

OIO No:213/ADC/SRV/O&A/2024-25
F. No. VIII/10-209/SVPIA-A/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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DIN No.20241271MN000000A748

PREAMBLE

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| A | फाइल संख्या/ File No. | : VIII/10-209/SVPIA-A/O&A/HQ/2024-25 |
| B | कारणबताओनोटिससंख्या- तारीख / Show Cause Notice No. and Date | : VIII/10-209/SVPIA-A/O&A/HQ/2024-25 dated: 06.09.2024 |
| C | मूलआदेशसंख्या/ Order-In-Original No. | : 213/ADC/SRV/O&A/2024-25 |
| D | आदेशतिथि/ Date of Order-In-Original | : 31.12.2024 |
| E | जारीकरनेकीतारीख/ Date of Issue | : 31.12.2024 |
| F | द्वारापारित/ Passed By | : Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad. |
| G | आयातककानामऔरपता / Name and Address of Importer / Passenger | : Shri Makdu Daud Sumbhaniya, Mailowas, Salaya, Devbhumi Dwarka, Gujarat, India, Pin-361310 |
| (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: | |
| (i) | अपील की एक प्रति और; | |

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|------|---|
| (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 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, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा। |

Brief facts of the case: -

Shri Makdu Daud Sumbhaniya, age:31 years (DOB 14.06.1993) son of S/o Shri Daud Amad Sumbhaniya holding Indian Passport No. W7610243, address: Mailowas, Salaya, Devbhumi Dwarka, Gujarat, India, Pin - 361310, arrived from Sharjah to Ahmedabad on 04.04.2024 by Air Arabia, Flight No. G9 418 at SVPI Airport, Ahmedabad. On the basis of specific input that this male passenger was carrying dutiable/contraband goods, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration to the Customs, under the **Panchnama dated 04.04.2024** in presence of two independent witnesses for passenger's personal search and examination of his baggage.

2. The pax was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. Not being satisfied with the reply of the suspected passenger, the officers asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger passed through the Door Frame Metal Detector (DFMD) installed at the

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end of the green channel in the Arrival hall of Terminal 2 building; however no beep sound was heard.

2.1 The said passenger was carrying one biscuit coloured bag and one corrugated box as checked-in baggage. The said Bag as well as the corrugated box were subjected to scanning through the X-Ray Bag Scanning Machine (BSM). While scanning of the said baggage some suspicious/objectionable x-ray image noticed. The officer of AIU asked the passenger about the suspicious x-ray image, but he did not give any answer. Thereafter the officer of the AIU asked the passenger to open the bag. Upon opening the bag, it was found that there were chocolates boxes, some toys, cream box and clothes inside the bag. The officers checked the baggage thoroughly and found that the corrugated boxes of chocolates were slightly moist. Hence, the officer took the passenger and his baggage in the AIU office, and tear one paper sheet and noticed boxes were unusually heavy.

2.2 Thereafter, the Government Approved Valuer, Shri Kartikey Vasantrai Soni was contacted to come to SVPI Airport to carry out verification, valuation and testing of the recovered corrugated boxes and requested him 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 has to be extracted from such semi-solid/paste form by melting it and also informs the address of his workshop.

3. Accordingly, the said box was taken to the workshop of Shri Kartikey Vasantrai Soni in presence of the said passenger and the

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Panchas. Shri Kartikey Vasantrai Soni carried out examination of the said chocolate boxes and after weighing the said items viz. boxes of the chocolates on his weighing scale, Shri Kartikey Vasantrai Soni informed that the weight of the corrugated boxes is 542.60 grams. After completion of the burning procedure 166.94 grams ash with gold dust was recovered. Upon melting of the said recovered ash and gold dust by Government Approved Valuer one gold bar weighing **158.690** grams having purity of 999.0/24kt was recovered.



4. After testing and valuation, the Govt. Approved Valuer issued Certificate No. 016/2024-25, dtd. 04.04.2024 with summary details as under:-

| Sr. No. | Item particulars | Net Weight (in Grams) | Market Value (In Rs.) | Tariff Value (In Rs.) |
|---------|---|-----------------------|-----------------------|-----------------------|
| 1. | One Gold Bar (derived from ash and gold dust of corrugated box)-purity 999.000/24 Kt. | 158.690 grams. | 11,44,314/- | 9,41,095/- |
| | TOTAL | 158.690 grams. | 11,44,314/- | 9,41,095/- |

The Govt. Approved Valuer informed that the total Market Value of the said recovered gold as **Rs.11,44,314/-** (Rupees Eleven Lakhs

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Forty Four Thousand Three Hundred Fourteen Only) and Tariff Value as **Rs.9,41,095/-** (Rupees Nine Lakhs Forty One Thousand Ninety Five only) calculated as per the Notification No. 25/2024-Customs (N.T.) DTD.28-03-2024 (Gold) and Notification No. 24/2024-Customs (N.T.) dtd. 26-03-2024 (exchange Rate).

