



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्कभवन,” पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-197/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-197/SVPIA-D/O&A/HQ/2023-24 dated: 04.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	79/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	28.06.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	28.06.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातकानामऔरपता / Name and Address of Importer / Passenger	:	Shri Hari Ram Kumawat, Ward No 10, VPO Mahawa, Sikar, Rajasthan-332713.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Shri Hari Ram Kumawat S/o Shri Ramchandra Kumawat (herein after referred to as 'the passenger/ Noticee') residing at Ward No 10, VPO Mâhawa, Sikar, Rajasthan-332713 holding Indian Passport bearing No. V2510737 arrived from Dubai by SpiceJet SG 16 dated 16.11.2023 at SVP International Airport, Ahmedabad on 17.11.2023. On the basis of passenger profiling, officers of Customs, Air Intelligence unit (hereinafter referred to as "AIU"), Sardar Vallabhbhai Patel International Airport (hereinafter referred to as "SPVIA"), Ahmedabad, guided the passenger namely Shri Hari Ram Kumawat (seat no. 31C) in presence of the independent panchas from flight to the Immigration Hall where they get his passport checked in. Thereafter, the passenger was guided to the Red Channel and asked whether he was carrying any dutiable goods or foreign currency or any restricted goods and whether he wished to declare anything before Customs Authorities. In response the passenger submitted that he did not wish to declare anything and that he did not carry any dutiable/ objectionable goods with him. Thereafter, the passenger was guided to the Air Intelligence Unit office for his personal search and examination of his baggage as recorded under Panchnama proceedings dated 17.11.2023.

2. Thereafter, the passenger was again asked if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The AIU officers again offered their personal search to the passenger, but the passenger denied saying that he was having full trust on the AIU officers. Thereafter, the AIU officer asked the passenger whether he wanted to be checked in front of Executive Magistrate or Superintendent of Customs (Gazetted officer), in reply the passenger gave his consent to be searched in front of the Superintendent of Customs. Before conducting the search, the AIU officers offered their personal search to which Shri Hari Ram Kumawat denied and stated that it was not necessary, and he had full faith in the officers. Further, the passenger was asked to pass through the

Door Frame Metal Detector placed in the hall in front of Belt No.1 near green channel in the arrival hall of Terminal-2, SVPI Airport and his checked in and hand bags are scanned through the X-Ray Baggage Inspection machine, but nothing objectionable is observed. Thereafter, the Customs officer interrogated the passenger, and again asked him if he was carrying any dutiable goods with him. On sustained interrogation, the said passenger confessed that he was carrying high valued dutiable goods hidden inside his body and clothes respectively. Shri Hari Ram Kumawat stated that he was carrying 03 big size capsules in semi-solid state in his rectum covered with transparent tape and one gold ring in his pocket. Thereafter, in the presence of the panchas, the passenger had taken out the capsules from his body in bathroom and one gold ring from his pocket and handed over the same to the officers of AIU.

2.1 Thereafter, the AIU officers called the Government Approved Valuer Shri Kartikey Vasantrai Soni and informed him that 03 gold capsules covered with transparent tapes and one gold ring have been recovered from a passenger and the passenger has informed that it was gold and therefore he was required 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 was only possible at his workshop as 03 gold capsules covered with transparent tapes and one gold ring recovered from the passenger need to be extracted and must be converted into gold bar by melting it and informed the address of his workshop and requested officers to come at his workshop.

2.2. Thereafter, at around 10:30 am on 17.11.2023, the AIU Officers along with panchas and the passenger left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad-380006. On reaching the above referred premises, the AIU officers introduced the panchas as well as the passenger to Shri Kartikey Vasantrai Soni, Government approved valuer. Here, after weighing the 03 gold capsules covered with transparent tapes and one gold ring on his weighing scale, Shri

Kartikey Vasantrai Soni informed that the gross weight of said semisolid like substances (03 capsules) is 769.280 grams, and weight of gold ring is 15.050 grams.

