



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/10-235/SVPIA-B/O&A/HQ/2023-24
B	कारणबताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-235/SVPIA-B/O&A/HQ/2023-24 dated: 15.03.2024
C	मूल आदेश संख्या/ Order-In-Original No.	: 85/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	: 28.06.2024
E	जारी करने की तारीख/ Date of Issue	: 28.06.2024
F	द्वारा पारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	: Shri Mohammad Rizwan, Mohalla Najjupura, PO: and Teh Tanda, Rampur, Uttar Pradesh, India-244925.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें 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), 4 वि मंजिल, हुडको 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 0.9% अधिकतम 10 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, 1962 के धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case: -

Shri Mohammad Rizwan, (hereinafter referred to as "the said passenger/ Noticee"), residing at Mohalla Najjupura, PO and Teh. Tanda, Rampur, Uttar Pradesh India-244925 holding an Indian Passport Number No. Y6367743, arrived from Dubai to Ahmedabad by (Seat No: 9A) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of intelligence, one passenger who arrived by Spice jet Flight No. SG-16 (Seat No. 12A) at SVPI Airport, Ahmedabad on 02.11.2023 and on suspicious movement of the passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 02/03.11.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2. The AIU Officers informed the Panchas that on the basis of intelligence, Shri Mohammed Rizwan who arrived by Spicejet Flight No. SG-16 came from Dubai to Ahmedabad at terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad and on being asked about his identity, the passenger identified himself and shown his Boarding Pass bearing Seat No.12A as shown against his name.

2.1 The AIU Officers asked the passenger in the presence of the panchas, if he had anything to declare to Customs, in reply to which he denied.

2.2 The AIU officers, in presence of the panchas, offer his personal search to the passenger but he denied and said that he had full trust on the AIU officers. Then, the AIU officers asked the passenger whether he wanted to be checked in front of Executive Magistrate or Superintendent of Customs, a Gazetted Officer, in reply to which the said passenger gave his consent for his baggage may be searched in front of the Superintendent of Customs.

2.3 The AIU officers again asked the above said passenger whether he had anything dutiable to declare to the customs authorities, to which the said passenger denied again. The AIU officers asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/clothes. The passenger readily removed all the metallic objects such as mobile, watch etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound was heard indicating there was nothing objectionable/metallic substance on his body/clothes. Thereafter, the said passenger, we Panchas and the officers of AIU moved to the AIU Office located opposite Belt No.3 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad. Then the AIU officers asked the said passenger again if he was having anything dutiable which is required to be declared to the Customs to which the said passenger denied. Then in presence of the Panchas, AIU Officers interrogated the said passenger and on sustained interrogation and repeated questioning, the passenger Mr. Mohammad Rizwan confessed that he was carrying Two capsules containing gold paste concealed in his rectum. He was then taken to the washroom opposite belt no. 6 of arrival hall, Terminal 2 by the AIU Officers, where Mr. Mohammad Rizwan removed two capsules covered with black coloured adhesive tape. Then the weight of the two capsules removed by Mr. Mohammad Rizwan, was measured which come to approximately 318.710 Grams.

2.4 Thereafter, the AIU officers in presence of the panchas called the Government Approved Valuer and informed him that two capsules covered with black coloured adhesive tape were recovered from the passenger and hence, requested him to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the AIU Officers that the testing of the said material was only possible at his workshop as the capsules covered with black coloured adhesive tape have to be converted into gold bar by melting it and also informed the address of his workshop.

2.5 Thereafter, the AIU Officers, the panchas along with the passenger left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer located

at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad-380006. On reached the above referred premises, the AIU officer introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantraai Soni, Government Approved Valuer. Here, after weighment of the recovered two capsules covered with black coloured adhesive tape Shri Kartikey Vasantraai Soni informed the total weighment found 318.710 grams.

