



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद - 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-179/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-179/SVPIA-D/O&A/HQ/2023-24 dated: 05.02.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 42/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 27.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 27.05.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: To, Shri Mohd. Faisal, H.No.83, Chak No.15, Mohalla Senta Khera, Tanda, Rampur, Bareilly, Uttar Pradesh-245925, India.
(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 ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case: -

Shri Mohd. Faisal, (hereinafter referred to as the said "passenger/ Noticee"), residing at H. No. 83, Chak No 15, Mohalla Senta Khera, Tanda, Rampur, Bareilly, Uttar Pradesh-245925, holding an Indian Passport Number No. S8075396, arrived from Abu Dhabi to Ahmedabad by (Seat No: 9A) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one passenger who arrived by Air Arabia Airways Flight No. 3L 111 from Abu Dhabi to Ahmedabad arrived at SVPI Airport, Ahmedabad on 24.09.2023 and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 24.09.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage.

2. The AIU Officers informed the Panchas that on the basis of the passenger profiling, one passenger Shri Mohd. Faisal who arrived by the Air Arabia Airways Flight No. 3L 111 came from Abu Dhabi at terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad. On being asked about his identity by the AIU officers, the passenger identified himself as under and further, on being asked he informed that he travelled by Air Arabia Airways Flight No. 3L 111 and arrived at Ahmedabad on 24.09.2023 from Abu Dhabi and shown his Boarding Pass bearing Seat No. 9A as shown against his name and he carried bags as detailed below in the table :-

Sr. No.	Name of the Passenger	Indian Passport No. (Identity Proof)	Seat No. as mentioned in Boarding Pass
01	Shri Mohd. Faisal	S8075396	9A

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, offered their 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 wants his baggage 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 that 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 baggage/clothes. The passenger readily removed all the metallic objects such as mobile, watch etc. and keep in a plastic tray and passed through the DFMD. The AIU Officers in presence of Panchas, scanned the baggage of the passenger in X-ray Baggage Scanning Machine placed opposite Belt No. 2 at the arrival hall of Terminal-2, SVPIA, Ahmedabad and found some suspicious or dutiable goods in the check-in a trolley bag of the passenger.

2.4 The AIU Officers thoroughly checked all the items of the baggage of the passenger, and they once again asked the passenger, if he had anything dutiable which required to be declared to the Customs to which the said passenger once again denied. Thereafter, the AIU officers informed the Panchas that they have doubt that the said passenger carried some high value dutiable goods by way of concealment inside the trolley bag. Hence, during the continuous and meticulous verification/ scan of suspicious trolley bag, the AIU officers found some suspicious articles which were hidden inside the trolley bag. On scanning of the said trolley bag, one Solid Substance of cylindrical shape of gold bar and one pouch of semi-solid substance consisting of gold and chemical mix concealed in the trolley bag was recovered.

2.5 Thereafter, the AIU officers in presence of the panchas called the Government Approved Valuer and informed him that one Solid Substance of cylindrical shape of gold bar and one pouch of semi-solid substance consisting of gold and chemical mix concealed in the trolley bag 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 is only possible at his workshop as the said gold have to be converted into gold bar by melting it and also informed the address of his workshop.

2.6 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 reaching the above referred premises, the AIU officer introduced the Panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. Here, after weighment together of the said recovered gold i.e. one Solid Substance of cylindrical shape of gold bar and one pouch of semi-solid substance consisting of gold and chemical mix concealed in luggage of the passenger, Shri Kartikey Vasantrai Soni informed that the total gross weighment found is 284.900 grams in respect of all the gold items recovered from Shri Mohd Faisal.

2.7 The AIU officer took the photograph of the said recovered 1 Gold bar net weight of 284.900 derived from the Solid Substance of cylindrical shape of gold bar and one pouch of semi-solid substance consisting of gold and chemical mix concealed in his possession, as under:





2.8 Thereafter, Shri Kartikey Vasantryai Soni led the Officers, Panchas and the passenger to the furnace, which is nearby in his premises. Then, Shri Kartikey Vasantryai 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 1 bar, derived from those gold items, in presence of Officers, Panchas, and the passenger, as under:

Sr. No.	Passenger Name	Gross weight	Net Weight
1	Shri Mohd Faisal	284.900	254.950

2.9 Thereafter, the Government Approved Valuer, in presence of AIU Officers, Panchas, and the passenger tested and valuation of the said bars. After test and valuation, the Govt. Approved Valuer confirmed and summarized that the gold bar is weighing 254.950 grams of 24 Kt.

gold having purity 999.0 having tariff value of Rs.13,11,427/- and market value of Rs.15,56,470/-. The value of the said gold bar has been calculated as per the Notification No. 67/2023-Customs (N.T.) dated 15.09.2023 (gold) and Notification No. 68/2023-Customs (N.T.) dated 21.09.2023 (exchange rate). He submitted his valuation report to the AIU Officer and the Officers took the same as on record and the Panchas and the said passenger put their dated signature on the said valuation report.

