

 <p>अपर आयुक्त, सीमा शुल्क कार्यालय OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE, SURAT 4th Floor, CUSTOMS HOUSE, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 Tel. No.- 0261-2990051</p>	 <p>आज्ञादी का अमृत महोत्सव</p>
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F.No.VIII/26-42/AIU/CUS/2023-24

Dated : 30.05.2024

DIN : 20240571MN000000F3F3

SHOW CAUSE NOTICE

(Issued under Section 124 of the Customs Act, 1962)

Shri Yusuf Ali Rehmani (hereinafter referred to as the "Passenger/Noticee"), aged 61 years, S/o Shri Ali Jusub rehmani, residing at 85, Haroon Manzil, 1st Floor, Room No. 13/14, Shaida Marg, Dongri, Charnull, Mumbai-400009, Maharashtra, India, having passport No. Z7463102 arrived at Surat International Airport on 28.01.2024 from Sharjah in Air India Express Flight No. IX172.

2. On the basis of passenger profiling, Shri Yusuf Ali Rehmani, an international passenger who was suspected to be carrying some high value dutiable/prohibited goods was intercepted by the officers of the Air Intelligence Unit (AIU) and Customs officers of Surat International Airport (hereinafter referred to as the "officers"), in the presence of panchas under Panchnama proceedings dated 28/29.01.2024. The passenger was found to carrying three baggages viz, one black colour trolley bag and two black colour hand bags. The officers asked the passenger whether he had anything to declare in reply to which the Passenger 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 it was politely denied by the passenger. Thereafter, the officers asked the passenger whether he wanted to be searched in the presence of the Magistrate or the Superintendent (Gazetted Officer) of Customs, in reply to which the passenger gave his consent to be searched before the Superintendent of Customs. The Customs officers then asked the passenger to remove all the metallic objects from his body and scanned his body with the hand-held metal detector. During scanning, a beep sound was heard near the chest area of the passenger. The passenger was asked to remove his vest, and the vest was scanned with the hand-held metal detector, whereby a beep sound was heard again. The said vest was then passed through the XBIS scanner machine located in the arrival hall of Surat International Airport. During scanning, a dark image, indicating the presence of some metallic object in his vest, was seen in the scanner machine.

3. Thereafter, the Customs officers scanned the baggages of the passenger viz, one black colour trolley bag and two black colour hand bags through the XBIS Scanner machine, however, nothing objectionable was observed in the baggages during scanning.

4. Thereafter the officers took the passenger to the Sunshine Global Hospital, Surat for CT scan/X-Ray after taking his consent to ascertain whether he had concealed any contraband item in his body. In the X-Ray of Shri Yusuf Ali Rehmani, no contraband item was seen in his body.

5. Thereafter, the Customs officers alongwith the panchas and the passenger proceeded to Shri Ambica Touch Refinery for burning of the garment of the passenger for extraction of metal concealed therein. Thereafter, the garment was burnt in the furnace and the ashes were collected and again melted in furnace upon which gold in bar form was obtained and also some ashes remained in the process. The gold bar and the remaining ashes so obtained were packed in a plastic pouch, put in a green envelop and sealed in such a manner that it cannot be tampered.

6. The Govt. Approved Valuer was unreachable at that time and hence in the presence of the passenger and the panchas, the Customs officers cut open the sealed green envelope and weighed the gold bar in the weighing machine available in the Customs office located at the arrival hall of Surat International Airport. The gold bar was found to be weighing 395.30 gms and it was approximately valued at Rs. 22,00,801/- by the Customs officers. On being asked, the passenger informed that the said gold is of 24 carats. The above mentioned gold recovered from the said passenger appeared to have been smuggled inside India in clear violation of the provisions of Customs Act, 1962. Therefore, the officers placed the said gold bar weighing 395.30 gms under seizure under the provisions of Section 110 of the Customs Act 1962 vide Seizure order dated 29.01.2024 under Panchnama proceedings dated 28/29.01.2024, on a reasonable belief that the same attempted to be smuggled by Shri Yusuf Ali Rehmani is liable for confiscation as per the provisions of the Customs Act, 1962.

