प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन ,"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
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PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-123/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by Pax.
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**93/ADC/VM/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**04.07.2024**
E	जारीकरनेकीतारीख/ Date of Issue	:	**04.07.2024**
F	द्वारापारित/ Passed By	:	**Vishal Malani**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Shri Shahrukh Mohammed Umar Sayed,** 30, Noor Manzil, 1st Floor, Room No. 6, Mohammed Ali Road, Mumbai, Maharashtra, Pin – 400 003.
(1)	**यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

Brief Facts of the case:

On the basis of specific input, a passenger, **Shri Shahrukh Mohammed Umar Sayed** S/o Shri Mohammed Umar Hussain Razak Sayed holding an Indian Passport Number No. B9663894 Residence: 30, Noor Manzil, 1st Floor, Room No. 6, Mohammed Ali Road, Mumbai, Maharashtra, India, Pin - 400003 (as per his passport) arrived at SVPI, Airport, Ahmedabad from Bangkok by Thai Airways Flight No. TG343 dated 19.04.2024 at around 11.54 PM was intercepted by the officers of DRI/ AIU on the specific Input and suspicion that he was carrying dutiable/ contraband goods. The DRI/ AIU Officers asked the passenger, if he has anything to declare to Customs, in reply to which passenger denied.

2. The AIU Officers asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, a beep sound is heard indicating there is something objectionable/ metallic substance on his body/ clothes. The AIU officers asked him whether anything objectionable/ dutiable item on his body or not. The passenger now agreed that he is having two Gold Chains which are concealed by him/ hidden by him insides his underpants. The officers directed him to remove them from his body and the said passenger removed the two gold chains of very similar size which were concealed by him. After removing the same, the officers again asked the said passenger as to whether he is further carrying anything dutiable item with him apart from the removed articles, he denied. The officer asks whether the said two chains are made of Gold, he agrees that the same made of gold.

3. Further, the Govt. Approved Valuer confirmed valuation vide Certificate No. 077/2024-25 dated 20.04.2024 and informed that the total Market Value of the said recovered gold weighing **699.960** grams, is **Rs.53,26,696/-** (Rupees Fifty-Three Lakhs Twenty-Six Thousand Six Hundred Ninety-Six only) and having tariff value of **Rs.45,66,623/-** (Forty-Five Lakhs Sixty-Six Thousand Six Hundred Twenty Three only).

4. A statement of Shri Shahrukh Mohammed Umar Sayed was recorded under Section 108 of the Customs Act, 1962 wherein the passenger admitted to attempting to smuggle gold into the country, he admitted that he had smuggled total 699.960 grams of gold of 999.00 purity/ 24 kt. in the form of two gold chains hidden in his underpants, which he wore. The same was clearly meant for commercial purposes and hence, do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before Customs by the passenger.

5. In view of above, 699.960 grams Gold in form of two gold chains of purity 999.00/24Kt was placed under Seizure on 20.04.2024 under Panchnama dated 19/20.04.2024 and Seizure Memo dated 20.04.2024 on reasonable ground that the same are liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally.

6. In terms of Board's Circular No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dtd. 23.10.2015 and 27/2015-Cus issued from 394/68/2013-Cus (AS) dtd. 23.10.2015 as revised vide circular No. 13/2022-Customs dtd. 16.08.2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items were the value of the goods involved is Rs.50,00,000/- (Rs. Fifty Lakhs) or more.

7. Since the Market Value of gold item weighting 699.960 Grams, is more than Rs.50,00,000/-, the passenger was arrested under Section 104 of the Customs Act, 1962. Further, the passenger was released on bail on payment of bail bond amount of Rs.70,000/- vide Challan/Folio No. 39624 dated 21.04.2024.

8. In view of above, 699.960 grams Gold in form of two gold chains of purity 999.00/24Kt was placed under Seizure on 20.04.2024 under Panchnama dated 19/20.04.2024 and Seizure Memo dated 20.04.2024 on reasonable ground that the same are

liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally.

