



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुरानेहाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-196/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-196/SVPIA-D/O&A/HQ/2023-24 dated: 04.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	76/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	27.06.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	27.06.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Mohammad Faheem, H. No. 35, Chak No. 18, Mohalla Najjupura, Tahsil-Tanda, Badli, Rampur, U.P.-244925
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (५.००) 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 (५.००) 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 डियूटी 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 Mohammad Faheem S/o Shri Abdul Aziz (herein after referred to as 'the passenger/ Noticee') residing at H. No. 35, Chak No. 18, Mohalla Najjupura, Tahsil-Tanda, Badli, Rampur, U.P.-244925 holding Indian Passport bearing No. Y8793178 arrived from Dubai by Fly Dubai Flight No. FZ437 dated 23.10.2023 at SVP International Airport, Ahmedabad on 24.10.2023. On the basis of passenger profiling, officers of Customs, Air Intelligence unit (hereinafter referred to as "AIU"), Sardar Vallabhbhai Patel International Airport (hereinafter referred to as "SVPIA"), Ahmedabad, guided the passenger namely Shri Mohammad Faheem (seat no. 7B) in presence of independent panchas from flight to the Immigration Hall where he gets his passport checked in. Thereafter, the passenger is guided to the Red Channel and asked whether he was carrying any dutiable goods or foreign currency or any restricted goods and whether he wished to declare anything before Customs Authorities. In response the passenger submitted that he did not wish to declare anything and that he did not carry any dutiable/ objectionable goods with him. Thereafter, the passenger is guided to the Air Intelligence Unit office for his personal search and examination of his baggage as recorded under Panchnama proceedings dated 24.10.2023.

2. Thereafter, the passenger is again asked if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The AIU officers again offered their personal search to the passenger, but the passenger denied saying that he was having full trust on the AIU officers. Thereafter, the AIU officers asked the passenger whether he wanted to be checked in front of Executive Magistrate or Superintendent of Customs, in reply, the passenger gave his consent to be searched in front of the Superintendent of Customs. The AIU officer asked Shri Mohammad Faheem to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, Shri Mohammad Faheem was asked to remove all the metallic objects he was wearing

on his body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc., and kept it on the tray placed on the table and after that officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound/ alert was generated. Thereafter, the AIU officers, in presence of the panchas carried out scanning of his black colored hand baggage in the X-ray Bag Scanning Machine placed opposite belt no. 1 at the arrival hall of Terminal-2, SVPIA, Ahmedabad, however, nothing suspicious was observed. Further, in presence of the panchas, the AIU Officers scanned the blue colored trolley bag of the passenger in the X-ray Bag Scanning Machine. On scanning, some dark suspicious images were observed by the AIU officers inside the said silver colored trolley bag. Thereafter, the AIU Officers asked the passenger about that suspicious image appeared inside the said silver colored trolley bag, to which the said passenger could not give satisfactory answer. Thereafter, the AIU officers decided to thoroughly check the silver-colored trolley bag of the passenger. The AIU officers thoroughly checked all items of the trolley bag and observed some white Rhodium coated screws fitted inside the black color trolley bag. Thereafter, the said white Rhodium coated screws were taken out with help of a screw driver and plier. On counting, the numbers of those white Rhodium coated screws came to total of 35 (thirty-five) screws. Thereafter, the AIU officers put the said 35 (thirty-five) white Rhodium coated screws in a tray and put the tray in the X Ray scanning machine, wherein dark image was observed on each of the said screw. The AIU officers informed the panchas that the dark image appearing on the said screws reflected concealment of some heavy metal substance like gold in each of said white Rhodium coated screws. On being once again asked by the AIU officers, the passenger, in presence of the panchas, admitted that those screws were consisted of gold and he tried to exit from the Airport with an intent to smuggle the said gold without making any declaration to the Customs and without payment of Customs duty. In presence of the panchas upon extensive interrogation of the passenger Shri Mohammad Faheem and frisking by the AIU officers, it was found that in the underwear of the passenger some heavy material in paste form was present between the two layers of the fabric of the underwear

which appeared to be inexplicably heavy. On being strongly questioned by the AIU officers, the passenger Shri Mohammad Faheem accepted the fact that the heavy material between the layers of the fabric of the underwear was nothing, but the gold paste mixed with the chemical. In presence of the Panchas, on being asked by the AIU officers it was replied by the passenger Shri Mohammad Faheem that he had carried that gold paste by way of concealment in his underwear with intent to evade the payment of Customs duty with illegal smuggling of the gold.

