



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-262/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-262/SVPIA-D/O&A/HQ/2023-24 dated: 27.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 90/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 01.07.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 01.07.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: Shri Vicky Hassanand Chimnani, Flat No. 915, Floor No.9, Patel Signature, Type-A, Palegaon, Ambarnath, East-Thane, Pin-421501 Maharastra.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case: -

Shri Vicky Hassanand Chimnani S/o Ghanshyamdas Chimnani (herein after referred to as 'the said passenger/ Noticee') residing at Flat No. 915, Floor No. 9, Patel Signature Type A, Palegaon, Ambarnath East, Thane, Pin-421501, Maharashtra holding Indian Passport bearing No. W8361719 arrived from Hanoi by Viet-Jet Airlines Flight No. VJ1925 at SVP International Airport, Ahmedabad on 25.11.2023. On the basis of specific intelligence that one Passenger is suspected to be restricted/ prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. There was also need to guide the passenger from the airplane to ensure that the goods are not handed over to someone else. The passenger would be arriving by Flight No. VJ1925 of Viet-Jet Airline which will be landing at 12.05 on 25.11.2023.

Accordingly, Panchas have been informed and they gave their consent to remain present in entire search proceedings, the AIU officers reached to the Airplane which has carried the flight No. VJ-1925 arriving from Hanoi to Ahmedabad. The officers then checked the passport of all the passengers deplaning from the flight. They find a passenger namely Shri Vicky Hassanand Chimnani (Seat No. 32A) having passport No. W8361719 and informed him that they will guide him from the airplane.

The passenger was guided to the Immigration Hall where he gets his passport checked in. Thereafter, in the presence of the Panchas, the AIU officers guided the passenger to the Red Channel and asked the passenger whether he is carrying any dutiable goods/ foreign currency or any restricted goods and whether he wishes to declare anything before Customs Authorities, to which the said passenger replied in negative.

2.1 The AIU officers under Panchnama proceedings dated 25.11.2023 asked the passenger, 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 said passenger was asked by the officers whether he wished to be searched before a Gazetted officer or Magistrate for which he agreed to being searched by a Gazetted officer. Before conducting the search, the AIU officers offer their personal search to which he denies and said that it is not necessary, and he has full faith in the officers. The officers asked the 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 his body/ clothes. The passenger was asked to pass through the Door Frame Metal Detector placed in the hall in front of Belt No.2 near green channel in the arrival hall of Terminal-2, SVPI Airport and his checked in and hand bags were scanned through the X-Ray Baggage Scanning machine, but nothing objectionable was observed. But, the officers of AIU have strong belief that the passenger carrying some contraband or dutiable item with him, hence the officer repeatedly asked the passenger whether he is carrying anything dutiable but the passenger denies, still, the officer of AIU has full doubt that the passenger is hiding something hence again and again asked to the passenger whether he is carrying anything dutiable. After sustained interrogation the passenger admitted that he has concealed three capsules containing gold and chemical mix paste in his body i.e. rectum. After some time, Shri Vicky Hassanand Chimnani emerges from the washroom, the same was removed from his body and handed over to the AIU officer.

2.2 Thereafter, the Customs officers called the Government Approved Valuer and informed him that **03 capsules** covered with black plastic tape have been recovered from one passenger and he has informed that it is gold in paste form and hence, he needed to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informed the Customs officers that the testing of the said material is only possible at his workshop as gold must be extracted from such paste form by melting it and informed the address of his workshop.

2.3 Thereafter, at around 08.00 A.M. on 25.11.2023, two panchas along with the passenger Shri Vicky Hassanand Chimnani and AIU officers leave 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.

2.4 On reaching the above referred premises, the AIU officers introduced the panchas as well as the passenger to one person named Mr. Kartikey Vasantrai Soni, Government Approved Valuer. Here, after weighing the said 03 capsules on his weighing scale, Mr. Kartikey Vasantrai Soni informed that the capsule's gross weight is 1115.00 gms.