9. LEGAL PROVISIONS RELEVANT TO THE CASE

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

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

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

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

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

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

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

a. vessels, aircrafts and vehicles;
b. stores;

c. baggage;
d. currency and negotiable instruments; and
e. any other kind of movable property;

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

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

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

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

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

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

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

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

p) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77 are liable to confiscation under Section 111(l) of the Customs Act, 1962.

q) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section(1) of section 54 are liable to confiscation under Section 111(m) of the

Customs Act, 1962.

r) As per Section 112 of the Customs Act, 1962 any person, (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

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

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

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

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

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

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

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

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

CONTRAVENTION AND VIOLATION OF LAWS

10. It therefore appears that:

a) Shri Shahrukh Mohammed Umar Sayed had actively involved himself in the instant case of smuggling of gold into India. Shri Shahrukh Mohammed Umar Sayed had improperly imported two gold chains ('the said gold' for short) of 24 Kt. gold having purity 999.0, totally weighing **699.960** grams, having tariff value of

Rs.45,66,623/- (Rupees Fourty-Five Lakhs Sixty-Six Thousand Six Hundred Twenty-Three Only) and market value of **Rs.53,26,696/-** (Rupees Fifty-Three Lakhs Twenty-Six Thousand Six Hundred Ninety-Six Only), as discussed above, without declaring it to the Customs. He has not declared the said gold with a deliberate intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules, and Regulations. Therefore, the improperly imported gold by the passenger without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Shri Shahrukh Mohammed Umar Sayed has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

b) By not declaring the value, quantity and description of the goods imported by him, the said passenger has violated the provisions of Baggage Rules, 2016, read with Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

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

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

f) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold articles, i.e. two

gold chains, totally weighing 699.960 grams having tariff value of Rs.45,66,623/- and market value of Rs.53,26,696/- without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Shahrukh Mohammed Umar Sayed.

11. Shri Mahavir B Bhansali, Advocate of the passenger Shri Shahrukh Mohammed Umar Sayed, vide his letter dated 21.04.2024, submitted that he wants to finish up the case at the earliest, hence he waives the issue of written Show Cause Notice and the case may be decided on merits. He requested for waiver of Show Cuse Notice and requested to take lenient view in the matter and release the gold.

12. PERSONAL HEARING:

Personal hearing in this case was fixed on 02.07.2024, wherein Shri Mahavir B Bhansali, Advocate appeared on behalf of the passenger/ Noticee. Shri Mahavir Bhansali, Advocate submitted that his client has purchased gold from his personal savings and borrowed money from his friends. He reiterated that his client brought Gold for his personal and family use. This is the first time he brought gold, i.e. 2 Gold Chains. Due to ignorance of law the said gold was not declared by the passenger. He further submitted that his client is ready to pay applicable fine and penalty and requested for release of seized gold. He further submitted that the gold is not prohibited but restricted and the gold is not in commercial quantity. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

DISCUSSION & FINDINGS :

13. I have carefully gone through the facts of this case and the submissions made by the Advocate of the passenger in his written submissions as well as during the personal hearing and documents available on record. I find that the passenger had requested for waiver of Show Cause Notice. The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section

124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

14. In the instant case, I find that the main issue that is to be decided is whether the gold i.e. two gold chains of 24Kt/ 999.0 purity, totally weighing 699.960 grams and having tariff value of Rs.45,66,623/- (Rupees Fourty-Five Lakhs Sixty-Six Thousand Six Hundred Twenty-Three only) and market value of Rs.53,26,696/- (Rupees Fifty-Three Lakhs Twenty-Six Thousand Six Hundred Ninety-Six Only) carried by the passenger, which were seized vide Seizure Order dated 20.04.2024 under the Panchnama proceedings dated 20.04.2024 on the reasonable belief that the said goods were smuggled into India, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not and whether the passenger is liable for penalty under the provisions of Section 112 of the Act.

15. I find that the Advocate has submitted that the gold was brought by his client, for his personal use. The gold was purchased by his client. He requested to allow release of gold on payment of redemption fine. He has further added that gold is not prohibited and not in commercial quantity, the genuine lapse took place and thus a case has been booked against his client.

