



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुरानेहाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
दूरभाष : (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-255/SVPIA-B/O&A/HQ/2023-24
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-255/SVPIA-B/O&A/HQ/2023-24 dated: 15.03.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	84/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	28.06.2024
E	जारीकरने की तारीख/ Date of Issue	:	28.06.2024
F	द्वारा पारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातकरना का नाम और पता / Name and Address of Importer / Passenger	:	Shri Mohd. Anas, H. No. 141 Chak No. 15, Senta Kheda, Tanda, Rampur, Uttar Pradesh India-244 925.
(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 60 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 (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) 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 इयूटी 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. Anas, residing at H No. 141 Chak No 15 Senta Kheda, Tanda, Rampur, Uttar Pradesh India-244925 (hereinafter referred to as "the said person/ Noticee") holding an Indian Passport Number No. S6205892, arrived from Dubai to Ahmedabad on 02.11.2023 by Spicejet Flight No. SG-16 (Seat No. 16E) at terminal 2 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one passenger who arrived by Spicejet Flight No. SG-16 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 02.11.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2.1. Accordingly, in the presence of the panchas, the officers intercepted passenger when the said passenger tried to exit through Green Channel at the arrival hall of 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 Shri Mohd Anas and shown his Passport which is an Indian Passport bearing No. S6205892 and shown his Boarding Pass which shows that he had travelled from Dubai to Ahmedabad on 02.11.2023 by Spicejet Flight No. SG-16 (Seat No. 16E) at SVPI Airport, Ahmedabad. The AIU officers asked Shri Mohd Anas, if he has anything to declare, in reply to which he denied. Then, the AIU officers informed the passenger in presence of panchas that they will be conducting his personal search and he and other accompanied officers will conduct detailed examination of him. Here, the officers offered their personal search to the passenger, but the passenger denied and said that he is having full trust on the officers. Thereafter, the AIU officers asked the passenger whether they want to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave his consent to be searched in front of the Superintendent of Customs. The AIU officers asked Mr. Mohd Anas in presence of panchas to pass through the Door Frame Metal Detector (DFMD) Machine installed near

the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/clothes. The passenger removed all the metallic objects such as Jewellery etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound is heard indicating there is nothing objectionable/ metallic substance on his body/clothes. Thereafter, the said passenger, Panchas and the officers of AIU moved to the AIU Office located opposite Belt No.3 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad.

2.2 The AIU officers asked the said passenger again, if he is having anything dutiable which is required to be declared to the Customs to which the said passenger denied. The Officers in presence of the Panchas, interrogated the said passenger and on sustained interrogation and repeated questioning, the passenger Shri Mohd Anas confessed that he had carried two capsules containing gold paste concealed in his rectum. The Officers then, in presence of panchas, the passenger has been taken to the washroom opposite Belt No. 6 of Arrival Hall, Terminal 2, from where Shri Mohd Anas removed two capsules covered with black coloured adhesive tape containing gold paste from their rectum. The Officers in presence of panchas took the weight of the two capsules removed by Shri Mohd Anas, which have been measured and found weight to approximately 464.54 Grams.

2.3 Thereafter, the AIU officer called the Government Approved Valuer and informed him that two black coloured capsules have been recovered from a passenger and the passenger has informed that it is gold in semi solid/ paste form and hence, he needs 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 gold has to be extracted from such semi solid/paste form by melting it and also informed the address of his workshop.

2.4 Thereafter, the AIU Officers, the panchas along with the passenger left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road,

Ahmedabad-380006. On reached the above referred premises, the AIU officer introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. Here, after weighing the said semi solid substance covered with adhesive tape on his weighing scale, Shri Kartikey Vasantrai Soni informed that the two capsules recovered from Shri Mohd Anas, containing gold paste wrapped in adhesive tape is weighing 464.540 Grams.

