



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/10-250/SVPIA-A/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-250/SVPIA-A/O&A/HQ/2023-24 dated: 08.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 82/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	आयातककानामऔरपता / Name and Address of Importer / Passenger	: Shri Sahil Abdul Rahim Shaikh, Darga Road Hatti Mohalla, Vasai West, Palghar, Maharashtra, India, PIN-401201.
(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 मंज़िल, 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 इयूटी 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 Sahil Abdul Rahim Shaikh, (hereinafter referred to as "the said passenger/ Noticee"), residing at Darga Road Hatti Mohalla, Vasai West, Palghar, Maharashtra, India, PIN-401201, holding an Indian Passport Number No. U4346541 arrived from Dubai to Ahmedabad by (Seat No:1A) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling and suspicious movement, one passenger who arrived by Spice Jet Flight No. SG16 on 03.10.2023 from Dubai to Ahmedabad at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 03.10.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2. The AIU Officers identified Shri Sahil Abdul Rahim Shaikh by his passport No. U4346541 and his boarding pass bearing Seat No. 20 D A, after he had crossed the Green Channel at the SVPI Airport, Ahmedabad. In the presence of the panchas, the AIU Officers asked Shri Sahil Abdul Rahim Shaikh if he has anything to declare to the Customs, to which he denied. The officers offered their personal search to the passenger, but the passenger politely denied and submitted that he is having full trust on the Officers. The officers asked the passenger whether he wants to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which he consented to be searched in front of the Superintendent of Customs.

2.1 Now, in presence of the panchas, the AIU officers asked Shri Sahil Abdul Rahim Shaikh to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he wore on his body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he

passed through the DFMD Machine, but no beep sound/ alert was generated.

2.2 The Officers in presence of the panchas, observed that Shri Sahil Abdul Rahim Shaikh carried one black trolley bag, corrugated box and small pouch. The officers, in presence of the panchas carried out scanning of the trolley bag, corrugated box and small pouch in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, some suspicious was observed. Thereafter, the passenger was taken to the AIU office located opposite Belt No.02 of the Arrival Hall, Terminal-2 SVPI, Airport, Ahmedabad. On sustained interrogation, the passenger asked whether he was concealing any high value dutiable goods, then the passenger confessed that he has concealed Gold Rod inside a microscope which was kept in his trolley bag weighing approx. 1470.140 grams. The officers of the AIU cut the pipe and removed the rod from the pipe, which appears to be gold.

2.3 The officer then informed the panchas that they need to contact Shri Soni Kartikey Vasantrai, a Government Approved Valuer so as to confirm that whether, the recovered rod is gold or not and valuation of the gold rod. Accordingly, the officers telephonically contacted Shri Soni Kartikey Vasantrai and requested him to come to the office of the Air Intelligence Unit, SVPI Airport, Ahmedabad for testing and valuation purpose. In reply, the Government Approved Valuer informed the officers that the testing of the material is possible only at his workshop as gold has to be extracted from the Gold Rod by melting it and also informs the address of his workshop.

2.4. Thereafter, the AIU & DRI Officers, along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G. Road, Ahmedabad-380006. On reaching the above referred premises, the officers introduced the panchas, as well as the passenger to one person namely Mr. Soni Kartikey Vasantrai, Government Approved Valuer. Further, the Government Approved Valuer asked the officers in presence of panchas that he would do the examination of the Gold Rod. The Valuer started the detailed examination of the gold rod that was

recovered from Shri Sahil Abdul Rahim Shaikh. After weighing the said gold rod on his weighing scale, Mr. Soni Kartikey Vasantrai provided detailed primary verification report of Gold Rod and informed that the weight of the gold rod is 1498.920 gram.

2.5. Thereafter, the Government approved valuer led the Officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Mr. Kartikey Vasantrai Soni started the process of converting the gold rod into solid gold bar. After completion of the procedure, the valuer informed that the one gold bar having total weight of **1470.140** Grams having purity of 999.0/24kt., derived from the gold rod having gross weight of 1498.920 gram. After testing and valuation, the Govt. Approved Valuer informs that the total Market Value of the said recovered gold bar is **Rs.87,17,930/-** (Rupees Eighty-Seven Lakh Seventeen Thousand Nine Hundred Thirty only) and Tariff Value is **Rs.74,50,986/-** (Seventy-Four Lakh Fifty Thousand Nine Hundred Eighty-Six only) which has been calculated as per the Notification No. 71/2023 Customs (N.T.), dated 29.09.2023 (Gold) and Notification No. 68/2023-Customs (N.T.), dated 21.09.2023 (exchange rate). Accordingly, a certificate of the recovered gold bearing no. 646/2023-24 dated 03.10.2023 was issued by the Govt. Approved Valuer.

