

	अपर आयुक्त, सीमा शुल्क कार्यालय OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS सीमा शुल्क सदन, सूरत/CUSTOMS HOUSE,SURAT 4 th Floor, CUSTOMS HOUSE, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat -395007 ; Tel. No.- 0261-2990051 Email: customs-suratairport@gov.in	
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PREAMBLE

A	डी आई ऐन/DIN	20250171MN0000710182
B	फाइल संख्या / File No.	F. No. VIII/26-16/AIU/CUS/2023-24
C	कारण बताओ नोटिस संख्या और तारीख Show Cause Notice No. and date	F. No. VIII/26-16/AIU/CUS/2023-24 Dated 07.12.2023
D	ऑर्डर-इन-ओरिजिनल नंबर / Order-In-Original No.	13/AB/ADC/SRT-AIRPT/2024-25
E	आदेश तारीख / Date of Order-In-Original	27-12-2024
F	जारी करने की तिथि / Date of Issuance	02.01.2025
G	द्वारा पारित / Passed by	Shri Anunay Bhati, Additional Commissioner, Customs Surat International Airport, Surat
H	आयातक/यात्री का नाम और पता Name and address of Importer/Passenger	Shri Mohammad Vakas, H. No. 83, Chak No. 15, Mohalla Senta Khera, Tanda, Rampur, Uttar Pradesh, PIN- 244925

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए यह प्रति निशुल्क प्रदान की है ।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश से अपने को व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है । इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९८२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोर्ट का स्टाम्प लगा होना चाहिए ।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against this order to the Commissioner of Customs (Appeals), 4th Floor, HUDCO Building, Ishwar Bhavan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeals), Rules, 1982. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

3. अपील के साथ निम्नलिखित चीजे सलग्र की जाए ।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश की प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोर्ट फी स्टाम्प लगा हो ।

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

BRIEF FACTS OF THE CASE:

1. On the basis of profiling of passengers, the officers of the Air Intelligence Unit and other Customs Officers (hereinafter referred to as the "Officers") of Surat International Airport, Surat on 21.09.2023, intercepted, at arrival hall of Surat International Airport, one passenger named Shri Mohammad Vakas (hereinafter for the sake of brevity referred to as "Passenger/Noticee"), aged 19 years, S/o Shri Matloob, residing at H. No. 83, Chak No. 15, Mohalla Senta Khera, Tanda, Rampur, Uttar Pradesh, PIN- 244925, holding Passport No. W0547298, who was suspected to be carrying some high value dutiable goods and had arrived at Surat International Airport from Sharjah by Air India Express Flight No. IX-172. Further, the passenger was carrying four pieces of baggage i. e. one black coloured trolley bag, one black coloured bagpack/backpack, one grey coloured backpack and one small black coloured pouch.

2. On being inquired whether he was carrying any dutiable/restricted/prohibited goods or gold items in his baggage or in person, he replied in negative. The Officers then informed the passenger that they would be conducting his personal search and the detailed examination of his baggage. Before proceeding with the search of the passenger in compliance of Section 102 of the Customs Act, 1962, he was asked whether he would like to be searched in presence of the nearest Magistrate or Gazetted Officer of Customs, to which he consented to be searched before the Gazetted officers of Customs. Thereafter, the officers asked the passenger to remove all the metallic objects from his body and scanned him with the hand-held metal detector. However, no beep sound indicating the absence of any objectionable/metallic substance on his body or clothes, was heard.

3. Thereafter, the officers scanned all the baggage of the passenger viz. one black coloured trolley bag, one black coloured backpack, one grey coloured backpack and one small black coloured pouch through XBIS Scanner machine. When the small black coloured pouch was passed through the XBIS scanner machine, an image showing metal was seen in the said pouch in the scanner machine. Thereafter, the said small black coloured pouch was opened and all its contents were withdrawn. On being checked, 02 packets of Metal paste weighing 189.53 grams were recovered from the said pouch. No objectionable item was recovered from the black coloured trolley bag, grey coloured backpack and black coloured bagpack. On being asked about the contents of said 02 packets, Shri Mohammad Vakas informed that the said packets contained "Gold" in paste form. The Customs officers then took the consent of the passenger for CT scan/ X-Ray of the body and took him to the Sunshine Global Hospital, Surat to ascertain whether he had concealed any contraband item in his body. In X-ray of the passenger, no contraband item was seen in his body.