5. A statement of the passenger Shri Makdu Daud Sumbhaniya, dated 04.04.2024 was recorded under Section 108 of the Customs Act, 1962 wherein he stated that:

- i. He is 5th pass and his mobile number is 9106983792.
- ii. On being asked regarding his overseas travels, he stated that he went to Dubai on 29.10.2023 for his Job purpose in a Shipping Agency and came to SVPI International Airport, Ahmedabad on 04.04.2024 by Air Arabia Flight No. G9 418.
- iii. The gold was purchased by the person who gave it to Shri Makdu in Sharjah.
- iv. He further stated that the goods (gold) was to be handed over to a unknown person at the SVPI, Airport Ahmedabad. The person was to contact Shri Makdu outside of SVPIA, Airport and give Shri Makdu AED 500/- for this work.
- v. He further stated that he does not know the person who gave him the said gold in Sharjah and also does not know the receiver of the said gold at SVPI, Airport Ahmedabad. He did not have any address details and contact no. of these persons.
- vi. He further stated that he had intentionally not declared the seized items, i.e. gold before the Customs Authorities on his arrival at SVP International Airport Ahmedabad, as he wanted to clear it illicitly and evade payment of Customs Duty. He was fully aware that clearing gold without declaring before Customs, with an intent to evade payment of customs duty is an offence, under the provisions of Customs Act, 1962 and Regulations. He also did not fill any Declaration form for declaring dutiable goods to Customs. He agreed that he has done evasion of Customs duty on total 158.690 grams of 24Kt, with purity 999.0, having market value of Rs.11,44,314/- (Eleven Lakh Forty Four thousand Three hundred Fourteen only) and Tariff Value Rs.9,41,095/- (Rupees Nine Lakhs Forty One Thousand Ninety Five only) which were recovered from him.

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vii. He further stated that he is aware of customs laws and baggage rules. He is fully aware that clearing gold without declaring before Customs, with an intent to evade payment of customs duty is an offence, under the provisions of Customs Act, 1962 and Regulations.

6. In view of the above, 158.690 grams Gold Bar had been placed under Seizure on under panchnama proceedings dated 04.04.2024 (RUD-01) and Seizure Memo dated 04.04.2024 on the reasonable ground that the same are liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally. The seized goods i.e. one gold bar weighing 158.690 grams having purity 999.0 (24 Kt.) recovered/ derived from the aforesaid corrugated box was handed over to the warehouse in-charge for safe keeping vide Warehouse Entry No.6150 dated 04.04.2024.

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;*
- (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;*

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(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section 11A – Definitions -In this Chapter, unless the context otherwise requires,

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) "Section 77 – Declaration by owner of baggage.—The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

IV) "Section 110 – Seizure of goods, documents and things.—
(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"

V) "Section 111 – Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:-

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect

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thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VI) "Section 112 – Penalty for improper importation of goods, etc.–Any person,-

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.*

VII) "SECTION 119- Confiscation of goods used for concealing smuggled goods – Any goods used for concealing smuggled goods shall also be liable to confiscation.

Explanation. – In this section, "goods" does not include a conveyance used as a means of transport.

VIII)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.*

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

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1976;

I) "Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."*

II) "Section 3(3) - *All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."*

III) "Section 11(1) - *No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."*

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

CONTRAVENTION AND VIOLATION OF LAWS

8. It therefore appears that:

- (a) The passenger viz. Shri Makdu Daud Sumbhaniya had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 158.690 grams having purity 999.0 (24 Kt.) derived from semi solid gold paste and having

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Market value of Rs.11,44,314/- (Rupees Eleven Lakh Forty Four thousand Three hundred Fourteen only) and Tariff Value Rs.9,41,095/- (Rupees Nine Lakhs Forty One Thousand Ninety Five only). The said semi solid gold paste in the form of corrugated box was concealed in his bag and not declared to the Customs. The passenger opted for the green channel to exit the Airport with the deliberate intention to evade the payment of Customs Duty and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 158.690 grams having purity 999.0 (24 Kt.) by Shri Makdu Daud Sumbhaniya by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- (b) By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.