2.6 Thereafter, Shri Kartikey Vasantraai Soni led the Officers, Panchas and the passenger to the furnace, which is nearby in his premises. Then, Shri Kartikey Vasantraai Soni started the process of converting the into gold bar. The above said items were put into the furnace together and after some time the substance in liquid state taken out of furnace, and poured into a mould and after cooling for some time, it became golden coloured solid metal in form of one gold bar. After completion of the procedure, Government Approved Valuer took the weight of the said golden coloured bar which is derived from the 318.710 Grams of capsules containing gold paste and chemical mix, in presence of the panchas, the passengers and the AIU Officers which came to **290.150** Grams. After completion of the procedure, Government Approved Valuer took the weight of the said golden coloured 1 bar, in presence of Officers, panchas, and the passenger, as under:

Sr. No.	Passenger Name	Gross weight	Net Weight
1	Shri Mohammad Rizwan	318.710 Grams	290.150 Grams

2.7 Thereafter, the Government Approved Valuer, in presence of AIU Officers, panchas, and the passenger tested and valuation of the said bar. After test and valuation, the Govt. Approved Valuer confirmed and summarized that the gold bar is of 24 Kt. gold having purity 999.0. made up of 24 Kt. gold having purity 999.0 weighing **290.150** Grams having market value of **Rs.18,27,945/-** (Rupees Eighteen Lakhs twenty-seven thousand nine hundred forty-five only) and tariff value of **Rs.15,69,957/-** (Rupees fifteen lakhs sixty-nine thousand nine hundred fifty-seven only). The value of the gold bar has been calculated as per the Notification No. 79/2023-Customs (N.T.) dated

31.10.2023 (gold) and Notification No. 81/2023-Customs (N.T.) dated 02.11.2023 (exchange rate). He submitted his valuation Certificate No. 832/2023-24 dated 03.11.2023 to the AIU Officers which is in Annexure-A attached with the show cause notice. The panchas and the said passenger put their dated signature on the said valuation report.

2.8. The details of the Valuation of the said gold bars is tabulated in below table:

Sl. No.	Details of Items	PCS	Gross Weight in Grams	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold bar derived from 318.710 Grams of capsules containing gold paste and chemical mix recovered from Mr. Mohammad Rizwan							
1.	Gold Bar	1	318.710	290.150	999.0 24Kt.	18,27,945	15,69,957

2.9 The proceedings of the conversion of gold items into gold bar at the workshop completed, the Officers, Panchas and the passenger came back to the Airport along with the extracted gold bar on 03.11.2023. Thereafter, on being asked by the AIU officers, in the presence of the panchas, the passenger produced the identity proof documents which have verified and confirmed by the AIU Officers. The panchas and the passenger put their dated signatures on the copies of the documents as token of having seen and agreed to the same by way of passenger's manifest,

2.10 The AIU Officers informed the panchas as well as the passenger that the gold bar of 24 Kt. gold having purity 999.0 weight, Market Value & Tariff value as mentioned in the above-mentioned Table, derived from two capsules recovered from the above said passenger attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the AIU officers informed that they have reasonable belief that the above said Gold is being attempted to be smuggled by Shri Mohammad Rizwan, is liable for confiscation as per the provisions of Customs Act, 1962; hence, the said one gold bar with a net weight of 290.150 derived from 318.710 Grams of capsules containing gold paste and chemical mix concealed in his possession have been placed

under seizure, vide Seizure Memo issued from F. No. VIII/10-174/AIU/B/2023-24 dated 02.11.2023, under Section 110(1) & (3) of Customs Act, 1962.

2.11 The AIU Officers, then, in presence of the panchas and the passenger namely Shri Mohammad Rizwan, placed the 24 Kt. gold having purity 999.0 with a weightment of 290.150 grams recovered from Shri Mohammad Rizwan, derived from 318.710 Grams of capsules containing gold paste and chemical mix concealed in his possession and after placing the packing list on the same, ties it with white thread and seals it with the Customs lac seal in such a manner that same cannot be opened without tempering the Customs lac seal. The AIU Officers, panchas and the passenger put dated signature on the packing list placed over the box as a token of having packed and sealed. The said one sealed packing material (i.e. Black coloured adhesive tape) were handed over to the Ware House In-charge, SVPI Airport, Ahmedabad vide Ware House Entry No. 5275 dated 03.11.2023.

