प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद –380009.
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DIN No.20250171MN000000AC10

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-119/SVPIA-B/O&A/HQ/ 2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-119/SVPIA-B/O&A/HQ/ 2024-25 dated: 11.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**237/ADC/SRV/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**23.01.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**23.01.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Shri Nasim Ahmed Abdul Aziz Khan,** Room No.2, chawl No.7, 666-Transit Camp, B.J. Road, Jacob Circle, Mumbai, Maharashtra-400011
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय 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 साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा 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, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case: -

Shri Nasim Ahmed Abdul Aziz Khan (hereinafter referred to as the said "passenger/ Noticee"), residing at Room No.2, chawl No.7, 666 - Transit Camp, B.J. Road, Jacob Circle, Mumbai, Maharashtra -400011, holding an Indian Passport Number No. M6906866, arrived by Spice Jet flight SG16 from Dubai to Ahmedabad and his boarding pass bearing Seat No.28C, at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one male passenger namely Shri Nasim Ahmed Abdul Aziz Khan, who arrived by Spice Jet Flight No. SG16 on 27.02.2024 came from Dubai at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad is suspected to be carrying smuggled gold either in his baggage or concealed in his clothes/ body and on suspicious movement of the passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 27.02.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2. The AIU Officers asked about his identity of Shri Nasim Ahmed Abdul Aziz Khan by his Passport No. M6906866, who travelled by Spice Jet Flight No. SG16 from Dubai to Ahmedabad

and his boarding pass bearing Seat No. 28C, after he had crossed the Green Channel at the Ahmedabad International Airport. In the presence of the Panchas, the AIU Officers asked Shri Nasim Ahmed Abdul Aziz Khan if he has anything to declare to the Customs, to which he denied the same politely. The officers offered their personal search to the passenger, but the passenger denied and said that he had full trust on them. Now, the officers asked the passenger whether he wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which he gave the consent to be searched in front of the Superintendent of Customs.

2.1 The AIU Officers, in presence of the Panchas, observed that Shri Nasim Ahmed Abdul Aziz Khan had carried a black-coloured trolley bag, a Grey coloured Trolley bag and some small handbags. The officers, in presence of the Panchas carried out scanning of the trolley bags in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed.

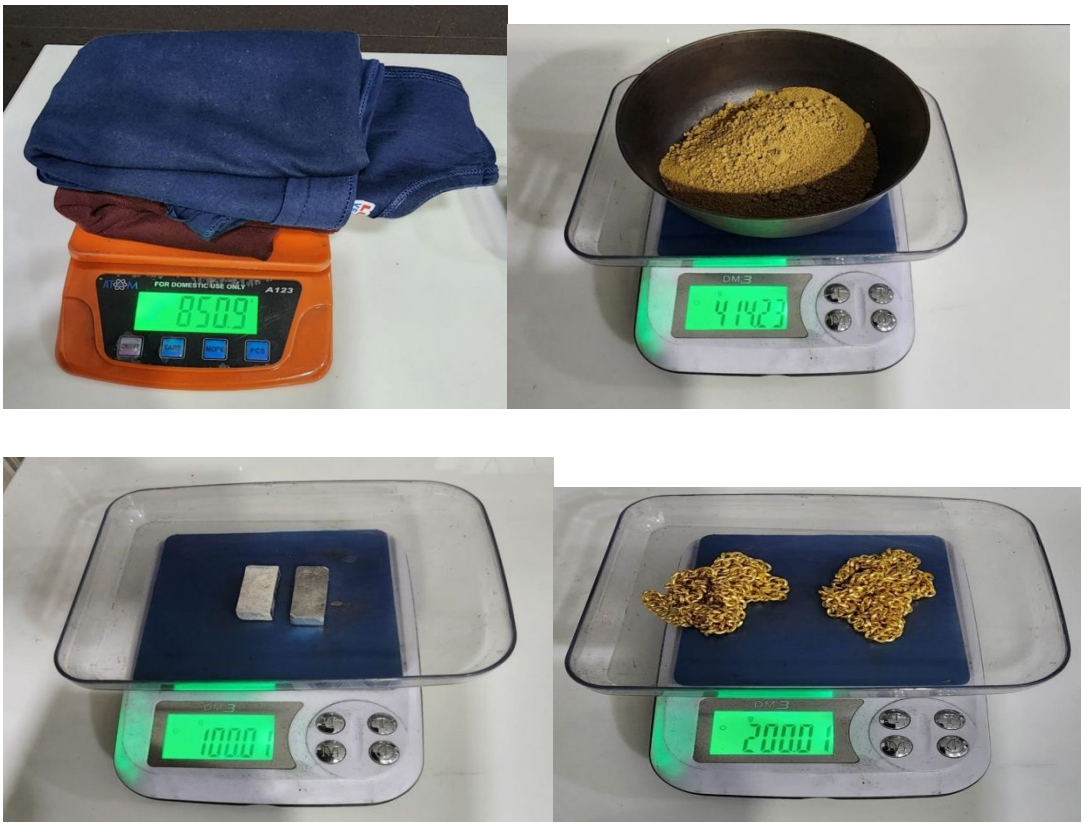
2.2 The AIU Officers, in presence of the Panchas, asked Shri Nasim Ahmed Abdul Aziz Khan to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he was wearing on their body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passing through the