16. In this regard, I find that on the basis of specific input, a passenger, **Shri Shahrukh Mohammed Umar Sayed** was intercepted by the officers of DRI/ AIU on the specific Input and suspicion that he was carrying dutiable/ contraband goods. The DRI/ AIU Officers asked the passenger, if he has anything to declare to Customs, in reply to which passenger denied. The AIU Officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passes through the DFMD Machine, a beep sound was heard indicating there is something objectionable/ metallic substance on his body/ clothes. On being asked, the passenger agreed that he is having two Gold Chains which are concealed by him/ hidden insides his underpants. Now, the officers directed him to remove them from his body and the said passenger removed the two gold chains of very similar size which were concealed by him. After removing the same,

the officers again asked the said passenger as to whether he is further carrying anything dutiable item with him apart from the removed articles, however, he denied.

17. Further, the passenger, Shri Shahrukh Mohammed Umar Sayed in presence of panchas confessed that he has carried gold articles viz. two gold chains, as detailed above. Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in the present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

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

19. I find that the said gold totally weighing 699.960 grams was placed under seizure vide Seizure Order dated 20.04.2024 under Panchnama proceedings dated 20.04.2024. The seizure was made under Section 110 of the Customs Act, 1962 on a reasonable belief that the said goods were attempted to be smuggled into India and

liable for confiscation. In the statement recorded on 20.04.2024, the passenger had admitted that he did not want to declare the seized gold carried by him to the Customs on his arrival to the SVPI Airport so that he could clear it illicitly and evade the payment of Customs duty payable thereon. It is also on record that the Government Approved Valuer has tested and certified that the said gold made of 24Kt/ 999.0 purity gold totally weighing 699.960 Grams, having tariff value of Rs.45,66,623/- and market value of Rs.53,26,696/-. The recovered gold was accordingly seized vide Seizure Order dated 20.04.2024 under Panchnama proceedings dated 19/20.04.2024 in the presence of the passenger and Panchas.

20. I also find that the passenger has neither questioned the manner of panchnama proceedings nor controverted the facts detailed in the Panchnama during recording his statement. Every procedure conducted during the panchnama proceedings by the Customs Officers is well documented and made in the presence of the panchas as well as the passenger. The passenger has submitted that the said gold was purchased by him. The Noticee has clearly admitted that he had intentionally not declared the gold recovered and seized from him, on his arrival before the Customs with an intent to clear it illicitly and evade payment of Customs duty, which is an offence under the Customs Act, 1962 and the Rules and Regulations made under it. In fact, in his statement dated 20.04.2024, the passenger admitted that he had intentionally not declared the seized gold having total weight of 699.960 Grams on his arrival before the Customs officer with an intent to clear it illicitly and evade payment of Customs duty.

21. I thus find that the recovery of gold from the possession of the passenger which was hidden and not declared to the Customs with an intention to illicitly clear it from the Airport to evade the payment of Customs duty is an act of smuggling and the same is conclusively proved. By his above act of commission, it is proved beyond doubt that the passenger has violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find that the gold imported by the passenger was

purchased by him, however the same has not been declared before the Customs to evade payment of tax. Therefore, the gold imported by the passenger, viz. two gold chains, and deliberately not declared before the Customs on his arrival in India cannot be treated as a bonafide household goods and thus the passenger has contravened the Para 2.26 of the Foreign Trade Policy 2015-20 and thereby 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 read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

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;

> *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. Given the facts of the present case before me and the judgements and rulings cited above, two gold chains, made of 24 kt/999.0 purity gold totally weighing 699.960 Grams, recovered from the said passenger, that was kept undeclared and placed under seizure would be liable to confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act. I find that the passenger is not a carrier and the said gold was brought by him for his personal

use which is not in a commercial quantity, and not carried on behalf of some other person with a profit motive.