2.1 Thereafter, the AIU officers called the Government approved valuer Shri Kartikey Vasantrai Soni and informed him that 35 (thirty-five) white Rhodium coated screws and some paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger have been recovered from a passenger and the passenger has informed that it is gold and therefore he is required to come to the Airport for testing and valuation of the said material. In reply, the Government approved valuer informed the AIU Officer that the testing of the said material is only possible at his workshop as 35 (thirty-five) white Rhodium coated screws and some paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger need to be extracted and must be converted into gold bar by melting it and informed the address of his workshop and requested officers to come at his workshop.

2.2. Thereafter, at around 13:00 hrs. on 24.10.2023, the AIU Officers along with panchas and 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, B/h. Ratnam Complex, C.G. Road, Ahmedabad-380006. On reaching the above referred premises, the AIU officers introduced the Panchas as well as the passenger to Shri Kartikey Vasantrai Soni, Government approved valuer. Here, after weighing the 35 (thirty-five) white Rhodium coated screws and some paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger on his weighing scale, Shri Kartikey Vasantrai Soni informed that the gross weight of the 35 pieces of screws coated with white paint is 250.120 grams and gross

weight of the paste material concealed between layers of Navy-Blue Color Underwear recovered from the passenger is 349.290 grams.

2.3 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of extraction of 35 (thirty-five) white Rhodium coated screws and some paste material concealed between layers of Navy-Blue Color Underwear. After completion of extraction, Government Approved Valuer informed that 01 Gold bar weighing 248.780 Grams having purity of 999.0/24 Kt was derived from the 35 (thirty-five) white Rhodium coated screws weighing 250.890 grams recovered from trolley bag and 01 Gold bar weighing 122.930 Grams having purity of 999.0/24 Kt was derived from paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger. After testing and valuation, the Govt. Approved Valuer vide his certificate no. 785/2023-24 dated 24.10.2023 confirmed that it is gold having purity 999.0/24 Kt. The govt Approved Valuer summarized that these gold bars are made up of 24kt gold having purity 999.0 weighing 248.780 Grams having purity of 999.0/24 Kt, was derived from the 35 (thirty-five) white Rhodium coated screws weighing 250.890 grams recovered from trolley bag and 01 Gold bar weighing 122.930 Grams having purity of 999.0/24 Kt was derived from paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar derived from screws is Rs.13,40,626/- and market value is Rs.15,47,412/- and the total Tariff Value of the said gold bar derived from underwear paste is Rs.6,62,445/- and market value is Rs.7,64,625/- which has been calculated as per the Notification No. 78/2023-Customs (N.T) dated 23.10.2023(gold) and Notification No. 76/2023-Customs (NT) dated 15.10.2023 (exchange rate).

- The outcome of the said testing is summarized in below table.