2.11 The details of the Valuation of the said gold bar are tabulated in below table:

Sl. No.	Name of the Passenger	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Shri Mohd Faisal	Gold Bar	1	254.950	999.0 24KT	15,56,470/-	13,11,427/-

2.12 The AIU officer took the photograph of the said gold bar, as under:



2.13 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 24.09.2023. 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.

2.14 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 gold items 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 Mohd Faisal, liable for confiscation as per the provisions of the Customs Act, 1962; hence, the said one gold bar with a net weight of 254.950 derived from the Solid Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix ('the said gold items' for short) concealed in his possession have been placed under seizure, vide Seizure Memo issued from F. No. VIII/10-120/AIU/B/ 2023-24 dated 24.09.2023, under Section 110(1) & (3) of the Customs Act, 1962.

2.15. The AIU officer, then, in presence of the Panchas and the passenger namely Shri Mohd Faisal, placed the 24 Kt. gold having purity 999.0 with a weightment of 254.950 grams recovered from Shri Mohd Faisal derived from the Solid Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold 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 pouch of semi-solid substance consisting of gold and chemical mix were handed over to the Ware House In-charge, SVPI Airport, Ahmedabad vide Ware House Entry No. 5017 dated 24.09.2023.

3. A Statement of Shri Mohd Faisal, was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 24.09.2023, wherein he inter-alia stated that -

- (i) His name, age and address stated above is true and correct. He is involved in profession of accounting.
- (ii) He lives with his family including, father, mother. His father is involved in trading business of rice in the local market of Rampur.
- (iii) He has studied up to 12th standard. His monthly income is approx. Rs.15,000/-.
- (iv) He has frequently visited Abu Dhabi and other places outside India during the last one year. This time he went to Abu Dhabi on 22.09.2023. In Abu Dhabi he stays in the hotel room which was booked by himself at Dehra, Abu Dhabi. He had to come back to India on 24.09.2023. His return ticket from Abu Dhabi to Ahmedabad also booked by himself.
- (v) No person gave me these gold items concealed in my possession. This is imported by me illegally with best of my knowledge in my possession.
- (vi) Yes, he knows bringing of gold or handing and taking over of the gold in an illegal way is an offense.
- (vii) He stated that he never indulged in any smuggling activity in the past. This is the first time he has carried one solid substance of cylindrical shaped gold bar and one pouch of semi-solid substance consisting of gold and chemical mix in my possession.
- (viii) On arrival at SVPI Airport at Ahmedabad at about 05:30 AM on 24.09.2023, he was intercepted by AIU Officers when he tried to exit through green channel with one hand bag and one trolley bag. During by personal search and interrogation by the AIU Officers, he confessed that he has hidden gold items having gross weight 284.900 grams. The said gold items were taken by the officers to the govt. approved Valuer, who in my presence tested and reported that the gold bar recovered from the concealed gold items is having weight 254.95 grams, having tariff value of Rs.13,11,427/- and market value of Rs.15,56,470/-. The said gold bar was seized by the officers under Panchnama dated 24.09.2023 under the provision of the Customs Act, 1962. He stated that he has been present during the entire course of the Panchnama dated 24.09.2023 and he confirmed the events narrated in the said Panchnama drawn on 24.09.2023 at Terminal-2, SVPI Airport, Ahmedabad. In token of its correctness, he put his dated signature on the said Panchnama.
- (ix) He stated that he is aware that smuggling of gold without payment of customs duty is an offence. Since, he was aware of the concealment of the gold items inside his trolley bag but he did not make any declarations in this

regard. He confirmed the Recovery of 254.95 grams of Gold having purity 999.0/24 KT valued at Rs.15,56,470/- (Market Value) and Rs.13,11,427/- (Tariff Value) of the said one gold bar recovered from him which is hidden inside my trolley bag by me under the Panchnama dated 24.09.2023. He opted for green channel so that he can attempt to smuggle the gold without paying customs duty.