DFMD Machine, no beep sound/ alert was generated. Thereafter, the AIU Officers in presence of Panchas, asked the passenger whether he has concealed any substance in his body, to which the replied in negative. Then, after thorough interrogation by the Officers, in presence of Panchas, the passenger did not confess he has carried any high valued dutiable goods. The Officers under the reasonable belief that the said passenger carried some high valued dutiable goods by way of concealing it in his body parts. During frisking, the passenger Shri Nasim Ahmed Abdul Aziz Khan is examined thoroughly by the AIU officer. The AIU officers asked the said passenger to change all his clothes. During the examination of clothes, the officers in presence of Panchas find that the innerwear i.e. vest of the passenger is unusually heavy. On further examination the officer found that that the said innerwear i.e. vest have two layers stitched on the inner side. The officer in presence of the Panchas and the passenger cut opens the stitched layer where in a Brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vests and two small gold bars coated with white Rhodium concealed in two Apple iPods and two gold chains are found and on sustained interrogation Shri Nasim Ahmed Abdul Aziz Khan confessed that he carried gold in Brown coloured semi solid paste of gold and substance concealed inside the two layer of fabrics of two inner vests and two small gold bars coated with white Rhodium concealed in apple iPods. He was taken to the AIU room opposite belt no. 2 of arrival hall, Terminal 2 by the Officer, where Shri Nasim Ahmed Abdul Aziz Khan removed his innerwear and he was allowed to wear another clothes he brought with him. In presence of the Panchas and the AIU Officers, Shri Nasim Ahmed Abdul Aziz Khan tear and cut opens the stitched layer of two inner vests and removed two

gold bars coated with white Rhodium concealed in two Apple iPods and two gold chains. The weight of the all the items removed by Shri Nasim Ahmed Abdul Aziz Khan is measured which comes to approximately 850.900 Grams.

2.3 Thereafter, the AIU officer called the Government Approved Valuer and informs him that substance concealed inside the layer of fabric of two inner vest and two small gold bars coated with white Rhodium concealed in two Apple iPods recovered from a passenger and the passenger has informed that it is gold in semi-solid/ paste form as well as solid gold bars and hence, he needs to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the AIU Officer that the testing of the said material is only possible at his workshop as gold has to be extracted from such semisolid substance consisting of gold and chemical mix form by melting it and also informed the address of his workshop. As such, the AIU Officers along with the passenger and the Panchas visited the Shop No. 301, Golden Signature, Behind Ratnam Complex, Near National Handloom, C.G. Road, Ahmedabad-380 006, where the officers introduced Shri Soni Kartikey Vasantrai, Government Approved Valuer to the Panchas, as well as the passenger. After weighing the said semisolid substance concealed inside the layer of the fabric of two inner vest and two small gold bars and two gold chain on his weighing scale, Shri Kartikey Vasantrai Soni provided detailed primary verification report of semi-solid substance consisting of Gold and Chemical mix inside the layer of the fabrics having gross weight 850.900 grams, gold paste with Ashes of cloth having weight 414.230 grams, one gold bar weighing 411.72 grams and one gold bar derived from gold bar coated with white Rhodium inside iPods having gross weight

