



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/10-193/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-193/SVPIA-D/O&A/HQ/2023-24 dated: 07.03.2024
C	मूलआदेश संख्या/ Order-In-Original No.	:	81/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	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Siraj Mohammed Husasain, Room No. 3, Ajmal Cottage, Bala Sawant Lane, Somwar Peth, Vasai West, Palghar, Maharashtra- 401201.
(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 प्राप्ति किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), छवि 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 7.5% अधिकतम 10 करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में हैं 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, 1962 के धरा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Shri Siraj Mohammed Husasain (hereinafter referred to as "the said passenger/ Noticee"), arrived by Viet Jet Flight No. VJ 1925 from Hanoi to Ahmedabad on 16.10.2023 at residential address as per passport is Room No. 3, Ajmal Cottage, Bala Sawant Lane, Somwar Peth, Vasai West, Palghar, Maharashtra-401201, holding Indian Passport No. Z3846396 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of input, the passenger was guided from the Airplane by the officers of Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad. The passenger was guided to the Immigration Hall where he gets his passport checked in. Thereafter, in the presence of the panchas, the AIU Officers guided the passenger to the Red Channel and asked the passenger whether he is carrying any dutiable goods or foreign currency or any restricted goods and whether he wishes to declare anything before Customs Authorities. In response the passenger Shri Siraj Mohammed Husasain submitted that he does not wish to declare anything and that he does not carry any dutiable/ objectionable goods. Thereafter, the panchas and the AIU officers along with Shri Siraj Mohammed Husasain came near AIU office situated in the arrival hall of the T-2 Terminal, where the passenger trying to exit Green Channel without making any declaration to Customs, under Panchnama proceedings dated 16.10.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggages (One Check-in baggage and One small Hand bag).

2. Now, the officers put/ place the baggages of the passenger into the Baggage Screening Machine (BSM) for examination/ checking in presence of the panchas. On examination of hand baggage, the AIU officers noticed unusual dark images indicating objectionable items, in the small hand bag. The officers put/ place the baggages (One Check-in baggage and one hand bag) of the passenger into the Baggage Screening Machine (BSM) and examine the baggage however; the

panchas and officers did not notice any unusual images indicating nothing objectionable is present in the two baggages.

Thereafter, the officers then asked the passenger Shri Siraj Mohammed Husasain to remove all the metallic items on his body and pass through the Door Frame Metal Detector (DFMD). The passenger places his mobile, wallet, in the plastic tray and passes through the DFMD machine. On passing through the DFMD the Panchas and the officers did not notice/ hear a beep sound indicating there is no metallic thing on the body. However, on the basis of input that the said passengers might be carrying high value dutiable/ contraband goods hidden inside his body, the AIU officers informed the passenger, that x-ray would be required to be conducted to confirm whether he has concealed any substance in his body. Thereafter, the officers again asked the passenger whether he is carrying any dutiable/ contraband goods in his body by way of concealment, the passenger again denies the same and agree for the X-ray to be conducted.

Thereafter, the officers call the X-ray expert along with his machines for conducting the x-rays at the above-mentioned premises. In the meanwhile, the passenger has gone to the wash room in a rush and did not come for a long time, on suspicion of delayed movement of the passenger, the officer along with the panchas, rushed to the washroom and find that the passenger is hidden inside a toilet cabin, after several calls from the outside of toilet cabin, the passenger opened the door in a distress, thereafter, the officers start the thorough search of toilet cabin, while searching, the officers find two capsules covered with black color adhesive tape under the commode sheet, on being asked by the officers, the passenger confesses that he has carried these capsules in his rectum which are containing gold in paste form and also states that for fear of being caught he was trying to hide these capsules in the washroom area. Thereafter, the officers, along with the panchas and passenger return to the AIU office for further procedure.

2.1 The officers informed the panchas that the capsules recovered from Shri Siraj Mohammed Husasain contains semi solid substance comprising of gold and chemical mix, which required to be confirmed

and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix 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 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said 02 capsules of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 467.760 grams (weight inclusive of black coloured adhesive tape).

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said semi solid substances concealed in the said capsules into solid gold. After completion of the procedure, Government Approved Valuer informed that **1 Gold bar** weighing **392.120** grams having purity 999.0/24 Kt. is derived from the above mentioned 467.760 grams of 02 capsules containing gold paste and chemical mix. The details are tabulated in the below table.

Sl. No.	Details of Items	PCS	Gross Weight in Gram	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold bar	1	467.760	392.120	999.0 24Kt.	24,15,459/-	19,87,348/-

After testing of the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 734/2023-24 dated 16.10.2023 certified that the gold bar is having purity 999.0/ 24kt. and Market Value at **Rs.24,15,459/-** (Rupees Twenty-Four Lakhs Fifteen Thousand Four Hundred and Fifty-Nine only) and tariff value at **Rs.19,87,348/-** (Rupees Nineteen Lakhs Eighty-Seven Thousand Three Hundred and Forty-Eight only). The value of the gold bar has been calculated as per the Notification No. 75/2023-Customs (N.T.) dated 13.10.2023 (gold)

and Notification No. 73/2023-Customs (N.T.) dated 05.10.2023 (exchange rate) recovered from the Shri Siraj Mohammed Husasain.