3. A statement of Shri Mohammad Rizwan, was recorded under Section 108 of the Customs Act, 1962 on 03.11.2023, wherein he inter-alia stated that -

- (i) His name, age and address stated above is true and correct. He resides at above address since his birth years. He is doing the business of selling dress materials.
- (ii) He lives with wife at native place and his monthly income is Rs.20,000/- per month. His wife is housewives.
- (iii) He completed 9th standard and he can speak and understand Hindi and English language.
- (iv) He used to travel to Dubai once in 05-10 days for the purpose of tour and travelling. He departed to Dubai on 31.10.2023 alone and returned back today i.e. on 02.11.2023 by Spicejet Flight No. SG-16.
- (v) No. nobody else is making overseas travelling.
- (vi) On arrival at SVPI Airport at Ahmedabad at about 11:30 PM. he walked towards the exit gates through the Green Channel after crossing the Customs counter at the red Channel. He confirmed the events narrated in the panchnama drawn on 02/03.11.2023 at Terminal -2, SVPI Airport, Ahmedabad. During the course of said panchnama, two capsules containing Semi Solid paste weighing 318.70 Grams which had been concealed in his rectum were recovered, from which Gold bar weighing 290.15 Grams having purity of 999.0/24KT, valued at

Rs.18,27,945/- (Market Value) and Rs.15,69,957/- (Tariff Value) was derived/recovered from the said passenger. Thereafter, the AIU Officers on the reasonable belief that the said retrieved 290.150 Grams of Gold of purity 24 Karat was attempted to be smuggled by keeping it in a concealed manner in rectum, under provisions of the Customs Act, 1962 and hence, the same was placed under seizure on 03.11.2023.

- (vii) He purchased the said Gold in paste form a gold shop in Dubai. He further stated that the Gold in paste form belongs to him.
- (viii) The money for purchase of Gold in paste form was not paid by him. A person who lived in Dubai whom, he doesn't know who has arranged the money and paid the amount to the gold shop online. He does not know the said payment was made from his account or from other's account.
- (ix) He does not know the amount of money i.e. for purchase of the said Gold. He also does not have any purchase bill/invoice pertaining to the said purchase.
- (x) He does not remember the name of the Gold Shop and he will recall the name of the shop.
- (xi) He purchased the said Gold for hand over to somebody else for earning money. He doesn't know about the person to whom it is to be handed over.
- (xii) The to and fro flight tickets were booked by his brother who lives in Dubai through a travel agent and the payment was also made by him.
- (xiii) The decision to smuggle gold was taken by him. He is well aware of the provisions of Customs Act and he know the smuggling of Gold is punishable offence.
- (xiv) No. This is the first time, he engaged in the activities of smuggling of Gold.
- (xv) He is not holding any bank account.
- (xvi) He perused the said panchnama dated 02/03.11.2023 drawn at Terminal-2 of SVPI Airport, Ahmedabad and he stated that he was present during the entire course of the said panchnama and he agree with the contents of the said panchnama.
- (xvii) He has nothing further to state at the moment.

4. The above said gold bar with a net weightment of 290.150 grams having purity of 999.0/24 Kt. involving market value of Rs.18,27,945/- (Rupees Eighteen Lakh twenty seven thousand nine hundred forty five only) and Rs.15,69,957/- (Rupees fifteen lakhs sixty nine thousand nine hundred fifty seven only) recovered from the said passenger who carried two capsules covered with black coloured adhesive tape in his rectum, which were attempted to be smuggled into India with an intent to evade payment of Customs duty which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar totally net weighing 290.150 Grams which were

attempted to be smuggled by Shri Mohammad Rizwan, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 290.150 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 02.11.2023, issued from F. No. VIII/10-174/AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