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar extracted from paste	1	122.930	999.0 24 Kt	7,64,625/-	6,62,445/-
2.	Gold Bar extracted from screws	1	248.780	999.0 24 Kt	15,47,412/-	13,40,626/-
	Total	2	371.710	999.0 24 Kt	23,12,037/-	20,03,071/-

3. The said pure gold of 24 kt having 999.0 purity retrieved from the 35 (thirty-five) white Rhodium coated screws fitted in a trolley bag of the passenger, weighing 248.780 Grams, has Tariff Value of Rs.13,40,626/- (Rupees Thirteen Lakh Forty Thousand Six Hundred Twenty-Six only) and market Value of Rs.15,47,412/- (Rupees Fifteen Lakh Forty-Seven Thousand Four Hundred Twelve Only) and other pure gold bar of 24 kt having 999.0 purity retrieved from paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger, weighing 122.930 Grams, has Tariff Value of Rs.6,62,445/- (Rupees Six Lakh Sixty-Two Thousand Four Hundred Forty-Five only) and market Value of Rs.7,64,625/- (Rupees Seven Lakh Sixty-Four Thousand Six Hundred Twenty-Five Only). The said gold recovered from the passenger was attempted to be smuggled inside India with intent to evade payment of Customs duty and was a clear violation of the provisions of the Customs Act, 1962. Thus, having a reasonable belief that the said **gold Bars (02 pieces)** having total weight of **371.710** Grams were attempted to be smuggled by the passenger, were liable for confiscation under the provisions of the Customs Act, 1962; they were placed under seizure vide Panchnama dated 24.10.2023 under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962. Further, the gold, recovered from the passenger, was placed under seizure under section 110 of the Customs Act, 1962 vide Panchnama dated 24.10.2023 & seizure report dated 24.10.2023.

The following travelling documents and identity documents of the passenger were recovered and withdrawn for further investigation:

- (i) Copy of Passport No. Y8793178 issued at Dubai on 08.09.2023 and valid up to 07.09.2033.
- (ii) Boarding pass of Fly Dubai Flight No. FZ 437 from Dubai to Ahmedabad dated 23.10.2023 having seat No. 7B.
- (iii) Passenger Manifest of Fly Dubai Flight No. FZ 437 from Dubai to Ahmedabad dated 23.10.2023 depicting name of Shri Mohammad Faheem.

4. Statement of the passenger was recorded on 24.10.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he arrived from Fly Dubai Flight No. FZ 437 from Dubai to Ahmedabad dated 23.10.2023, having Passport No. Y8793178, at Sardar Vallabhbhai Patel International Airport, Ahmedabad. Furthermore, the passenger accepted that the said Gold Bars (02 Pieces) having weight 371.710 Grams which was derived from 35 pieces of screws coated with white paint weighing 250.120 grams and paste material concealed between layers of Navy-Blue Color Underwear worn by him weighing 349.290 grams (as discussed herein above) belong to him. He admitted that he had purchased this gold to bring it to India without payment of Customs duty. The same was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before the Customs by the pax. Since, he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted in his statement that he had opted for green channel so that he could attempt to smuggle the Gold without paying Customs duty. Further, he again confirmed the recovery of **02 gold bars** totally weighing **371.710** grams of 999.0/24 Kt purity having total market value of **Rs.23,12,037/-** and total tariff value of **Rs.20,03,071/-** from him during Panchnama dated 24.10.2023.

5. Therefore, on the basis of facts narrated above, the said gold Bars (2 Pieces) weighing 371.710 grams of 999.0/24 Kt purity valued at Rs.23,12,037/- (market value) and Rs.20,03,071/- (tariff value),

derived from 250.120 grams of 35 (thirty-five) white Rhodium coated screws fitted in a trolley bag and 349.290 grams of paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger, appeared liable for confiscation, was placed under seizure under Panchnama dated 24.10.2023 as said gold totally weighing 371.710 grams seized under Panchnama dated 24.10.2023 was "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. It also appeared that the said pax has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 24.10.2023 under Section 108 of the Customs Act, 1962. He has committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962.