100.00 grams and two gold chains having Gross Weight of 200.010 Grams. Shri Kartikey Vasantrai Soni and the Officers took the photograph of the same which is as under:-



2.4 Thereafter, the Government approved valuer led the Panchas, officers and the passenger to the furnace which is located inside his business premises. The Government approved valuer started the process of converting the brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vests and two small gold bars coated with white Rhodium containing semi solid gold paste recovered from the passenger, was put into the furnace and upon heating the same solid substance, turns into ash form. The said substance in ash form is taken out of furnace, and heated in the furnace and it turns to liquid form and after cooling for some times, it becomes yellow

coloured solid metal and poured it into a bar shaped plate and after cooling for some time, it becomes yellow coloured solid metal in form of one gold bar. After completion of the procedure, the Government Approved Valuer take the weight of the said golden coloured bar derived from gold past which is comes to 411.720 grams one gold bar weighing 100.00 grams derived from gold bar coated with 100.00 white Rhodium and 100.00 grams from two gold bars coated with white Rhodium. The Govt. approved valuer take the two gold chains totally weighing 200.01 grams and informed that the gold chain recovered from the passenger is having purity 999.0/24K. After completing the procedure, the Government approved valuer confirmed vide Valuation Certificate No. 1412/2023-24 dated 27.02.2024 that the semi-solid substance consisting of Gold and Chemical mix derived from gold paste recovered from Shri Nasim Ahmed Abdul Aziz Khan, one gold bar weighing 411.72 grams having purity 999.0/ 24 Kt., having market value of Rs.26,45,713/- (Rupees Twenty-six lakh forty-five thousand seven hundred and thirteen only) and having tariff value of Rs.22,07,317/- (Rupees Twenty-two lakhs Seven thousand three hundred and seventeen only). One Gold bar derived from gold bar coated with white rhodium having purity 999.0/24k having market value Rs.6,42,600/- and Tariff value Rs.5,36,121/- and two gold chain having purity 999.0/24k having market value Rs.12,85,264/- and Tariff value Rs.10,72,296/-. The value of the gold bar has been calculated as per the Notification No. 12/2024-Customs (N.T.) dated 15.02.2024 (gold) and Notification No. 13/2024-Customs (N.T.) dated 15.02.2024 (exchange rate). He submits his valuation report to the AIU Officer which is in Annexure-A and Annexure-B.

The details of the valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar (derived from gold paste)	1	411.720	999.0 24Kt.	26,45,713	22,07,317
2	Gold Bar (Derived from gold bar coated with White Rhodium)	1	100.000	999.0 24 Kt.	6,42,600	5,36,121
3.	Gold Chain	2	200.010	999.0 24 Kt.	12,85,264	10,72,296
	Total	**4**	**711.730**		**45,73,577**	**38,15,734**

The Photographs of the net weight of the pure gold is as under:-

2.5 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent Panchas the passenger and officers. All were satisfied and agreed with the testing and valuation Certificate dated 27.02.2024 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 certificate.

