



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुरानेहाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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### PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-26/O&A/SVPIA/HQ/2020-21
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-26/O&A/SVPIA/HQ/2020-21 Dated 20.07.2020
C	मूल आदेश संख्या / Order-In-Original No.	:	<b>65/ADC/VM/O&amp;A/2024-25</b>
D	आदेश तिथि / Date of Order-In-Original	:	<b>11.06.2024</b>
E	जारी करने की तारीख / Date of Issue	:	<b>11.06.2024</b>
F	द्वारा पारित / Passed By	:	<b>Vishal Malani,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	To, <b>Shri Manish Dhirajlal Sagar,</b> S/o Shri Dhirajlal Popatalal Sagar, Sagar Nivas, Krishna Nagar, Street No. 4, Veraval, Gujarat.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), धवि मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ८.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**Brief facts of the case :**

On the basis of suspicious movement, the passenger namely **Shri Manish Dhirajlal Sagar** (herein after referred to as 'the said Passenger/ Noticee) arrived from Dubai to Ahmedabad on 28.01.2020 along with his family members, moving out of green channel exit, were intercepted by the Customs officers of AIU, SVPIA, Ahmedabad. The Passenger were asked if he had anything to declare to the Customs, he said that he has nothing to declare.

**2.** On scanning of their baggage and passing through the DFMD by both the Passenger, neither any objectional object/ material found nor beep sound was heard, indicating that there is nothing objectionable in the baggage and body/ cloths. The officers found that the Passenger has put one kada and kadiwali chain hidden under his jacket and two kadas hidden inside his jeans pant in the plastic tray. On suspicion, the officers of AIU, passed the plastic tray contained three kadas and one kadiwali chain through scanning machine to which a dark black coloured image with yellow outline was appeared. On being asked, the Passenger confessed that the said articles, i.e. three kadas and one kadiwali chain were in raw form and made out from 24 karat gold biscuits. The details are as under :

Details of item	PCS	Net Weight in grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold Kada	3	350.000	999/ 24 Kt.	14,67,550/-	12,46,350/-
Gold Kadi Wali Chain	1	116.640	999/ 24 Kt.	4,89,072/-	4,15,355/-
<b>TOTAL</b>	<b>4</b>	<b>466.640</b>	-	<b>19,56,622/-</b>	<b>16,61,705/-</b>

**3.** The Government Approved Valuer after testing and valuation of the said article i.e. 3 kadas and 1 kadiwali chains ('gold items' for short), informed that these were made of pure gold having purity of 24 Kt. (999). The report indicated that four (4) pieces of gold items, recovered from the Noticee totally weighed **466.640** grams having market value of **Rs.19,56,622/-** and tariff value of **Rs.16,61,705/-**.

**4.** In view of the above, a Show Cause Notice was issued to the Noticee, alleging that -

- (i) Three gold kadas and one kadiwali chain weighing, having purity of 24 Kt./ 999.0 purity, totally weighing **466.640** grams having tariff value of **Rs.16,61,705/-** and market value of **Rs.19,56,622/-**, seized vide Panchnama drawn on 28.01.2020, is liable to be confiscated under the provisions of Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger Shri Manish Dhirajlal Sagar, under Sections 112 (a) and 112 (b) of the Customs Act, 1962; and

**5.** The said Show Cause Notice was adjudicated by the Joint Commissioner of Customs, Ahmedabad, vide Order-in-Original No. 03/JC/AKM/O&A/2020-21 dated 18.03.2021 wherein the Joint Commissioner passed order as under:

- (i) I order absolute confiscation of three gold kadas, and one gold kadiwali chain, having purity of 24 Kt./ 999.0, totally weighing **466.640** grams, having tariff value of **Rs.16,61,705/-** and market value of **Rs.19,56,622/-**, recovered from **Shri Manish Dhirajlal Sagar**, seized vide Panchnama drawn on 28.01.2020, under the provisions of Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962.
- (ii) I impose a penalty of Rs.2,00,000/- (Rupees Two Lakh only) on **Shri Manish Dhirajlal Sagar** under the provisions of Sections 112(i) of the Customs Act, 1962.