2.3 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of extraction of 03 gold capsules covered with transparent tapes and one gold ring. After completion of extraction, Government Approved Valuer informed that said recovered gold bar having net weighing **689.830** Grams derived from semisolid paste/ dust substances/ material consisting of Gold. The gold bar has purity of 999.0/24kt having Market Value of **Rs.43,45,929/-** (Rupees Forty-Three Lakhs Forty-Five Thousand Nine hundred and twenty-nine only) and tariff value at **Rs.36,80,319/-** (Rupees Thirty-Six Lakhs Eighty Thousand Three Hundred and Nineteen only) and the gold ring is weighing **15.050** grams, having purity 999.0/24kt and having Market Value of **Rs.94,815/-** (Rupees Ninety-Four Thousand Eight Hundred and Fifteen only) and tariff value at **Rs.80,293/-** (Rupees Eighty Thousand Two Hundred and Ninety-Three only) which has been calculated as per the Notification No. 83/2023-Customs (NT) dated 15.11.2023 (gold) and Notification No. 81/2023-Customs (NT) dated 15.10.2023 (exchange rate). On the basis of above details, the valuation Certificate No. 878/2023-24 dated 02.11.2023 was prepared by Shri Kartikey Vasantrai Soni.

The outcome of the said testing is summarized in the table below:-

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold bar extracted from 03 capsules	1	689.830	999.0 24Kt.	43,45,929/-	36,80,319/-
2.	Gold Ring	1	15.050	999.0 24Kt.	94,815/-	80,293/-
	Total	2	704.880	999.0 24Kt.	44,40,744/-	37,60,612/-

3. The said gold of 24 kt having 999.0 purity derived from semisolid/ powdered/ solid substance Material in form of 03 capsules concealed inside rectum of the passenger, weighing 689.830 Grams, has Market Value at Rs.43,45,929/- (Rupees Forty-Three Lakhs Forty-Five

Thousand Nine hundred and Twenty-Nine only) and tariff value at Rs.36,80,319/- (Rupees Thirty-Six Lakhs Eighty Thousand Three Hundred and Nineteen only) and one Gold Ring weighing 15.050 grams, has Market Value at Rs.94,815/- (Rupees Ninety-Four Thousand Eight Hundred and Fifteen only) and tariff value at Rs.80,293/- (Rupees Eighty Thousand Two Hundred and Ninety-Three only). The said gold recovered from the passenger was attempted to be smuggled inside India with intent to evade payment of Customs duty and was a clear violation of the provisions of the Customs Act, 1962. Thus, having a reasonable belief that the said gold Bar and one gold ring (02 pieces) having total weight of **704.880** Grams were attempted to be smuggled by the passenger, were liable for confiscation under the provisions of the Customs Act, 1962; they were placed under seizure vide Panchnama dated 17.11.2023 under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962. Further, the said gold, recovered from the passenger, was placed under seizure under section 110 of the Customs Act, 1962 vide Panchnama dated 17.11.2023.

4. Statement of the passenger, Shri Hari Ram Kumawat was recorded on 17.11.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he visited Dubai for the purpose of getting a job in construction industry as tiles and marble fitter. But upon reaching there in Dubai the work of fitting tiles and marbles was not easy and not getting a reasonable salary for the same. He started missing his family there in Dubai and decided to return to his native place. Accordingly, his ticket was booked by one person Rahim Bhai and in return of the cost of the flight ticket he asked him to carry Gold in the form of Capsules in his body i.e. rectum and deliver the same to a person who will contact him at SVPI Airport, Ahmedabad. Accordingly, he took flight from Dubai to Ahmedabad Flight No. SG16 of Spice Jet Airlines on 16.11.2023. He also stated that this was his first visit to Dubai for work but due to lack of knowledge he tried to attempt smuggling of Gold in the form of Gold paste by way of concealment in rectum for someone else. Furthermore, the passenger accepted that the said 01 Gold Bar derived from semisolid like

substance (03 capsules) and one gold ring having combined weight 704.880 Grams which (as discussed herein above) belonged to him. The same was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before Customs by the pax. 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. Further, he again confirmed the recovery of 01 gold bar and one gold ring totally weighing 704.880 grams of 999.0/24 Kt purity totally valued at Rs.44,40,744/- (market value) and Rs.37,60,612/- (tariff value) from him during Panchnama dated 17.11.2023.