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- (c) The improperly imported gold by the passenger viz. Shri Makdu Daud Sumbhaniya consisting of gold and chemical mix paste found hidden in his baggage, 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 Makdu Daud Sumbhaniyaby 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 158.690 grams having purity 999.0 (24 Kt.) and having Market value of Rs.11,44,314/- (Eleven Lakh Forty Four thousand Three hundred Fourteen only) and Tariff Value Rs.9,41,095/- (Rupees Nine Lakhs Forty One Thousand Ninety Five only), derived from semi solid gold paste in the form of chocolate boxes without declaring it to the Customs, is not smuggled goods, is upon the passenger Shri Makdu Daud Sumbhaniya.
- 09.** Accordingly, a show cause notice no. F.No VIII/10-209/SVPIA-A/O&A/HQ/2024-25 dated 06.09.2024 was issued to **Shri Makdu Daud Sumbhaniya**, holding an Indian Passport Number No. W7610243 residing at Mailowas, Salaya, Devbhumi Dwarka, Gujarat, India, Pin -361310 as to why:

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- i. One gold bar weighing **158.690** grams having purity 999.0 (24 Kt.) derived from the gold and chemical mix paste and having Market value of **Rs.11,44,314/-** (Eleven Lakh Forty Four thousand Three hundred Fourteen only) and Tariff Value **Rs.9,41,095/-** (Rupees Nine Lakhs Forty One Thousand Ninety Five only), which has been calculated as per the Notification No. 02/2024-Customs (N.T.) dated 15.01.2024 (gold) and Notification No. 04/2024-Customs (N.T.) dated 18.01.2024 (exchange rate), should not be confiscated under the provisions of Sections 111(d), 111 (f), 111(i), 111 (j) and 111 (l) and 111(m) of the Customs Act, 1962 and ;
- ii. Penalty should not be imposed upon the passenger under Section 112 of the Customs Act, 1962;

Defence Reply:

10. The noticee has not submitted any defense reply against the allegation made in the SCN dated 06.09.2024.

PERSONAL HEARING:

11. Personal Hearing in this case were fixed on 18.12.2024, 23.12.2024 & 30.12.2024. **Shri Makdu Daud Sumbhaniya**, noticee himself appeared for Personal Hearing on 30.12.2024. He requested to attend the PH in person rather than through video conferencing. He mentioned that he was working as daily labourer in Dubai. He admitted that he concealed the gold in form of gold dust in chocolates boxes/corrugated box. He mentioned that the gold was purchased by him, however he did not have any

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purchase invoice/bills of said gold and also not have any details viz. bank statement/proof of payment. He mentioned that he has nothing to add more in the matter and the same is his final submission.

Discussion and Findings:

12. I have carefully gone through the facts of this case and the submissions made by the noticee during the personal hearing. 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 158.690 grams of 01 gold bar, recovered/ derived from gold dust with ashes of corrugated boxes/chocolates boxes concealed in bag, having Tariff Value of **Rs.9,41,095/-** and Market Value of **Rs.11,44,314/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 04.04.2024, 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.

After having identified and framed the main issue to be decided, as stated above, I now proceed to deal with the issue in the light of facts and circumstances of the case provision of the Customs Act, 1962, contentions of the noticee and evidences available on record.

14. I find that the Panchnama has clearly drawn out the fact that On the basis of specific input that a passenger was carrying dutiable/contraband goods, the passenger was intercepted by the

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Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration 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 04.04.2024 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. However, on scanning the checked in baggage i.e one biscuit coloured bag and one corrugated box in X-ray baggage scanning machine (BSM), some suspicious/objectionable x-ray image noticed. Thereafter the officer of the AIU asked the passenger to open the bag in presence of the Panchas. Upon opening the bag, it was found that there were chocolates boxes, some toys, cream box and clothes inside the bag. The officers checked the baggage thoroughly and found that the corrugated boxes of chocolates were slightly moist.

15. It is on record that Shri Kartikey Vasantraai Soni, the Government Approved Valuer, weighed the said corrugated boxes of chocolates, and after completion of extraction, the Government Approved Valuer informed that 01 gold bar weighing **158.690** Grams having purity 999.0/ 24kt is derived Gold dust with ashes of concealed in inner side of corrugated boxes containing chocolates. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar is **Rs.9,41,095/- and** Market value

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is **Rs.11,44,314/-** . The details of the Valuation of the said gold bar are tabulated as below:

| Sl. No . | Details of Items | PCS | Net Weight in Gram | Purity | Market Value (Rs.) | Tariff Value (Rs.) |
|----------|--|-----|--------------------|-------------|--------------------|--------------------|
| 1. | Gold Bar (derived from gold dust with ashes of corrugated box) | 1 | 158.690 | 999.0/24 Kt | 11,44,314/- | 9,41,095/- |

16. Accordingly, the said 01 gold bar having purity 999.0/24 Kt. weighing 158.690 grams, recovered from **Shri Makdu Daud Sumbhaniya** was seized vide Panchnama dated 04.04.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold bar were smuggled into India by the said passenger 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 158.690 grams of 01 gold bar, having Tariff Value of **Rs.9,41,095/-** and Market value is **Rs.11,44,314/-** carried by the passenger 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 04.04.2024 under Section 108 of the Customs Act, 1962.