2.5 Thereafter, Shri Kartikey Vasantrai Soni, led the AIU Officers, Panchas and Passenger Shri Mohd Anas to the furnace, which is nearby. Then, Shri Kartikey Vasantrai Soni started the process of converting the two capsules containing semi solid substance consisting of gold and chemical mix recovered from the passenger, into solid gold. The black colour adhesive tape of two capsules were removed and brown coloured semi solid paste packed in transparent tape was obtained which has been put into the furnace and upon heating the said substance, it turned into liquid material. The said substance in liquid state is taken out of furnace, and poured into a mould and after cooling for some time, it became golden coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer took the weight of the said golden coloured bar which is derived from the 464.540 Grams of capsules containing semi solid substance consisting of gold and chemical mix, in presence of the Officers, panchas, and the passenger, which came to 436.300 Grams.

2.6 The Government Approved Valuer, in presence of the Officers, panchas, and the passenger started testing and valuation of the said golden coloured bars. After testing and valuation, the Govt. Approved Valuer confirmed that it is 24 Kt. gold having purity 999.0 and he summarized that this gold bar is made up of 24 Kt. gold having purity 999.0 weighing **436.300** Grams having market value of **Rs.27,48,690/-** (Rupees Twenty Seven Lakhs forty eight thousand six hundred ninety only) and having tariff value of **Rs.23,60,752/-** (Twenty-three lakhs sixty thousand seven hundred fifty-two only). The value of the gold bar has been calculated as per the Notification No.79/2023-Customs (N.T.) dated 31.10.2023 (gold) and Notification

No. 81/2023-Customs (N.T.) dated 02.11.2023 (exchange rate). He submitted his valuation report to the AIU Officers and the Officers, the above panchas and the said passenger put their dated signature on the said valuation report.

2.7 The details of the Valuation of the said gold bars has been tabulated in below table:

Sl. No.	Details of Items	PCS	Gross Weight In Gram	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold bar derived from 464.540 Grams of capsules containing gold paste and chemical mix recovered from Shri Mohd Anas							
1.	Gold Bar	1	464.540	436.300	999.0 24Kt.	27,48,690/-	23,60,752/-

2.8. 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 alongwith the extracted gold bar on 03.11.2023. Thereafter, on being asked by the AIU officers, in the presence of the panchas, the passenger produced the identity proof documents which have verified and confirmed by the AIU Officers. The panchas and the passenger put their dated signatures on the copies of the documents as token of having seen and agreed to the same by way of passenger's manifest,

2.9 Thereafter the Officers in the presence of the panchas, and the passenger scrutinized the documents of the passengers, and found that Shri Mohd Anas is aged 23 years (DOB-16.07.2000), S/o- Mr. Mohd Umar, address (as per Passport): H No.141, Chak No.15, Mohalla Senta Kheda, Tanda, Rampur, Uttar Pradesh, India Pin- 244925. The AIU Officers again asked the passenger in presence of panchas to produce the identity proof documents and the passenger produced the following documents, as under:

- (i) Copy of Passport No. S6205892 issued at Bareilly on 26.11.2018 and valid up to 25.11.2028.
- (ii) Boarding pass of Spicejet Flight No. SG-16 from Dubai to Ahmedabad dated 02.11.2023 having Seat No. 16E.

2.10 Then, the AIU Officers shown the passenger Shri Mohd Anas as well as the Panchas, the passenger manifest of Spicejet Flight No. SG-16, in which name of Shri Mohd Anas is mentioned at Seq. No. 05 and the Officers, the panchas as well as the passenger put their dated signatures on the copies of all the above mentioned documents and the above passenger manifest, as a token of having seen and agreed to the same.

