प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

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

A	फ़ाइलसंख्या/ File No.	:	VIII/10-76/SVPIA-D/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by Pax.
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**57/ADC/VM/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**10.06.2024**
E	जारीकरनेकीतारीख/ Date of Issue	:	**10.06.2024**
F	द्वारापारित/ Passed By	:	**Vishal Malani**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	To, **Shri Vicky Hariram Bhatia,** BK No. 1920, Near Room No. 4, Section 40, Nr Sewal Thakur House, Ulhasnagar, Thane, PIN- 421005, Maharastra.
(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 ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

Brief Facts of the case:

On the basis of information received from DRI, Ahmedabad, the AIU officials along with DRI officers intercepted (01) one passenger namely **Shri Vicky Hariram Bhatia** was suspected to be carrying high value dutiable goods and therefore a thorough search of all the baggage of the passenger as well as his personal search was required to be carried out. In presence of the Panchas, the AIU officers intercept one passenger along with his baggage when the said passenger was trying to exit the Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad. On being asked about his identity by the AIU officers, the passenger identified himself as Shri Vicky Hariram Bhatia showing his Passport bearing No. V7146933. Further, on being asked, he informed that he has travelled by Thai Airways Flight No. TG343 from Bangkok to Ahmedabad on 16.04.2024 and showed his Boarding Pass bearing seat No. 40A. In the presence of the Panchas, it is observed that the passenger Shri Vicky Hariram Bhatia one color trolley bag and one hand bag. In the presence of the Panchas, the AIU Officer asks the passenger, if he has anything to declare to Customs, in reply to which he denied.

2. The AIU officer offered his personal search to the passenger but he denied saying that had full trust on the AIU officer. The AIU officers asked the passenger whether he wanted that his baggage to be checked in front of executive magistrate or Superintendent of Customs, in reply to which the said passenger gives his consent for his baggage may be searched in front of the Superintendent of Customs.

The officers then asked the third passenger Shri Vicky Hariram Bhatia to remove all the metallic items, Purse, Ring and jewellery etc. from his body and pass through the Door Frame Metal Detector (DFMD). The passenger places his mobile, wallet etc. in the plastic tray and passes through the DFMD machine. On passing through the DFMD the Panchas and officers notice/ hear beep sound from the machine. Later on, the officer again asked the passenger to pass

through the DFMD machine and removed out any metallic item, to which the passenger has taken out 01 gold Chain and 01 Gold Kada and again passes through the DFMD machine. On again passing through the DFMD, the Panchas and officers did not notice/ hear any beep sound indicating no metal on the body. Further, the AIU Officers thoroughly checked all items of the baggage of the passenger. On examination of baggage, the AIU officers did not notice any suspicious/ dutiable items.

3. The officers, then informed the Panchas that they need to contact Shri Soni Kartikey Vasantrai, a Government Approved Valuer so as to confirm the contents of gold Kada and Gold Chain recovered from the passenger. 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. After sometime, one person appeared at the AIU office who introduced himself as Shri Soni Kartikey Vasantrai, Government Approved Valuer. In presence of the Panchas, the Government Approved Valuer showed that he had bring his laptop, weighing scale and testing kit. After testing the said recovered chain and kada, he confirmed that the said recovered One Gold Chain and One Gold Kada from Shri Vicky Hariram Bhatia is of 24kt. having purity of 999.0

4. Shri Soni Kartikey Vasantrai, the Government Approved Valuer after detailed examination and testing submitted a valuation Report as Annexure-A dated 17.04.2024 wherein he provided weighment of gold, market value and tariff value. The Tariff value has been determined in terms of Customs Notification No. 29/2024-Customs (N.T.) dated 15.04.2024 (gold) and Notification No. 27/2024-Customs (N.T.) dated 04.04.2024 (Exchange Rate). The report is mentioned as below:

Sl. No.	Details of Items	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	01 Gold Chain & 01 Gold Kada	2	252.510	999.0 24 KT	19,18,823	16,46,430

5. The officer, then, in presence of the Panchas and the said passengers, placed the said gold chain and kada, totally weighing **252.510** Grams are of 24 KT (999.0 Purity) is having Market Value at **Rs.19,18,823/-** (Rupees Nineteen Lakh Eighteen Thousand Eight Hundred and Twenty-Three only) and tariff value at **Rs.16,46,430/-** (Rupees Sixteen Lakh Forty-Six Thousand Four Hundred and Thirty only) recovered from Shri Vicky Hariram Bhatia in a transparent plastic box and after placing the packing list (Annexure-C3) on the same, tied it with white thread and sealed it with the Customs lac seal.