7. The following documents were withdrawn from the Passenger for further investigation:-

- (i) Boarding Pass, from Sharjah to Surat, of Air India Express Flight No. IX-172 dated 28.01.2024, Seat No. 10D, PNR No. K6RTXD.
- (ii) Copy of Passport No. Z7463102 issued at Mumbai on 18.09.2023 and valid upto 17.09.2033.

8. A statement of Shri Yusuf Ali Rehmani was recorded on 29.01.2024 under the provision of Section 108 of the Customs Act, 1962, wherein he interalia stated:--

- that he is residing at 85, Haroon Manzil, 1st Floor, Room No. 13/14, Shaida Marg, Dongri, Charnull, Mumbai, Pin-400009 with his wife, sister and three children; that he is a trader and engaged in the sale of clothes and shoes; that he has studied upto 8th Std.; that he can read, write and understand English and Hindi Languages.

- that he was shown and explained the panchnama dated 28/29.01.2024 drawn at International Airport, Surat by the officers of Customs AIU, International Airport, Surat which is in English and after understanding the same he put his dated signature on the panchnama in token of acceptance of the facts stated therein.
- that earlier he has made ten visits to Dubai for business purpose; that for the current trip, he had gone to Dubai on 27.01.2024 from International Airport, Mumbai; that the impugned gold recovered from his possession does not belong to him and he is not the owner of said gold; that one Mr. Parvezbhai had handed over the vest containing gold to him at Dubai; that he had met Mr. Parvezbhai at Dubai in connection with business purpose; that Mr. Parvezbhai met him outside Sharjah Airport on 28.01.2024 and handed over the vest to him and asked him to hand over the vest containing gold to a person, who would call him at Surat on his mobile number the following day; that he had met Mr. Parvezbhai a few times at Dubai, however his full name, details or mobile number are not known to him; that the details of person who was supposed to collect the gold from him are not known to him; that he had carried the gold as Mr. Parvezbhai had promised him that the person who would collect gold at Surat will give him Rs. 20,000/- upon handing over the gold to him; that he is not aware of the cost of gold and payment details.
- that he was aware that import of gold without payment of Customs duty is an offence, but he tried to smuggle the same for some monetary benefit; that as he intended to smuggle the gold by concealing the same, he did not declare the same upon his arrival before any Customs officer; that after clearing the immigration procedures, he collected his baggage and during checkout, he was intercepted by the Customs officials and further procedures as stated in Panchnama dated 28/29.01.2024 was carried out.
- that he was aware that he had committed an offence by smuggling gold for which he would have to face the consequences as prescribed under the Customs Law.

9. Shri Vikasraj Juneja, the Government Approved Valuer was requested vide letter F.No. VIII/26-42/AIU/CUS/2023-24 dated 29.01.2024 to visit the Surat International Airport on 30.01.2024 for testing and valuation of the gold so recovered and seized from the passenger on 29.01.2024. Shri Vikasraj Juneja, the Govt. approved valuer, arrived at the Surat International Airport on 30.01.2024 and after examination of the said item under panchnama proceedings dated 30.01.2024, certified the same to be a gold nugget of 99% purity weighing 395.300 gms having market value of Rs. 25,65,497/- (Rupees Twenty Five Lakh Sixty Five Thousand Four Hundred Ninety Seven only) and tariff value of Rs. 21,33,434/- (Rupees Twenty One Lakh Thirty Three Thousand Four Hundred Thirty Four only) as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus(NT) dated 18.01.2024. Thereafter, the Government Approved Valuer issued valuation certificate No. 30.01.2024/1.

10. 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) of the Customs Act, 1962 – “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, but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”

- 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.”
- j) As per Section 77 of the Customs Act 1962-“the owner of any 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 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.
- n) 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.
- o) 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, harbouring, 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.”
- p) As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- q) As per Section 123 of Customs Act 1962 (Burden of proof in certain cases)
(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.