5. Therefore, on the basis of facts narrated above, the said 01 gold bar and one gold ring totally weighing 704.880 grams of 999.0/24 Kt purity valued at Rs.44,40,744/- (market value) and Rs.37,60,612/- (tariff value), appeared liable for confiscation, was placed under seizure under Panchnama dated 17.11.2023 as the said gold totally weighing 704.880 grams seized under Panchnama dated 17.11.2023 was "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. It also appeared that the said pax has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 17.11.2023 under Section 108 of the Customs Act, 1962.

6. In view of the above, **Shri Hari Ram Kumawat**, resident of Ward No 10, VPO Mahawa, Sikar, Rajasthan-332713 holding Indian Passport bearing No. V2510737, was called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Custom House, Opp. Old Gujarat High Court, Navrangpura, Ahmedabad-380009, as to why:

- (i) The gold bar weighing **689.830** grams with purity of 999.0/24kt having Market Value of **Rs.43,45,929/-** (Rupees Forty-Three Lakhs Forty-Five Thousand Nine hundred and twenty-nine only) and tariff value at **Rs.36,80,319/-** (Rupees Thirty-Six Lakhs Eighty

Thousand Three Hundred and Nineteen only) and the gold ring weighing **15.050** grams with purity 999.0/ 24kt and having Market Value of **Rs.94,815/-** (Rupees Ninety-Four Thousand Eight Hundred and Fifteen only) and tariff value at **Rs.80,293/-** (Rupees Eighty Thousand Two Hundred and Ninety-Three only) placed under seizure under panchnama dated 17.11.2023 and seizure memo order dated 17.11.2023 should not be confiscated under 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(a) and 112(b) of the Customs Act, 1962.

Defence Reply and Personal Hearing:

7. Shri Hari Ram Kumawat has not submitted written reply to the Show Cause Notice.

8. Shri Hari Ram Kumawat was given opportunity to appear for personal hearing on 19.06.2024; 21.06.2024 and 24.06.2024 but he did not appear for personal hearing on the given dates.

Discussion and Findings:

9. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

10. In the instant case, I find that the main issue to be decided is whether the total 704.880 grams of 01 gold bar, obtained from three capsules containing paste of gold and chemical mixture and one gold

ring, having total Tariff Value of Rs.44,40,744/- (Rupees Fourty-Four Lakhs Forty Thousand Seven Hundred Fourty-Four Only) and Market Value of Rs.37,60,612/- (Rupees Thirty-Seven Lakhs Sixty Thousand Six Hundred Twelve Only), seized vide Seizure Memo/ Order under Panchnāma proceedings both dated 17.11.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

11. I find that the Panchnama has clearly drawn out the fact that on the basis

of passenger profiling, officers of Customs, Air Intelligence unit (hereinafter referred to as "AIU"), Sardar Vallabhbhai Patel International Airport (hereinafter referred to as "SVPIA"), Ahmedabad, guided the passenger namely Shri Hari Ram Kumawat in presence of the independent Panchas from flight to the Immigration Hall where they get his passport checked in. Thereafter, the passenger was guided to the Red Channel and asked whether he was carrying any dutiable goods or foreign currency or any restricted goods and whether he wished to declare anything before Customs Authorities. In response the passenger submitted that he did not wish to declare anything and that he did not carry any dutiable/ objectionable goods with him.

12. The passenger was again asked if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. I also find that the passenger was asked to pass through the Door Frame Metal Detector and his checked in and hand bags are scanned through the X-Ray Baggage Inspection machine, but nothing objectionable was observed. Thereafter, the Customs officer interrogated the passenger, and again asked him if he was carrying any dutiable goods with him. On sustained interrogation, the said passenger confessed that he was carrying high valued dutiable goods hidden inside his body and clothes respectively. I find that the passenger, Shri Hari Ram Kumawat stated that he was carrying 03 big

size capsules in semi-solid state in his rectum covered with transparent tape and one gold ring in his pocket. Thereafter, the passenger had taken out the capsules from his body in bathroom and one gold ring from his pocket and handed over the same to the officers of AIU.