2.6. Then, the Officers, the panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the proceedings of the extraction of gold at the workshop, along with the extracted gold bar on 03.10.2023. Thereafter, the officers in the presence of the panchas asked the passenger, Shri Sahil Abdul Rahim Shaikh, to produce the documents in his possession and he produced the below mentioned documents. The Officers in presence of panchas and passenger carried out scrutiny of the documents of the passenger, and found that Shri Sahil Abdul Rahim Shaikh, aged 24 years, holding Indian Passport No. U4346541 issued on 07.02.2020 and his address as per Passport is Darga Hatti Mohalla, Vasai West, Palghar, Maharashtra – 401201.

- i) Copy of Stamped pages of Passport No. U4346541 issued on 07.02.2020 valid up to 06.02.2030 of Shri Sahil Abdul Rahim Shaikh.

- ii) Boarding pass dated 02.10.2023 showing seat No. 20D of Spice Jet Flight No. SG-16 from Dubai to Ahmedabad of Shri Sahil Abdul Rahim Shaikh.

3. The AIU Officers informed the panchas as well as the passenger, that the recovered one gold bars of 24Kt. with purity 999.0 total weighing 1470.140 grams having total Market value of Rs.87,17,930/- (Rupees Eighty-Seven Lakh Seventeen Thousand Nine Hundred Thirty only) and Tariff Value is Rs.74,50,986/- (Seventy-Four Lakh Fifty Thousand Nine Hundred Eighty-Six only). The said passenger had attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the officers informed that they have a reasonable belief that the aforesaid Gold had attempted to be smuggled by the passenger, resulted in liable for confiscation as per the provisions of Customs Act, 1962, hence the aforesaid Gold was placed under seizure, vide Seizure Memo dated 03.10.2023, under Section 110 (1) & (3) of the Customs Act, 1962.

4. A Statement of Shri Sahil Abdul Rahim Shaikh, D.O.B. 30.06.1974, S/o Shri Abdul Rahim Shaikh, Address Darga Hatti Mohalla, Vasai West, Palghar, Maharashtra - 401201, holding an Indian Passport Number No. U4346541 was recorded under Section 108 of the Customs Act, 1962 (**RUD-02**) on 03.10.2023, wherein he explained as under:

- His name, age and address stated above are true and correct. He engages in selling of car parts.
- They lived with his family.
- He passed 10th class. He can read and write Hindi, English.
- He had visited Dubai (UAE) in search of Job.
- His Cousin brother Mr. Zain is arranged his to and fro tickets for Dubai. When They arrived from Dubai to India then the passenger handed over the goods (Gold) to his family of Cousin brother in India.
- On arrival at SVPI Airport at Ahmedabad at 02.10.2023 about to 11.30 PM, he picked up his checked in baggage and walked towards the exit gates through the Green Channel after crossing the Customs counter at the red Channel. He confirmed the events narrated in the Panchnama drawn on 03.10.2023 at Terminal-2, SVPI Airport, Ahmedabad. His Checked-in baggage was put through baggage screening

machine located near the green channel of the Arrival Hall and screened and checked thoroughly. Thereafter, he confirmed that when the officer asked him repeatedly about any concealment of any contraband goods in my luggage, he handed over all the goods item which was kept in his luggage to the officer. Then officer checked luggage. The officers, being dis-satisfied, interrogated him about any concealment. Then, he admitted that he had concealed gold in a microscope which was kept in his trolley bag as a Gold rod.

- He stated that he is very well aware that smuggling of gold without Payment of customs duty is an offence. He was aware of the concealed gold but he did not make any declarations in this regard. The Customs AIU officers asked him if he had anything dutiable to be declared to Customs, he denied. Thereafter, on suspicion, he was questioned which resulted in the recovery of the 1470.140 grams of pure Gold. Thereafter, the AIU Officer on the reasonable belief that the above said Gold was attempted to be smuggled by keeping it in a concealed manner under provisions of the Customs Act, 1962, the same was placed under seizure on 03.10.2023.