- (x) After reaching in Ahmedabad on 24.09.2023, he was not going to hand over these items to anyone else because these all are brought by him and for him.

4. The above said gold bar with a net weightment of **254.950** grams having purity of 999.0/24 Kt. having tariff value of **Rs.13,11,427/-** (Rupees Thirteen Lakhs Eleven Thousand Four Hundred Twenty Seven Only) and market value of **Rs.15,56,470/-** (Rupees Fifteen Lakhs Fifty Six Thousand Four Hundred Seventy Only) recovered from the said passenger who carried One Gold Bar with a net weight of 254.950 grams derived from the Solid Substance of cylindrical shape of gold bar alongwith one pouch of semi-solid substance consisting of gold and chemical mix, concealed in his possession inside his trolley bags, 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 weighing 254.950 Grams which were attempted to be smuggled by Shri Mohd Faisal, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 254.950 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 12.09.2023, issued from F. No. VIII/10-120/ AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

5. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) **Section 2 - Definitions.**—*In this Act, unless the context otherwise requires,—*

(22) "goods" includes—

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section 11A – Definitions -In this Chapter, unless the context otherwise requires,

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

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

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

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

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VI) "Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation."

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

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) "Section 3(2) - The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."

II) "Section 3(3) - All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."

III) "Section 11(1) - No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

Contravention and violation of laws:

6. It therefore appears that:

(a) The passenger had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The

passenger had improperly imported gold bar weighing 254.950 Grams having purity 999.0/24 Kt., One Gold Bar with a net weight of 254.950 derived from the Solid Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix concealed in his possession inside his trolley bags, involving tariff value of Rs.13,11,427/- (Rupees Thirteen Lakhs Eleven Thousand Four Hundred Twenty Seven Only) and market value of Rs.15,56,470/- (Rupees Fifteen Lakhs Fifty Six Thousand Four Hundred Seventy Only) not declared to the Customs. The passenger opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported 254.950 Grams of gold bar of purity 999.0/24 Kt. by the passenger by way of concealment derived from the Solid Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix inside his trolley bags, without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- (b) By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported gold bar by the passenger, Shri Mohd Faisal, who carried the said gold with a net weight of 254.95 derived from the Solid Substance of cylindrical shape of

gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix, inside his trolley bags, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

- (d) Shri Mohd Faisal, 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 gold bar weighing 254.950 Grams having purity 999.0/24 Kt. and having tariff value of Rs.13,11,427/- and market value of Rs.15,56,470/-, which was concealed in the form of Solid Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix, by the passenger inside the trolley bag, totally weighing 254.950 grams without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee, Shri Mohd Faisal.

7. Now, therefore, Shri Mohd Faisal, residing at H. No. 83, Chak No 15, Mohalla Senta Khera, Tanda, Rampur, Bareilly, Uttar Pradesh-245925, holding an Indian Passport Number No. S8075396, is hereby 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 **254.950** Grams having purity 999.0/24 Kt. and having tariff value of **Rs.13,11,427/-** (Rupees Thirteen Lakhs Eleven Thousand Four Hundred Twenty Seven Only) and market value of **Rs.15,56,470/-** (Rupees Fifteen Lakhs Fifty Six Thousand Four Hundred Seventy Only), which was concealed in the form of Solid

Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix, inside the trolley bags, was placed under seizure under Panchnama proceedings dated 24.09.2023 and Seizure Memo Order dated 24.09.2023, 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 which was used to import the said 1 gold bar, weighing 254.950 which was concealed in the form of Solid Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix, which were also seized under Seizure memo order dated 24.09.2023, 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:

8. Shri Mohd Faisal has not submitted written reply to the Show Cause Notice.

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

Discussion and Findings:

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

I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

10. In the instant case, I find that the main issue to be decided is whether the 254.950 grams of gold bar, obtained from the one Solid Substance of cylindrical shape of gold bar and one pouch of semi-solid substance consisting of gold and chemical mix weighing 284.900 grams (gross), having Tariff Value of Rs.13,11,427/- (Rupees Thirteen Lakhs Eleven Thousand Four Hundred Twenty-Seven Only) and Market Value of Rs.15,56,470/- (Rupees Fifteen Lakhs Fifty-Six Thousand Four Hundred Seventy Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 24.09.2023, 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 goods used for packing and concealment of seized goods is liable for confiscation under the provisions of Section 119 of the Act and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

