

OIO No:225/ADC/SRV/O&A/2024-25
F. No. VIII/10-211/SVPIA-A/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद -380009.

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DIN No.20250171MN0000818979

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-211/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-211/SVPIA-A/O&A/HQ/2024-25 dated: 06.09.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	225/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	10.01.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	10.01.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Rohit Balu More, Post Gardi, Solapur Maharashtra Pin Code 413306
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		

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(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा 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, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case: -

Shri Rohit Balu More (hereinafter referred to as the said “passenger/Noticee”), residing at Post Gardi, Solapur, Pin-413306, Maharashtra, India, holding an Indian Passport Number No. B6960968 arrived from Thai Airways Flight No. TG-343 Seat No. 34A from Bangkok to Ahmedabad at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passengers profiling and suspicious movement of Shri Rohit Balu More, who arrived 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 20.04.2024 in presence of two independent witnesses for passenger’s personal search and examination of his baggages.

2. The AIU Officers identified Shri Rohit Balu More by his passport No. B6960968 and his boarding pass bearing Seat No. 34A, after he had crossed the Green Channel at the SVPI Airport, Ahmedabad. In the presence of the panchas, the AIU Officers asked Shri Rohit Balu More 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 AIU officer informed the passenger that he along with accompanied officers would be

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conducting his personal search and detailed examination of his baggage. The AIU officer asked the passenger 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 is wearing on his body/clothes. The passenger, readily removed the metallic substances from his body/clothes such as mobile, purse etc. and keeps it on the tray placed on the table. Further, the AIU Officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passes through the DFMD Machine, no beep sound was heard indicating that nothing dutiable/objectionable/ metallic substance on his body/clothes is there. Thereafter the AIU officers scan all the baggage in the X-ray machine but nothing suspicious is observed by the AIU officers. Thereafter, the said passenger, the Panchas and the officers of AIU move to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad.

2.1 The Officers, in presence of the panchas, asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough interrogation by the officers, in presence of the panchas, the passenger did not confess that he is carrying any high valued dutiable goods. Then, the Customs officers seated him in the office and the officers offered the said passenger water and tea. Thereafter, the officers informed the panchas that they have reasonable belief that the said passenger carried some high valued dutiable goods by way of concealed in his body parts and once again the said passenger was asked whether he concealed any high valued dutiable goods in his body parts. Further, on sustained interrogation, the passenger confessed that he is carrying high valued dutiable goods viz. 3 capsules covered with black tape

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containing gold in semi solid paste form in his rectum. The passenger was taken to the washroom opposite belt no.1 of the Arrival hall, Terminal 2 by the Officer, where he took out all the 3 capsules covered with black tape and handed over to the Customs officers.

2.2 The officer then informed the panchas that they need to contact Shri Soni Kartikey Vasantrai, a Government Approved Valuer so as to confirm the contents of the gold paste covered with black tape. 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 semi-solid paste form by melting it and also informs the address of his workshop.

2.3 Thereafter, the AIU 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. Mr. Soni Kartikey Vasantrai, asked the officers in presence of panchas that he would do the examination of the gold paste covered with with black tape. The valuer started the detailed examination of the gold paste that was recovered from Shri Rohit Balu More. After weighing the said capsules of gold paste on his weighing scale, Shri. Soni provided detailed primary verification report of semi solid substance and informed that the weight of the semi solid substance

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mixture of gold paste and chemicals covered with black tape has a Gross weight of **970.520 grams**. The photograph of the same is as:-



3. 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 semi solid material concealed in a packet covered with plastic adhesive tape into solid gold. The covering of the packets was removed and semi solid substance consisting of Gold and Chemical mix was obtained which was put into the furnace and upon heating, the semi solid substance turned into mixture of gold like material weighing **856.730** grams. The Photograph of the same is as:-

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4. The said substance consisting of gold was tested by the valuer for the gold component by putting in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that 01 Gold bar weighing 856.730 grams having purity 999.0/24 Kt. derived from 970.520 grams paste found in 3 capsules wrapped in the black tape. Concealed in his rectum. After testing the said derived bar, the Government Approved Valuer confirmed that it is pure gold and Shri Soni Kartikey Vasantrai issued a Certificate, vide Certificate No.76/2024-25 dated 20.04.2024, wherein it is certified that the gold bar weighing 856.730 grams is having purity 999.0/24kt and having Market Value of Rs.65,19,715/- (Rupees Sixty Five Lakhs Nineteen thousand Seven Hundred Fifteen only) and having tariff value of Rs. 55,89,409/- (Fifty Five lakhs Eighty Nine thousand Four hundred Nine only). The value of the gold bar has been calculated as per the Notification No.29/2024-Customs (N.T.) dated 15.04.2024 (gold) and Notification No. 30/2024-Customs (N.T.) dated 18.04.2024 (exchange rate).