The said sealed transparent plastic containers containing 01 gold chain and 01 gold kada recovered from the passenger were handed over to the Ware House In-charge, SVPI Airport, Ahmedabad vide Ware House Entry No. 6199 dated 17.04.2024.

6. A statement of the said passenger was recorded under Section 108 of the Customs Act, 1962; wherein he admitted to have attempted to smuggle goods into India i.e. 252.510 grams of gold of 24kt. and having purity 999.0 by Shri Vicky Hariram Bhatia with an intend of illicitly clearing the said gold and to evade customs duty by way of adopting the modus operandi of smuggling the said gold as recorded under Panchnama dated 17.04.2024.

7. LEGAL PROVISIONS RELEVANT TO THE CASE

a) As per para 2.26 of Foreign Trade Policy 2015-20 Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.

b) As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order 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.

c) As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 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.

d) As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 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.

e) As per Section 11(3) of the Customs Act, 1962 Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

f) As per Section 2(3) — "baggage" includes unaccompanied baggage but does not include motor vehicles

g) As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-

a. vessels, aircrafts and vehicles;
b. stores;
c. baggage;
d. currency and negotiable instruments; and
e. any other kind of movable property;

h) As per Section 2(33) of Customs Act 1962, 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.

i) As per Section 2(39) of the Customs Act 1962 '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 of the Customs Act 1962.

j) As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

k) As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

l) Any goods which are imported or attempted to be imported or 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 shall be liable to confiscation under section 111(d) of the Customs Act 1962.

m) Any dutiable or prohibited goods required to be mentioned under the regulation in an arrival manifest, import manifest or import report which are no so mentioned are liable to confiscation under Section 111(f) of the Customs Act 1962.

n) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111(i) of the Customs Act 1962.

o) 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 are liable to confiscation under Section 111(j) of the Customs Act 1962.

p) 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 are liable to confiscation under Section 111(l) of the Customs Act 1962.

q) 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section(1) of section 54 are liable to confiscation under Section 111(m) of the Customs Act 1962.

r) As per Section 112 of the Customs Act 1962 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.

s) As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

t) As per Section 123 of Customs Act 1962 (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person –

(i) on the person from whose possession the goods

were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

u) As per Customs Baggage Declaration Regulations, 2013 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) Shri Vicky Hariram Bhatia had actively involved himself in the instant case of smuggling of gold into India. Shri Vicky Hariram Bhatia had improperly imported one gold kada and one gold chain ('the said gold' for short) of 24 Kt. gold having purity 999.0 totally weighing **252.510** grams made of 24kt/ 999.00 purity gold, having tariff value of **Rs.16,46,430/-** (Rupees Sixteen Lakhs Fourty-Six Thousand Four Hundred Thirty Only) and market value of **Rs.19,18,823/-** (Rupees Nineteen Lakhs Eighteen Thousand Eight Hundred Twenty-Three Only) without declaring it to the Customs. He opted for Green Channel to exit the Airport with a 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 by the passenger without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Shri Vicky Hariram Bhatia 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 has violated the provisions of Baggage Rules, 2016, read with Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

c) The improperly imported gold by the passenger, Shri Vicky Hariram Bhatia, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) read with Section 2(22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

d) Shri Vicky Hariram Bhatia, by his above-described acts of omission/ commission and/ or abetment on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

f) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold articles, i.e. one gold kada and one gold chain, totally weighing 252.510 grams having tariff value of Rs.16,46,430/- and market value of Rs.19,18,823/- without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Vicky Hariram Bhatia.

9. DEFENCE REPLY:

The passenger Shri Vicky Hariram Bhatia submitted that he wants to finish up the case at the earliest, hence he waives the issue of Show Cause Notice and the case may be decided on merits. He requested for waiver of Show Cuse Notice and requested to take lenient view in the matter and release the gold.

10. PERSONAL HEARING:

Personal hearing in this case was fixed on 05.06.2024, wherein Shri Mahavir Bhansali, Advocate appeared on behalf of Shri Vicky Hariram

Bhatia. Shri Mahavir Bhansali submitted that that the gold, which was seized was purchased by him from his personal savings and borrowed money from his friends and relatives. This is the first time he brought gold, i.e. one gold chain and one gold kada. The gold is not a prohibited item and also not in commercial quantity. Due to ignorance of law the gold was not declared by the passenger. He further submitted that his client is ready to pay applicable Customs Duty, fine and penalty and requested for release of seized gold. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

DISCUSSION & FINDINGS :