2.5 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of extracting the gold from the gold capsules. After completion of extraction, Government Approved Valuer informed that gold bar weighing **1014.980** Grams having purity 999.0/24kt. is derived from the 1115.00 Grams of semisolid paste substance consisting of gold paste and chemical mix (03 capsules). After testing and valuation, the Govt. Approved Valuer vide his certificate No. 909/2023-24 dated 25.11.2023 confirmed that it is gold, having purity 999.0/24 Kt. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.54,11,812/-** (Rupees Fifty-Four Lakhs Eleven Thousand Eight Hundred and Twelve only) and market value is **Rs.64,59,333/-** (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Three Hundred and Thirty-Three only) which has been calculated as per the Notification No. 82/2023-Customs (N.T.) dated 15.11.2023 (gold) and Notification No. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate). The outcome of the said testing is summarized in below table.

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	1014.980	999.0 24Kt.	64,59,333/-	54,11,812/-

3. The said pure gold of 24 kt. having 999.0 purity retrieved from the semisolid paste substance consisting of gold paste and chemical mix

capsule inside the rectum of the passenger, weighing **1014.980** Grams, has Market Value at **Rs.64,59,333/-** (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Three Hundred and Thirty-Three only) and tariff value at **Rs.54,11,812/-** (Rupees Fifty-Four Lakhs Eleven Thousand Eight Hundred and Twelve 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 Customs Act, 1962. Thus, having a reasonable belief that the said gold Bar (1 piece) having weight 1014.980 Grams was attempted to be smuggled by the passenger, were liable for confiscation under the provisions of the Customs Act, 1962 and was placed under seizure vide Panchnama dated 25.11.2023 drawn by the Officer of Customs (AIU) 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 (**Seizure Report dated 25.11.2023**). Further, the gold, recovered from the passenger, was placed under seizure under section 110 of the Customs Act, 1962 vide Panchnama dated 25.11.2023 drawn by the Officer of Customs, AIU, at SVPI Airport, Ahmedabad.

4. The statement of the passenger was recorded on 25.11.2023 under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that he arrived from Flight Number VJ-1925 on 25.11.2023 having seat no. 32-A, having Passport No. W8361719, at Sardar Vallabhbhai Patel International Airport, Ahmedabad. Furthermore, the passenger accepted that the said Gold Bar (1 Piece) having weight 1014.980 Grams which was derived from capsules having gross weight 1115.00 concealed inside his rectum not belonging to him. Under his statement, the passenger admitted that he has been travelled abroad many times, viz. Dubai, Dhaka, Bangkok, Maldives etc. frequently, because of his business related to costume designing and some time to attend functions. Normally, he is carrying clothes, masala, papad, at the time of departure from India to abroad for selling purpose to earn some amounts and while returning from abroad, he carries Clothes like kurta, pazama, fabrics etc. This time, he visited Bangkok for the purpose of buying clothes but not available as per his choice. At the time he came in contact Shri Alibhai. The said person Alibhai told him to carry gold paste in capsule form by way of concealment in

his body and he was in need of money, he consented to do same immediately, he was also told by Alibhai that at SVPI Airport a person will contact him to deliver the same with code "Habibi". I took flight from Bangkok to Ahmedabad in Viet-Jet Flight No. VJ-1925 on 24.11.2023. In view of the statement given by Shri Vicky Hassanand Chimnani, 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 carrying by way of concealment and intended to avoid to pay Customs duty by the pax, also he stated that he was aware that smuggling of gold without payment of customs duty is an offence. Since, he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying Customs duty. Further, he again confirmed the recovery of gold bar weighing 1014.980 grams of 999.0/24 Kt purity valued at Rs.64,59,333/- (market value) and Rs.54,11,812/- (tariff value) from him during the course of Panchnama dated 25.11.2023.

