



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-218/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-218/SVPIA-D/O&A/HQ/2023-24 dated: 14.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 83/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 28.06.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 28.06.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: Smt. Rojinaben Yakubbhai Rathod, Chamoda, Gir, Somnath, Gujarat Pin Code:-362265.
(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 मंजिल, हुडको भवन, ईश्वर भुतन 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: -

Smt. Rojinaben Yakubbbhai Rathod, (D.O.B: 01.01.1984) (hereinafter referred to as the said "passenger/ Noticee"), residential address as per passport is Chamoda, Gir, Somnath, Pin Code - 362265, India, holding Indian Passport No. V3292408, arrived by Spice Jet Flight No. SG 16 from Dubai to Ahmedabad dated 31.10.2023 having seat No. 10D at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 01.11.2023 in presence of two independent witnesses for passenger's personal search and examination of her baggage. The passenger was carrying one trolley bag and one shoulder bag as Checked-in baggage.

2. The officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. The officers informed the passenger that she would be conducting her personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether she wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave her consent to be searched in presence of the Superintendent of Customs. Now, the AIU officer asks the passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from her body/clothes. The passenger removes all the metallic objects such as mobile, purse etc. and keeps in a plastic tray and passes through the DFMD. However, no beep sound is heard indicating there is nothing objectionable/ metallic substance on her body/ clothes. Thereafter, the said passenger, panchas and the officers move to the AIU office located opposite belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport,

Ahmedabad along with the baggage of the passenger. Now, the luggage of Smt. Rojinaben Yakubbbhai Rathod passed through the X-Ray Baggage Scanning Machine, the officers noticed some suspicious items in her check-in baggage/ suitcase. The AIU officers ask the passenger to open her bag, in reply of which, Smt. Rojinaben Yakubbbhai Rathod opens her bag in which various Chocolate item packets such as wafers packet etc. are displayed, the weight of the Chocolate packets is measured and found more than the weight written on the Chocolate packets. Therefore, one chocolate packet is opened and 02 powder packed pouches are found inside. Further, the officers ask the passenger about the powder material present inside the powdered sealed pouches, in reply of which the passenger tells the officers that these pouches contains Gold Powder mixed with Flavored Powder and all the chocolate packets contain the same pouches.

2.1 The officers informed the panchas that the Powder mixed with Flavored Powder substance recovered from Smt. Rojinaben Yakubbbhai Rathod contains gold, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantryai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such Powder mixed with Flavored Powder of gold and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad-380006. Shri Kartikey Vasantryai Soni, the Government Approved Valuer weighed the said Powder mixed with Flavored Powder substance comprising of gold on his weighing scale and informed that it was weighing 2828.650 grams.

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantryai Soni started the process of converting the said Powder mixed with Flavored Powder substance comprising of gold into solid gold. After completion of the procedure, Government Approved Valuer informed that the Gold Powder is extracted having gross weight 211.320 grams which is further melted to a gold bar. The Government Approved Valuer now takes the weight of the said golden colored bar which is derived from the Powder material mixed flavored powder

weighing 2828.650 grams, in presence of the panchas, the passenger and the Officers, which comes to **205.690** Grams.

Now, the Government Approved Valuer, in presence of panchas, the passenger and the Officers, starts testing and valuation of the said golden colored bar. After testing and valuation, Shri Soni Kartikey Vasantrai vide certificate no. 819/2023-24 dated 01.11.2023 that this gold bar is made up of 24 Kt. gold having purity 999.0 weighing 205.690 Grams having market value of Rs.12,94,819/- (Rupees Twelve Lakh Ninety-Four Thousand Eight Hundred and Nineteen Only) and Tariff Value of Rs.11,13,618/- (Rupees Eleven Lakh Thirteen Thousand Six Hundred and Eighteen 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. 76/2023-Customs (N.T.) dated 19.10.2023 (exchange rate).

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

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	205.690	999.0/ 24 Kt	12,94,819/-	11,13,618/-

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates.

3. The following documents produced by the passenger – Smt. Rojinaben Yakubbbhai Rathodwere withdrawn under the Panchnama dated 01.11.2023 :

- (i) Copy of Passport No. V3292408 issued at Ahmedabad on 28/09/2021 and valid up to 27/09/2031.

- (ii) Boarding pass of Spice Jet Flight No. SG 16 from Dubaito Ahmedabad dated 31.10.2023 having seat No. 10D.

4. Accordingly, gold bar having purity 999.0/24 Kt. weighing 205.690 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Smt. Rojinaben Yakubbbhai Rathod was seized vide Panchnama dated 01.11.2023, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made there under.