3. The following documents produced by the passenger Shri Nasim Ahmed Abdul Aziz Khan were withdrawn under the Panchanama dated 27.02.2024:

(i) Copy of Passport No. M6906866 1issued at Mumbai on 02.03.2015 valid up to 01.03.2025.
(ii) Boarding pass of Spice Jet Flight No. SG 16, Seat No.28C from Dubai to Ahmedabad dated 14.09.2023

4. Thereafter, the AIU officers asked in the presence of the Panchas, to produce the identify proof documents of the passenger and the passenger produced the identity proof documents which have been verified and confirmed by the AIU officers and found correct. Accordingly, one gold bar weighing 411.72 grams having purity 999.0/24 Kt., having market value of Rs.26,45,713/- (Rupees Twenty-six lakh forty-five thousand seven hundred and thirteen only) and having tariff value of Rs.22,07,317/- (Rupees Twenty-two lakhs Seven thousand three hundred and seventeen only). One Gold bar derived from gold bar coated with white rhodium having purity 999.0/24k having market value Rs.6,42,600/- and Tariff value Rs.5,36,121/- and two gold chain having purity 999.0/24k having market value Rs.12,85,264/- and Tariff value Rs.10,72,296/- recovered from the passenger, which were attempted to smuggle gold into India with an intent to evade

payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962, was seized vide Panchnama dated 27.02.2024, vide Seizure Memo dated 27.02.2024 issued from F. No. VIII/10-325/AIU/B/2023-24 dated 27.02.2024, under the provisions of Section 110(1) & (3) of Customs Act, 1962 and accordingly the same was liable for confiscation as per the provisions of Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A Statement of Shri Nasim Ahmed Abdul Aziz Khan was recorded under Section 108 of the Customs Act, 1962 on 27.02.2024**,** wherein he, inter-alia stated that -

(i) His name, age and address stated above is true and correct. He is a Driver by profession and running autorickshaw/cab in Mumbai.

(ii) He is living with his Wife Mrs. Razia Khan and two children at his native place and his monthly income is Rs.25,000/-. He has studied upto 10th Standard.

(iii) He went to Dubai on 23rd February, 2024 with his wife for the purpose of attending a religious function held at his brother's residence in Dubai and returned back on 26th February, 2024 by Spicejet Flight No.SG16.

(iv) The Spice Jet Flight No. SG16 from Dubai arrived at SVPI Airport, Ahmedabad on 27.02.2024. Thereafter, he was intercepted by the officers of Air Intelligence Unit when he arrived at Arrival Hall of T-2 Terminal of SVPI International Airport when he was about to exit through the green channel. During his personal search, carried out by the Officers in presence of him and the Panchas, he confessed that he was carrying brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in two Apple iPod and two gold chains total net weight 711.730 grams (god bar

weighting 411.720 derived from brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest + 100.00 grams Gold bar derived from gold bar + 200.010 grams of two gold chains). Thereafter the gold items were converted into gold bar by melting it at the premises of the Govt. approved valuer in presence of himself, AIU officers and the Panchas. The said gold bar weighing 711.730grams was seized by the officers under Panchnama dated 27.02.2024 under the provision of Customs Act, 1962.

(v) He has purchased the said gold items from a shop in Dubai. He stated that all the gold items recovered from him belongs to him only.

(vi) The money for the purchase of gold in paste from was paid by him. He borrowed the money from his brother, Shri Shamim Ahmed who is working in Dubai and settled there for years.

(vii) He has not any bills for the purchase and he paid 1,68,000 dirham which is approximately. 38 lakhs of Indian rupees for purchase of the said gold items.

(viii) He has purchased the said gold for selling to somebody else for earning money. He had not decided to whom the said gold be sold.

(ix) The to and fro flight tickets were booked by him through a travel agent and the payment was also made by him.

(x) He is well aware of the provisions of Customs Act and he know the smuggling of Gold is punishable offence.

(xi) He stated that this is the first time he engaged in the activities of smuggling of Gold.

