# प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमा शुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्टके सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
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## PREAMBLE

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| A | फ़ाइलसंख्या/ File No. | : | VIII/10-242/SVPIA-D/O&A/HQ/2023-24 |
| B | कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date | : | Waiver of SCN by the Pax. |
| C | मूलआदेशसंख्या/ Order-In-Original No. | : | **16/ADC/VM/O&A/2024-25** |
| D | आदेशतिथि/ Date of Order-In-Original | : | **29.04.2024** |
| E | जारीकरनेकीतारीख/ Date of Issue | : | **29.04.2024** |
| F | द्वारापारित/ Passed By | : | **Vishal Malani,**<br>Additional Commissioner,<br>Customs, Ahmedabad. |
| G | आयातककानामऔरपता / Name and Address of Importer / Passenger | : | To,<br>**Shri Jagpal Singh Jhala,**<br>Gopinath Ka Garwa,<br>Banswara, Rajasthan<br>Pin - 327034. |
| (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), ४वि मंज़िल, 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 :**

On the basis of passenger profiling, the AIU officers intercepted one passenger **Shri Jagpal Singh Jhala** having Indian Passport No. R3886293 who arrived by Indigo Flight No. 6E 1667 on 23.12.2023 from Kuwait to Ahmedabad. The pax was trying to exit green channel without declaring any contraband goods. On examination of baggage of the passenger, the AIU officers did not notice any unusual images indicating nothing objectionable is present in the bags of Shri Jagpal Singh Jhala. Thereafter, the pax placed his mobile, wallet, and one transparent pouch in the plastic tray and passed through the DFMD machine. On passing through the DFMD the Panchas and officers noticed/ heard a beep sound from the machine. The AIU officers then asked Shri Jagpal Singh Jhala about any concealment of the objectional goods, in reply the passenger handed over 03 yellow coloured metal objects/ goods which were hidden/ concealed in his innerwear. On being asked, he admitted that the said 03 yellow coloured metal objects/ goods, are Bars/ Cut Bars made up of gold.

2. Thereafter, the AIU Officer called the Government Approved Valuer for detailed examination of the Goods received from the said Pax. Shri Soni Kartikey Vasantrai, the Government Approved Valuer after detailed examination and testing, submitted a Valuation Report a dated 23.12.2023 wherein he provided weighment of 01 Gold Bar and 02 gold cut bars, its purity, market value and tariff value. The Tariff value has been determined in terms of Customs No. 91/2023-Customs (N.T.) dated 15.12.2023 (gold) and Notification No. 93/2023- Customs (N.T.) dated 21.12.2023 (exchange rate). As per the said valuation report dated 23.12.2023, the said gold, i.e. one gold bar and two cut gold bars, are totally weighing **241.130** Grams, of 24 KT (999.0 Purity) and having tariff value of **Rs.13,31,621/-** (Rupees Thirteen Lakhs Thirty-One Thousand Six Hundred and Twenty-One only) and market value of **Rs.15,64,934/-** (Rupees Fifteen Lakhs Sixty-Four Thousand Nine Hundred and Thirty-Four only).

3. In view of the above, the said gold weighing 241.130 grams seized under Panchnama dated 23.12.2023 is attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962.

4. Thus, the AIU officers have a reasonable belief that the above said Gold is being attempted to be smuggled by Shri Jagpal Singh Jhala and is liable for confiscation as per the provisions of the Customs Act, 1962. Hence, the said gold, i.e. one gold bar and two cut gold bars were placed under seizure. The said sealed transparent plastic container containing gold bar along with the packing material was handed over to the Warehouse In-charge, SVPI Airport, Ahmedabad vide Warehouse Entry No. 5520 dated 23.12.2023.