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5. Then, the Officers, 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 20.04.2024. Thereafter, the officers in the presence of the panchas asked the passenger, Shri Rohit Balu More, to produce the documents in his possession and he produced the below mentioned documents:

1. Copy of Stamped pages of Passport No.B6960968 issued at Pune on 31.10.2023 valid up to 30.10.2033.
2. Boarding pass of Thai Airlines Flight No.TG343 from Bangkok to Ahmedabad dated 20.04.2024 having seat No.34 A.
3. Copy of Adhar Card.

The officers in presence of panchas and passenger carried out scrutiny of the documents of the passenger, and found that Shri Rohit Balu More, aged 30 years (DOB-24.10.1994) S/o Shri Balu More, holding Indian Passport No.B6960968 issued on 31.10.2023 and his address as per Passport is Post Gardi, Solapur, Pin-413306, Maharashtra, India. The copies of travelling documents and identity proof documents mentioned above taken into possession by the Customs officers for further investigation and the panchas as well as the passenger put their dated signatures on copies of all the above-mentioned travelling documents and the passenger manifest, as a token of having seen and agreed to the same.

6. The AIU Officers informed the panchas as well as the passenger, that the recovered 01 gold bars is of 24Kt. with purity 999.0 total weighing 856.730 grams having Market Value of Rs.65,19,715

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(Rupees Sixty Five Lakhs Nineteen thousand Seven Hundred Fifteen only) and having tariff value of Rs. 55,89,409/- (Fifty Five lakhs Eighty Nine thousand Four hundred Nine 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 attempted to be smuggled by the passenger was liable for confiscation as per the provisions of Customs Act, 1962, hence the aforesaid Gold was placed under seizure, vide Seizure Memo dated 20.04.2024, under Section 110 (1) & (3) of the Customs Act, 1962.

6.1 A Statement of Shri Rohit Balu More, Post Gardi, Solapur, Pin-413306, Maharashtra, India, holding an Indian Passport Number B6960968 was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 20.04.2024, wherein he explained as under:

- (i) That the name, age and address stated above are true and correct. He is engaged in trading of clothes and can understand Hindi and Marathi very well.
- (ii) That there are 3 members in his family comprising of his parents and him and that he is unmarried. His father is a farmer by profession and that he and his father are the earning members of the family.
- (iii) That he has studied till Second Year B.A. (History).
- (iv) That his monthly income is Rs.7,000/- approx
- (v) That he is also engaged in dairy related work at home with 02 Cows. That this is his Second visit abroad i.e. Bangkok. That he came in contact with a person at his native who suggested him to work as carrier of Gold from Bangkok. That his Passport has been issued on 31.10.2023 and valid upto

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30.10.2033. Thereafter, he planned to visit Thailand that is Bangkok on 17.04.2024 and boarded flight of Thai Airways from Mumbai and reached Bangkok on 17.04.2024 itself. On reaching Bangkok, in a hotel in Bangkok on 20.04.2024 an unknown person to him came and handed over three capsules containing chemical mix gold in paste form wrapped with black coloured rubber. The unknown person explained him the process of inserting the capsules in rectum and accordingly he inserted three capsules given to him in his body i.e. in rectum. He was told that a person would contact him at the SVPI Airport, Ahmedabad on my arrival. He also stated that he was not given any contact details of the person who would contact him at the Airport, in Ahmedabad. He was also told that in lieu carrying the Gold capsules in rectum he will be paid a sum of Rs.20,000/- per trip. His flight tickets from Mumbai to Bangkok and from Bangkok to Ahmedabad were booked by someone who is not known to him, Accordingly, he took flight from Bangkok to Ahmedabad in Flight No. TG 343 of Thai Airlines on 20.04.2024. He also stated that this is his first attempt of smuggling of Gold capsules in the form of Gold paste by way of concealment in rectum

- (vi) That in greed of earning quick money he opted this illegal smuggling of Gold by way of concealment in the rectum though he was fully aware that smuggling of gold without payment of Custom duty is an offence. He was in possession of the Gold paste in the form of Gold capsules concealed in rectum but did not make any declarations in this regard to evade the Custom duty. That he opted for green channel so that I can smuggle the gold without paying custom duty

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- (vii) That he is aware that bringing dutiable/prohibited/restricted goods without declaration and without payment of duty is an offence but not much in detail.