6. The above said gold items with a net weighment of **711.730** grams (total) having purity of 999.0/24 Kt. And having total market value of **Rs.45,73,577/-** (Rupees Forty-five lakh Seventy-three thousand Five hundred and seventy-seven only) and having

total tariff value of **Rs.38,15,734/-** (Rupees Thirty-eight lakh Fifteen Thousand Seven hundred and Thirty four only) recovered from the said passenger, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in two Apple iPod and two gold chains total net weight 711.730 grams, which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar and chains totally weighing 711.730 Grams which were attempted to be smuggled by Shri Nasim Ahmed Abdul Aziz Khan is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar and gold chains totally weighing 711.730 grams which was derived and concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in Apple iPod and two gold chains, were placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 27.02.2024, issued from F. No. VIII/10-325/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. *—In this Act, unless the context otherwise requires, —*

(22) "goods" includes-

(a) vessels, aircrafts and vehicles;
(b) stores;
(c) baggage;
(d) currency and negotiable instruments; and

(d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(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;

(39) "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;"

II) Section11A – Definitions *-In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) Section 77 – Declaration by owner of baggage. — *The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."*

IV) Section 79. Bona fide baggage exempted from duty. -

(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value

of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

V) Section 110 – Seizure of goods, documents and things. *—(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

VI) Section 111 – Confiscation of improperly imported goods, etc.–*The following goods brought from a place outside India shall be liable to confiscation:-*

(d) any goods which are imported or attempted to be imported or are 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;
(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
(j) 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;
(l) 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;
(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VII) Section 112 – Penalty for improper importation of goods, etc.– *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.

VII) Section 119 – Confiscation of goods used for concealing smuggled goods–*Any goods used for concealing smuggled goods shall also be liable to confiscation."*

B. <u>THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;</u>

I) Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, 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."*

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

III) Section 11(1) - *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."*

C. <u>THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:</u>

I) Regulation 3 (as amended) - *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

8. It therefore appears that:

(a) The passenger had dealt with and actively indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold bar weighing 711.730 Grams having purity 999.0/24 Kt., by way of brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in Apple iPod and two gold chains total net weight 711.730 grams, involving market value of Rs.45,73,577/- (Rupees Forty-five lakh Seventy-three thousand Five hundred and seventy-seven only) and having tariff value of Rs.38,15,734/- (Rupees Thirty-eight lakh Fifteen Thousand Seven hundred and Thirty four only), not declared to the Customs. The passenger opted green channel to exit the Airport with 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 711.730 Grams of gold bar of purity 999.0/ 24 Kt. by the passenger, without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with

Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

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

(c) The improperly imported of the said gold bar by the passenger, Shri Nasim Ahmed Abdul Aziz Khan, which was concealed in brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in two Apple iPod and two gold chains, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(d) Shri Nasim Ahmed Abdul Aziz Khan, by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

(e) As per Section 123 of the Customs Act 1962, the burden of proving that the gold bar weighing 711.730 Grams having purity 999.0/24 Kt. and having market value of

Rs.45,73,577/- (Rupees Forty-five lakh Seventy-three thousand Five hundred and seventy-seven only) and having tariff value of Rs.38,15,734/- (Rupees Thirty-eight lakh Fifteen Thousand Seven hundred and Thirty four only), which was concealed in brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in Apple iPod and two gold chain, without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee, Shri Nasim Ahmed Abdul Aziz Khan.

09. Accordingly, a Show Cause Notice was issued to **Shri Nasim Ahmed Abdul Aziz Khan**, Room No. 2, chawl No.7, 666-Transit Camp, B.J. Road, Jacob Circle, Mumbai, Maharashtra - 400011, as to why:

(i) Two Gold Bars and Two Gold Chains, (as discussed above), totally weighing 711.730 grams having purity 999.0/ 24 Kt. and having market value of Rs.45,73,577/- (Rupees Forty-five lakh Seventy-three thousand Five hundred and seventy-seven only) and having tariff value of Rs.38,15,734/- (Rupees Thirty-eight lakh Fifteen Thousand Seven hundred and Thirty four only), which was concealed brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in Apple iPod and two gold chain, was placed under seizure under panchnama proceedings dated 27.02.2024 and Seizure Memo Order dated 27.02.2024, 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.