4. Thereafter, the officers alongwith the panchas and the passenger proceeded to Shri Ambica Touch Refinery for extraction of gold from 02 packets of gold paste weighing 189.53 grams, as recovered from the black pouch carried by the passenger. The gold paste was melted in the furnace and gold in bar/nugget form was obtained. Thereafter, the service of Shri Vikasraj Juneja, a government approved valuer was requested for testing and valuation of the extracted gold. Shri Vikasraj Juneja informed that a gold nugget weighing 136.720 grams having 99% purity has been extracted from recovered 02 packets of gold paste in black pouch, belonging to the passenger. Shri Vikasraj government approved valuer issued Valuation Certificate No. 16/2023 dated 21.09.2023 certifying the market value of extracted gold of 136.720 grams as Rs. 8,32,420/- (Rupees Eight Lakh Thirty Two Thousand Four Hundred Twenty Only) and its tariff value of Rs. 6,95,393/- (Rupees Six Lakh Ninety Five Thousand Three Hundred Ninety Three only) as per Notification No. 64/2023-Cus (NT) dated 06.09.2023 and 67/2023-Cus (NT) dated 15.09.2023.

5. The following documents were withdrawn from the Passenger for further investigation:

- (i) Copy of Boarding Pass, from Sharjah to Surat, of Air India Express Flight No. IX-172 dated 20.09.2023, Seat No. 25C.
- (ii) Copy of Aadhar Card No. 748601187990.

- (iii) Copy of ticket bearing PNR No. ITQI9L from Sharjah to Surat by Flight No. IX-172 on 20.09.2023.
- (iv) Copy of Passport No. W0547298 issued at Bareilly on 16.06.2022 and valid upto 15.06.2032.

6. A statement of passenger viz. Shri Mohammad Vakas was recorded on 21.09.2023 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

- he was residing at H. No. 83, Chak No. 15, Mohalla Senta Khera, Tanda, Rampur, Uttar Pradesh, Pin. 244925 with his parents and siblings;
- he was a trader and engaged in the sale of cosmetic products;
- he can read, write and understand English and Hindi Language;
- he was shown and explained the Panchnama dated 21.09.2023 drawn at International Airport, Surat by the officers of Customs AIU, International Airport, Surat which was in English and after understanding the same he put his dated signature on the Panchnama in token of acceptance of the facts stated therein;
- earlier he had made five-six visits to Dubai for business purpose;
- he was in the business of selling of cosmetic product like cream, etc. which he purchased from Dubai;
- for the current trip, he had gone to Dubai on 16.09.2023 from International Airport, New Delhi;
- the impugned gold did not pertain to him and he was not the owner of the gold;
- one Mr. Asimbhai had handed over the gold to him in Dubai and asked him to hand over the gold to a person, who was supposed to call him at Surat Airport on his mobile number;
- he had met Mr. Asimbhai two-three times at Sharjah, however his full name, details or mobile number was not known to him;
- the details of the person who was supposed to call him at Surat Airport was not known to him;
- Mr. Asimbhai had promised that the person who would collect the gold at Surat Airport would give him Rs.8,000/- on handling over the gold to him;
- he was aware that import of Gold without payment of Customs duty was an offence, but he intended to get some monetary benefit on account of such activity and therefore he tried to smuggle the gold into the country;
- as he was to smuggle the gold by concealing the same, he did not declare the gold brought by him before any Customs officer;
- after clearing the immigration procedures, he collected his check-in baggage and during checkout he was intercepted by Customs officers and further procedures as stated in Panchnama dated 21.09.2023 was carried out;
- he was aware that he had committed an offence by evading payment of Customs duty for which he had to face the consequences as prescribed under the Customs Law.