24. I further find that the passenger had involved himself and abetted the act of carrying the said gold made up of 999.0/ 24Kt. purity gold having total weight of 699.960 grams. He has agreed and admitted in the statement recorded that he travelled with the said gold of 24Kt/999.0 purity having total weight of 699.960 grams from Bangkok to Ahmedabad. Despite his knowledge and belief that the gold carried and undeclared by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to clear the said gold without making any declaration. The passenger in his statement dated 20.04.2024 stated that he did not declare the impugned gold as he wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has actively involved himself in carrying, removing, keeping 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 provisions of Sections 112 of the Act and I hold accordingly.

25. I also refer, CBIC Circular No: 495/5/92-Cus. VI dated 10.05.1993 which talks about the concealment of gold in order to smuggle it into India. So, I find that ingenious concealment is one of the important aspects of deciding on redemption/ non-redemption of the goods. Accordingly, I proceed to decide the issue.

26. In view of the above discussions, I hold that the said gold, totally weighing 699.960 grams, recovered from the Noticee/ passenger are liable for confiscation. However, the impugned gold carried by the passenger was for personal use, not in a commercial quantity, and not brought for another person for profit motive. As such, I use my discretion to give an option to redeem the impugned seized gold on payment of a redemption fine, as provided under Section 125 of the Act.

27. I find that this issue of re-demption of gold has travelled through various appellate fora. I find that in the following cases, Hon'ble Supreme Courts, High Courts, the appellate fora allowed redemption of seized goods;

(i) *Sapna Sanjeev Kohli vs. Commissioner – 2010(253) E.L.T.A52(S.C.).*
(ii) *Union of India vs. Dhanak M Ramji – 2010(252) E. L. T. A102(S.C.)*
(iii) *Shaikh Jamal Basha Vs. G.O.I. – 1997(91) E. L. T. 277 (A. P.).*
(iv) *Commissioner of Cust. & C. Ex. Nagpir-I Vs. Mohd. Ashraf Armar – 2019(369) E. L. T. 1654 (Tri. Mumbai).*
(v) *Shri R. P. Sharma, Additional Secretary in RE Ashok Kumar Verma – 2019(369) E. L. T. 1677 (G. O. I.).*
(vi) *Suresh Bhosle Vs. Commissioner of Customs (Rev.) Kolkatta – 2009(246) E. L. T. 77 (Cal.).*
(vii) *T. Elavarasan Versus Commissioner of Customs (Airport), Chennai reported at 2011 (266) E.L.T. 167 (Mad.)*

28. I find that when there are judgements favouring redemption, there are contra judgement which provide for absolute confiscation of seized gold attempted to be smuggled into India as follows;

i. *Abdul Razak Vs., U. O. I. – 2012(275)E. L. T. 300 (Ker.) maintained by Hon'ble Supreme Court – 2017(350) E. L. T. A173(SC)*

29. I further find that ingenious concealment is one of the important aspects for deciding on the redemption/ non-redemption of the goods. Further, while deciding the case, the CBIC Circular/ Instruction F. No: 275/17/2015-CX. 8A dated 11.03.2015 is also looked into, which emphasized that Judicial discipline should be followed while deciding pending show cause notices/ appeals.

30. I find that, the option to redemption has been granted and absolute confiscation is set-a-side vide order No. 12/2021-CUS(WZ)/ASAR dated 18.01.2021 by the Revision authority, GOI issued under F. No: 371/44/B/2015-RA/785 dated 29.01.2021. Similar view was taken by Revision Authority vide Order No. 287/2022-CUS(WZ)/ASAR/Mumbai dated 10.10.2022; Order No. 245/2021- CUS(WZ)/ASAR dated 29.09.2021 issued under F. No: 371/44/B/15-RA/2020 dated 06.10.2021 and Order No: 314/2022-Cus (WZ)/ASAR/Mumbai dated 31.10.2022 issued from F. No:

371/273/B/WZ/2018 dated 03.11.2022. Further, the above mentioned 3 orders of RA has been accepted by the department.