Defense reply and record of personal hearing:

10. The noticee has not submitted any written submission to the Show Cause Notice issued to him.

11. The noticee was given opportunity for personal hearing on 09.12.2024, 20.12.2024 & 27.12.2024 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

11.1 Before, proceeding further, I would like to mention that Hon'ble Supreme Court, High Courts and Tribunals have held, in several judgments/decision, that ex-parte decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon some the relevant judgments/orders which are as under-

a) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

> *"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."*

b). Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), the Hon'ble Court has observed that;

> *Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.*

c) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon'ble court has observed that;

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

d) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.). The Hon'ble Court has observed that:

Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but

opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

e) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), the Hon'ble CESTAT has observed that;

Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

f). The Hon'ble High Court of Jharkhand in W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that

"Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in

the Act itself, we hold that the instant writ application is not maintainable.

9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed."

Discussion and Findings:

12. I have carefully gone through the facts of this case and the submissions made by the noticee in his written submission as well as during the personal hearing and documents submitted. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the 711.730 grams of two Gold Bars and two Gold Chains of 24KT(999.0 purity), recovered/ derived from brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vest worn by him and two small gold bars coated with white rhodium concealed in Apple iPod and two gold chain, having Tariff Value of **Rs.38,15,734/-** and Market Value of **Rs.45,73,577/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 27.02.2024, 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.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling that Shri Nasim Ahmed Abdul Aziz Khan was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried

out. The AIU officers under Panchnama proceedings dated 27.02.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he is not carrying any high valued dutiable goods. Thereafter, the officers checked the baggage of the noticee, however nothing objectionable was found. On suspicion, the officer asked to change the cloths and on examination, the officer found that the innerwear i.e. vest have two layers stitched on the inner side. The officer in presence of the Panchas and the passenger cut opens the stitched layer where in a Brown coloured semi solid paste of gold and substance concealed inside the layer of fabric of two inner vests and two small gold bars coated with white Rhodium concealed in two Apple iPods and two gold chains are found.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said semisolid substance concealed inside the layer of the fabric of two inner vest and two small gold bars and two gold chain on his weighing scale and after completion of extraction, the Government Approved Valuer informed that the total Net weight of the all items comes to **711.730** Grams having purity 999.0/24KT which is derived from gold paste containing gold and chemical mix concealed inside the layer of fabric of two inner vests & and two small gold bars coated with white Rhodium containing semi solid gold paste and two gold chains. Further, the Govt. Approved Valuer informed that the total Tariff Value of the all 04 items (One Gold bar derived from gold

paste, Another gold bar derived from gold bar coated with White Rhodium and 02 gold chains) is **Rs.38,15,734/-** and Market value is **Rs.45,73,577/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	**Details of Items**	**PCS**	**Net Weight in Gram**	**Purity**	**Market Value (Rs.)**	**Tariff Value (Rs.)**
1.	Gold Bar (derived from gold paste)	1	411.720	999.0 24Kt.	26,45,713	22,07,317
2	Gold Bar (Derived from gold bar coated with White Rhodium)	1	100.000	999.0 24 Kt.	6,42,600	5,36,121
3.	Gold Chain	2	200.010	999.0 24 Kt.	12,85,264	10,72,296
	Total	**4**	**711.730**		**45,73,577**	**38,15,734**

16. Accordingly, the said 04 items (One Gold bar derived from gold paste, Another gold bar derived from gold bar coated with White Rhodium and 02 gold chains) having purity 999.0/24 Kt. weighing 711.730 grams, recovered from noticee was seized vide Panchnama dated 27.02.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold items were smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same were liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 711.730 grams of 04 gold items, having Tariff Value of **Rs.38,15,734/-** and Market value is **Rs.45,73,577/-** carried by the passenger 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 27.02.2024 under Section 108 of the Customs Act, 1962.

17. I also find that the noticee 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 the bringing gold by way of concealment to India was illegal and it was an offense. Further, I find that from the content of statement that the gold was purchased by him however, he has no purchase bills for the said gold or other required documents which shows his legitimate purchase. He admitted that he purchased the said gold for selling to someone else for earning money. His intention was to earn fast money, so he had done this illegal carrying of gold of 24KT. in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules,

the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020. I find that the noticee has tendered his statement under Section 108 of Customs Act, 1962 voluntarily without any threat, coercion or duress and same was typed for him on his request and same was explained to him in Hindi.