5. Therefore, on the basis of facts narrated above, the said gold Bar (1 Piece) weighing 1014.980 grams of 999.0/24 Kt purity valued at Rs.64,59,333/- (market value) and Rs.54,11,812/- (tariff value), derived from 1115.00 grams 3 gold capsules concealed inside the rectum of the passenger, appeared liable for confiscation, was placed under seizure under Panchnama dated 25.11.2023 as said gold totally weighing 1014.980 grams seized under Panchnama dated 25.11.2023 was "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. It also appeared that the said passenger has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 25.11.2023 under Section 108 of the Customs Act, 1962. He has committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962. Hence, the passenger was arrested.

6. In view of the above, **Shri Vicky Hassanad Chimnani**, resident of Flat No. 915, Floor No.9, Patel Signature, Type-A, Palegaon, Ambarnath, East-Thane, Pin-421501, Maharastra, holding Indian

Passport bearing No. W8361719, was called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad, as to why:

- i) The One Gold Bar, weighing **1014.980** grams having purity 999.0 (24KT) recovered/ derived from 3 gold capsules of 1115.000 grams, having Market Value at **Rs.64,59,333/-** (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Three Hundred and Thirty-Three only) and tariff value at **Rs.54,11,812/-** (Rupees Fifty-Four Lakhs Eleven Thousand Eight Hundred and Twelve only) placed under seizure under panchnama dated 25.11.2023 and seizure memo order dated 25.11.2023 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, Shri Vicky Hassanand Chimnani under Section 112(a) and 112(b) of the Customs Act, 1962.

Defence Reply and Personal Hearing:

7. Shri Vicky Hassanad Chimnani has not submitted written reply to the Show Cause Notice.
8. Shri Vicky Hassanad Chimnani 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 1014.980 grams of gold bar (one), obtained from three capsules containing paste of gold and chemical mixture weighing 1115.000 grams, having Tariff Value of Rs.54,11,812/- (Rupees Fifty-Four Lakhs Eleven Thousand Eight Hundred Twelve Only) and Market Value of Rs.64,59,333/- (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Three Hundred Thirty-Three Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 25.11.2023, 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 specific intelligence that one Passenger is suspected to be carrying restricted/ prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. There was also need to guide the passenger from the Airplane to ensure that the goods are not handed over to someone else. The AIU officers reached to the Airplane which has carried the flight No. VJ-1925 arriving from Hanoi to Ahmedabad. The officers then checked the passport of all the passengers deplaning from the flight. They found a passenger namely Shri Vicky Hassanand Chimnani (Seat No. 32A) having passport No. W8361719 and informed him that they will guide him from the airplane. The AIU officers guided the passenger to the Red Channel and asked the passenger whether he is carrying any dutiable goods/ foreign currency or any restricted goods and whether he wishes to declare anything before Customs Authorities, to which the said passenger replied in negative. The AIU officers again asked the passenger, if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The passenger was asked to pass through the Door Frame Metal Detector and his checked in and hand bags were scanned through the X-Ray Baggage Scanning machine, but nothing

objectionable was observed. However, the officers of AIU have strong belief that the passenger is carrying some contraband or dutiable item with him, hence the officer repeatedly asked the passenger whether he is carrying anything dutiable, but the passenger denied. Still the officers of AIU had doubt that the passenger is hiding something hence again and again asked to the passenger whether he is carrying anything dutiable. After sustained interrogation, the passenger admitted that he has concealed three capsules containing gold and chemical mix paste in his body i.e. rectum. After some time, Shri Vicky Hassanand Chimnani emerges from the washroom, the same was removed from his body and handed over to the AIU officer.

12. Shri Kartikey Vasantrai Soni, the Government Approved Valuer after weighing the said 03 capsules on his weighing scale, Mr. Kartikey Vasantrai Soni informed that the capsule's gross weight is 1115.00 grams. After completion of extraction, the Government Approved Valuer informed that gold bar weighing **1014.980** Grams having purity 999.0/24kt. is derived from the 1115.00 Grams of semisolid paste substance consisting of gold paste and chemical mix (03 capsules), having total Tariff Value of the said gold bar is **Rs.54,11,812/-** (Rupees Fifty-Four Lakhs Eleven Thousand Eight Hundred and Twelve only) and market value is **Rs.64,59,333/-** (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Three Hundred and Thirty-Three only). The outcome of the said testing is summarized in below table.