11. I find that the panchnama has clearly drawn out the fact that on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 24.09.2023. On being asked about his identity by the AIU officers, the passenger identified himself and informed that he travelled by Air Arabia Airways Flight No. 3L 111 and arrived at Ahmedabad on 24.09.2023 from Abu Dhabi and shown his Boarding Pass bearing Seat No. 9A. 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 on passing through DFMD Machine nothing objectionable found. The AIU Officers scanned the baggage of the passenger in X-ray Baggage Scanning Machine and found some suspicious or dutiable goods in the check-in a trolley bag of the passenger. The AIU Officers thoroughly checked all the items of the

baggage of the passenger. During the continuous and meticulous verification/ scan of suspicious trolley bag, the AIU officers found some suspicious articles which were hidden inside the trolley bag. On scanning of the said trolley bag, one Solid Substance of cylindrical shape of gold bar and one pouch of semi-solid substance consisting of gold and chemical mix concealed in the trolley bag was recovered.

I also find that the said 254.950 grams of gold bar obtained from the 284.900 Grams of gold paste having Tariff Value of Rs.13,11,427/- and Market Value of Rs.15,56,470/- carried by the passenger Shri Mohd Faisal 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 24.09.2023 under Section 108 of the Customs Act, 1962.

12. 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 baggage 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.

13. Further, the passenger has accepted that he had not declared the said gold, i.e. one Solid Substance of cylindrical shape of gold bar and one pouch of semi-solid substance consisting of gold and chemical mix, (hereinafter referred as 'the said gold') concealed in his baggage on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said gold

which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of the said 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 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.

14. From the facts discussed above, it is evident that Shri Mohd Faisal had carried the said gold, weighing 284.900 grams, (wherefrom 254.950 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste), while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 254.950 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 in his baggage 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.

15. 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

284.900 grams concealed in his baggage (extracted gold bar of 254.950 grams) by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 254.950 grams, having Tariff Value of Rs.13,11,427/- and Market Value of Rs.15,56,470/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 24.09.2023 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 in his baggage, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is therefore very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Airport. 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 of 284.900 grams concealed in his baggage (extracted gold bar of 254.950 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 foreign destination with the willful intention to smuggle the impugned goods. The said Gold bar weighing 254.950 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 284.900 grams, having Tariff Value of Rs.13,11,427/- and Market Value of Rs.15,56,470/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 24.09.2023. 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, totally weighing 254.950 grams, by deliberately not declaring the same by him on arrival at airport with the willful 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.

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 254.950 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 in his baggage. 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 254.950 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 24.09.2023 stated that he has carried the gold by concealment in his baggage 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 baggage. 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 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

25. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 254.950 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 254.950 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; I also hold that the material/ goods used for packing and concealment of the said gold and seized would be liable to absolute confiscation under Section 119 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 254.950 grams,

derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 284.900 grams carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Abu Dhabi 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 284.900 grams by concealing in his baggage (extracted gold bar of 254.950 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 the gold bar weighing **254.950** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.13,11,427/-** (Rupees Thirteen Lakhs Eleven Thousand Four Hundred Twenty-Seven Only) and Market Value of **Rs.15,56,470/-** (Rupees Fifteen Lakhs Fifty-Six Thousand Four Hundred Seventy Only) derived from the Solid Substance of cylindrical shape of gold bar along with one pouch of semi-solid substance consisting of gold and chemical mix, recovered and seized from the passenger Shri Mohd Faisal vide Seizure Order under Panchnama proceedings both dated 24.09.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii) I order absolute confiscation of the goods/ material, used for packing and concealment of seized goods, seized vide Seizure Order under Panchnama proceedings both dated 24.09.2023 under the provisions of Sections 119 of the Customs Act, 1962;

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

28. Accordingly, the Show Cause Notice No. VIII/10-179/SVPIA-D/O&A/HQ/2023-24 dated 05.02.2024 stands disposed of.


27/5/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-179/SVPIA-D/O&A/HQ/2023-24 Date: 27.05.2024
DIN: 20240571MN0000555FCE

BY SPEED POST AD

To,
Shri Mohd. Faisal,
H.No.83, Chak No.15, Mohalla Senta Khera,
Tanda, Rampur, Bareilly,
Uttar Pradesh-245925, India.

Copy to:

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

 (iv) Guard File.