

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-167/SVPIA-C/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-167/SVPIA-C/O&A/HQ/2023-24 dated: 23.01.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	30/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	13.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	13.05.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	To, Smt. Ajita Bhavesh Ahir, Flat No. F/404, Ghanshyam Complex, Chandlodia, Ahmedabad- 382481.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्रूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Smt. Ajita Bhavesh Ahir, (D.O.B: 22.05.1981) (hereinafter referred to as the said "passenger/ Noticee"), residential address as per passport is Flat No. F/404, Ghanshyam Complex, Chandodia, Ahmedabad- 382481, holding Indian Passport No. P9355310, arrived by Spice Jet Flight No. SG-16 from Dubai to Ahmedabad on 14.09.2023 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of suspicious movement, the said passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 15.09.2023 in presence of two independent witnesses for the passenger's personal search and examination of her baggage. The passenger was carrying a blue colored trolley bag and purse as her Checked-in and hand baggage.

2. The AIU officer asked her if she had anything to declare to the Customs, in reply to which, she denied. The AIU officer informed the passenger that she along with her accompanied officers would be conducting her personal search and detailed examination of her baggages. The AIU officers scanned the checked in baggage and hand baggage of the passenger Smt. Ajita Bhavesh Ahir in the X-Ray baggage scanning machine, which was installed near Green Channel at Arrival Hall, Terminal II, SVPII Airport, Ahmedabad. On scanning, two dark yellow images appeared on the scanning machine. On further examination of her hand bag, the officers found one Gold Plate covered/ concealed in Fake ATM Card's paper of Federal Bank, Gold key coated with white rhodium, which was unusually heavy. The officers scratched the said ATM card paper and the said key, on which a yellow like metal shine revealed on both the objects. On being asked, Smt. Ajita Bhavesh Ahir told the officers that the said ATM card and key are of pure gold.

3. The AIU officers offered their personal search to the passenger, but the passenger denied saying that she had full trust on the AIU officers. Now, the AIU officers asked the passenger whether she

wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave her consent to be searched in front of the Superintendent of Customs. Now, the AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from her body/ innerwear. Further, the passenger readily removed all the metallic objects such as mobile, purse, watch etc. and kept in a plastic tray and passed through the DFMD machine one by one. However, no beep sound was heard indicating there was nothing objectionable/ dutiable on her body/ innerwear.

3.1 During frisking of the passenger Smt. Ajita Bhavesh Ahir was examined thoroughly by the Lady AIU officer. Smt. Ajita Bhavesh Ahir was asked by the Lady officer to change all her innerwear. Smt. Ajita Bhavesh Ahir changed all her innerwear. During examination of her innerwear, the lady officer found that the trouser and inner wears i.e. vest and underwear of the passenger was unusually heavy. On further examination, it was found that the said trouser and inner wears had two layers stitched on the inner side. The officer in presence of the passenger cut opened the stitched layer wherein a yellow paste like substance was found spread between the two layers of the said inner wears i.e. vest and underwear. On being asked, the passenger Smt. Ajita Bhavesh Ahir told the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

4. The officers informed the panchas that 01 ATM like card, 01 key and yellow coloured paste like substance has been detected from Smt. Ajita Bhavesh Ahir and the passenger had informed that it was gold in semi solid paste form. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted and he required to come to the Airport for testing and valuation of the said material recovered, which required to be confirmed and also to be ascertained its purity and weight, in reply, he informed that the testing of the said material is only possible at her workshop and the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, was available at her

shop only. Accordingly, the officers, the panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad - 380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government approved valuer weighs the vest, underwear and trouser of Smt. Ajita Bhavesh Ahir. Further, he informs that the gross weight of the said items are as under :

Atm like card and key: 81.55 Gms
Trouser, Vest and underwear: 2160.90 Gms

The photograph of the same is as under:

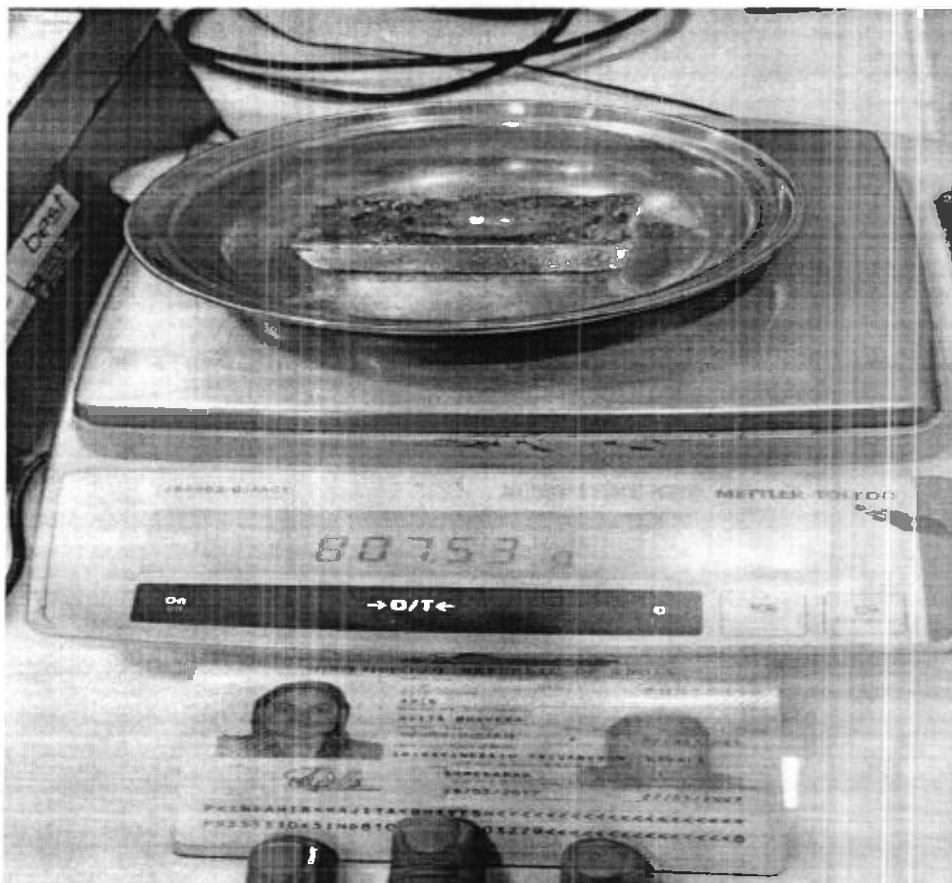




5. Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said Atm like card, key and inner wears containing semi solid gold paste recovered into solid gold. After completion of the procedure, Government Approved Valuer informed that 1 Gold bar totally weighing 807.53 Grams having purity 999.0/24kt is derived from 2242.45 Grams recovered from Smt. Ajita Bhavesh Ahir. After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 568/2023-24 dated 15.09.2023 certified that the extracted gold bar from Smt. Ajita Bhavesh Ahir was having net weight of **807.53** Grams, purity 999.0/24kt, tariff value of **Rs.42,50,567/-** (Rupees Forty-Two Lakhs Fifty Thousand Five Hundred Sixty-Seven only) and market value of **Rs.49,09,782/-** (Rupees Forty-Nine Lakhs Nine Thousand Seven Hundred Eighty-Two only). The value of the gold bar has been calculated as per the Notification No. 63/2023-Customs (N.T.) dated 31.08.2023 (gold) and Notification No. 64/2023-Customs (N.T.) dated 06.09.2023 (exchange rate). The details of item recovered from the passenger are as under:

S. No.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1.	1 Gold Bar	807.53	999.0/24 Kt.	42,50,567/-	49,09,782/-

The photograph of the extracted gold bar is as follows:-



5.1 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 568/2023-24 dated 15.09.2023 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. The following documents produced by the passenger.

- i) Copy of Passport No. P9355310 issued at Ahmedabad on 28.03.2017 valid up to 27.03.2027.
- ii) Boarding pass of Spice Jet Flight No. SG 16, Seat No. 5B from Dubai to Ahmedabad dated 14.09.2023.