18. Further, the noticee has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said 02 gold bars and 02 gold chains, which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with 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 as amended, 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.

19. From the facts discussed above, it is evident that noticee had carried the said gold weighing 711.730 grams, 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 of 24KT/999.00 purity totally weighing 711.730 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the noticee 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.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of*

1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 711.730 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee 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.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 711.730 grams, having Tariff Value of Rs.38,15,734/- and Market Value of Rs.45,73,577/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 27.02.2024 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 by him in form of semi solid substance containing gold and chemical mix concealed inside the layer of fabric of two inner vests and in form of two small gold bars coated with white Rhodium concealed in two Apple iPods and two gold chains, it is observed that the noticee 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 Customs Airport. It

is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

21. I find that the Noticee confessed of carrying the said gold of 711.730 grams concealed by him 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 amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

22. It is quite clear from the above discussions that the 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 noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said 02 gold bars and 02 gold chains weighing 711.730 grams, having Tariff Value of Rs.38,15,734/- and Market Value of Rs.45,73,577/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 27.02.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said 02 gold bars and 02 gold chains weighing 711.730 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 him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

23. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the 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 02 gold bars and 02 gold chains weighing 711.730 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said 02 gold chain and 02 gold bars in semi solid form inside the vest and ipod. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

24. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of semi solid substance containing gold and chemical mix concealed inside the layer of fabric of two inner vests and in form of two small gold bars coated with white Rhodium concealed in two Apple iPods and two gold chains, with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 711.730 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 27.02.2024 stated that he has carried the said gold by concealment to evade payment of

Customs duty and also admitted that the he has no purchase bills or other documents which establish that the gold was purchased in legitimate way. In the instant case, without any documents viz. purchase invoice, Bank Statement and other documents, I hold that the gold was not purchased by the noticee in a legitimate way and was carried by the Noticee for getting monetary benefit and that too by concealment of the said gold in semi solid substance containing gold and chemical mix concealed inside the layer of fabric of two inner vests and in form of two small gold bars coated with white Rhodium concealed in two Apple iPods and two gold chains. ***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.***

25. 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."*

The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

26. 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.

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

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

prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

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

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

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

29. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is

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

30. The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

*"**23.** There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."*

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*"**26.** The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country**."*

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold weighing 711.730 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 711.730 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.

32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 711.730 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Dubai to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 711.730 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee 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 of the Act and I hold accordingly.

33. Accordingly, I pass the following Order:

O R D E R

i) I order **absolute confiscation** of one gold bar weighing **711.730** grams having purity of 999.0 (24KT.) recovered/ derived from semi solid substance containing gold and chemical mix concealed inside the layer of fabric of two inner vests and in form of two small gold bars coated with white Rhodium concealed in two Apple iPods and two gold chains, having Market value of **Rs.45,73,577/-** (Rupees Forty-five lakh Seventy-three

thousand Five hundred and seventy-seven only) and Tariff Value of **Rs.38,15,734/-** (Rupees Thirty-eight lakh Fifteen Thousand Seven hundred and Thirty four only), placed under seizure under Panchnama dated 27.02.2024 and seizure memo order dated 27.02.2024, 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 combined penalty of **Rs. 11,00,000/- (Rupees Eleven Lakh Only)** on **Shri Nasim Ahmed Abdul Aziz Khan** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-119/SVPIA-B/O&A/HQ/2024-25 dated 11.07.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 23-01-2025 14:52:36

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-119/SVPIA-B/O&A/HQ/2024-25 Date:23.01.2025
DIN: 20250171MN000000AC10

BY SPEED POST AD

To,
Shri Nasim Ahmed Abdul Aziz Khan,
Room No.2, chawl No.7,
666-Transit Camp, B.J. Road,
Jacob Circle, Mumbai, Maharashtra-400011

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.

5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in.
6. Guard File.