**6.** Being aggrieved by the said Order-in-Original No. 03/JC/AKM/O&A/21021-22 dated 18.03.2021, the Noticee filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The said appeal was decided by the Commissioner (Appeals), Customs, Ahmedabad vide Order-in-Appeal No. AHD-CUSTM-000-APP- 292 to 297/ 22-23 dated 24.06.2022, wherein he ordered that -

“---- ---- ----. I set aside the impugned orders and remit these cases to the concerned adjudicating authority for passing fresh order after considering the submissions made by the appellants. In light of the aforesaid facts and circumstances, I remit the matter pertaining to these appeals to the concerned adjudicating authority, who shall ascertain the facts, examine the documents, submissions and case laws relied upon by the appellants and pass speaking order afresh following principles of natural justice and legal provisions.”

In view of the above referred OIA dated 24.06.2022, the case has been taken up for adjudication proceedings.

**PERSONAL HEARING:**

7. Personal Hearing in this case was fixed on 30.05.2024. Shri Rishikesh Mehra, Advocate submitted the Noticee, is staying at Dubai since last 10 years, and hence he is NRI and eligible passenger to carry gold as he was coming after six months of stay at Dubai. The passenger brought gold for his personal and family use, purchased from his own money i.e. savings and borrowed money from his friends and relatives. The gold was not concealed or hidden by the Noticee. At the time of arrival, he has orally declared the said gold before examination. Due to ignorance of Customs Rules and regulations the gold was carried by the Noticee. He had never indulged in any illegal/ smuggling activities, but this was his first time when he carried gold in the form of gold articles i.e. 3 gold kada and 1 gold Kandivali chain. The gold is not prohibited items and was not in commercial quantity and the same can be released on payment of fine and penalty. He further submitted that he is ready to pay fine and penalty and requested for re-export/ release of seized gold. He requested to take lenient view in the matter and allow re-export/ release the gold articles, on payment of reasonable fine and penalty. He has nothing more to add.

## **DISCUSSION & FINDINGS**

**8.** I have carefully gone through the facts of this case and submissions made by the Noticee. In the instant case I find that the main issues that are to be decided is whether 4 pieces of gold items, i.e. 3 gold kadas and 1 gold kadiwali chain, recovered from Shri Manish Dhirajlal Sagar, totally weighing **466.640** grams having purity of 24 Kt./ 999.0 and having market value of **Rs.19,56,622/-** and tariff value of **Rs.16,61,705/-**; recovered from the Passenger which was placed under seizure vide Panchnama drawn on 28.01.2020 on the reasonable belief that the said goods were smuggled into India, are liable for confiscation under Section 111 of the Customs Act, 1962 (herein after referred to as "the Act") or not and whether the Passenger is liable for penalty under Section 112 (a), 112 (b) of the Act.

**9.** I find that the Panchnama clearly draws out the fact that the Passenger was intercepted and on suspicion, personal search of the Passenger and his baggage was conducted. The Passenger did not declare the gold and denied to have dutiable goods. The Customs officers recovered the gold items (as discussed above), totally weighing **466.640 grams** having tariff value of **Rs.16,61,705/-** and market value of **Rs.19,56,622/-** having purity of 24 Kt./ 999.0 from the Passenger. It is on record that the Passenger had admitted that he was carrying gold which was intended to smuggle without declaring before the Customs Officers. It is also on record that the government approved valuer had tested and certified these gold items totally weighing 466.640 grams having tariff value of Rs.16,61,705/- and market value of Rs.19,56,622/- having purity of 24 Kt./ 999.0, which was placed under seizure order and Panchnama both dated 28.01.2020, in the presence of the Passenger and Panchas.

**10.** I find that it is quite clear that the Passenger have 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 of their statements. 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. The Passenger

have not dislodged any of the facts narrated in his deposition. In fact, in his statement, he has clearly admitted that he had intentionally kept undeclared gold items (supra) and had not declared the same on his arrival before the Customs with an intent to clear them illicitly and evade payment of Customs duty and thereby, violated provisions of 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.

**11.** Further, the Passenger has accepted that he had not declared the said gold on his arrival to the Customs authorities in order to evade payment of Customs duty. 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 gold 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 intent of clear 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, 1962 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.