6. Accordingly, 01 gold bar having purity 999.0/24 Kt. weighing 807.530 grams, recovered from Smt. Ajita Bhavesh Ahir was seized vide Panchnama dated 15.09.2023, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation

under the Customs Act, 1962 read with Rules and Regulation made thereunder. A statement of Smt. Ajita Bhavesh Ahir was recorded on 15.09.2023, under Section 108 of the Customs Act, 1962, wherein she inter alia stated that –

- (i) Smt. Ajita Bhavesh Ahir works as a teacher;
- (ii) she travelled to Dubai on 10.09.2023; She came on 14.09.2023 by Spice Jet Flight No. SG-16 from Dubai to Ahmedabad; She went with her husband and their tickets were managed by her husband's friend Ashishbhai. She had never indulged in any illegal/ smuggling activities, but this was her first time when she carried gold in the form of semi solid paste;
- (iii) One friend of Ashishbhai gave her to carry the subject articles to India. One person was supposed to receive the said articles from her in Ahmedabad but she don't know the whereabouts of Ashishbhai;
- (iv) While starting her return journey to India, she was intercepted by the Customs Officers when she tried to exit through the green channel with her check-in baggage and hand baggage. During the examination of her innerwear/ body by the Customs Officers. The officers found that one Gold Plate covered/concealed in Fake ATM Card's paper, 01 Gold key coated with white rhodium and inner wears i.e. the vest, trouser and underwear worn by her was unusually heavy. On further examination, it was found that the trouser, vest and underwear had two layers stitched on the inner side.
- (v) She had been present during the entire course of the Panchnama dated 15.09.2023 and she confirmed the events narrated in the said panchnama drawn on 15.09.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (vi) She was aware that smuggling of gold without payment of Customs duty is an offence; she was well aware of the gold concealed in inner wears i.e. the vest, trouser and underwear worn by her also she was carrying one Gold Plate covered/concealed in Fake ATM Card's paper, 01 Gold key coated with white rhodium, she did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty.

7. The above said gold bar weighing 807.530 grams, recovered from Smt. Ajita Bhavesh Ahir, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 807.530 grams was attempted to be smuggled by Smt. Ajita Bhavesh Ahir, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 807.530 grams was placed under seizure under the provision of Section

110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 15.09.2023.

8. 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) Section 11A – 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 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:"*

V) "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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

VI) "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 in the Customs Act, 1962 :

119. *Confiscation of goods used for concealing smuggled goods.*
—Any goods used for concealing smuggled goods shall also be liable to confiscation.

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

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. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

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 her accompanied baggage in the prescribed form.*

Contravention and violation of law:

9. It therefore appears that:

(a) The passenger Smt. Ajita Bhavesh Ahir had dealt with and knowingly indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 807.530 grams having purity 999.0/24 Kt. derived from 2242.45 Grams (*81.55 Gms of ATM like card & key and 2160.90 gms of gold paste with chemical mix recovered from trouser and inner wears*) and having tariff value of Rs.42,50,567/- (Rupees Forty-Two Lakhs Fifty Thousand Five Hundred Sixty-Seven only) and market value of Rs.49,09,782/- (Rupees Forty-Nine Lakhs Nine Thousand Seven Hundred Eighty-Two only). The passenger did not declare to the Customs and 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. Thus, the element of smuggling appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 807.530 grams of purity 999.0/24 Kt. by Smt. Ajita Bhavesh Ahir by way of concealment and 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 Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold by the passenger Smt. Ajita Bhavesh Ahir, found concealed in hand and check-in baggage having 01 Gold Plate covered/concealed in Fake ATM Card's paper, 01 Gold key coated with white rhodium and inner wears i.e. the trouser, vest and underwear, 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) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

(e) Smt. Ajita Bhavesh Ahir by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.

(f) As per Section 123 of Customs Act 1962, the burden of proving that the gold bar weighing 807.530 grams of purity 999.0/24 Kt. and having tariff value of Rs.42,50,567/- (Rupees Forty Two Lakhs Fifty Thousand Five hundred Sixty Seven only) and market value of Rs.49,09,782/- (Rupees Forty Nine Lakhs Nine Thousand Seven Hundred Eighty Two only), derived from 01 Gold Plate covered/concealed in Fake ATM Card's paper, 01 Gold key coated with white rhodium and inner wears i.e. the trouser, vest and underwear, without declaring it to the Customs, is not smuggled goods, is upon the passenger Smt. Ajita Bhavesh Ahir.