- r) 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."
- s) As per DGFT Notification No. 36/2015-2020 dated 18.12.2019, Import policy of gold in any form, other than monetary gold and silver in any form, is amended from 'Free' to 'Restricted'; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

CONTRAVICTION AND VIOLATION OF LAWS

11. It therefore appears that:

- (a) Shri Yusuf Ali Rehmani had actively involved himself in the instant case of smuggling of gold into India. Shri Yusuf Ali Rehmani had improperly imported Gold weighing 395.300 gms (net weight), having market value of Rs.25,65,497/- and tariff value of Rs.21,33,434/-, as per Notification No. 02/2024-Cus (NT) dated 15.01.2024 and Notification No. 04/2024-Cus(NT) dated 18.01.2024, without declaring it to the Customs, by way of concealment in paste form in the vest (garment) worn by him. He concealed the said gold with a deliberate and malafide intention to smuggle the said gold into India and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. The gold improperly imported by him with commercial considerations without declaration before the proper officer of Customs cannot be treated as bona fide household goods or personnel effects. Shri Yusuf Ali Rehmani has thus contravened the Foreign Trade Policy 2015-20, 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 and DGFT Notification No. 36/2015-2020 dated 18.12.2019.
- (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 gold improperly imported by the passenger Shri Yusuf Ali Rehmani by concealing the same in paste form in his vest without declaring it to the Customs is thus liable for confiscation under Section 111(d), (i) and (j) 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 Yusuf Ali Rehmani, by his above-described acts of omission and

commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

(e) As per Section 123 of the Customs Act 1962, the burden of proving that the said improperly imported gold, weighing 395.300 gms (net weight), having market value of Rs. 25,65,497/- and tariff value of Rs.21,33,434/- without declaring it to the Customs, are not smuggled goods, is upon the passenger/Noticee, Shri Yusuf Ali Rehmani.

12. Now therefore, Shri Yusuf Ali Rehmani is hereby called upon to show cause in writing to the Joint/Additional Commissioner of Customs, I/c of Surat International Airport, Surat, having his office situated on 4th Floor, CUSTOMS HOUSE, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 within 30 days from the receipt of this notice as to why:-

- (i) The recovered 01 gold nugget of purity 99% weighing 395.300 gms having market value of Rs. 25,65,497/- (Rupees Twenty Five Lakh Sixty Five Thousand Four Hundred Ninety Seven only) and tariff value of Rs. 21,33,434/- (Rupees Twenty One Lakh Thirty Three Thousand Four Hundred Thirty Four only), seized vide Seizure Order dated 29.01.2024 under panchnama proceeding dated 28/29.01.2024 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;
- (ii) A penalty should not be imposed upon him under Section 112 of the Customs Act, 1962.

13. The noticee is further required to state in his written reply whether he wishes to be heard in person before the case is adjudicated. If no specific mention is made about this in the written submissions, it shall be presumed that he does not wish to be heard in person. He should produce, at the time of showing cause, all the evidences upon which he intends to rely in support of his defence.

14. The noticee is further required to note that his reply should reach within 30 (thirty) days from the receipt of this SCN or within such extended period as may be allowed by the adjudicating authority. If no cause is shown against the action proposed above within 30 days from the receipt of this SCN or if he does not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.

15. The relied upon documents for the purpose of this notice are listed in **Annexure-A**, and copies thereof are enclosed with this notice.

16. This Show Cause Notice is issued without prejudice to any other action that may be taken against him, under this Act or any other law for the time being in force, or against any other company, the person(s), goods and conveyances whether named in this notice or not.

17. The Department reserves its right to amend, modify or supplement this notice at any time before the adjudication of the case.



(Anunay Bhati)
Additional Commissioner

BY SPEED POST-A.D.

F.No.VIII/26-42/AIU/CUS/2023-24

Date: 30.05.2024

DIN: 20240571MN000000F3F3

To

Shri Yusuf Ali Rehmani
S/o Shri Ali Jusub rehmani,
85, Haroon Manzil, 1st Floor, Room No. 13/14,
Shaida Marg, Dongri, Charnull,
Mumbai-400009, Maharashtra

Copy to:-

- 1. The System in-charge, Customs (HQ), Ahmedabad, for uploading on the official website <http://www.ahmedabadcustoms.gov.in>
- 2. Guard File