief that the gold paste 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 paste of 633.970 grams by concealing in his body (extracted gold bar of 596.360 grams having purity 999.0). 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 Sections 112(a)(i) of the Act and I hold accordingly.

28. Accordingly, I pass the following Order:

ORDER

i) I order absolute confiscation of the gold bar weighing

596.360 grams, of 24Kt/999.0 purity having Tariff Value of **Rs.30,22,481** (Rupees Thirty Lakhs Twenty-Two Thousand Four Hundred Eighty-One Only) and Market Value of **Rs.35,15,542/-** (Rupees Thirty-Five Lakhs Fifteen Thousand Five Hundred Fourty-Two Only) derived from 02 capsules of Semi Solid substance Material consisting of Gold & Chemical Mix, recovered and seized from the passenger **Shri Sultan Sathik Batcha** vide Seizure Order under Panchnama proceedings both dated 04.10.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs.11,00,000/-** (Rupees Eleven Lakhs Only) on Shri Sultan Sathik Batcha under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-192/SVPIA-D/O&A/HQ/2023-24 dated 29.01.2024 stands disposed of.

27/5/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-192/SVPIA-D/O&A/HQ/2023-24 Date: 27.05.2024
DIN: 20240571MN000041994D

BY SPEED POST AD

To,
Shri Sultan Sathik Batcha,
O No: 105, N No: 48,
Portuguese Church Street,
Seven Wells, Chennai-600001,
Tamil Nadu, India.

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.