6. In view of the above, **Shri Mohammad Faheem**, resident of H. No. 35, Chak No. 18, Mohalla Najjupura, Tahsil-Tanda, Badli, Rampur, U.P.-244925 holding Indian Passport bearing No. Y8793178, is called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Customs House, Opp. Old High Court, Navrangpura, Ahmedabad-380009, as to why:

- i) Two Gold Bars, weighing **371.710** grams having purity 999.0 (24KT) derived from 250.120 grams of 35 (thirty-five) white Rhodium coated screws fitted in a trolley bag and 349.290 grams of paste material concealed between layers of Navy-Blue Color Underwear worn by the passenger, having Tariff Value of **Rs.20,03,071/-** (Rupees Twenty Lakh Three Thousand Seventy-One only) and market Value of **Rs.23,12,037/-** (Rupees Twenty Three Lakh Twelve Thousand Thirty Seven Only) placed under seizure under panchnama dated 24.10.2023 and seizure memo order dated 24.10.2023 should not be confiscated under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) The packing material i.e. Silver Colour Trolley bag used for concealment of the 35 (thirty-five) white Rhodium coated gold screws, seized under panchnama dated 24.10.2023 and Seizure memo order dated 25.10.2023, should not be

confiscated under Section 119 of the Customs Act, 1962;
and

iii) Penalty should not be imposed under Section 112(a) and 112(b) of the Customs Act, 1962.

Defence Reply and Personal Hearing:

7. Shri Mohammad Faheem has not submitted written reply to the Show Cause Notice.

8. Shri Mohammad Faheem 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:

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 371.710 grams of 02 gold bar, obtained from the paste of gold and screws weighing 380.840 grams, having Tariff Value of Rs.20,03,071/- (Rupees Twenty Lakhs Three Thousand Seventy-One Only) and Market Value of Rs.23,12,037/- (Rupees Twenty-Three Lakhs Twelve Thousand Thirty-Seven Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 24.10.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; the packing material used for packing and concealment of the seized goods 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.

11. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling, officers of Customs, Air Intelligence unit (hereinafter referred to as "AIU"), Sardar Vallabhbhai Patel International Airport (hereinafter referred to as "SVPIA"), Ahmedabad, guided the passenger namely Shri Mohammad Faheem from flight to the Immigration Hall where he gets his passport checked in. Thereafter, the passenger was guided to the Red Channel and asked whether he was carrying any dutiable goods or foreign currency or any restricted goods and whether he wished to declare anything before Customs Authorities. In response the passenger submitted that he did not wish to declare anything and that he did not carry any dutiable/objectionable goods with him.

Thereafter, the passenger was again asked if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. While he passed through the DFMD Machine, no beep sound/ alert was generated. Thereafter, the AIU officers, in presence of the panchas carried out scanning of his black colored hand baggage in the X-ray Bag Scanning Machine, however, nothing suspicious was observed. Further, the AIU Officers scanned the blue colored trolley bag of the passenger in the X-ray Bag Scanning Machine and on scanning, some dark suspicious images were observed by the AIU officers inside the said silver colored trolley bag. Thereafter, the AIU Officers asked the passenger about that suspicious image appeared inside the said silver colored trolley bag, to which the said passenger could not give satisfactory answer. The AIU officers thoroughly checked all items of the trolley bag and observed some white Rhodium coated screws fitted inside the black colored trolley bag. Thereafter, the said white Rhodium coated screws were taken out with help of a screw driver and plier. On counting, the numbers of those white Rhodium coated screws came to total of 35 (thirty-five) screws. Thereafter, the AIU officers put the said 35 (thirty-five) white Rhodium coated screws in a tray and put the tray in the X Ray scanning machine, wherein dark image was observed on each of the said screw. The AIU officers informed the panchas that the dark image appearing on the

said screws reflected concealment of some heavy metal substance like gold in each of said white Rhodium coated screws. On being once again asked by the AIU officers, the passenger admitted that those screws were consisted of gold and he tried to exit from the Airport with an intent to smuggle the said gold without making any declaration to the Customs and without payment of Customs duty.

12. Upon extensive interrogation and frisking of the passenger Shri Mohammad Faheem, it was found that in the underwear of the passenger some heavy material in paste form was present between the two layers of the fabric of the underwear which appeared to be inexplicably heavy. On being strongly questioned by the AIU officers, the passenger Shri Mohammad Faheem accepted the fact that the heavy material between the layers of the fabric of the underwear was nothing, but the gold paste mixed with the chemical. On being asked by the AIU officers it was replied by the passenger Shri Mohammad Faheem that he had carried that gold paste by way of concealment in his underwear with intent to evade the payment of Customs duty with illegal smuggling of the gold.