7. The aforesaid one gold nugget weighing 136.720 grams of 99% purity having market value of Rs. 8,32,420/- (Rupees Eight Lakh Thirty Two Thousand Four Hundred Twenty Only) and tariff value of Rs.6,95,393/- (Rupees Six Lakh Ninety Five Thousand Three Hundred Ninety Three only) extracted from 02 packets of gold paste concealed by the passenger namely Shri Mohammad Vakas, was placed under seizure under section 110 of the Customs Act 1962, vide Seizure order under Panchnama proceedings both dated 21.09.2023 on a reasonable belief that the said gold was smuggled into India and the same was liable for confiscation under provisions of the Customs Act, 1962. The small black coloured pouch used for concealment of the two packets of gold paste was also placed under seizure under Customs Act, 1962.

8. 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) of the Customs Act, 1962 – “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, but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”
- 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.”
- j)** As per Section 77 of the Customs Act 1962- “the owner of any 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 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.
- n)** 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.

- o)** 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, harbouring, 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.”
- p)** As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- q)** As per Section 123 of Customs Act 1962 (Burden of proof in certain cases):
 - (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.
- r)** 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.”

9. CONTRAVICTION AND VIOLATION OF LAWS:

- (a)** Shri Mohammad Vakas appeared to have actively involved himself in the instant case of smuggling of gold into India. He had improperly imported gold weighing 136.720 grams (net weight) of purity 99% having market value of Rs.8,32,420/- (Rupees Eight Lakh Thirty Two Thousand Four Hundred Twenty Only) and tariff value of Rs. 6,95,393/- (Rupees Six Lakh Ninety Five Thousand Three Hundred Ninety Three only) as per Notification No. 64/2023-Cus(NT) dated 06.09.2023 and 67/2023-Cus(NT) dated 15.09.2023 by concealing the gold in paste form in his baggage without declaring it to the Customs. He concealed the gold in his baggage with a deliberate and mala fide 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. The gold imported by him with commercial considerations without declaration before the proper officer of Customs cannot be treated as bona fide household goods or personnel effects. Shri Mohammad Vakas had 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 provisions of Baggage Rules, 2016, read with the section 77 of the Customs Act, 1962 read with Regulation 3 of Customs

Baggage Declaration Regulations, 2013.

- (c) The gold improperly imported by the passenger Shri Mohammad Vakas by concealing in his baggage without declaring it to the Customs was thus liable for confiscation under Section 111(d), (i) and (j) 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 Mohammad Vakas, by his above-described acts of omission and commission on his part had rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (e) The small black coloured pouch used for packing and concealment of gold paste seized under Panchnama proceedings dated 21.09.2023 was liable for confiscation under Section 119 of Customs Act, 1962.
- (f) As per Section 123 of the Customs Act 1962, the burden of proving that the said improperly imported gold, totally weighing 136.720 grams (net weight), of purity 99% having market value of Rs.8,32,420/- and tariff value Rs.6,95,393/- as per Notification No. 64/2023-Cus (NT) dated 06.09.2023 and 67/2023 - Cus (NT) dated 15.09.2023, without declaring it to the Customs, were not smuggled goods, was upon the passenger viz. Shri Mohammad Vakas.

10. Therefore, Shri Mohammad Vakas was called upon to show cause in writing to the Additional Commissioner of Customs, Surat International Airport, Surat, having his office situated on 4th Floor, Customs House, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395017 within 30 days from the receipt of this notice as to why:

- (i) The gold nugget of purity 99% weighing 136.720 grams (net weight) having market value of Rs. 8,32,420/- (Rupees Eight Lakh Thirty Two Thousand Four Hundred Twenty Only) and tariff value Rs.6,95,393/- (Rupees Six Lakh Ninety Five Thousand Three Hundred Ninety Three only) recovered from him and seized vide Seizure order under Panchnama proceedings both dated 21.09.2023 should not be confiscated under Section 111(d), 111(i) and 111(j) of the Customs Act,1962;
- (ii) The small black coloured pouch used for concealment of the gold paste seized from him vide seizure order under Panchnama proceedings dated 21.09.2023 should not be confiscated under Section 119 of the Customs Act,1962;
- (iii) A penalty should not be imposed on him under Section 112 of the Customs Act, 1962.