10. Now, therefore, **Smt. Ajita Bhavesh Ahir**, residing at Flat No. F/404, Ghanshyam Complex, Chandlodia, Ahmedabad - 382481, holding Indian Passport No. P9355310, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having her office at 2nd Floor, Customs House, Opp. Old High Court, Navrangpura, Ahmedabad-380009, as to why:

- (i) 01 Gold Bar weighing **807.530** grams having purity 999.0/24 Kt. and having tariff value of **Rs.42,50,567/-** (Rupees Forty Two Lakhs Fifty Thousand Five hundred Sixty Seven only) and market value of **Rs.49,09,782/-** (Rupees Forty Nine Lakhs Nine Thousand Seven Hundred Eighty Two only) derived from *01 Gold Plate covered/ concealed in Fake ATM Card's paper, 01 Gold key coated with white rhodium and inner wears i.e. the trouser, vest and underwear, carried by the passenger and placed under seizure under panchnama proceedings dated 15.09.2023 and Seizure Memo Order dated 15.09.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;*
- (ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

11. Smt. Ajita Bhavesh Ahir has not submitted written reply to the Show Cause Notice.

11.1. Personal Hearing in this case was fixed on 10.05.2024, wherein Shri Bhavesh Rameshbhai Ahir, husband of the Noticee appeared for personal hearing. Shri Bhavesh Rameshbhai Ahir submitted that he works as an actor and choreographer. He visited Dubai along with his wife Smt. Ajita Bhavesh Ahir for a meeting to convene a cultural programme at Dubai. His friend Shri Ashish bhai arranged his ticket.

One friend of Ashish bhai gave her to carry the subject gold articles to India. He further submitted that One person was supposed to receive the said articles from her in Ahmedabad. He had never indulged in any illegal/ smuggling activities, but this was her first time when she carried gold in the form of semi solid paste. Due to ignorance of law the gold was not declared by the passenger. He further submitted that he is ready to pay applicable Customs Duty, fine and penalty and requested for re-export or release of seized gold. He requested to take lenient view in the matter and allow to re-export the gold on payment of reasonable fine and penalty.

Discussion and Findings:

12. I have carefully gone through the facts of the case and submissions made by the Noticee during personal hearing and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the 807.530 grams of gold bar, obtained from the paste of gold and chemical mixture, gold keys coated with white rhodium and gold plate concealed in fake ATM Card, weighing 2160.900 grams (gross), having Tariff Value of Rs.42,50,567/- (Rupees Fourty-Two Lakhs Fifty Thousand Five Hundred Sixty-Seven Only) and Market Value of Rs.49,09,782/- (Rupees Fourty-Nine Lakhs Nine Thousand Seven Hundred Eighty-Two Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 15.09.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of suspicious movement, passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs. The AIU officers scanned the checked in baggage and hand baggage of the passenger Smt. Ajita

Bhavesh Ahir. On scanning, two dark yellow images appeared on the scanning machine. On further examination of her hand bag, the officers found one Gold Plate covered/ concealed in Fake ATM Card's paper of Federal Bank, Gold key coated with white rhodium, which was unusually heavy. The officers scratched the said ATM card paper and the said key, on which a yellow like metal shine revealed on both the objects. On being asked, Smt. Ajita Bhavesh Ahir told the officers that the said ATM card and key are of pure gold. Now, the AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine, on passing through the DFMD machine, no beep sound was heard indicating there was nothing objectionable/dutiable on her body/ innerwear.