5. In view of the above, Shri Mohammed Rizwan, residing at Mohalla Najjupura, PO: and Teh. Tanda, Rampur, Uttar Pradesh India-244925, holding an Indian Passport Number No. Y6367743, was called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:

- (i) One Gold Bar weighing **290.150** Grams having purity 999.0/24 Kt. and having market value of **Rs.18,27,945/-** (Rupees Eighteen Lakh twenty seven thousand nine hundred forty five only) and **Rs.15,69,957/-** (Rupees fifteen lakhs sixty nine thousand nine hundred fifty seven only), which was concealed in two capsules covered with black coloured adhesive tape in his rectum, was placed under seizure under panchnama proceedings dated 02/03.11.2023 and Seizure Memo Order dated 03.11.2023, 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) The packing materials (i.e. Black coloured adhesive tape) under seizure used for packing and concealment of the above-mentioned gold bar which were attempted to be smuggled into India in violation of Section 77, Section 132 and Section 135, of the Customs Act, 1962, should not be confiscated under Section 119 of the Customs Act, 1962; and

- (iii) 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:

6. Shri Mohammed Rizwan has not submitted written reply to the Show Cause Notice.

6.1. Shri Mohammed Rizwan 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:

7. 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.

8. In the instant case, I find that the main issue to be decided is whether the 290.150 grams of gold bar, obtained from 02 capsules containing paste of gold and chemical mixture weighing 318.710 grams, having Tariff Value of Rs.15,69,957/- (Rupees Fifteen Lakhs Sixty-Nine Thousand Nine Hundred Fifty-Seven Only) and Market Value of Rs.18,27,945/- (Rupees Eighteen Lakhs Twenty-Seven Thousand Nine Hundred Forty-Five Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 02-03.11.2023, 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; whether the packing material used packing and concealment of the seized gold is liable for confiscation under Section 119 of the Act; and whether the passenger is liable for penal action under the

provisions of Section 112 of the Act.

9. I find that the Panchnama has clearly drawn out the fact that on the basis of intelligence, one passenger who arrived by Spice jet Flight No. SG-16 (Seat No. 12A) from Dubai to Ahmedabad at SVPI Airport, Ahmedabad on 02.11.2023 and on suspicious movement of the passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 02/03.11.2023. The AIU Officers asked the passenger, if he had anything to declare to Customs, in reply to which he denied. The AIU officers again asked the above said passenger whether he had anything dutiable to declare to the customs authorities, to which the said passenger denied again. The AIU officers asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine and when he passed through the DFMD, no beep sound was heard indicating there was nothing objectionable/ metallic substance on his body/clothes. The AIU officers again asked the said passenger if he was having anything dutiable which is required to be declared to the Customs to which the said passenger again denied. The AIU Officers interrogated the said passenger and on sustained interrogation and repeated questioning, the passenger Mr. Mohammad Rizwan confessed that he was carrying Two capsules containing gold paste concealed in his rectum. He was then taken to the washroom, where Shri Mohammad Rizwan removed two capsules covered with black coloured adhesive tape. Then the weight of the two capsules removed by Mr. Mohammad Rizwan, was measured which come to approximately 318.710 Grams.

10. It is on record that Shri Kartikey Vasantraai Soni, the Government Approved Valuer started the process of converting the gold paste into gold bar. After completion of the procedure, Government Approved Valuer took the weight of the said gold bar which is derived from the 318.710 Grams of capsules containing gold paste and chemical mix, which came to **290.150** Grams. After test and valuation, the Govt. Approved Valuer confirmed and summarized that the gold bar is of 24

Kt. gold having purity 999.0 having weighing **290.150** Grams having market value of **Rs.18,27,945/-** (Rupees Eighteen Lakhs twenty-seven thousand nine hundred forty-five only) and tariff value of **Rs.15,69,957/-** (Rupees fifteen lakhs sixty-nine thousand nine hundred fifty-seven only). The details of the Valuation of the said gold bar are tabulated in below table:

Sl. No.	Details of Items	PCS	Gross Weight in Grams	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold bar derived from 318.710 Grams of capsules containing gold paste and chemical mix recovered from Mr. Mohammad Rizwan							
1.	Gold Bar	1	318.710	290.150	999.0 24Kt.	18,27,945	15,69,957

I also find that the said 290.150 grams of gold bar obtained from the 318.710 grams of gold paste having Tariff Value of Rs.15,69,957/- and Market Value of Rs.18,27,945/- carried by the passenger Shri Mohammed Rizwan 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 02.11.2023 under Section 108 of the Customs Act, 1962.

