



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/10-221/SVPIA-C/O&A/HQ/2023-24
B	कारणबता ओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-221/SVPIA-C/O&A/HQ/2023-24 dated: 27.03.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	88/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	01.07.2024
E	जारी करने की तारीख/ Date of Issue	:	01.07.2024
F	द्वारा पारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Beer Mohamed Naina Mohamed, 1/10, Agrahara Theru, Thondi Thiruvadanai (TK), Ramanathapuram - 623409, Tamil Nadu.
(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 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) 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 साथ केवल पांच (5.00) 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 Beer Mohamed Naina Mohamed, (D.O.B: 04.02.1987) (hereinafter referred to as the said "passenger/ Noticee/ pax"), residential address as per passport is 1/10, Agrahara Theru, Thondi Thiruvadanai (TK), Ramanathapuram - 623409, Tamil Nadu, India, holding Indian Passport No. Z7268163, arrived by Air Arabia Flight from Sharjah to Ahmedabad on 22.11.2023 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while the passenger was attempting to exit through green channel without making any declaration to Customs. Thereafter, proceedings were undertaken under Panchnama dated 22.11.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying a one black coloured trolley bag.

2. The officers asked the passenger whether if he has anything to declare to the Customs, in reply to which he denied. The officers informed the passenger that he would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger politely denied the same. 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 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. Thereafter, the AIU officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passes through the DFMD Machine, a beep sound was heard indicating that something metallic that is objectionable/ dutiable is on his body/ clothes. The AIU officer asked him whether he had anything objectionable/dutiable item on his body

or not. The passenger denied having anything. Then the passenger was requested to pass through DFMD again, when he passed through DFMD machine, lights at the middle of the DFMD machine blinks and beep sound was heard indicating some metal object was hidden in the waist area. The AIU officer asked him whether he had anything objectionable/dutiable item hidden in his body/clothes. The passenger gives a belt to the officers with a buckle coated black rhodium and told that the said buckle is of pure gold. Thereafter, the AIU officer put the said belt in a tray and scanned in the X-Ray Bag Scanning Machine (BSM) installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad to which a dark yellow image appears. Then, the AIU officers asked the said pax to pass through DFMD again and when he passes through DFMD machine, no beep sound was heard.

2.1 Thereafter, the AIU officer called the Government Approved Valuer and informed him that he is required to come to the office of the AIU, SVPI Airport, Ahmedabad for valuation of belt buckle coated with black rhodium recovered from the said passenger. In reply, the Government Approved Valuer informed the officer that the testing of the material is possible at his workshop only as gold has to be extracted from belt buckle by melting it and also informs the address of his workshop. Thereafter, the panchas, along with the passenger and the AIU officers leave the Airport premises in a government vehicle and reach at the premises of the Government Approved Valuer located at 301, Golden Signature, B/H, Ratnam Complex, C.G. Road, Ahmedabad-380006. On reaching the above said premises, the officer introduced the panchas, as well as the passenger to one person namely Mr. Soni Kartikey Vasantrai, Government Approved Valuer. After weighing the said belt buckle on his weighing scale, Mr. Kartikey Vasantrai Soni informed that the belt buckle coated with black rhodium has gross weight of 250.50 grams.

2.2 Thereafter, the Government approved valuer leads us to the furnace, which was located inside his business premises. Mr. Kartikey Vasantrai Soni starts the process of converting the said belt buckle into solid gold. The said belt buckle was put into the furnace and upon heating the paste, the said substance turned into liquid material. The

said substance in liquid state was taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became a yellow coloured solid metal in the form of a bar. After completion of the procedure, Government Approved Valuer informed that 1 Gold bar weighing 250.28 grams having purity 999.0/24 Kt. is derived from the 250.50 grams of belt buckle. After testing the said bar, the Government Approved Valuer confirmed that it is pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 902/2023-24 dated 22.11.2023 certifies that the extracted gold bar is having purity 999.0/24kt, tariff value of Rs. 13,34,478/- (Rupees Thirteen Lakhs Thirty Four Thousand Four Hundred Seventy Eight only) and Market value of Rs. 15,90,029/- (Rupees Fifteen Lakhs Ninety Thousand and Twenty Nine only). The value of the gold bar has been calculated as per the Notification No. 82/2023-Customs (N.T.) dated 15.11.2023 (gold) and Notification No. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate). The details of items recovered from the passenger are as under:

S. No.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1.	1 Gold Bar	250.280	999.0 24 Kt.	15,90,029/-	13,34,478/-

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: 902/2023-24 dated 22.11.2023 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.

3. The following documents produced by the passenger – Shri Beer Mohamed Naina Mohamed were withdrawn under the Panchnama dated 22.11.2023:-

- i) Copy of Stamped pages of Passport No. Z7268163 issued at Tiruchirappallion 04.10.2023 valid up to 03.10.2033.
- ii) Boarding pass dated 22.11.2023 showing seat no. 22F of Air Arabia Flight No. G9-418 from Sharjah to Ahmedabad.