5. The above said gold bar with net weigh of 1470.140 grams having purity of 999.0/24 Kt. involving total Market value of Rs.87,17,930/- (Rupees Eighty-Seven Lakh Seventeen Thousand Nine Hundred Thirty only) and Tariff Value is Rs.74,50,986/- (Seventy Four Lakh Fifty Thousand Nine Hundred Eighty Six only) recovered from the said passenger which were attempted to be smuggled into India with an intent to evade payment of Customs duty by concealed in a microscope kept in his trolley bag, which was a clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar totally weighing 1470.140 Grams which was attempted to be smuggled by Shri Sahil Abdul Rahim Shaikh is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, hence, the above said gold bar weighing 1470.140 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 03.10.2023, issued from F.No. VIII/10-128/AIU/A/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

6. In terms of Board's Circular No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23.10.2015 and 27/2015-Cus. as revised vide circular No. 13/2022-Customs dated 16.08.2022, the

prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rs. Fifty Lakhs or more).

7. Since, the value of the recovered Gold from Shri Sahil Abdul Rahim Shaikh weighing 1470.140 grams 24Kt./999.0 purity is more than Rs.50,00,000/-. Hence, Shri Sahil Abdul Rahim Shaikh was arrested under section 104 of the Customs Act, 1962 on 04.10.2023. Subsequently, the passenger Shri Sahil Abdul Rahim Shaikh was released on Bail on payment of Bail amount of Rs.1,50,000/- (One Lakh Fifty Thousand) vide challan No. 37675, dt. 04.10.2023 as per Bail Bond dated 10.12.2023.

8. In view of the above, Shri Sahil Abdul Rahim Shaikh, residing at Darga Road Hatti Mohalla, Vasai West, Palghar, Maharashtra, India, PIN-401201, holding an Indian Passport Number No. U434654, was called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2ndFloor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:

- (i) The One Gold Bars total weighing 1470.14 Grams derived from gold rod having purity 999.0/24 Kt. and having Market value of Rs.87,17,930/- (Rupees Eighty Seven Lakh Seventeen Thousand Nine Hundred Thirty only) and Tariff Value is Rs.74,50,986/- (Seventy Four Lakh Fifty Thousand Nine Hundred Eighty Six only) which was concealed in microscope as Gold Rod kept in his trolley bag was placed under seizure under panchnama proceedings dated 03.10.2023 and Seizure Memo Order dated 03.10.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

9. Shri Sahil Abdul Rahim Shaikh has not submitted written reply to the Show Cause Notice.

9.1. Shri Sahil Abdul Rahim Shaikh 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:

10. 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.

11. In the instant case, I find that the main issue to be decided is whether the 1470.14 grams of gold bar, obtained from gold rod weighing 1498.920 grams, having Tariff Value of Rs.74,50,986/- (Rupees Seventy-Four Lakhs Fifty Thousand Nine Hundred Eighty-Six Only) and Market Value of Rs.87,17,930/- (Rupees Eighty-Seven Lakhs Seventeen Thousand Nine Hundred Thirty Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 03.10.2023, 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.

12. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement, one passenger who arrived by Spice Jet Flight No. SG16 on 03.10.2023 from Dubai to Ahmedabad at Terminal 2 of Sardar Vallabhbhai Patel

International Airport (SVPI), Ahmedabad, was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 03.10.2023. The AIU Officers identified Shri Sahil Abdul Rahim Shaikh by his passport No. U4346541 and his boarding pass bearing Seat No. 20 D A, after he had crossed the Green Channel at the SVPI Airport, Ahmedabad. The AIU Officers asked Shri Sahil Abdul Rahim Shaikh if he has anything to declare to the Customs, to which he denied. The AIU officers asked Shri Sahil Abdul Rahim Shaikh to walk through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound/ alert was generated. The Officers carried out scanning of the trolley bag, corrugated box and small pouch in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, and some suspicious image was observed. On sustained interrogation, the passenger confessed that he has concealed Gold Rod inside a microscope which was kept in his trolley bag weighing approx. 1470.140 grams. The officers of the AIU cut the pipe and removed the rod from the pipe, which appears to be gold.