11. 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.

12. Further, the passenger has accepted that he had not declared the said gold paste concealed in his body (rectum) on his arrival to the Customs authorities. It is clear case of non-declaration with an intent

to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said gold 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.

13. From the facts discussed above, it is evident that Shri Mohammed Rizwan had carried gold paste weighing 318.710 grams, (wherefrom 290.150 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste) while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/ 999.00 purity totally weighing 290.150 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.

14. 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 318.710 grams concealed in his body i.e. rectum (extracted gold bar of 290.150 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.

15. It, is therefore, proved by the above acts of contravention, that the passenger has rendered the said gold bar weighing 290.150 grams (derived from the gold paste, totally weighing 318.710 grams), having Tariff Value of Rs.15,69,957/-/- and Market Value of Rs.18,27,945/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 02-03.11.2023 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 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 said gold and failed to declare the same on his arrival at the 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.

16. I find that the Noticee confessed of carrying the said gold paste of 318.710 grams concealed in his body (extracted gold bar of 290.150 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.

17. 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 the foreign destination with the wilful intention to smuggle the impugned goods. The said gold bar weighing 290.150 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 318.710 grams, having Tariff Value of Rs.15,69,957/- and Market Value of Rs.18,27,945/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 02-03.11.2023. 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 Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 318.710 grams (Gold bar weighing 290.150 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 the provisions of Section 112 of the Customs Act, 1962.

18. 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 290.150 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 318.710 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.

19. In view of the above discussions, I hold that the said gold bar weighing 290.150 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 318.710 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 03.11.2023 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.

20. 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."

21. 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.

22. 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).

23. 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.

24. 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 10-05-1993 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".

25. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 290.150 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 318.710 grams

carried by the passenger is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that said gold bar weighing 290.150 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.

26. I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 290.150 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold paste consisting of Gold & Chemical Mix, totally weighing 318.710 grams from Dubai 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 318.710 grams by concealing in his body (extracted gold bar of 290.150 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.


27. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of One Gold Bar weighing **290.150** Grams having purity 999.0/24 Kt. and having market value of **Rs.18,27,945/-** (Rupees Eighteen Lakh twenty seven thousand nine hundred forty five only) and **Rs.15,69,957/-** (Rupees fifteen lakhs sixty nine thousand nine hundred fifty seven only), which was concealed in two capsules covered with black coloured adhesive tape in his rectum, was placed under seizure under Panchnama proceedings dated 02/03.11.2023 and Seizure Memo Order dated 03.11.2023, 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 order absolute confiscation of the packing materials (i.e. Black coloured adhesive tape) under seizure used for packing and concealment of the above-mentioned gold bar which were attempted to be smuggled into India in violation of Section 77, Section 132, and Section 135, of the Customs Act, 1962, under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.6,00,000/-** (Rupees Six Lakhs Only) on Shri Mohammed Rizwan under the provisions of Section 112(a)(i) of the Customs Act, 1962 for the omissions and commissions mentioned hereinabove.

28. Accordingly, the Show Cause Notice No. VIII/10-235/SVPIA-B/O&A/HQ/2023-24 dated 15.03.2024 stands disposed of.


28/6/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-235/SVPIA-B/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN000000EF15 O/C

BY SPEED POST AD

To,
Shri Mohammad Rizwan,
Mohalla Najjupura,
PO: and Teh Tanda,
Rampur, Uttar Pradesh,
India-244925.

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 Dy./Asstt. Commissioner of Customs (Prosecution), Ahmedabad.
- (v) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (vi) Guard File.