4. Accordingly, gold bar having purity 999.0/24 Kt. weighing 250.28 grams, derived from black rhodium coated belt buckle recovered from Shri Beer Mohamed Naina Mohamed was seized vide Panchnama dated 22.11.2023, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made thereunder.

5. A statement of Shri Beer Mohamed Naina Mohamed was recorded on 22.11.2023, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:-

- (i) he is engaged in business of text service in Tamilnadu and lives with his wife, one son & one daughter at 1/10, AgraHaraTheru, Thondi Thiruvadanai (TK), Ramanathapuram-623409, Tamil Nadu.
- (ii) he went to Sharjah on 21.11.2023 and returned back on 22.11.2023 by Air Arabia Flight from Sharjah to Ahmedabad; that he used his savings for purchase of gold; that he had never indulged in any smuggling activity in the past and this was first time he had carried gold;
- (iii) In Sharjah, he purchased the said gold because the gold in Sharjah is cheaper than India so to make some money by selling in India. He purchased the gold in the form of belt buckle coated with black rhodium under panchanama dated 22.11.2023 weighted 250.28 gms (gross weight 250.50 gms);
- (iv) he had been present during the entire course of the Panchnama dated 22.11.2023 and he confirmed the events narrated in the said panchnama drawn on 22.11.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) he was aware that smuggling of gold without payment of Customs duty is an offence; he was aware of the gold concealed in the belt buckle coated with black rhodium but he did not make any declarations in this regard with an intention

to smuggle the same without payment of Customs duty. He confirmed the recovery of Gold totally weighing 250.28 grams having purity 999.0/24 KT valued at Rs. 13,34,478/- (Tariff value) and Market value of Rs. 15,90,029/- from him under the Panchnama dated 22.11.2023; he had opted for green channel to attempt to smuggle the gold hidden in belt buckle coated with black rhodium without paying Customs duty.

6. The above said gold bar weighing 250.28 Grams, tariff value of Rs. 13,34,478/- (Rupees Thirteen Lakhs Thirty Four Thousand Four Hundred Seventy Eight only) and market value of Rs. 15,90,029/- (Rupees Fifteen Lakhs Ninety Thousand and Twenty Nine only), recovered from Shri Beer Mohamed Naina Mohamed , was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in belt buckle coated with black rhodium, which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar weighing 250.28 grams which was attempted to be smuggled by Shri Beer Mohamed Naina Mohamed, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 250.28 grams derived from belt buckle coated with black rhodium 250.50 grams, was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 22.11.2023.

7. In view of the above, Shri Beer Mohamed Naina Mohamed, residing at 1/10, Agrahara Theru, Thondi Thiruvadanai (TK), Ramanathapuram-623409, Tamil Nadu, India, holding Indian Passport No. Z7268163, was 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 250.280 Grams, purity 999.0/ 24kt, tariff value of Rs.13,34,478/- (Rupees Thirteen Lakhs Thirty Four Thousand Four Hundred Seventy Eight Only) and market value of Rs.15,90,029/- (Rupees Fifteen Lakhs Ninety

Thousand and Twenty Nine Only), concealed in the form of belt buckle coated with black rhodium by the passenger and placed under seizure under Panchnama proceedings dated 22.11.2023 and Seizure Memo Order dated 22.11.2023, 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 Beer Mohamed Naina Mohamed has not submitted written reply to the Show Cause Notice.

9. Shri Beer Mohamed Naina Mohamed was given opportunity to appear for personal hearing on 19.06.2024; 21.06.2024 and 24.06.2024 but he did not appear for personal hearing on the given dates.

Discussion and Findings:

10. 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.

11. In the instant case, I find that the main issue to be decided is whether the 250.280 grams of 01 gold bar, obtained from the belt buckle coated with black rhodium, having Tariff Value of Rs.13,34,478/- (Rupees Thirteen Lakhs Thirty-Four Thousand Four

Hundred Seventy-Eight Only) and Market Value of Rs.15,90,029/- (Rupees Fifteen Lakhs Ninety Thousand Twenty-Nine Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 22.11.2023, 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.

12. I find that the Panchnama has clearly drawn out the fact that on the basis of suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, 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 has anything to declare to the Customs, in reply to which he denied. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine, and while he passes through the DFMD Machine, a beep sound was heard indicating that something metallic that is objectionable/ dutiable is on his body/ clothes. The AIU officer asked him whether he had anything objectionable/ dutiable item on his body ?. The passenger denied having anything. Then the passenger was requested to pass through DFMD again, when he passed through DFMD machine, lights at the middle of the DFMD machine blinks and beep sound was heard indicating some metal object was hidden in the waist area. The AIU officer asked him whether he had anything objectionable/ dutiable item hidden in his body/ clothes. The passenger gave a belt to the officers with a buckle coated black rhodium and told that the said buckle is of pure gold. Thereafter, the AIU officer put the said belt in a tray and scanned in the X-Ray Bag Scanning Machine (BSM) to which a dark yellow image appeared.