17. 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

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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 the gold was not purchased by him and same was handed over to him by another person who also booked his air ticket from Sharjah to Ahmedabad. He clearly admitted that on delivery of the same at Ahmedabad Airport, he would receive 500 AED for the said carrying/smuggling of gold. he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. His intention was to earn fast money, so he had done this illegal carrying of gold of 24 Kt. in commercial quantity in India without declaration. 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. 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 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. I find that during the Personal hearing the noticee has claimed that the gold was purchased by him and belong to him. He admitted of carrying the said gold in form of gold dust concealed in corrugated boxes/chocolate boxes. Further, I noticed that the noticee has admitted that he has no purchase invoice and any bank details/payment details regarding purchase of the said gold. In this regard, I find that the noticee had tendered their statement voluntarily under Section 108 of

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Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. The judgments relied upon in this matter is as:-

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidences"
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that " It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."

I find that the noticee has clearly admitted in his Statement tendered by him under Section 108 of the Customs Act, 1962 on 04.04.2024 that the gold was belong to him and not purchased by him and was given to him by the person who booked his ticket from Sharjah to Ahmedabad, however, during the PH the mentioned that the gold was purchased by him which in contrary to the statement which he tendered under Section 108 of Customs Act, 1962 voluntarily. Further, I pointed out that if he had purchased the said gold why would he have not any purchase invoice and other relevant documentary

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evidences which establishes his claim on the gold. Therefore, I do not find any force in the contention of noticee in this regard and same is afterthought.

18. Further, the passenger 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, 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. I find that the noticee has not submitted any purchase bills alongwith other documentary evidences or during the personal hearing. I find from the record that the noticee has merely claimed the ownership on gold that the ownership on the gold, however not submitted any bills or other documentary evidences which establishes his claim on the seized gold. Therefore, I hold that the

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noticee has nothing to submit in his defense and allegation made under SCN is correct, legal and tenable. Moreover, I find that nature of concealment in the instant case is ingenious in nature as the noticee has concealed the gold in form of gold dust in corrugated boxes/chocolates boxes. I also find that the noticee has opted for the green channel to exit the Airport with the deliberate intention to evade the payment of Customs Duty and fraudulently circumvent the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Therefore, the element of *mens rea* have been established beyond doubt.

20. From the facts discussed above, it is evident that Shri Makdu Daud Sumbhaniya had carried the said gold weighing 158.690 grams, while arriving from Sharjah 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 158.690 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 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.

21. 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

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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-bonafide purposes and the passenger has not fulfilled the condition of staying at least upto six months in abroad. Therefore, the noticee does not fulfil the criteria of eligible passenger. Accordingly, the said improperly imported gold weighing 158.690 grams concealed by him, 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.

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It, is therefore, proved that by the above acts of contravention, the passenger has rendered the said gold weighing 158.690 grams, having Tariff Value of Rs.9,41,095/- and Market Value of Rs.11,44,314/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 04.04.2024 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, 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 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 her liable for penalty under Section 112 of the Customs Act, 1962.

22. I find that the Noticee confessed of carrying the said gold of 158.690 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, 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)

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“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.

23. 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 158.690 grams, having Tariff Value of Rs.9,41,095/- and Market Value of Rs.11,44,314/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 04.04.2024. 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 158.690 grams, by deliberately not declaring the same by her 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 the provisions of Section 112 of the Customs Act, 1962.

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24. 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 158.690 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 form of gold dust in corrugated boxes/chocolate boxes. 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.

25. In view of the above discussions, I hold that the said gold bar weighing 158.690 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 04.04.2024 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. **I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment**

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of redemption fine, as envisaged under Section 125 of the Act.

26. 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."

27. 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.

28. 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

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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).

29. 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

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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.

30. 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".

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 158.690 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 158.690 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

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Act, 1962.

32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 158.690 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Sharjah 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 has attempted to smuggle the said gold of 158.690 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(a)(i) & 112(b)(i) 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 **158.690** grams having purity of 999.0 (24 Kt.) recovered/ derived from gold dust in corrugated boxes of chocolates, having Market Value at **Rs.11,44,314/-** (Eleven Lakh Forty Four thousand Three hundred Fourteen only) and Tariff Value **Rs.9,41,095/-** (Rupees

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Nine Lakhs Forty One Thousand Ninety Five only), placed under seizure under Panchnama dated 04.04.2024 and seizure memo order dated 04.04.2024, 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 a penalty of **Rs. 3,00,000/- (Rupees Three Lakhs Only)** on **Shri Makdu Daud Sumbhaniya** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act, 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-209/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: 20241271MN000000A748

BY SPEED POST AD

To,
Shri Makdu Daud Sumbhaniya,
Mailowas, Salaya, Devbhumi Dwarka,
Gujarat, India, Pin-361310

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.

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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.