**5. LEGAL PROVISIONS RELEVANT TO THE CASE:**

**a)** As per para 2.26 of Foreign Trade Policy 2015-20 Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.

**b)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

**c)** As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

**d)** As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

**e)** As per Section 11(3) of the Customs Act, 1962 Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

**f)** As per Section 2(3) — "baggage" includes unaccompanied baggage but does not include motor vehicles

**g)** As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

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

**h)** As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.

**i)** As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.

**j)** As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

**k)** As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

**l)** Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation under section 111(d) of the Customs Act, 1962.

**m)** Any dutiable or prohibited goods required to be mentioned under the regulation in an arrival manifest, import manifest or import report which are no so mentioned are liable to confiscation under Section 111(f) of the Customs Act 1962.

**n)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111(i) of the Customs Act, 1962.

**o)** Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under Section 111(j) of the Customs Act, 1962.

**p)** 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 are liable to confiscation under Section 111(l) of the Customs Act, 1962.

**q)** 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 are liable to confiscation under Section 111(m) of the Customs Act, 1962.

**r)** As per Section 112 of the Customs Act, 1962 any person, (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, 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.

**s)** As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

**t)** As per Section 123 of the Customs Act, 1962 (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person –

(i) on the person from whose possession the goods were seized;

and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

**u)** As per Customs Baggage Declaration Regulations, 2013 all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

## CONTRAVENTION AND VIOLATION OF LAWS

**6.** It therefore appears that:

a) Shri Jagpal Singh Jhala had actively involved himself in the instant case of smuggling of gold into India. Shri Jagpal Singh Jhala had improperly imported the said gold, i.e. one gold bar and two cut gold bars, totally weighing **241.130** grams made of 24kt/ 999.00 purity gold, having **tariff value of Rs.13,31,621/-** (Rupees Thirteen Lakhs Thirty-One Thousand Six Hundred Twenty-One only) and **market value of Rs.15,64,934/-** (Rupees Fifteen Lakhs Sixty-Four Thousand Nine Hundred Thirty-Four only) by concealing in the form of gold cut bars, concealed/ hidden in the Innerwear, without declaring it to the Customs. He opted for Green Channel to exit the Airport with a 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 gold cut bars, by the passenger, by way of concealment without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Shri Jagpal Singh Jhala 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 has violated the provisions of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

c) The improperly imported gold by the passenger, Shri Jagpal Singh Jhala, found concealed/ hidden without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

d) Shri Jagpal Singh Jhala, by his above-described acts of omission/ commission and/ or abetment on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

f) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold, totally weighing 241.130 grams having tariff value of Rs.13,31,621/- and market value of Rs.15,64,934/- by way of concealment in the form of gold cut bars, concealed in the Innerwear, without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Jagpal Singh Jhala.

**7.** The passenger, Shri Jagpal Singh Jhala vide his letter dated 20.01.2024, forwarded through his Advocate Shri Rishikesh J Mehra, submitted that he is cooperating in investigation and claiming the ownership of the gold recovered from him. He understood the charges levelled against him. He requested to adjudicate the case without issuance of Show Cause Notice.

**8. PERSONAL HEARING:**

Personal Hearing in this case was fixed on 17.04.2024. Shri Rishikesh J Mehra, Advocate appeared for personal hearing on behalf of the passenger/ Noticee. Shri Rishikesh Mehra submitted written submissions dated 20.01.2024 and reiterated the same. He submitted that his client is NRI and is residing in Kuwait since 2020 and doing labour work in Kuwait. He is an eligible passenger coming after more than six months' stay at abroad. He also submitted that the gold was purchased by him from his personal savings and borrowed money from his friends. He reiterated that his client brought Gold for his personal and family use. He submitted copies of gold purchase bills issued from Kuwait showing legitimate purchase of the said gold in the name of the passenger and Noticee. This is the first time he brought gold, i.e. 01 gold cut bar & 02 cut gold bars. Due to ignorance of law the gold was not declared by the passenger. He further submitted that his client is ready to pay applicable fine and penalty and requested for Re-Export release of seized gold. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