I also find that the said 371.710 grams of 2 gold bar obtained from the 380.840 Grams of gold paste & screws having Tariff Value of Rs.20,03,071/- and Market Value of Rs.23,12,037/- carried by the passenger Shri Mohammad Faheem 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 24.10.2023 under Section 108 of the Customs Act, 1962.

13. I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wanted to save Customs duty, he had concealed the same in his body with an intention to clear the

gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

14. Further, the passenger has accepted that he had not declared the said gold paste and screws concealed by him, 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 2 gold bars (derived from gold paste and screws), which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

15. From the facts discussed above, it is evident that Shri Mohammad Faheem had carried the said gold weighing 380.840 grams, (wherfrom 371.710 grams of 2 gold bar having purity 999.0 recovered on the process of extracting gold from the said paste & Screws) 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 371.710 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the passenger had a

clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

16. 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 380.840 grams concealed by him, (extracted gold bar of 371.710 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 two gold bars weighing 371.710 grams, having Tariff Value of Rs.20,03,071/- and Market Value of Rs.23,12,037/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 24.10.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold paste concealed by him, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

17. I find that the Noticee confessed of carrying the said gold of 380.840 grams (gross weight) concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

18. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign destination with the wilful intention to smuggle the impugned goods. The said 2 gold bars weighing 371.710 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 380.840 grams, having Tariff Value of Rs.20,03,071/- and Market Value of Rs.23,12,037/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 24.10.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said two gold bars weighing 371.710 grams, by deliberately not declaring the same by him on arrival at airport with the wilful intention

to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

19. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said two gold bars weighing 371.710 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 bars. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

20. In view of the above discussions, I hold that the said two gold bars weighing 371.710 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 24.10.2023 stated that he has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

21. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases)

Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

22. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

23. Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

24. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is

in accordance with law - Interference by Tribunal is against law and unjustified -

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

25. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government Of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

26. Given the facts of the present case before me and the judgements and rulings cited above, the said two gold bars weighing 371.710 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said two gold bars weighing 371.710 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

27. I further find that the passenger had involved himself and abetted the act of smuggling of the said two gold bars weighing 371.710 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold consisting of Gold & Chemical Mix & Screws, totally weighing 380.840 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 of 371.710 grams by concealing having purity 999.0. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962.

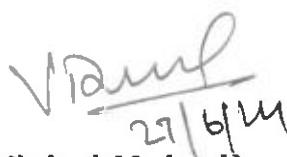
Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

28. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the said gold bars weighing **371.710** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.20,03,071/-** (Rupees Twenty Lakhs Three Thousand Seventy-One Only) and Market Value of **Rs.23,12,037/-** (Rupees Twenty-Three Lakhs Twelve Thousand Thirty-Seven Only) as discussed above, recovered and seized from the passenger **Shri Mohammad Faheem** vide Seizure Order under Panchnama proceedings both dated 24.10.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;
- ii) I order absolute confiscation of the packing material, i.e. Silver Coloured Trolley Bag used for concealment of 35 white rhodium coated gold screws under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.7,50,000/-** (Rupees Seven Lakhs Fifty Thousand Only) on Shri Mohammad Faheem under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-196/SVPIA-D/O&A/HQ/2023-24 dated 04.03.2024 stands disposed of.


27/6/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-196/SVPIA-D/O&A/HQ/2023-24 Date: 27.06.2024
DIN: 20240671MN0000111BA6

BY SPEED POST AD

To,
Shri Mohammad Faheem,
H. No. 35, Chak No. 18, Mohalla Najjupura,
Tahsil-Tanda, Badli, Rampur, U.P.-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 System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (v) Guard File.