2.11 The AIU Officers informed the panchas as well as the passenger Shri Mohd Anas that the recovered Gold bars of 24Kt. with purity 999.0 weighing 436.300 Grams having market value of Rs.27,48,690/- (Rupees Twenty Seven Lakhs forty eight thousand six hundred ninety only) and having tariff value of Rs.23,60,752/- (Twenty-three lakhs sixty thousand seven hundred fifty-two only). The value of the gold bar has been calculated as per the Notification No. 79/2023-Customs (N.T.) dated 31.10.2023 (gold) and Notification No. 81/2023-Customs (N.T.) dated 02.11.2023 (exchange rate), recovered from the above said passenger was 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 a reasonable belief that the above said Gold is being attempted to be smuggled by Shri Mohd Anas, is liable for confiscation as per the provisions of Customs Act, 1962; hence, the said gold bars along with packing material was placed under seizure, vide Seizure Memo dtd. 03.11.2023, issued from F. No. VIII/10-175/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

3. A statement of Shri Mohd. Anas, was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 03.11.2023, wherein he explained as under:

Q-1. His name, age and address stated above is true and correct. He resides at above address since his birth years. He is doing the business of selling dress materials.

Q-2. : - He lives with his mother Smt. Rashida, and his wife Smt. Shajiya at his native place and his monthly income is Rs.25,000/- per month. His mother and his wife are house wives.

Q.3 :- He has completed 9th standard and he can speak and understand Hindi and English language.

Q.4 :- He used to travel to Dubai once in 05-10 days for the purpose of tour and travelling. He departed to Dubai on 01.11.2023 alone and returned back today i.e. on 02.11.2023 by Spicejet Flight No. SG-16.

Q.5 :- No. Nobody else has made overseas travelling.

Q.6:- On arrival at SVPI Airport at Ahmedabad at about 11:30 PM. he walked towards the exit gates through the Green Channel after crossing the Customs counter at the red Channel. He confirmed the events narrated in the panchnama drawn on 02/03.11.2023 at Terminal -2, SVPI Airport, Ahmedabad. During the course of said panchnama, two capsules containing Semi Solid paste weighing 464.540 Grams which had been concealed in his rectum were recovered, from which Gold bar weighing 436.300 Grams having purity of 999.0/24KT, valued at Rs.27,48,690/- (Market Value) and Rs.23,60,752/- (Tariff Value) was derived/ recovered from the said Semi Solid paste weighing 464.540 Grams. Thereafter, the AIU Officers on the reasonable belief that the said retrieved 436.300 Grams of Gold of purity 24 Karat was attempted to be smuggled by keeping it in a concealed manner in rectum under provisions of The Customs Act, 1962 and hence, the same was placed under seizure on 03.11.2023.

Q.7:- Ans:- He purchased the said Gold in paste form a Gold shop in Dubai. He further stated that the Gold in paste form belongs to him.

Q.8:- Ans:- The money for purchase of Gold in paste form was not paid by him. His brother Shri Sehzad who lives in Dubai was arranged the money and paid the amount to the Gold shop online. He do not know the said payment was made from his account or from other's account.

Q.9:- Ans:- He do not know the amount of money paid by his brother for purchase of the said Gold. He also do not have any purchase bill/invoice pertaining to the said purchase.

Q.10:- Ans:- He do not remember the name of the Gold Shop and he will recall the name of the shop.

Q.11:- Ans:- He purchased the said Gold for selling to somebody else for earning money. He had not decided to whom the said Gold would be sold.

Q.12:- Ans:- The to and fro flight tickets were booked by him through a travel agent and the payment was also made by him.

Q.13:- Ans:- The decision to smuggle gold was taken by him. He is well aware of the provisions of Customs Act and he know the smuggling of Gold is punishable offence.

Q.14:- Ans:- No. This is the first time he engaged in the activities of smuggling of Gold.

Q.15:-Ans:- He don't have any bank account.