11. I have carefully gone through the facts of this case and the submissions made by the Advocate of the passenger in his written submissions as well as during the personal hearing and documents available on record. I find that the passenger had requested for waiver of Show Cause Notice. The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

12. In the instant case, I find that the main issue that is to be decided is whether the gold i.e. one gold kada and one gold chain of 24Kt/999.0 purity, totally weighing 252.510 grams and having tariff value of Rs.16,46,430/- (Rupees Sixteen Lakhs Fourty-Six Thousand Four Hundred Thirty only) and market value of Rs.19,18,823/- (Rupees Nineteen Lakhs Eighteen Thousand Eight Hundred Twenty-Three Only) carried by the passenger, which were seized vide Seizure Order dated 17.04.2024 under the Panchnama proceedings dated 17.04.2024 on the reasonable belief that the said goods were smuggled into India, 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 penalty under the provisions of Section 112 of the Act.

13. I find that the Advocate has submitted that the gold was brought by his client, for his personal use. The gold was purchased by his client from Bangkok. He requested to allow release of gold on payment of redemption fine. He has further added that gold is not prohibited and not in commercial quantity, the genuine lapse took place and thus a case has been booked against his client.

14. In this regard, I find that on the basis of suspicious movement of Shri Vicky Hariram Bhatia, he was intercepted when he was trying to exit through green channel. Shri Vicky Hariram Bhatia was asked to pass through the DFMD Machine and when he passed through the DFMD, a beep sound was heard. Further, the passenger, Shri Vicky Hariram Bhatia in presence of panchas confessed that he has carried gold in jewellery form viz. one gold kada and one gold chain. Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in present case. Ignorance of law is not an excuse but an attempt to divert the adjudication proceedings.

15. In this regard, I find that the Customs Baggage Rules, 2016 nowhere mentions about carrying gold in commercial quantity. It simply mentions about the restrictions on gold carried by the international passengers. Further, the Hon'ble Apex Court in Om Prakash Bhatia case reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the passenger had brought the said gold and did not declare the same even after asking by the Customs officers until the same was detected. Hence, I find that in view of the above-mentioned case citing, the passenger with an intention of clearing the same illicitly from Customs area by not declaring the same to Customs have held

the impugned gold liable for confiscation under Section 111 of the Customs Act, 1962.

16. I find that the said gold totally weighing 252.510 grams was placed under seizure vide Seizure Order dated 17.04.2024 under Panchnama proceedings dated 17.04.2024. The seizure was made under Section 110 of the Customs Act, 1962 on a reasonable belief that the said goods were attempted to be smuggled into India and liable for confiscation. In the statement recorded on 17.04.2024, the passenger had admitted that he did not want to declare the seized gold carried by him to the Customs on his arrival in the SVPI Airport so that he could clear it illicitly and evade the payment of Customs duty payable thereon. It is also on record that the Government Approved Valuer has tested and certified that the said gold made of 24Kt/999.0 purity gold totally weighing 252.510 Grams, having tariff value of Rs.16,46,430/- and market value of Rs.19,18,823/-. The recovered gold was accordingly seized vide Seizure Order dated 17.04.2024 under Panchnama proceedings dated 17.04.2024 in the presence of the passenger and Panchas.

17. I also find that the passenger has neither questioned the manner of panchnama proceedings nor controverted the facts detailed in the Panchnama during recording his statement. Every procedure conducted during the panchnama proceedings by the Customs Officers is well documented and made in the presence of the panchas as well as the passenger. The passenger has submitted that the said gold was purchased by him from Bangkok. The Noticee has clearly admitted that he had intentionally not declared the gold recovered and seized from him, on his arrival before the Customs with an intent to clear it illicitly and evade payment of Customs duty, which is an offence under the Customs Act, 1962 and the Rules and Regulations made under it. In fact, in his statement dated 17.04.2024, the passenger admitted that he had intentionally not declared the seized gold having total weight of 252.510 Grams on his arrival before the Customs officer with an intent to clear it illicitly and evade payment of Customs duty.

18. I thus find that the recovery of gold from the possession of the passenger which was hidden and not declared to the Customs with an intention to illicitly clear it from the Airport to evade the payment of Customs duty is an act of smuggling and the same is conclusively proved. By his above act of commission, it is proved beyond doubt that the passenger has violated Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013. I also find that the gold imported by the passenger was purchased by him from Bangkok, however the same has not been declared before the Customs to evade payment of tax. Therefore, the gold imported by the passenger in the form of Jewellery, viz. one gold kada and one gold chain, and deliberately not declared before the Customs on his arrival in India cannot be treated as a bonafide household goods and thus the passenger has contravened the Para 2.26 of the Foreign Trade Policy 2015-20 and thereby 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 read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016, Customs Baggage Declaration Regulations, 2013 and Notification No. 50/2017-Customs dated 30.06.2017 as amended.