**DISCUSSION & FINDINGS:**

**9.** I have carefully gone through the facts of the case I have carefully gone through the facts of the case and submissions made by the Advocate of the passenger/ Noticee during the personal hearing. I find that the passenger had requested for waiver of Show Cause Notice. The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

**10.** In the instant case, I find that the main issues that are to be decided is whether the said gold, i.e. one gold bar and two cut gold bars, of 24Kt/ 999.0 purity, totally weighing 241.130 grams and having tariff value of Rs.13,31,621/- (Rupees Thirteen Lakhs Thirty-One Thousand Six Hundred Twenty-One only) and market value of Rs.15,64,934/- (Rupees Fifteen Lakhs Sixty-Four Thousand Nine Hundred Thirty-Four only) carried by the passenger, which was seized vide Seizure Order dated 23.12.2023 under the Panchnama proceedings dated 23.12.2023 on the reasonable belief that the said goods were smuggled into India, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not and whether the passenger is liable for penalty under the provisions of Section 112 of the Act or not.

**11.** I find that the passenger Shri Jagpal Singh Jhala, was asked by the Customs officers whether he was having anything dutiable to declare to the Customs, to which he had replied that he has nothing to declare. On passing through DFMD, it was found that the passenger has concealed/ hide gold cut bars, totally weighing 241.130 grams in the Innerwear. The passenger admitted to have smuggled the said gold by concealing/ hiding in the form of gold cut bars in Innerwear. On testing and valuation, the government approved valuer confirmed that the said recovered gold is of purity 999.0/24Kt., totally weighting 241.130 Grams ('the said gold' for short) having Tariff value of Rs.13,31,621/- and Market value of Rs.15,64,934/-. The said gold was seized under the provisions of the Customs Act, 1962, under Panchnama proceedings dated 23.12.2023.

Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty which is also admitted by him in his statement dated 23.12.2023. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in the present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

**12.** In this regard, I find that the Customs Baggage Rules, 2016 nowhere mentions about carrying gold in commercial quantity. It simply mentions about the restrictions on gold carried by the international passengers. Further, the Hon'ble Apex Court in Om Prakash Bhatia case reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the passenger had concealed/ hidden the gold and did not declare the same even after asking by the Customs officers until the same was detected. Hence, I find that in view of the above-mentioned case citing, the passenger by his act of concealing the gold with an intention of clearing the same illicitly from Customs area by not declaring the same to Customs has held the impugned gold liable for confiscation under Section 111 of the Customs Act, 1962.

**13.** I find that the said gold was placed under seizure vide Seizure Order dated 23.12.2023 under Panchnama proceedings dated 23.12.2023. The seizure was made under Section 110 of the Customs Act, 1962 on a reasonable belief that the said goods were attempted to be smuggled into India and liable for confiscation. In the statement recorded on 23.12.2023, the passenger had admitted that he did not want to declare the seized gold carried by him to the Customs on his arrival in the SVPI Airport so that he could clear it illicitly and evade the payment of Customs duty payable thereon. It is also on record that the Government Approved Valuer has tested and certified that the said gold was made of 24Kt/999.0 purity, totally weighing 241.130 Grams, having tariff value of Rs.13,31,621/- and market value of Rs.15,64,934/-. The recovered gold was accordingly seized vide Seizure Order dated 23.12.2023 under Panchnama proceedings dated 23.12.2023 in the presence of the passenger and the Panchas.

**14.** I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wants to save Customs duty, he had concealed the same with an intention to clear the gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy, 2015-2020.

**15.** Further, the passenger has accepted that he had not declared the said gold concealed/ hidden 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 gold recovered from his possession and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further, as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**16.** From the facts discussed above, it is evident that the passenger had carried the said gold weighing 241.130 grams, while arriving from Kuwait to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24Kt/999.00 purity totally weighing 241.130 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**17.** It is seen that the Noticee had not filled 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 241.130 grams concealed by the passenger 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.