3. Accordingly, gold bar having purity 999.0/24 Kt. weighing 392.120 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Shri Siraj Mohammed Husasain was seized vide Panchnama dated 16.10.2023, under the provisions of the Customs Act 1962, on a reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Custom duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

A statement of Shri Siraj Mohammed Husasain was recorded on 16.10.2023, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that -

- (i) He is engaged in the business of Computer repairing and Networking;
- (ii) He went to Bangkok on 11.10.2023 from Mumbai; he started his return journey from Bangkok to Hanoi by Flight VJ906 and from Hanoi to Ahmedabad by Viet Jet Flight VJ 1925;
- (iii) He decided to meet one of his clients in Surat and for this he chose to arrive at Ahmedabad airport.;
- (iv) He had been present during the entire course of the Panchnama dated 16.10.2023 and he confirmed the events narrated in the said panchnama drawn on 16.10.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) He is aware that smuggling of gold without payment of Customs duty is an offence; he is well aware of the gold concealed in 02 capsules containing gold and chemical mix in semi-solid form in his rectum but he did not make any declarations in this regard with an intention to smuggle the same without payment of Custom duty.
- (vi) He was trying to hide these capsules in the washroom area.

4. The above said gold bar weighing 392.120 grams recovered from Shri Siraj Mohammed Husasain, 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 form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that

the Gold bar weighing 392.120 grams is attempted to be smuggled by Shri Siraj Mohammed Husasain, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 392.120 grams derived from the above said semi solid gold paste with chemical mix weighing 467.760 grams along with its packing material used to conceal the semi solid gold paste in 02 capsules, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 16.10.2023.

5. In view of the above, **Shri Siraj Mohammed Husasain**, residing at Room No. 3, Ajmal Cottage, Bala Sawant Lane, Somwar Peth, Vasai West, Palghar, Maharashtra-401201, holding Indian Passport No. Z3846396, 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 **392.120** grams having purity 999.0/24kt, Market Value at **Rs.24,15,459/-** (Rupees Twenty-Four Lakhs Fifteen Thousand Four Hundred and Fifty-Nine only) and tariff value at **Rs.19,87,348/-** (Rupees Nineteen Lakhs Eighty-Seven Thousand Three Hundred and Forty-Eight only derived from semi solid gold paste concealed in 02 capsules containing gold and chemical mix in semi-solid paste form in rectum by the passenger and placed under seizure under Panchnama proceedings dated 16.10.2023 and Seizure Memo Order dated 16.10.2023, should not be confiscated under the provisions 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:

6. Shri Siraj Mohammed Husasain has not submitted written reply to the Show Cause Notice.

6.1. Shri Siraj Mohammed Husasain 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 392.120 grams of gold bar, obtained from two capsules containing paste of gold and chemical mixture weighing 467.760 grams, having Tariff Value of Rs.19,87,348/- (Rupees Nineteen Lakhs Eighty-Seven Thousand Three Hundred Fourty-Eight Only) and Market Value of Rs.24,15,459/- (Rupees Twenty-Four Lakhs Fifteen Thousand Four Hundred Fifty-Nine Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 16.10.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; 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 input, the passenger was guided from the Airplane by the officers of Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad. The passenger was guided to the Immigration Hall where he got his passport checked in. Thereafter, the AIU Officers guided the passenger to the Red Channel and asked the passenger whether he is

carrying any dutiable goods or foreign currency or any restricted goods and whether he wishes to declare anything before Customs Authorities. In response the passenger Shri Siraj Mohammed Husasain submitted that he does not wish to declare anything and that he does not carry any dutiable/ objectionable goods.

10. It is also on record that the officers asked the passenger Shri Siraj Mohammed Husasain to pass through the Door Frame Metal Detector (DFMD) and on passing through the DFMD, the officers did not notice/ hear a beep sound indicating there is no metallic thing on the body. However, based on input that the said passengers might be carrying high value dutiable/ contraband goods hidden inside his body, the AIU officers informed the passenger, that x-ray would be required to be conducted to confirm whether he has concealed any substance in his body. Thereafter, the officers again asked the passenger whether he is carrying any dutiable/ contraband goods in his body by way of concealment, the passenger again denies the same and agree for the X-ray to be conducted. The officers called the X-ray expert along with his machines for conducting the X-rays at the above-mentioned premises. In the meanwhile, the passenger went to the washroom in a rush and did not come for a long time. On suspicion of delayed movement of the passenger, the officers rushed to the washroom and found that the passenger was hidden inside a toilet cabin. After several calls from the outside of toilet cabin, the passenger opened the door in a distress. The officers started thorough search of the toilet cabin and while searching, the officers found two capsules covered with black color adhesive tape under the commode seat. On being asked by the officers, the passenger confessed that he has carried these capsules in his rectum which are containing gold in paste form and also stated that for fear of being caught he was trying to hide these capsules in the washroom area.

11. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said 02 capsules of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 467.760 grams (weight inclusive of black coloured adhesive tape). The Government Approved Valuer Shri Kartikey Vasantrai Soni started the process of converting the said semi

solid substances concealed in the said capsules into solid gold. After completion of the procedure, the Government Approved Valuer informed that **1 Gold bar** weighing **392.120** grams having purity 999.0/24 Kt. is derived from the above mentioned 467.760 grams of 02 capsules containing gold paste and chemical mix, having Market Value at **Rs.24,15,459/-** (Rupees Twenty-Four Lakhs Fifteen Thousand Four Hundred and Fifty-Nine only) and tariff value at **Rs.19,87,348/-** (Rupees Nineteen Lakhs Eighty-Seven Thousand Three Hundred and Forty-Eight only). The details of the said gold are tabulated below:

TABLE - I

Sl. No.	Details of Items	PCS	Gross Weight in Gram	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold bar	1	467.760	392.120	999.0 24Kt.	24,15,459/-	19,87,348/-

I also find that the said 392.120 grams of gold bar obtained from the 467.760 grams of gold paste having Tariff Value of Rs.19,87,348/- and Market Value of Rs.24,15,459/- carried by the passenger Shri Siraj Mohammed Husasain 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 16.10.2023 under Section 108 of the Customs Act, 1962.

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

(Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

13. Further, the passenger has accepted that he had not declared the said gold paste concealed in his body 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 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.

14. From the facts discussed above, it is evident that Shri Siraj Mohammed Husasain had carried gold paste weighing 467.760 grams, (wherfrom 392.120 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste) while arriving from Hanoi 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 392.120 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.

15. It is seen that the passenger & 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 467.760 grams concealed in his body i.e. rectum (extracted gold bar of 392.120 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.

16. It is, therefore, proved that by the above acts of contravention, the passenger has rendered the gold bar weighing 392.120 grams (derived from the gold paste, totally weighing 467.760 grams), having Tariff Value of Rs.19,87,348/- and Market Value of Rs.24,15,459/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 16.10.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold paste concealed 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 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 passenger & Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

17. I find that the Noticee confessed of carrying the said gold paste of 467.760 grams concealed in his body (extracted gold bar of 392.120 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.

18. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign destination with the wilful intention to smuggle the impugned goods. The said gold bar weighing 392.120 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 467.760 grams, having Tariff Value of Rs.19,87,348/- and Market Value of Rs.24,15,459/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 16.10.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 467.760 grams (Gold bar weighing 392.120 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 provisions of Section 112 of the Customs Act, 1962.

19. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 392.120 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 467.760 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.

20. In view of the above discussions, I hold that the said gold bar weighing 392.120 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 467.760 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 passenger & Noticee in his statement dated 16.10.2023 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.

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

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

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

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

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

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

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

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

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

26. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 392.120 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 467.760 grams carried by the passenger is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold bar weighing 392.120 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

27. I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 392.120 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 467.760 grams from Hanoi 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 467.760 grams by concealing in his body (extracted gold bar of 392.120 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.

28. Accordingly, I pass the following Order:

ORDER

- (i) I order absolute confiscation of One Gold Bar weighing **392.120** grams having purity 999.0/24kt, Market Value at **Rs.24,15,459/-** (Rupees Twenty-Four Lakhs Fifteen Thousand Four Hundred and Fifty-Nine only) and tariff value at **Rs.19,87,348/-** (Rupees Nineteen Lakhs Eighty-Seven Thousand Three Hundred and Forty-Eight only derived from semi solid gold paste concealed in 02 capsules containing gold and chemical mix in semi-solid paste form in rectum by the passenger and placed under seizure under Panchnama proceedings dated 16.10.2023 and Seizure Memo Order dated 16.10.2023, under the provisions 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.7,50,000/-** (Rupees Seven Lakhs Fifty Thousand Only) on Shri Siraj Mohammed Husasain under the provisions of Section 112(a)(i) of the Customs Act, 1962 for the omissions and commissions mentioned hereinabove.

29. Accordingly, the Show Cause Notice No. VIII/10-193/SVPIA-D/O&A/HQ/2023-24 dated 07.03.2024 stands disposed of.

Vishal
28/6/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-193/SVPIA-D/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN0000111811

BY SPEED POST AD

To,
Shri Siraj Mohammed Husasain,
Room No. 3, Ajmal Cottage,
Bala Sawant Lane, Somwar Peth,
Vasai West, Palghar, Maharashtra-401201.

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.