19. 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;

> *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).

20. Given the facts of the present case before me and the judgements and rulings cited above, one gold kada and one gold chain, made of 24 kt/999.0 purity gold totally weighing 252.510 Grams, recovered from the said passenger, that was kept undeclared and placed under seizure would be liable to confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act. I find that the passenger is not a carrier and the said gold was brought by him for personal use and not carried on behalf of some other person with a profit motive.

21. I further find that the passenger had involved himself and abetted the act of carrying the said gold made up of 999.0/ 24Kt. purity gold having total weight of 252.510 grams. He has agreed and admitted in the statement recorded that he travelled with the said gold of 24Kt/999.0 purity having total weight of 252.510 grams from Bangkok to Ahmedabad. Despite his knowledge and belief that the gold carried and undeclared by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to clear the said gold without making any declaration. The passenger in his statement dated 17.04.2024 stated that he did not declare the impugned gold as he wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has actively involved himself in carrying, removing, keeping 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 provisions of Sections 112 of the Act and I hold accordingly.

22. I also refer, CBIC Circular No: 495/5/92-Cus. VI dated 10.05.1993 which talks about the concealment of gold in order to smuggle it into India. So, I find that ingenious concealment is one of the important aspects of deciding on redemption/ non-redemption of the goods. Accordingly, I proceed to decide the issue.

23. In view of the above discussions, I hold that the said gold, totally weighing 252.510 grams, recovered from the Noticee/ passenger are liable for confiscation. However, the impugned gold carried by the passenger was for personal use and not brought for another person for profit motive. As such, I use my discretion to give an option to redeem the impugned seized gold on payment of a redemption fine, as provided under Section 125 of the Act.

24. I find that this issue of re-demption of gold has travelled through various appellate fora. I find that in the following cases, Hon'ble Supreme Courts, High Courts, the appellate fora allowed redemption of seized goods;

i. *Sapna Sanjeev Kohli vs. Commissioner – 2010(253) E.L.T.A52(S.C.).*
ii *Union of India vs. Dhanak M Ramji – 2010(252) E. L. T. A102(S.C.)*
iii *Shaikh Jamal Basha Vs. G.O.I. – 1997(91) E. L. T. 277(A. P.)*
iv *Commissioner of Cust. & C. Ex. Nagpur-I Vs. Mohd. Ashraf Armar – 2019(369) E. L. T. 1654 (Tri. Mumbai)*
v *Shri R. P. Sharma, Additional Secretary in RE Ashok Kumar Verma – 2019(369) E. L. T. 1677 (G. O. I.)*
vi *Suresh Bhosle Vs. Commissioner of Customs (Rev.) Kolkatta – 2009(246) E. L. T. 77(Cal.)*
vii *T. Elavarasan Versus Commissioner Of Customs (Airport), Chennai reported at 2011 (266) E.L.T. 167 (Mad.)*

25. I find that when there are judgements favouring redemption, there are contra judgement which provide for absolute confiscation of seized gold attempted to be smuggled into India as follows;

i. *Abdul Razak Vs., U. O. I. – 2012(275) E. L. T. 300 (Ker.) maintained by Hon'ble Supreme Court – 2017(350) E. L. T. A173(SC)*

26. I further find that ingenious concealment is one of the important aspects for deciding on the redemption/ non-redemption of the goods. Further, while deciding the case, the CBIC Circular/ Instruction F. No: 275/17/2015-CX. 8A dated 11.03.2015 is also looked into, which emphasized that Judicial discipline should be followed while deciding pending show cause notices/ appeals.

27. I find that, the option to redemption has been granted and absolute confiscation is set-a-side vide order No. 12/2021-CUS(WZ)/ASAR dated 18.01.2021 by the Revision authority, GOI issued under F. No: 371/44/B/2015-RA/785 dated 29.01.2021. Similar view was taken by Revision Authority vide Order No. 287/2022-CUS(WZ)/ASAR/Mumbai dated 10.10.2022; Order No. 245/2021- CUS(WZ)/ASAR dated 29.09.2021 issued under F. No: 371/44/B/15-RA/2020 dated 06.10.2021 and Order No: 314/2022-Cus(WZ)/ASAR/Mumbai dated 31.10.2022 issued from F. No: 371/273/B/WZ/2018 dated 03.11.2022. Further, the above mentioned 3 orders of RA has been accepted by the department.