13. It is on record that the Government Approved Valuer, after weighing the said belt buckle on his weighing scale, informed that the belt buckle coated with black rhodium has gross weight of 250.50 grams. After completion of the procedure, Government Approved Valuer informed that 1 Gold bar weighing 250.280 grams having purity 999.0/24 Kt. is derived from the 250.500 grams of belt buckle. After

testing the said bar, the Government Approved Valuer confirmed that it is pure gold, having purity 999.0/24kt, and tariff value of Rs.13,34,478/- (Rupees Thirteen Lakhs Thirty Four Thousand Four Hundred Seventy Eight only) and Market value of Rs.15,90,029/- (Rupees Fifteen Lakhs Ninety Thousand and Twenty Nine only). The details of items recovered from the passenger are as under:

S. No.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1.	1 Gold Bar	250.280	999.0 24 Kt.	15,90,029/-	13,34,478/-

Therefore, the above said gold bar weighing 250.280 Grams, having tariff value of Rs.13,34,478/- (Rupees Thirteen Lakhs Thirty Four Thousand Four Hundred Seventy Eight only) and market value of Rs.15,90,029/- (Rupees Fifteen Lakhs Ninety Thousand and Twenty Nine only), recovered from Shri Beer Mohamed Naina Mohamed , was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in belt buckle coated with black rhodium, which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the said gold bar weighing 250.280 grams which was attempted to be smuggled by Shri Beer Mohamed Naina Mohamed, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 250.280 grams derived from belt buckle coated with black rhodium 250.500 grams, was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 22.11.2023.

I also find that the said 250.280 grams of 1 gold bar obtained from the 293.750 Grams of gold in the form of belt buckle, having Tariff Value of Rs.13,34,478/- and Market Value of Rs.15,90,029/- carried by the passenger Shri Beer Mohamed Naina Mohamed 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 22.11.2023 under Section 108 of the Customs Act, 1962.

14. 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 wanted 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.

15. Further, the passenger has accepted that he had not declared the said gold concealed by him in the form of Belt Buckle, 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 1 gold bar, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, 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.

16. From the facts discussed above, it is evident that Shri Beer Mohamed Naina Mohamed had carried the said gold weighing 293.750 grams, (wherfrom 250.280 grams of 1 gold bar having purity 999.0

recovered on the process of extracting gold from Belt Buckle) while arriving from Sharjah 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 250.280 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.

17. It is seen that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 250.280 grams concealed by him, 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 said gold bar weighing 250.280 grams, having Tariff Value of Rs.13,34,478/- and Market Value of Rs.15,90,029/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 22.11.2023 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 concealed by him, 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.

18. I find that the Noticee confessed of carrying the said gold of 293.750 grams (gross weight) concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As 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.

19. 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 with the wilful intention to smuggle the impugned goods. The said gold bar weighing 250.280 grams, having Tariff Value of Rs.13,34,478/- and Market Value of Rs.15,90,029/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 22.11.2023. 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 said gold bar weighing 250.280 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

20. 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 bar weighing 250.280 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold bar in the form of belt buckle. 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.

21. In view of the above discussions, I hold that the said gold bar weighing 250.280 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 22.11.2023 stated that he has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment. 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.

22. 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."

23. 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.

24. 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).

25. 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.

26. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government Of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

27. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 250.280 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 250.280 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.

28. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold bar weighing 250.280 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Sharjah to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 250.280 grams by concealing 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.

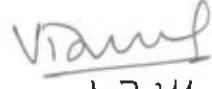
29. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of One Gold Bar weighing **250.280** Grams, purity 999.0/ 24kt, having tariff value of **Rs.13,34,478/-** (Rupees Thirteen Lakhs Thirty Four Thousand Four Hundred Seventy Eight Only) and market value of **Rs.15,90,029/-** (Rupees Fifteen Lakhs Ninety Thousand and Twenty Nine Only), concealed in the form of belt buckle coated with black rhodium by the passenger and placed under seizure under Panchnama proceedings dated 22.11.2023 and Seizure Memo Order dated 22.11.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs.5,00,000/-** (Rupees Five Lakhs Only) on Shri Beer Mohamed Naina Mohamed under the provisions of Section 112(a)(i) of the Customs Act, 1962.

30. Accordingly, the Show Cause Notice No. VIII/10-221/SVPIA-C/O&A/HQ/2023-24 dated 27.03.2024 stands disposed of.


1.7.24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-221/SVPIA-C/O&A/HQ/2023-24 Date: 01.07.2024
DIN: 20240771MN000000DDC0

BY SPEED POST AD

To,
Shri Beer Mohamed Naina Mohamed,
1/10, Agraahara Theru, Thondi Thiruvadanai (TK),
Ramanathapuram-623409, Tamil Nadu.

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.