13. After completion of extraction of 03 gold capsules covered with transparent tapes, the Government Approved Valuer informed that said recovered gold bar having net weighing **689.830** Grams derived from semisolid paste/ dust substances/ material consisting of Gold. The gold bar has purity of 999.0/24kt having Market Value of **Rs.43,45,929/-** (Rupees Forty-Three Lakhs Forty-Five Thousand Nine hundred and twenty-nine only) and tariff value at **Rs.36,80,319/-** (Rupees Thirty-Six Lakhs Eighty Thousand Three Hundred and Nineteen only) and the gold ring is weighing **15.050** grams, having purity 999.0/24kt and having Market Value of **Rs.94,815/-** (Rupees Ninety-Four Thousand Eight Hundred and Fifteen only) and tariff value at **Rs.80,293/-** (Rupees Eighty Thousand Two Hundred and Ninety-Three only). On the basis of above details, the valuation Certificate No. 878/2023-24 dated 02.11.2023 was prepared by Shri Kartikey Vasantrai Soni. The outcome of the said testing is summarized in the table below:

TABLE-I

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold bar extracted from 03 capsules	1	689.830	999.0 24Kt.	43,45,929/-	36,80,319/-
2.	Gold Ring	1	15.050	999.0 24Kt.	94,815/-	80,293/-
	Total	2	704.880	999.0 24Kt.	44,40,744/-	37,60,612/-

I also find that the said total 704.880 grams of gold bar obtained from the gold paste & gold ring having Tariff Value of Rs.44,40,744/- and Market Value of Rs.37,60,612/-, as discussed in the Table-I above, carried by the passenger Shri Hari Ram Kumawat 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 17.11.2023 under Section 108 of the Customs

Act, 1962.

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

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

16. From the facts discussed above, it is evident that Shri Hari Ram Kumawat had carried gold paste & gold ring totally weighing 704.880 grams having purity 999.0, 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 704.880 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold paste in his body & cloth and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

17. It is seen that the passenger & Noticee had not filed the baggage declaration form and had not declared the said gold (as discussed in Table-I above), which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold totally weighing 704.880 grams concealed in his body i.e. rectum & cloth 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 gold bar weighing 704.880 grams, having Tariff Value of Rs.44,40,744/- and Market Value of Rs.37,60,612/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 17.11.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the

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

18. I find that the Noticee confessed of carrying the said gold totally weighing 704.880 grams concealed in his body & cloth 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.

19. 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 after arriving from foreign destination with the wilful intention to

smuggle the impugned goods. The said gold weighing 704.880 grams, having Tariff Value of Rs.44,40,744/- and Market Value of Rs.37,60,612/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 17.11.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said gold, totally weighing 704.880 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 provisions of Section 112 of the Customs Act, 1962.

20. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold totally weighing 704.880 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, passenger concealed the said gold paste in his body & cloth. 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.

21. In view of the above discussions, I hold that the said gold weighing 704.880 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from the Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the passenger & Noticee in his statement dated 17.11.2023 stated that

he has carried the gold by concealment in his body (rectum) & cloth to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment in the body & cloth. 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.

22. 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."

23. 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.

24. 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).

25. 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.

26. 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".

27. Given the facts of the present case before me and the judgements and rulings cited above, the said gold totally weighing 704.880 grams, carried by the passenger is therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold totally weighing 704.880 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.

28. I further find that the passenger had involved himself and abetted the act of smuggling of gold weighing 704.880 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold, totally weighing 704.880 grams 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 Passenger attempted to smuggle the said gold by concealing in his body & cloth having purity 999.0. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

29. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the said gold totally weighing **704.880** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.44,40,744/-** (Rupees Fourty-Four Lakhs Fourty Thousand Seven Hundred Fourty-Four Only) and Market Value of **Rs.37,60,612/-** (Rupees Thirty-Seven Lakhs Sixty Thousand Six Hundred Twelve Only) derived from 03 capsules of Semi Solid substance Material consisting of Gold & Chemical Mix, and one gold ring (as discussed in Table-I

above), recovered and seized from the passenger **Shri Hari Ram Kumawat** vide Seizure Order under Panchnama proceedings both dated 17.11.2023, 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.14,00,000/-** (Rupees Fourteen Lakhs Only) on Shri Hari Ram Kumawat under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-197/SVPIA-D/O&A/HQ/2023-24 dated 04.03.2024 stands disposed of.

Vishal
28/6/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-197/SVPIA-D/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN000000D4F0

BY SPEED POST AD

To,
Shri Hari Ram Kumawat,
Ward No 10, VPO Mahawa,
Sikar, Rajasthan-332713.

Copy to:

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