During frisking of the passenger Smt. Ajita Bhavesh Ahir was examined thoroughly by the Lady AIU officer. Smt. Ajita Bhavesh Ahir was asked by the Lady officer to change all her innerwear. Smt. Ajita Bhavesh Ahir changed all her innerwear. During examination of her innerwear, the lady officer found that the trouser and inner wears i.e. vest and underwear of the passenger was unusually heavy. On further examination, it was found that the said trouser and innerwear had two layers stitched on the inner side. The officer in presence of the passenger cut opened the stitched layer wherein a yellow paste like substance was found spread between the two layers of the said innerwear i.e. vest and underwear. On being asked, the passenger Smt. Ajita Bhavesh Ahir told the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

I also find that the said 807.530 grams of gold bar obtained from the 2160.900 grams (gross) of gold paste, keys & fake ATM Card, having Tariff Value of Rs.42,50,567/- and Market Value of Rs.49,09,782/- carried by the passenger Smt. Ajita Bhavesh Ahir 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 15.09.2023 under Section 108 of the Customs Act, 1962.

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

16. Further, the passenger has accepted that she had not declared the said gold concealed in her innerwear/ baggage on her arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said gold which was in her possession and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold paste recovered from her possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further, as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

17. From the facts discussed above, it is evident that Smt. Ajita Bhavesh Ahir had carried the said gold weighing 2160.900 grams (gross), (wherfrom 807.530 grams of gold bar having purity 999.0

recovered on the process of extracting gold from the said paste, gold keys coated with white rhodium & fake ATM Card) while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 807.530 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 passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

18. It is seen that the Noticee had not filed the baggage declaration form and had not declared the said gold paste which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 2160.900 grams (gross) concealed in her innerwear & other articles, as discussed above, (extracted gold bar of 807.530 grams) by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 807.530 grams, having Tariff Value of Rs.42,50,567/- and Market Value of Rs.49,09,782/- recovered and seized from the passenger vide Seizure Order under the Panchnama proceedings both dated 15.09.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold paste concealed in her innerwear & other articles, it

is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

19. I find that the Noticee confessed of carrying the said gold of 2160.900 grams (gross) concealed in her innerwear & other articles, (extracted gold bar of 807.530 grams having purity 999.0) and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

20. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign

destination with the wilful intention to smuggle the impugned goods. The said gold bar weighing 807.530 grams, having Tariff Value of Rs.42,50,567/- and Market Value of Rs.49,09,782/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 15.09.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 2160.900 grams (gross) (Gold bar weighing 807.530 grams derived from the same) by deliberately not declaring the same by her on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making her liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

21. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import of gold into India in baggage. The said gold bar weighing 807.530 grams, was recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger had concealed the gold paste in her innerwear & other articles. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

22. In view of the above discussions, I hold that the said gold bar weighing 807.530 grams, carried and undeclared by the noticee with

an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the noticee in her statement dated 15.09.2023 stated that she has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

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

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

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

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

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

26. The Hon'ble High Court of Madras in the matter of COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

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

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

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

28. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 807.530 grams, carried by the passenger is, therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that gold bar weighing 807.530 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

29. I further find that the passenger had involved herself and abetted the act of smuggling of the said gold bar weighing 807.530 grams, carried by her. She has agreed and admitted in her statement that she travelled with the said gold from Dubai to Ahmedabad. Despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 2160.900 grams (gross) by concealing in her innerwear & other articles (extracted gold bar of 807.530 grams having purity 999.0). Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act, and I hold accordingly.

30. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the gold bar weighing **807.530** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.42,50,567/-** (Rupees Fourty-Two Lakhs Fifty Thousand Five Hundred Sixty-Seven Only) and market value of **Rs.49,09,782/-** (Rupees Fourty-Nine Lakhs Nine Thousand Seven Hundred Eighty-Two Only) derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, gold keys coated with white rhodium & gold plate covered/

concealed in fake ATM Card, recovered and seized from the passenger Smt. Ajita Bhavesh Ahir vide Seizure Order under Panchnama proceedings both dated 15.09.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs.16,00,000/-** (Rupees Sixteen Lakhs Only) on Smt. Ajita Bhavesh Ahir under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-167/SVPIA-C/O&A/HQ/2023-24 dated 23.01.2024 stands disposed of.


13/5/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-167/SVPIA-C/O&A/HQ/2023-24

Date: 13.05.2024

DIN: 20240571MN000000ACFB

BY SPEED POST AD

To,
Smt. Ajita Bhavesh Ahir,
Flat No. F/404, Ghanshyam Complex,
Chandodia, Ahmedabad- 382481.

Copy to:

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