13. I find that the Government Approved Valuer started the detailed examination of the gold rod that was recovered from Shri Sahil Abdul Rahim Shaikh. After weighing the said gold rod on his weighing scale, Mr. Soni Kartikey Vasantrai informed that the weight of the gold rod is 1498.920 grams. Shri Kartikey Vasantrai Soni started the process of converting the gold rod into solid gold bar. After completion of the procedure, the valuer informed that one gold bar having total weight of **1470.140** Grams having purity of 999.0/24kt., derived from the gold rod having gross weight of 1498.920 grams having total Market Value of the said recovered gold bar is **Rs.87,17,930/-** (Rupees Eighty-Seven Lakh Seventeen Thousand Nine Hundred Thirty only) and Tariff Value is **Rs.74,50,986/-** (Seventy-Four Lakh Fifty Thousand Nine Hundred Eighty-Six only).

I also find that the said 1470.140 grams of gold bar obtained from the 1498.920 grams of gold paste having Tariff Value of Rs.74,50,986/- and Market Value of Rs.87,17,930/- carried by the passenger Shri Sahil Abdul Rahim Shaikh 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 03.10.2023 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 luggage (gold rod in microscope) 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 rod concealed in his luggage 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 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. I also find that the value of the recovered Gold from Shri Sahil Abdul Rahim Shaikh weighing 1470.140 grams 24Kt./999.0 purity is more than Rs.50,00,000/-, Shri Sahil Abdul Rahim Shaikh was arrested under section 104 of the Customs Act, 1962 on 04.10.2023. Subsequently, the passenger Shri Sahil Abdul Rahim Shaikh was released on Bail on payment of Bail amount of Rs.1,50,000/- (One Lakh Fifty Thousand) vide challan No. 37675, dt. 04.10.2023 as per Bail Bond dated 10.12.2023.

17. From the facts discussed above, it is evident that Shri Sahil Abdul Rahim Shaikh had carried gold rod weighing 1498.920 grams, (wherefrom 1470.14 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said rod) while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 1470.140 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 rod in his luggage and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

18. It is seen that the 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 weighing 1498.920 grams concealed in his luggage (extracted gold bar of 1470.140 grams) by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade

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

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 1470.14 grams, having Tariff Value of Rs.74,50,986/-/- and Market Value of Rs.87,17,930/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 03.10.2023 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 luggage, 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.

19. I find that the Noticee confessed of carrying the said gold of 1498.920 grams concealed in his luggage (extracted gold bar of 1470.14 grams having purity 999.0) and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied

with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

20. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign destination with the wilful intention to smuggle the impugned goods. The said gold bar weighing 1470.140 grams, having Tariff Value of Rs.74,50,986/- and Market Value of Rs.87,17,930/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 03.10.2023. 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 bar weighing 1470.14 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.

21. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. Gold bar weighing 1470.140 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 luggage. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

22. In view of the above discussions, I hold that the said gold bar weighing 1470.140 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 03.10.2023 stated that he has carried the gold by concealment in his luggage 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 luggage. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

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

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

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

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

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

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

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

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion

conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

27. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government Of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

28. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 1470.140 grams, carried by the passenger is therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold bar weighing 1470.140 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.


29. I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 1470.140 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Dubai to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold by concealing in his luggage. 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.

30. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the One Gold Bar total weighing **1470.140** Grams derived from gold rod having purity 999.0/24 Kt. and having Market value of **Rs.87,17,930/-** (Rupees Eighty Seven Lakh Seventeen Thousand Nine Hundred Thirty only) and Tariff Value is **Rs.74,50,986/-** (Seventy Four Lakh Fifty Thousand Nine Hundred Eighty Six only) which was concealed in microscope as Gold Rod kept in his trolley bag was placed under seizure under Panchnama proceedings dated 03.10.2023 and Seizure Memo Order dated 03.10.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) I impose a penalty of **Rs.28,00,000/-** (Rupees Twenty-Eight Only) on Shri Sahil Abdul Rahim Shaikh under the provisions of Section 112(a)(i) of the Customs Act, 1962 for the omissions and commissions mentioned hereinabove.

31. Accordingly, the Show Cause Notice No. VIII/10-250/SVPIA-A/O&A/HQ/2023-24 dated 08.03.2024 stands disposed of.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-250/SVPIA-A/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN000000C5B6

BY SPEED POST AD

To,
Shri Sahil Abdul Rahim Shaikh,
Darga Road Hatti Mohalla,
Vasai West, Palghar,
Maharashtra, India, PIN-401201.

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.