4. The above said gold bar with a net weightment of 436.300 grams having purity of 999.0/24 Kt. involving market value of Rs.27,48,690/- and having tariff value of Rs.23,60,752/-, recovered from the said person, 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 436.300 Grams which were attempted to be smuggled by Shri Mohd. Anas, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 436.300 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 03.11.2023, issued from F. No. VIII/10-175/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

5. In view of the above, Shri Mohd. Anas, residing at H No. 141 Chak No. 15, Senta Kheda, Tanda, Rampur, Uttar Pradesh India-244 925, holding an Indian Passport Number No. S6205892, was called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:-

(i) The One Gold Bar weighing **436.300** Grams having purity 999.0/24 Kt. and involving market value of **Rs.27,48,690/-** (Rupees Twenty Seven Lakhs forty eight thousand six hundred ninety only) and having tariff value of **Rs.23,60,752/-** (Twenty-three Lakhs sixty thousand seven hundred fifty-two only), recovered from the Passenger who carried two capsules containing gold paste concealed in his rectum having gross weightment of Gold of 464.540 Grams, was placed under seizure under Panchnama proceedings dated 02.11.2023/ 03.11.2023 and Seizure Memo Order dated 03.11.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) The packing materials under seizure used for packing and concealment of the above-mentioned gold bar which were attempted to be smuggled into India in violation of Section 135, of the Customs Act, 1962, under Panchnama dated 02.11.2023/ 03.11.2023 and seized under Seizure memo order dated 03.11.2023, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger, Shri Mohd. Anas, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

6. Shri Mohd. Anas has not submitted written reply to the Show Cause Notice.

6.1. Shri Mohd. Anas was given opportunity to appear for personal hearing on 19.06.2024; 21.06.2024 and 24.06.2024 but he did not appear for personal hearing on the given dates.

Discussion and Findings:

7. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

8. In the instant case, I find that the main issue to be decided is whether the 436.300 grams of gold bar, obtained from 02 capsules containing paste of gold and chemical mixture weighing 464.540 grams, having Tariff Value of Rs.23,60,752/- (Rupees Twenty-Three Lakhs Sixty Thousand Seven Hundred Fifty-Two Only) and Market

Value of Rs.27,48,690/- (Rupees Twenty-Seven Lakhs Fourty-Eight Thousand Six Hundred Ninety Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 02-03.11.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the packing material used packing and concealment of the seized gold is liable for confiscation under Section 119 of the Act; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

9. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling, one passenger who arrived by Spice jet Flight No. SG-16 and on the basis of suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad, when the said passenger tried to exit through Green Channel at the arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad under Panchnama proceedings dated 02.11.2023. The AIU officers asked Shri Mohd. Anas, if he has anything to declare, in reply to which he denied. The AIU officers asked Mr. Mohd Anas to pass through the Door Frame Metal Detector (DFMD) Machine and when he passed through the DFMD, no beep sound was heard indicating there is nothing objectionable/ metallic substance on his body/ clothes. The AIU officers asked the said passenger again, if he is having anything dutiable which is required to be declared to the Customs to which the said passenger denied. The Officers interrogated the said passenger and on sustained interrogation and repeated questioning, the passenger Shri Mohd Anas confessed that he had carried two capsules containing gold paste concealed in his rectum. The Officers took the passenger to the washroom, where Shri Mohd Anas removed two capsules covered with black coloured adhesive tape containing gold paste from their rectum. The Officers in presence of Panchas took the weight of the two capsules removed by Shri Mohd Anas, weighing approximately 464.54 Grams.

10. It is on record that the Government Approved Valuer, started testing and valuation of the said capsules. After testing and valuation,

the Govt. Approved Valuer confirmed that it is 24 Kt. gold having purity 999.0 and he summarized that this gold bar is made up of 24 Kt. gold having purity 999.0 weighing **436.300** grams having market value of **Rs.27,48,690/-** (Rupees Twenty Seven Lakhs Forty-Eight Thousand Six Hundred Ninety only) and having tariff value of **Rs.23,60,752/-** (Twenty-Three Lakhs Sixty Thousand Seven Hundred Fifty-Two only).

I also find that the said 436.300 grams of gold bar obtained from the 464.540 grams of gold paste having Tariff Value of Rs.23,60,752/- and Market Value of Rs.27,48,690/- carried by the passenger Shri Mohd. Anas appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 02.11.2023 under Section 108 of the Customs Act, 1962.

