



प्रधान आयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद

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SHOW CAUSE NOTICE

(Issued under Section 124 of the Customs Act, 1962)

Shri Nizamuddin Badshah Shaikh (hereinafter referred to as the said “passenger/Noticee”), arrived by Flight No. FZ 437 of Fly Dubai Airlines from Dubai to Ahmedabad on 12.01.2024 at residential address as per passport is TF-18, Karimi Flat, Near Bank of India, Jamalpur Pagathiya, Jamalpur, Ahmedabad - 380001, holding Indian Passport No. R4591797 Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of input the passenger, the passenger was guided from the Airplane by the officers of Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad. The passenger was guided to the Immigration Hall where he gets his passport checked. Thereafter, in the presence of we the Panchas, the AIU Officers guide the passenger to the Red Channel and asked the passenger whether he is carrying any dutiable goods or foreign currency or any restricted goods and whether he wishes to declare anything before Customs Authorities. In response the passenger Shri Nizamuddin Badshah Shaikh submitted that he does not wish to declare anything and that he does not carry any dutiable/ objectionable goods. Thereafter, the Panchas and the AIU officers along with Shri Nizamuddin Badshah Shaikh came near AIU office situated in the arrival hall of the T-2 Terminal, where the passenger trying to exit Green Channel without making any declaration to Customs, under Panchnama proceedings dated 12.01.2024 **(RUD – 01)** in presence of two independent witnesses for passenger’s personal search and examination of his baggage. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage.

Now, the officers put/ place the baggage of the passenger into the Baggage Screening Machine (BSM) for examination/ checking in presence of we the Panchas. On examination of hand baggage, the AIU officers notice unusual dark images indicating objectionable items, in the small hand bag. The officers put/place the baggage (One Check-in baggage and one hand bag) of the passenger into the Baggage Screening Machine (BSM) and examine the baggage, however; the Panchas and officers did not notice any unusual images indicating nothing objectionable is present in the baggage. Thereafter, 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 their checked in and hand bags are scanned through the X-Ray Baggage Inspection machine, but nothing objectionable is observed.

Thereafter, the Customs officers interrogate the passenger, Shri Nizamuddin Badshah Shaikh and again asked him if he is carrying any dutiable goods with him, on sustained interrogation, the said passenger confessed that he is carrying high valued dutiable goods hidden inside his under garments. Shri Nizamuddin Badshah Shaikh stated that he is carrying semi-solid substance consisting of Gold and Chemical mix covered with white tape concealed inside his underwear. Thereafter, the passenger removed the underwear and bring the same to the officers, in the presence of the Panchas. Thereafter, the officers, in presence of the Panchas has taken out the pouch containing semi-solid substance of Gold and Chemical mix from the inner layer of the said underwear.

2.1 The officers informed the Panchas that the pouch recovered from Shri Nizamuddin Badshah Shaikh contains semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantraai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the Panchas and the passenger visited his

shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad-380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said pouch of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 906.170 grams (weight inclusive of plastic pouch). The photograph of the same is as under :



2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said semi solid substances concealed in the said capsules into solid gold. After completion of the procedure, the Government Approved Valuer informed that 2 Gold bar weighing 743.260 grams having purity 999.0/24 Kt. is derived from the above mentioned 906.170 grams of plastic pouch containing gold paste and chemical mix.

The photograph of the extracted gold bar is as under:



| Sl. No. | Details of Items | PCS | Gross Weight In Gram | Net Weight in Gram | Purity | Market Value (Rs.) | Tariff Value (Rs.) |
|---------|------------------|-----|----------------------|--------------------|-------------|--------------------|--------------------|
| 1. | Gold bar | 2 | 906.170 | 743.260 | 999.0 24Kt. | 47,53,891/- | 41,89,255/- |

After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 1117/2023-24 dated 12.01.2024 (**RUD - 02**) certified that the said two gold bars are weighing **743.260** grams having purity 999.0/24kt and Market Value at Rs.47,53,891/- (Rupees Forty-Seven Lakhs Fifty-Three Thousand Eight Hundred and Ninety-One only) and tariff value at Rs.41,89,255/- (Rupees Forty-One Lakhs Eighty-Nine Thousand Two Hundred and Fifty-Five only). The value of the gold bar has been calculated as per the Notification No. 95/2023-Customs (N.T.) dated 29.12.2023 (gold) and Notification No. 01/2024-Customs (N.T.) dated 04.01.2024 (exchange rate).