28. I also find that in Order No. 345/2022-CUS(WZ)/ASRA/ MUMBAI dated 25.11.2022, in the case of Mrs. Manju Tahelani Vs. Principal Commissioner of Customs, Ahmedabad, passed by the Revision Authority, Government of India, Mumbai in which it was held in para 13 that –

> *"In the instant case, the quantum of gold under import is small and is not of commercial quantity. The impugned gold jewellery had been worn by the applicant on her person and Government observes that sometimes passengers resort to such methods to keep their valuables/ precious possessions safe. There are no allegations that the applicant is habitual offender and was involved in similar offence earlier. The fact of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling of commercial consideration."*

29. I also find that in Order No. 245/2021-CUS(WZ)/ASAR/MUMBAI dated 29.09.2021 in case of Shri Memon Anjum, the Revisionary Authority set aside the order of absolute confiscation. The Revisionary Authority in Para 14 observed as under:

> *"Government notes that there is no past history of such offence/violation by the applicant. The part of impugned gold jewellery was concealed but this at times is resorted to by travellers*

with a view to keep the precious goods secure and safe. The quantity/type of gold being in form of gold chain and 3 rings is jewellery and is not commercial in nature. Under the circumstance, the Government opines that the order of absolute confiscation in the impugned case is in excess and unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allows redemption on suitable redemption fine and penalty."

30. I further find that the Hon'ble High Court of Delhi in a recent judgement dated 21.08.2023 in the case of Nidhi Kapoor and others, in para 156 of its order observed that –

"The Court holds that an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudicating Officer. For reasons aforenoted, the Court finds no illegality in the individual orders passed by the Adjudicating Officer and which were impugned in these writ petitions."

31. I find that hiding the seized goods cannot be considered as an ingenious concealment even though the charge of non-declaration of the seized gold is established. Further, the ownership of the seized gold by the passenger cannot be denied, as he claims ownership of seized gold. Further, he brought gold for the first time and hence it is not a case of habitual offender. Looking to the facts that this is not a case of ingenious concealment, I am of the considered opinion that under Section 125 of the Customs Act, 1962, the option for redemption can be granted.

32. I further find that the passenger had agreed and admitted in the statement recorded that he travelled with the said gold made up of 999.0/ 24Kt. purity gold having net weight of 252.510 Grams from Bangkok to Ahmedabad. Despite his knowledge and belief that the gold carried by him in his person is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to carry the said gold. The passenger in his

statement dated 17.04.2024 stated that he did not declare the impugned gold as he wanted to clear the same illicitly and evade the Customs Duty. Thus, it is clear that the passenger has involved himself in carrying, removing, keeping and dealing with the undeclared 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 the provisions of Sections 112 of the Act and I hold accordingly.

33. Accordingly, I pass the order as under:

O R D E R

i. I order confiscation of the impugned gold, i.e. one Gold Chain and one Gold Kada weighing **252.510** grams, made up of 999.0/ 24Kt. purity gold and having tariff value of **Rs.16,46,430/-** (Rupees Sixteen Lakhs Fourty-Six Thousand Four Hundred Thirty only) and market value of **Rs.19,18,823/-** (Rupees Nineteen Lakhs Eighteen Thousand Eight Hundred Twenty-Three Only) recovered and seized from the passenger Shri Vicky Hariram Bhatia vide Seizure Order dated 17.04.2024 under Panchnama proceedings dated 17.04.2024 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii. I give an option to Shri Vicky Hariram Bhatia to redeem the impugned goods, of 24Kt/999.0 purity gold having total weight of 252.510 Grams on payment of redemption fine of **Rs.3,00,000/-** (Rupees Three Lakhs Only) under Section 125(1) of the Customs Act, 1962. In addition to redemption fine, the passenger would be liable for payment of applicable duties and other levies/ charges in terms of Section 125(2) of the Customs Act, 1962;

iii. I impose a penalty of **Rs.2,00,000/-** (Rupees Two Lakhs Only) on Shri Vicky Hariram Bhatia under the provisions of Section 112 (a)(i) of the Customs Act, 1962.

34. This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

10/6/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-76/SVPIA-D/O&A/HQ/2024-25 Date: 10.06.2024
DIN: 20240671MN000031313A

BY SPEED POST A.D.

To,
Shri Vicky Hariram Bhatia,
BK No. 1920, Near Room No. 4, Section 40,
Nr Sewal Thakur House,
Ulhasnagar, Thane, PIN- 421005, Maharastra.

Copy to:

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