**12.** From the facts discussed above, it is evident that the Passenger had imported gold items with an intention to clear the same without payment of Customs duty, thereby rendering the gold totally weighing 466.640 Grams, liable for confiscation, under the provisions of Sections 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. By concealing/ hiding the said gold and not declaring before the Customs, it is established that the Passenger had a clear intention to clear the same 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.

**13.** It is seen that the passenger had not filed the baggage declaration form and had not declared the 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.

**14.** I find that the Noticee had carried the said gold totally weighing 466.640 grams, having market value of Rs.19,56,622/- and tariff value of Rs.16,61,705/- as detailed above and had not declared the same in the baggage declaration as required under Section 77 of the Customs Act, 1962. The said quantity of gold, as per the discussions have been made hereinabove, and I have already found that the same is liable for confiscation in terms of the provisions of Sections 111(d), 111(i), 111(l) and 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.

By using the modus of gold concealed in his clothes, 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 him liable for penalty under Section 112 of the Customs Act, 1962.

**17.** I find that the Noticee confessed of carrying the said gold of 466.640 grams concealed and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

**18.** It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods after arriving from foreign destination with the wilful intention to smuggle the impugned goods. The said gold totally weighing 466.640 grams, having Tariff Value of Rs.16,61,705/- and Market Value of Rs.19,56,622/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 28.01.2020. 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, totally weighing 466.640 grams by deliberately not declaring the same by him on arrival at Airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making his liable for penalty under provisions of Section 112 of the Customs Act, 1962.

**19.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold weighing 466.640 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

**20.** In view of the above discussions, I hold that the said gold totally weighing 466.640 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the Noticee in his statement dated 28.01.2020 stated that he has carried the 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 of redemption fine, as envisaged under Section 125 of the Act.

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

*"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration.*

*We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."*

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

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

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

**24.** The Hon'ble High Court of Madras in the matter of COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold*

*while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -*

*Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.*

- 25.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".
- 26.** Given the facts of the present case before me and the judgements and rulings cited above, gold weighing 466.640 grams, carried by the passenger is, therefore, liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold weighing 466.640 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962.
- 27.** I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 466.640 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold, totally weighing 466.640 grams from Dubai to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 466.640 grams by concealment. Thus, it is clear that the passenger has concerned himself with carrying,

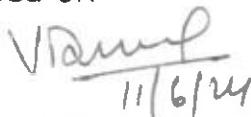
removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the said gold is liable for absolute confiscation and the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

**28.** Accordingly, I pass the following Order:

**ORDER**

- i) I order absolute confiscation of the said gold, i.e. three gold kadas and one gold kadi wali chain, totally weighing **466.640** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.16,61,705/-** (Rupees Sixteen Lakhs Sixty-One Thousand Seven Hundred Five Only) and Market Value of **Rs.19,56,622/-** (Rupees Nineteen Lakhs Fifty-Six Thousand Six Hundred Twenty-Two Only), recovered and seized from Shri Manish Dhirajlal Sagar vide Seizure Order under Panchnama proceedings both dated 28.01.2020, under the provisions of Sections 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962;
- ii) I impose a penalty of **Rs.2,00,000/-** (Rupees Two Lakhs Only) on Shri Manish Dhirajlal Sagar under the provisions of Section 112(a)(i) of the Customs Act, 1962.

**29.** Accordingly, the Show Cause Notice No. VIII/10-26/O&A/SVPIA/HQ/2020-21 dated 20.07.2020 stands disposed of.

  
11/6/24

**(Vishal Malani)**  
Additional Commissioner  
Customs : Ahmedabad

F. No. VIII/10-26/O&A/SVPIA/HQ/2020-21  
**DIN: 20240671MN000000B836**

Date: 11.06.2024

**BY SPEED POST A.D.**

To,  
**Shri Manish Dhirajlal Sagar,**  
S/o Shri Dhirajlal Popatalal Sagar,  
Sagar Nivas, Krishna Nagar,  
Street No. 4, Veraval, Gujarat.

**Copy to:**

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
- (v) Guard File.