5. A statement of Smt. Rojinaben Yakubbbhai Rathod was recorded on 01.11.2023, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that -

- (i) She went Dubai on 7.10.2023 in connection with a work offer of cooking in a marriage function and not regular and frequent flier;
- (ii) She arranged travel ticket on her own through travel agent and have made the payment to the travel agent.
- (iii) She has not purchased the Gold Powder mixed with Flavored Powder which has been recovered from her trolley bag. The recovered Gold Powder mixed with Flavored Powder was purchased by some unknown person at Dubai to hand over the same to a person at Ahmedabad Airport;
- (iv) She had been present during the entire course of the Panchnama dated 01.11.2023 and he confirmed the events narrated in the said Panchnama drawn on 01.11.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) She was aware that smuggling of gold without payment of Customs duty is an offence; She confirmed the recovery of Gold totally weighing 205.690 grams having purity 999.0/24 KT valued at market value of Rs.12,94,819/- (Rupees Twelve Lakh Ninety Four Thousand Eight Hundred and Nineteen Only) and Tariff Value of Rs.11,13,618/- (Rupees Eleven Lakh Thirteen

Thousand Six Hundred and Eighteen only from him under the Panchnama dated 01.11.2023; she had opted for green channel to attempt to smuggle the gold without paying Customs duty.

6. The above said gold bar weighing **205.690** grams, market value of **Rs.12,94,819/-** (Rupees Twelve Lakh Ninety-Four Thousand Eight Hundred and Nineteen Only) and Tariff Value of **Rs.11,13,618/-** (Rupees Eleven Lakh Thirteen Thousand Six Hundred and Eighteen only recovered from Smt. Rojinaben Yakubbbhai Rathod, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the vest in the form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar weighing 205.690 grams which was attempted to be smuggled by Smt. Rojinaben Yakubbbhai Rathod, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 205.690 grams derived from the Powder material mixed flavored powder weighing 2828.650 grams, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 01.11.2023.

7. In view of the above, Smt. Rojinaben Yakubbbhai Rathod, residing at Chamoda, Gir, Somnath, Pin Code - 362265, India, holding Indian Passport No. V3292408, was 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) One Gold Bar weighing 205.690 grams having purity 999.0/24 Kt. and having market value of Rs.12,94,819/- (Rupees Twelve Lakh Ninety Four Thousand Eight Hundred and Nineteen Only) and Tariff Value of Rs.11,13,618/- (Rupees Eleven Lakh Thirteen Thousand Six Hundred and Eighteen only) derived the Powder material mixed flavored powder weighing 2828.650 grams concealed various Chocolate item packets such as wafers packet etc by the passenger and

placed under seizure under Panchnama proceedings dated 01.11.2023 and Seizure Memo Order dated 01.11.2023, 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) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

8. Smt. Rojinaben Yakubbbhai Rathod has not submitted written reply to the Show Cause Notice.

8.1. Smt. Rojinaben Yakubbbhai Rathod was given opportunity to appear for personal hearing on 19.06.2024; 21.06.2024 and 24.06.2024 but she 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 her reply/ submissions or to appear for the personal hearing opportunities offered to her. The adjudication proceedings cannot wait until the Noticee makes it convenient to file her 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 205.690 grams of gold bar, derived the Powder material mixed flavored powder weighing 2828.650 grams, having Tariff Value of Rs.11,13,618/- (Rupees Eleven Lakh Thirteen Thousand Six Hundred and Eighteen Only) and Market Value of Rs.12,94,819/- (Rupees Twelve Lakh Ninety Four Thousand Eight Hundred and

Nineteen Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 01.11.2023, 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; 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 suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 01.11.2023. The officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. The officers asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine and passed through the DFMD, no beep sound was heard indicating there is nothing objectionable/ metallic substance on her body/ clothes. The luggage of Smt. Rojinaben Yakubbbhai Rathod was passed through the X-Ray Baggage Scanning Machine, and the officers noticed some suspicious items in her check-in baggage/ suitcase. The AIU officers asked the passenger to open her bag, Smt. Rojinaben Yakubbbhai Rathod opened her bag in which various Chocolate item packets such as wafers packet etc. were found. The weight of the Chocolate packets was measured and found more than the weight written on the Chocolate packets. Therefore, one chocolate packet was opened and 02 powder packed pouches were found inside. Further, the officers asked the passenger about the powder material present inside the powdered sealed pouches, in reply of which the passenger informed the officers that these pouches contain Gold Powder mixed with Flavored Powder and all the chocolate packets contain the same pouches.