**18.** It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold weighing 241.130 grams, recovered, and seized from the passenger vide Seizure Memo/ Order dated 23.12.2023 under Panchnama proceedings dated 23.12.2023, 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/ hidden, 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.

**19.** It is seen that he has involved himself in carrying, keeping, concealing, hiding 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 passenger 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.

**20.** I find that based on suspicious movement of Shri Jagpal Singh Jhala, he was intercepted at green channel when he was trying to exit through green channel. At the time of scanning of his baggage, it was found that the passenger has concealed/ hidden 6 gold cut bars (i.e. 5 cut gold bars & 1 small gold bar), totally weighing 241.130 grams concealed in Innerwear. Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty which is also admitted by him in his statement dated 23.12.2023. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

**21.** I find that the passenger confessed of carrying the said gold of 241.130 grams, concealed/ hidden are made up of 24 Kt. gold 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.

**22.** It is quite clear from the above discussions that the impugned gold was concealed/ hidden 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 gold totally weighing 241.130 grams, having Tariff Value of Rs.13,31,621/- and Market Value of Rs.15,64,934/- recovered and seized from the passenger vide Seizure Memo/ Order dated 23.12.2023 under the Pachamama proceedings dated 23.12.2023. Despite having knowledge that the said gold/ 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 241.130 grams by deliberately not declaring the same by him on arrival at the 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.

**23.** 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, totally weighing 241.130 grams, made up of 24 Kt. gold having purity 999.0, in the form of gold cut bars, was recovered from his possession and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. 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.

**24.** In view of the above discussions, I hold that the said gold weighing 241.130 grams, carried and undeclared by the passenger with an intention to clear the same illicitly from the Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the passenger has carried the said gold by concealing/ hidden to evade payment of Customs duty, to earn easy money. In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the said gold on payment of redemption fine, as envisaged under Section 125 of the Act.

**25.** Further, before the Hon'ble 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."*

**26.** In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble 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 Hon'ble 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.

**27.** 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).*

**28.** The Hon'ble High Court of Madras in the matter of Commissioner of Customs reported in (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.*

**29.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam

Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

**30.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold cut bars, made up of 24 Kt. gold having purity 999.0 totally weighing 241.130 grams carried by the passenger is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that gold cut bars, totally weighing 241.130 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.

**31.** I further find that the passenger had involved himself and abetted the act of smuggling of the said gold cut bars carried by him. He has agreed and admitted in his statement that he travelled with said gold, totally weighing 241.130 grams from Kuwait 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 241.130 grams by concealing/ hiding in the form of gold cut bars. 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 Section 112(a)(i) of the Act and I hold accordingly.

**32.** Accordingly, I pass the following Order:

## **O R D E R**

(i) I order absolute confiscation of the impugned gold, in the form of 1 gold bar & 2 cut gold bars, of 999.0/ 24Kt. purity gold having total weight of **241.130 Grams** hidden/ concealed in Innerwear and having total tariff value of **Rs.13,31,621/-** (Rupees Thirteen Lakhs Thirty-One Thousand Six Hundred Twenty-One only) and market value of **Rs.15,64,934/-** (Rupees Fifteen Lakhs Sixty-Four Thousand Nine Hundred Thirty-Four only) recovered and seized from the passenger **Shri Jagpal Singh Jhala** vide Seizure Order dated 23.12.2023 under Panchnama proceedings dated 23.12.2023 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

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

**33.** This order is issued without prejudice to any other action that may be taken against the passenger/ Notice or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

29/4/24

**(Vishal Malani)**
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-242/SVPIA-D/O&A/HQ/2023-24 Date: 29.04.2024
DIN: 20240471MN0000477897

**BY SPEED POST A.D.**

To,
**Shri Jagpal Singh Jhala,**
Gopinath Ka Garwa,
Banswara, Rajasthan
Pin - 327034.

**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.