6.2 The above said gold bar with a net weight of 856.730 grams having purity of 999.0/24 Kt. involving Market Value of Rs.65,19,715 (Rupees Sixty-Five Lakhs Nineteen Thousand Seven Hundred Fifteen only) and having tariff value of Rs. 55,89,409/- (Fifty-Five lakhs Eighty-Nine thousand Four hundred Nine only), recovered from the said passenger which were attempted to be smuggled into India with an intent to evade payment of Customs duty by concealing gold wrapped in black tape containing gold in semi solid paste form in his rectum, was in clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the gold bar totally weighing 856.730 Grams which were attempted to be smuggled by Shri Rohit Balu More, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 856.730 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 20.04.2024, issued from F.No.VIII/10-08/AIU/A/2024-25, under Section 110 (1) & (3) of Customs Act, 1962.

6.3 In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 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/- (Rupees Fifty Lakhs) or more. Since

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the market value of gold in this case is more than Rs.50/- Lakhs, hence this case is fit for arrest in terms of Section 104 of the Customs Act, 1962. The relevant parts of Section 104 of Customs Act, 1962 is as:-

Section 104 of the Customs Act, 1962- *The provisions of Section 104 (6) & (7) of the Customs Act, 1962 is reproduced as under:-*

(6) Notwithstanding anything contained in the Code of [(6) Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to —

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees,

shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.]

Hence, the said passenger was arrested on 21.04.2024 under Section 104 of the Customs Act, 1962 and bail granted on deposition of Bail Bond amounting to Rs. 86,000/- on 21.04.2024.

7. 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;

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*(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 79. Bona fide baggage exempted from duty. -

(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each

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such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

V) 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:”

VI) 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;”*

VII) 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*

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(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.

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 subsection (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 LAWS

8. It therefore appears that:

(a) The passenger Shri Rohit Balu More had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported

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gold bar weighing 856.730 Grams having purity 999.0/24ct and involving Market Value of Rs.65,19,715 (Rupees Sixty Five Lakhs Nineteen thousand Seven Hundred Fifteen only) and having tariff value of Rs. 55,89,409/- (Fifty Five lakhs Eighty Nine thousand Four hundred Nine only) by concealing the same. The said gold was concealed in in his rectum in 3 capsules wrapped in black tape in semi solid paste form and was 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. Therefore, the improperly imported gold bar weighing 856.730 Grams of gold bar of purity 999.0/24 Kt., by the passenger, by way of concealment in 3 capsules wrapped in black tape containing gold in semi solid paste form in his rectum, 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 Customs Baggage Declaration Regulations, 2013.
- (c)** The improperly imported gold bar by the passenger, Shri Rohit Balu More, in 3 capsules wrapped in black tape, found

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concealed in his rectum, in form of semi solid paste without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

- (d) Shri Rohit Balu More, 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.
- (e) As per Section 123 of Customs Act 1962, the burden of proving that the gold bar weighing 856.730Grams having purity 999.0/24 Kt. and having Market Value of Rs.65,19,715 (Rupees Sixty Five Lakhs Nineteen thousand Seven Hundred Fifteen only) and having tariff value of Rs. 55,89,409/- (Fifty Five lakhs Eighty Nine thousand Four hundred Nine only) which was concealed in 3 capsules wrapped in black tape containing gold in semi solid paste form in his rectum by the passenger, without declaring it to the Customs, are not smuggled goods, is upon the passenger and noticee, Shri Rohit Balu More.

09. Accordingly, a Show Cause Notice was issued to **Shri** Rohit Balu More, residing at Post Gardi, Solapur, Pin-413306, Maharashtra, India, holding an Indian Passport Number No.B6960968, as to why:

- (i) The One Gold Bars total weighing 856.730Grams (derived from 970.520 Gram semi solid gold paste) having purity 999.0/24 Kt. and having Market Value of Rs.65,19,715

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(Rupees Sixty Five Lakhs Nineteen thousand Seven Hundred Fifteen only) and having tariff value of Rs. 55,89,409/- (Fifty Five lakhs Eighty Nine thousand Four hundred Nine only) which was concealed in 3 capsules wrapped in black tape containing gold in semi solid paste form in his rectum placed under seizure under panchnama proceedings dated 20.04.2024 and Seizure Memo Order dated 20.04.2024, 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) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

10. The noticee has not submitted any written submission to the Show Cause Notice issued to him.

11. The noticee was given opportunity for personal hearing on 20.12.2024, 27.12.2024 & 03.01.2025 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

Discussion and Findings:

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12. I have carefully gone through the facts of this case and the submissions made by the noticee in his written submission as well as during the personal hearing and documents submitted. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the 856.730 grams of 01 gold bar of 24KT(999.0 purity), recovered/ derived from semi solid gold paste concealed in his rectum, having Tariff Value of **Rs.55,89,409/-** and Market Value of **Rs.65,19,715/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 20.04.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of input that Shri Rohit Balu More was 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. The AIU officers under Panchnama proceedings dated 20.04.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he is not carrying any high valued dutiable goods. After thorough interrogation, the noticee admitted/confessed that he was carrying high valued dutiable goods in form of semi solid