2.3 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: 1117/2023-24 dated 12.01.2024 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 certificates. The following documents produced by the passenger – Shri Nizamuddin Badshah Shaikh was withdrawn under the Panchnama dated 12.01.2024.

Shri Nizamuddin Badshah Shaikh is aged 52 years (DOB 27/12/1971) and having address as TF-18, Karimi Flat, Near Bank Of India, Jamalpur Pagathiya, Jamalpur, Ahmedabad-380001.

On being asked by the AIU officer, in the presence of the Panchas, the passenger Shri Nizamuddin Badshah Shaikh produced the identity proof documents which are as under:

- (i) Boarding pass of Fly Dubai, Flight number FZ 437 having seat no. 11E and sequence no. 006 from Dubai to Ahmedabad dated 12.01.2024.
- (ii) Copy of Passport No. R4591797 issued at Ahmedabad on 04.10.2017 valid up to 03.10.2027.

3. Accordingly, gold bar having purity 999.0/24 Kt. weighing 743.260 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Shri Nizamuddin Badshah Shaikh was seized vide Panchnama dated 12.01.2024, under the provisions of the 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 Custom duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

A statement of Shri Nizamuddin Badshah Shaikh was recorded on 12.01.2024, under Section 108 of the Customs Act, 1962 (**RUD-03**), wherein he inter alia stated that -

- (i) He had travelled from Dubai to Ahmedabad on 11.01.2024 by fly Dubai FZ 437.
- (ii) Gold recovered from his possession is not his and same was given by unknown person;
- (iii) His return ticket was sponsored by unknown person and he will give him 20,000/- for bringing gold from Dubai to India;
- (iv) He had been present during the entire course of the Panchnama dated 12.01.2024 and he confirmed the events narrated in the said Panchnama drawn on 12.01.2024 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) He is aware that smuggling of gold without payment of Customs duty is an offence; he is well aware of the gold paste pouch concealed in his underwear containing gold and chemical mix in semi-solid form but he did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty.

4. The above said gold bar weighing 743.260 grams recovered from passenger, 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 743.260 grams is attempted to be smuggled by the passenger, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 743.260 grams derived from the above said semi solid gold paste with chemical mix weighing 906.170 grams along with its packing material used to conceal the semi solid gold paste in pouch concealed in underwear,

was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 12.01.2024 (**RUD - 04**).

5. **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 transshipment, with the declaration for transshipment 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 their accompanied baggage in the prescribed form.*

Contravention and violation of law:

6. It therefore appears that -

- (a) The passenger Shri Nizamuddin Badshah Shaikh had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 743.260 Grams derived from semi-solid substance mixed with chemical isconsisting of Gold and is having purity 999.0/24kt and Market Value at Rs.47,53,891/- (Rupees Forty-Seven Lakhs Fifty-Three Thousand Eight Hundred and Ninety-One only) and tariff value at Rs.41,89,255/- (Rupees Forty-One Lakhs Eighty-Nine Thousand Two Hundred and Fifty-Five only). The said semi solid gold paste was concealed in pouch in underwear containing gold and chemical mix in semi-solid paste form and 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. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 743.260 grams of purity 999.0/24 Kt. by Shri Nizamuddin Badshah Shaikh 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 him, 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 gold by the passenger, found concealed in pouch in underwear containing gold and chemical mix in semi-solid paste form 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 the 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) Shri Nizamuddin Badshah Shaikh 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.
- (f) As per Section 123 of the Customs Act, 1962, the burden of proving that the gold bar weighing 743.260 grams derived from semi-solid substance mixed with chemical is consisting of Gold and is having purity 999.0/24kt and Market Value at Rs.47,53,891/- (Rupees Forty-Seven Lakhs Fifty-Three Thousand Eight Hundred and Ninety-One only) and tariff value at Rs.41,89,255/- (Rupees Forty-One Lakhs Eighty-Nine Thousand Two Hundred and Fifty-Five only). The said semi solid gold paste was concealed in pouch in underwear containing gold and chemical mix in semi-solid paste form, without declaring it to the Customs, is not smuggled goods, is upon the passenger Shri Nizamuddin Badshah Shaikh.