12. It is on record that Shri Kartikey Vasantraai Soni, the Government Approved Valuer weighed the said Powder mixed with Flavored Powder substance comprising of gold on his weighing scale and informed that it was weighing 2828.650 grams (weight inclusive of vest). The

Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said Powder mixed with Flavored Powder substance comprising of gold into solid gold. After completion of the procedure, he informed that the Gold Powder is extracted having gross weight 211.320 grams which is further melted to a gold bar. After testing and valuation, he informed that this gold bar is made up of 24 Kt. gold having purity 999.0 weighing **205.690** Grams having market value of **Rs.12,94,819/-** (Rupees Twelve Lakh Ninety Four Thousand Eight Hundred and Nineteen Only) and Tariff Value of **Rs.11,13,618/-** (Rupees Eleven Lakh Thirteen Thousand Six Hundred and Eighteen only). The details of the Valuation of the said gold bar are tabulated in below table:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	205.690	999.0/24 Kt	12,94,819/-	11,13,618/-

13. I also find that the said 205.690 grams of gold bar obtained from the 211.320 Grams of gold paste having Tariff Value of Rs.11,13,618/- and Market Value of Rs.12,94,819/- carried by the passenger Smt. Rojinaben Yakubbbhai Rathod 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 her statement recorded on 01.11.2023 under Section 108 of the Customs Act, 1962.

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 her 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 her statement, she has clearly admitted that she was aware that import of gold without payment of Customs duty was an offence but as she wants to save Customs duty, she had concealed the same in packets of wafers 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 she had not declared the said gold paste concealed in Packers of wafers on her 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 her possession and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from her possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

16. From the facts discussed above, it is evident that Smt. Rojinaben Yakubbbhai Rathod had carried gold weighing 211.320 grams, (wherefrom 205.690 grams of gold bar having purity 999.0 recovered on the process of extracting gold) 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 205.690 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold in Packers of wafers 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 filed the baggage declaration form and had not declared the said gold which was in her 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 211.320 grams concealed in Packers of wafers (extracted gold bar of 205.690 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.

18. It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 205.690 grams, having Tariff Value of Rs.11,13,618/- and Market Value of Rs.12,94,819/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 01.11.2023 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 concealed in Packers of wafers, 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 she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she 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 her liable for penalty under Section 112 of the Customs Act, 1962.

19. I find that the Noticee confessed of carrying the said gold of 211.320 grams concealed in Packers of wafers (extracted gold bar of 205.690 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.

20. 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 gold bar weighing 205.690 grams, having Tariff Value of Rs.11,13,618/- and Market Value of Rs.12,94,819/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 01.11.2023. 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 said gold bar weighing 205.690 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 her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

21. 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 205.690 grams, was recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in Packers of wafers in her luggage. 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.

22. In view of the above discussions, I hold that the said gold bar weighing 205.690 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from the Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the Noticee in her statement dated 01.11.2023 stated that she has carried the said gold by concealment in Packers of wafers 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.

23. 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."

24. 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.

25. 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).

26. 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.

27. 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".

28. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 205.690 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that gold

bar weighing 205.690 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.

29. I further find that the passenger had involved herself and abetted the act of smuggling of the said gold bar weighing 205.690 grams, carried by her. She has agreed and admitted in her statement that she travelled with the said gold from Dubai to Ahmedabad. Despite her knowledge and belief that the said gold carried by her 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 205.690 grams by concealing in Packers of wafers having purity 999.0. Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she 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.

30. Accordingly, I pass the following Order:

ORDER

- (i) I order absolute confiscation of the one Gold Bar weighing **205.690** grams having purity 999.0/24 Kt. and having market value of **Rs.12,94,819/-** (Rupees Twelve Lakh Ninety Four Thousand Eight Hundred and Nineteen Only) and Tariff Value of **Rs.11,13,618/-** (Rupees Eleven Lakhs Thirteen Thousand Six Hundred Eighteen only) derived the Powder material mixed flavored powder weighing 2828.650 grams concealed various Chocolate item packets such as wafers packet etc by the passenger and placed under seizure under Panchnama proceedings dated 01.11.2023 and Seizure Memo Order dated 01.11.2023, 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 impose a penalty of **Rs.4,00,000/-** (Rupees Four Lakhs Only) on Smt. Rojinaben Yakubbbhai Rathod under the provisions of Section 112(a)(i) of the Customs Act, 1962 for the omissions and commissions mentioned hereinabove.

31. Accordingly, the Show Cause Notice No. VIII/10-218/SVPIA-D/O&A/HQ/2023-24 dated 14.03.2024 stands disposed of.

Vishal
28/6/24

(Vishal Malani)

Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-218/SVPIA-D/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN0000823112

BY SPEED POST AD

To,
Smt. Rojinaben Yakubbbhai Rathod,
Chamoda, Gir, Somnath, Gujarat
Pin Code:-362265.

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.