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substance containing gold and chemical mix in the form of capsules concealed in his rectum.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said semi-solid substance (covered with black rubber) and after completion of extraction, the Government Approved Valuer informed that 01 gold bar weighing **856.730** Grams having purity 999.0/24KT is derived from three capsules covered with black tape containing gold and chemical mix concealed in his rectum. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar is **Rs.55,89,409/-** and Market value is **Rs.65,19,715/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PC S	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	856.730	999.0/24Kt	65,19,715/-	55,89,409/-

16. Accordingly, the said 01 gold bar having purity 999.0/24 Kt. weighing 856.730 grams, recovered from noticee was seized vide Panchnama dated 20.04.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold bar was smuggled into India by the said noticee with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 856.730 grams of 01 gold bar, having Tariff Value of **Rs.55,89,409/-** and Market value is **Rs.65,19,715/-** carried by the passenger appeared to be “smuggled goods” as defined under Section 2(39) of the Customs Act, 1962. The offence

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committed is admitted by the passenger in his statement recorded on 20.04.2024 under Section 108 of the Customs Act, 1962.

17. I also find that the noticee 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 the bringing gold by way of concealment to India was illegal and it was an offense. Further, he also stated that the gold was not his and also not purchased by him and he was not the owner of said gold. One unknown person in Bangkok contacted him and asked to carry some gold item in paste form as capsule in rectum, which was purchased the said unknown person. He clearly mentioned in his statement that in temptation of earning money, he opted this illegal smuggling of gold paste. His intention was to earn fast money, so he had done this illegal carrying of gold of 24KT. in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and 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 and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development &

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Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

18. Further, the noticee has accepted that he had not declared the said gold concealed by him, 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 said 01 gold bar, ('the said gold' for short), 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 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 as amended, 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.

19. From the facts discussed above, it is evident that noticee had carried the said gold weighing 856.730 grams, while arriving from Bangkok to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24KT/999.00 purity totally weighing 856.730 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

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concealing the said gold and not declaring the same before the Customs, it is established that the noticee 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.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold 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 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bona fide purposes. Therefore, the said improperly imported gold weighing 856.730 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bona fide household

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goods or personal effects. The noticee 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 noticee has rendered the said gold weighing 856.730 grams, having Tariff Value of Rs.55,89,409/- and Market Value of Rs.65,19,715/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 20.04.2024 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 by him in form of semi solid substance containing gold and chemical mix concealed in his rectum in form of capsules, it is observed that the noticee 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 Customs 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 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.

21. I find that the Noticee confessed of carrying the said gold of 856.730 grams concealed by him 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,

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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 amended. 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.

22. 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 noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bar weighing 856.730 grams, having Tariff Value of Rs.55,89,409/- and Market Value of Rs.65,19,715/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 20.04.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bar weighing 856.730 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

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nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

23. 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 the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 856.730 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in semi solid form containing gold and chemical mix concealed in his rectum in form of 3 capsules. 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.

24. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the

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noticee concealed the gold in semi solid form in his rectum in form of capsules with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 856.730 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 20.04.2024 stated that he has carried the said gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment of the said gold in semi solid form in his rectum. ***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.***

25. 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.”

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The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

26. 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.

27. 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).

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28. 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.

29. 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,

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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”.

30. The Hon’ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

“23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea.”

*“26. The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country.**”*

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 856.730 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 856.730 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.**

32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 856.730 grams, carried by him. He has agreed and admitted in his statement that he

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travelled with the said gold from Bangkok 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 noticee attempted to smuggle the said gold of 856.730 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee 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 of the Act and I hold accordingly.

33. Accordingly, I pass the following Order:

ORDER

- i) I order **absolute confiscation** of one gold bar weighing **856.730** grams having purity of 999.0 (24KT.) recovered/derived from semi solid paste in 3 capsules concealed in his rectum, having Market value of **Rs.65,19,715/- (Rupees Sixty Five Lakhs Nineteen thousand Seven Hundred Fifteen only)** and Tariff Value of **Rs.55,89,409/- (Fifty Five lakhs Eighty Nine thousand Four hundred Nine only)**, placed under seizure under Panchnama dated 20.04.2024 and seizure memo order dated 20.04.2024, 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 combined penalty of **Rs. 16,00,000/- (Rupees Sixteen Lakh Only)** on **Shri Rohit Balu More** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

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34. Accordingly, the Show Cause Notice No. VIII/10-211/SVPIA-A/O&A/HQ/2024-25 dated 06.09.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

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DIN: 20250171MN0000818979

BY SPEED POST AD

To,
Shri Rohit Balu More,
Post Gardi, Solapur
Maharashtra
Pin Code 413306

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In charge, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusamd@gov.in
6. Guard File.