7. Now, therefore, **Shri Nizamuddin Badshah Shaikh**, residing at, residential address as per passport is TF-18, Karimi Flat, Near Bank of India, Jamalpur Pagathiya, Jamalpur, Ahmedabad-380001, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Customs House, Opp. Old High Court, Navrangpura, Ahmedabad-380009, as to why:

- i. One Gold Bar weighing **743.260** grams having purity 999.0/24kt, Market Value at **Rs.47,53,891/-** (Rupees Forty-Seven Lakhs Fifty-Three Thousand Eight Hundred and Ninety-One only) and tariff value at **Rs.41,89,255/-** (Rupees Forty One Lakhs Eighty-Nine Thousand Two Hundred and Fifty-Five only derived from semi solid gold paste concealed in in pouch in underwear containing gold and chemical mix in semi-solid paste form by the passenger and placed under seizure under Panchnama proceedings dated 12.01.2024 and Seizure Memo Order dated 12.01.2024, 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. The Underwear used for concealment of the said gold bar in the form semi solid gold paste concealed in pouch in underwear containing gold and chemical mix in semi-solid paste form, seized under Panchnama dated 12.01.2024, should not be confiscated under Section 119 of the Customs Act, 1962; and
- iii. Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

8. Shri Nizamuddin Badshah Shaikh is further required to state specifically in the written reply as to whether he wishes to be heard in person before the case is adjudicated. If no specific mention is made about this in the written reply, it shall be presumed that he does not wish to be heard in person. He should produce at the time of showing cause, all the evidences which he intends to rely upon in defense.

9. Shri Nizamuddin Badshah Shaikh is further required to note that the reply should reach within **30 (thirty) days** or within such extended period as may be allowed by the adjudicating authority. If no cause is shown against the action proposed above within 30 days from the receipt of this show cause notice or if anyone does not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.

10. This show cause notice is issued without prejudice to any other action that may be taken against him, under this Act or any other law for the time being in force, or against any other company, person(s), goods and conveyances whether named in this notice or not.

11. Department reserves its right to amend, modify or supplement this notice at any time prior to the adjudication of the case.

12. The relied upon documents for the purpose of this notice are listed in Annexure 'A' and copies thereof are enclosed with this notice.


 29/5/24
(Vishal Malani)
 Additional Commissioner
 Customs, Ahmedabad.

DIN: 20240571MN0000924423

F. No. VIII/10-04/SVPIA-D/O&A/HQ/2024-25

Date: 29.05.2024

BY SPEED POST

To,

Shri Nizamuddin Badshah Shaikh,
 (residing at residential address as per passport)
 TF-18, Karimi Flat, Near Bank of India,
 Jamalpur Pagathiya, Jamalpur,
 Ahmedabad-380001.

Copy to:

- (i) The Deputy Commissioner of Customs (AIU), SVPI Airport, Ahmedabad.
- (ii) The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
- (iii) Guard File.

Annexure 'A'

List of documents relied upon in the show cause notice issued to Shri Nizamuddin Badshah Shaikh, having address as TF-18, Karimi Flat, Near Bank of India, Jamalpur Pagathiya, Jamalpur, Ahmedabad-380001

| Sr. No | Document | Remarks |
|--------|---|---------------|
| 1 | Panchnama drawn on 12.01.2024 at SVP International Airport, Ahmedabad. | Copy enclosed |
| 2. | Valuation certificate No.1117/2023-24 dated 12.01.2024 issued by Shri Karitkey Soni, Government Approved Valuer. | Copy enclosed |
| 3. | Statement dated 12.01.2024 of Shri Nizamuddin Badshah Shaikh. | Copy enclosed |
| 4. | Seizure memo Order dated 12.01.2024 issued under Section 110(1) & (3) of the Customs Act, 1962 in respect of the gold bar weighing 743.260 grams along with its packing material. | Copy enclosed |