DEFENCE REPLY

11. In the Show Cause Notice, the noticee was asked to submit his written reply/defence submission to the Notice within stipulated time, however, no reply/defence submission to the Show Cause Notice has been received from the noticee within stipulated time or beyond.

RECORD OF PERSONAL HEARING

12. “Audi alteram partem” is an important principle of natural justice which dictates to hear the other side before passing any order. Therefore, three opportunities to be heard in person were granted to the noticee to appear for personal hearing on 12.09.2024 and 25.09.2024 and 10.12.2024 vide office letters dated 28.08.2024,14.09.2024 & 25.11.2024 respectively. The letters informing the noticee of the dates for personal hearings were sent via India Post's speed post service to the addressee listed on his Passport and Aadhaar card.

However, all the letters were returned undelivered, with scribbled remarks on the envelopes. Consequently, personal hearing notices were affixed to the office notice board. Despite these efforts, neither the noticees nor his authorized representative appeared for the personal hearings on any of the scheduled dates.

DISCUSSION AND FINDINGS

13. I have carefully gone through the facts of this case, the relied upon documents, relevant legal provisions. I find that the noticee has not submitted any written reply/defence submission to the notice issued to him. Further, three opportunities granted to noticee to present his case, have not been availed by the noticee. Therefore, I, now, proceed to decide the instant case on the basis of evidences and documents available on record.

14. In the instant case, I find that the main issues to be decided are:

- (i) Whether the gold nugget of purity 99% weighing 136.720 gram with market value of Rs. 8,32,420/- (Rupees Eight Lakh Thirty-Two Thousand Four Hundred Twenty Only) and Tariff value of Rs. 6,95,393/- (Rupees Six Lakh Ninety-Five Thousand Three Hundred Ninety-Three only), recovered from Shri Mohammad Vakas and seized vide Seizure Order under Panchnama proceedings dated 21.09.2023, is liable for confiscation under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962 or otherwise;
- (ii) Whether the small black pouch used for concealing the gold paste seized from the noticee vide the same Panchnama proceedings is liable for confiscation under Section 119 of the Customs Act, 1962 or otherwise;
- (iii) Whether the noticee is liable for penal action under Section 112 of the Customs Act, 1962 or otherwise.

15. I find that the Panchnama has accounted for the facts that on the basis of passenger profiling, one passenger named Shri Mohammad Vakas holding passport No. W0547298, who had arrived at Surat International Airport from Sharjah on Air India Express Flight No. IX-172, was intercepted by Customs officers of Surat International Airport, Surat. On being inquired whether he was carrying any dutiable/restricted/ prohibited goods or gold items in his baggage or in person, he replied in negative. Subsequently, his baggage was scanned using the XBIS scanner machine, which detected metal content concealed in black pouch in the baggage of the passenger. Upon examination, two packets containing gold paste weighing a total of 189.53 grams were recovered from the black pouch. The passenger confessed that the packets contained gold. Subsequently, the said gold paste was melted at Shri Ambica Touch Refinery, and upon melting a gold nugget weighing 136.720 grams with 99% purity was extracted therefrom. The Government approved valuer after performing the examination and valuation issued a Valuation Certificate No. 16/2023 dated 21.09.2023 certifying the market and tariff values of the said gold nugget as Rs. 8,32,420/- and Rs. 6,95,393/- respectively. The said gold nugget was subsequently seized vide Order/Memo under Panchnama dated 21.09.2023 under the reasonable belief that the goods carried by the passenger appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962.