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	1014.980	999.0 24Kt.	64,59,333/-	54,11,812/-

The said gold recovered from the passenger was attempted to be smuggled by the passenger, were liable for confiscation under the provisions of the Customs Act, 1962 and was placed under seizure vide Panchnama dated 25.11.2023 drawn by the Officer of Customs (AIU) 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. Hence, the said gold recovered from the

passenger, was placed under seizure under section 110 of the Customs Act, 1962.

I also find that the said 1014.980 grams of gold bar obtained from the 1115.000 grams of gold paste having Tariff Value of Rs.54,11,812/- and Market Value of Rs.64,59,333/- carried by the passenger Shri Vicky Hassanad Chimnani 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 25.11.2023 under Section 108 of the Customs Act, 1962.

13. 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 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.

14. Further, the passenger has accepted that he had not declared the said gold paste concealed in his body 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 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 the 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.

15. From the facts discussed above, it is evident that Shri Vicky Hassanad Chimnani had carried gold paste weighing 1115.000 grams, (wherefrom 1014.980 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste), while arriving from Hanoi 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 1014.980 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 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.

16. It is seen that the passenger & Noticee had not filed the baggage declaration form and had not declared the said gold paste 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 paste weighing 1115.000 grams concealed in his body i.e. rectum (extracted gold bar of 1014.980 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 gold bar weighing 1014.980 grams, having Tariff Value of Rs.54,11,812/-/- and Market Value of Rs.64,59,333/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 25.11.2023 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 paste concealed in his body, 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.

17. I find that the Noticee confessed of carrying the said gold paste of 1115.000 grams concealed in his body (extracted gold bar of 1014.980 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.

18. 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 1014.980 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1115.000 grams, having Tariff Value of Rs.54,11,812/- and Market Value of Rs.64,59,333/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 25.11.2023. 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 Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1115.000 grams (Gold bar weighing 1014.980 grams derived from the same) 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.

19. 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. Gold bar weighing 1014.980 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1115.000 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. 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.

20. In view of the above discussions, I hold that the said gold bar weighing 1014.980 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1115.000 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 25.11.2023 stated that he has carried the gold by concealment in his body (rectum) 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. 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.

21. 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."

22. 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.

23. 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).

24. 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.

25. 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 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

26. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 1014.980 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1115.000 grams carried by the passenger is therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold bar weighing 1014.980 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.

27. I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 1014.980 grams, carried by him. He has agreed and admitted in his statement that he travelled with gold paste consisting of Gold & Chemical Mix, totally weighing 1115.000 grams from Hanoi to Ahmedabad. Despite his knowledge and belief that the gold paste 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 paste of 1115.000 grams by concealing in his body (extracted gold bar of 1014.980 grams 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.

28. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the One Gold Bar, weighing

1014.980 grams having purity 999.0 (24KT) recovered/ derived from 3 gold capsules of 1115.000 grams, having Market Value at **Rs.64,59,333/-** (Rupees Sixty-Four Lakhs Fifty-Nine Thousand Three Hundred and Thirty-Three only) and tariff value at **Rs.54,11,812/-** (Rupees Fifty-Four Lakhs Eleven Thousand Eight Hundred and Twelve only) placed under seizure under panchnama dated 25.11.2023 and seizure memo order dated 25.11.2023, under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- ii) I impose a penalty of **Rs.20,00,000/-** (Rupees Twenty Lakhs Only) on Shri Vicky Hassanad Chimnani under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-262/SVPIA-D/O&A/HQ/2023-24 dated 27.03.2024 stands disposed of.


1.7.24

(Vishal Malani)

Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-262/SVPIA-D/O&A/HQ/2023-24 Date: 01.07.2024
DIN: 20240571MN000000CB75

BY SPEED POST AD

To,
Shri Vicky Hassanand Chimnani,
Flat No. 915, Floor No.9, Patel Signature,
Type-A, Palegaon, Ambarnath, East-Thane,
Pin-421501 Maharastra.

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.