31. I also find that in Order No. 345/2022-CUS(WZ)/ASRA/ MUMBAI dated 25.11.2022, in the case of Mrs. Manju Tahelani Vs. Principal Commissioner of Customs, Ahmedabad, passed by the Revision Authority, Government of India, Mumbai in which it was held in para 13 that –

> *"In the instant case, the quantum of gold under import is small and is not of commercial quantity. The impugned gold jewellery had been worn by the applicant on her person and Government observes that sometimes passengers resort to such methods to keep their valuables/ precious possessions safe. There are no allegations that the applicant is habitual offender and was involved in similar offence earlier. The fact of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling of commercial consideration."*

32. I also find that in Order No. 245/2021-CUS(WZ)/ASAR/MUMBAI dated 29.09.2021 in case of Shri Memon Anjum, the Revisionary Authority set aside the order of absolute confiscation. The Revisionary Authority in Para 14 observed as under:

> *"Government notes that there is no past history of such offence/violation by the applicant. The part of impugned gold jewellery was concealed but this at times is resorted to by travellers with a view to keep the precious goods secure and safe. The quantity/type of gold being in form of gold chain and 3 rings is jewellery and is not commercial in nature. Under the circumstance, the Government opines that the order of absolute confiscation in the impugned case is in excess and unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allows redemption on suitable redemption fine and penalty."*

33. I further find that the Hon'ble High Court of Delhi in a recent judgement dated 21.08.2023 in the case of Nidhi Kapoor and others, in para 156 of its order observed that –

> *"The Court holds that an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudicating Officer. For reasons aforenoted, the Court finds no illegality in the individual orders passed by the Adjudicating Officer and which were impugned in these writ petitions."*

34. I find that hiding the seized goods cannot be considered as an ingenious concealment even though the charge of non-declaration of the seized gold is established. Further, the ownership of the seized gold by the passenger cannot be denied, as he claims ownership of

seized gold. Further, he brought gold for the first time and hence it is not a case of habitual offender. Looking to the facts that this is not a case of ingenious concealment, I am of the considered opinion that under Section 125 of the Customs Act, 1962, the option for redemption can be granted.

35. I further find that the passenger had agreed and admitted in the statement recorded that he travelled with the said gold having net weight of 699.960 Grams from Bangkok to Ahmedabad. Despite his knowledge and belief that the gold carried by him in his person is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to carry the said gold. The passenger in his statement dated 20.04.2024 stated that he did not declare the impugned gold as he wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has involved himself in carrying, removing, keeping and dealing with the undeclared 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 the provisions of Sections 112 of the Act and I hold accordingly.

36. Accordingly, I pass the order as under:

O R D E R

i. I order confiscation of the impugned gold, i.e. two gold chains made up of 999.0/ 24Kt. purity gold having total weight of **699.960 Grams** and having tariff value of **Rs.45,66,623/-** (Rupees Fourty-Five Lakhs Sixty-Six Thousand Six Hundred Twenty-Three only) and market value of **Rs.53,26,696/-** (Rupees Fifty-Three Lakhs Twenty-Six Thousand Six Hundred Ninety-Six Only) recovered and seized from the passenger Shri Shahrukh Mohammed Umar Sayed vide Seizure Order dated 20.04.2024 under Panchnama proceedings dated 19/20.04.2024 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii. I give an option to Shri Shahrukh Mohammed Umar Sayed to redeem the impugned goods, having total weight of 699.960 Grams on payment of redemption fine of **Rs.10,00,000/-** (Rupees Ten Lakhs Only) under Section 125(1) of the Customs Act, 1962. In addition to redemption fine, the passenger would be liable for payment of applicable duties and other levies/ charges in terms of Section 125(2) of the Customs Act, 1962;

iii. I impose a penalty of **Rs.4,00,000/-** (Rupees Four Lakhs Only) on Shri Shahrukh Mohammed Umar Sayed under the provisions of Section 112 (a)(i) of the Customs Act, 1962.

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

4/7/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-123/SVPIA-A/O&A/HQ/2024-25 Date: 04.07.2024
DIN: 20240771MN000033203F

BY SPEED POST A.D.

To,
Shri Shahrukh Mohammed Umar Sayed,
30, Noor Manzil, 1st Floor, Room No. 6,
Mohammed Ali Road, Mumbai,
Maharashtra, Pin – 400 003.

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 (Prosecution), Ahmedabad.
(iv) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
(v) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site.
(vi) Guard File.