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

12. Further, the passenger has accepted that he had not declared the said gold paste concealed in his body (rectum) on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said gold paste which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold paste recovered from his possession and which was kept

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

13. From the facts discussed above, it is evident that Shri Mohd. Anas had carried gold paste weighing 464.540 grams, (wherefrom 436.300 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste) while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/ 999.00 purity totally weighing 436.300 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold paste in his body and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

14. It is seen that the Noticee had not filed the baggage declaration form and had not declared the said gold paste which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold paste weighing 464.540 grams concealed in his body i.e. rectum (extracted gold bar of 436.300 grams), by the passenger without declaring to the Customs on arrival in India cannot be treated as

bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

15. It, is therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 436.300 grams (derived from the gold paste, totally weighing 464.540 grams), having Tariff Value of Rs.23,60,752/- and Market Value of Rs.27,48,690/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 02-03.11.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold paste concealed in his body, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the said gold and failed to declare the same on his arrival at the Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

16. I find that the Noticee confessed of carrying the said gold paste of 464.540 grams concealed in his body (extracted gold bar of 436.300 grams having purity 999.0) and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or

export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

17. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from the foreign destination with the wilful intention to smuggle the impugned goods. The said gold bar weighing 436.300 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 464.540 grams, having Tariff Value of Rs.23,60,752/- and Market Value of Rs.27,48,690/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 02-03.11.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 464.540 grams (Gold bar weighing 436.300 grams derived from the same) by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

18. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be

fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 436.300 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 464.540 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, passenger concealed the said gold paste in his body. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

19. In view of the above discussions, I hold that the said gold bar weighing 436.300 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 464.540 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 02.11.2023 stated that he has carried the gold by concealment in his body (rectum) to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment in the body. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

20. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that

he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

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

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

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

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

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately

attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

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

24. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government Of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-05-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

25. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 436.300 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 464.540 grams carried by the passenger is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that said gold bar weighing 436.300 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

26. I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 436.300 grams,

carried by him. He has agreed and admitted in his statement that he travelled with gold paste consisting of Gold & Chemical Mix, totally weighing 464.540 grams from Dubai to Ahmedabad. Despite his knowledge and belief that the gold paste carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold paste of 464.540 grams by concealing in his body (extracted gold bar of 436.300 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 one gold bar weighing **436.300** Grams having purity 999.0/24 Kt. and involving market value of **Rs.27,48,690/-** (Rupees Twenty Seven Lakhs forty eight thousand six hundred ninety only) and having tariff value of **Rs.23,60,752/-** (Twenty-three Lakhs sixty thousand seven hundred fifty-two only), recovered from the Passenger who carried two capsules containing gold paste concealed in his rectum having gross weightment of Gold Bar of 464.540 Grams, was placed under seizure under Panchnama proceedings dated 02.11.2023/ 03.11.2023 and Seizure Memo Order dated 03.11.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) I order absolute confiscation of the packing materials under seizure used for packing and concealment of the above-mentioned gold bars which were attempted to be smuggled into India in violation of Section 119, of the Customs Act, 1962, under panchnama dated 02.11.2023/ 03.11.2023 and seized under Seizure memo order dated 03.11.2023, under

Section 119 of the Customs Act, 1962; and

iii) I impose a penalty of **Rs.9,00,000/-** (Rupees Nine Lakhs Only) on Shri Mohd. Anas under the provisions of Section 112(a)(i) of the Customs Act, 1962 for the omissions and commissions mentioned hereinabove.

28. Accordingly, the Show Cause Notice No. VIII/10-255/SVPIA-B/O&A/HQ/2023-24 dated 15.03.2024 stands disposed of.

Vishal
28/6/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-255/SVPIA-B/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN000001060B

BY SPEED POST AD

To,
Shri Mohd. Anas,
H. No. 141 Chak No. 15,
Senta Kheda, Tanda,
Rampur, Uttar Pradesh India-244 925.

Copy to:

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