16. I find that a statement of Shri Mohammad Vakas was recorded on 21.09.2023 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

- he was residing at H. No. 83, Chak No. 15, Mohalla Senta Khera, Tanda, Rampur, Uttar Pradesh, Pin. 244925 with his parents and siblings;
- he was a trader and engaged in the sale of cosmetic products;
- he can read, write and understand English and Hindi Language;
- he was shown and explained the Panchnama dated 21.09.2023 drawn at International Airport, Surat by the officers which was in English and after understanding the same he put his dated signature on the Panchnama in token of acceptance of the facts stated therein.
- earlier he had made five-six visits to Dubai for business purpose;

- he was in the business of selling of cosmetic product like cream, etc. which he purchased from Dubai;
- for the current trip, he had gone to Dubai on 16.09.2023 from International Airport, New Delhi;
- the impugned gold did not pertain to him and he was not the owner of the gold;
- one Mr. Asimbhai had handed over the gold to him in Dubai and asked him to hand over the gold to a person, who was supposed to call him at Surat Airport on his mobile number;
- he had met Mr. Asimbhai two-three times at Sharjah, however his full name, details or mobile number was not known to him;
- the details of the person who was supposed to call him at Surat Airport was not known to him;
- Mr. Asimbhai had promised that the person who would collect the gold at Surat Airport would give him Rs.8,000/- on handling over the gold to him.
- he was aware that import of Gold without payment of Customs duty was an offence, but he intended to get some monetary benefit on account of such activity and therefore he tried to smuggle the gold into the country;
- that as he was to smuggle the gold by concealing the same, he did not declare the gold brought by him before any Customs officer;
- after clearing the immigration procedures, he collected his check-in baggage and during checkout he was intercepted by Customs officers and further procedures as in Panchnama dated 21.09.2023 was carried out.
- he was aware that he had committed an offence by evading payment of Customs duty for which he had to face the consequences as prescribed under the Customs Law.

17. I find that the noticee has never retracted his aforesaid statement dated 21.09.2023 and the offence committed by the passenger is clearly confessed by him in his statement. Therefore, I consider his statement to be material evidence in this case and for that I place my reliance on the following judgements/case laws;

- The Hon'ble Apex Court has held in the case of **Surjeet Singh Chhabra vs UOI**, reported as 1997 (84) ELT 646 (SC), that statement made before the Customs Officers though retracted within 6 days is an admission and binding, since Customs Officers are not Police Officers under Section 108 of the Customs Act, 1962;
- The confessional statement given before the Customs officers are admissible evidence as they are not the police officers. This view has been upheld by the Hon'ble Supreme Court in the case of **Badaku Joti Savant vs. State of Mysore** [1978 (2) ELT J 323 (SC)];
- The decision of the Hon'ble Madras High Court in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Raghupathy** 1998 (98) ELT 50 (Mad), in which the court held that the confessional statement under Section 108 even though later retracted is a voluntary statement and was not influenced by duress and is a true one.
- The Hon'ble Apex Court in **Naresh J Sukhawani vs UOI** held that the Statement before the Customs Officer is a material piece of evidence.

18. I also find that the noticee has neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama in the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger. In fact, in his statement, noticee had clearly confessed that he was aware that import of gold paste without payment of customs duty was an offence but as he wanted to evade customs duty, therefore he had concealed and not declared the same with sole intention to smuggle the gold into country as he was working as carrier for clearance of smuggled goods into India for monetary consideration as confessed by the passenger in his Statement dated 21.09.2023 that one person Mr. Asimbhai had handed over the gold him at

Sharjah Airport for clearance into India and promised him that the person who would collect the gold at Surat Airport would give him Rs.8,000/- on handing over the gold to him. Thus, the passenger has violated provisions of Customs Act,1962; the Baggage Rules 2016; the Foreign Trade (Development & Regulations) Act, 1992; the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020/2023.

19. Further, the passenger had not declared the said gold paste concealed in his black pouch upon his arrival to the Customs authorities as he was working as carrier for clearance of smuggled goods into India for monetary consideration as confessed by the passenger in his statement dated 21.09.2023 that one person Mr. Asimbhai had handed over the gold him at Sharjah Airport for clearance into India and promised him that the person who would collect the gold at Surat Airport would give him Rs.8,000/- on handing over the gold to him. It is clear case of non-declaration with an intent to smuggle the gold into Indian territory. Accordingly, there is sufficient evidence to say that the passenger had kept the gold in his possession and had failed to declare the same before the Customs Authorities upon his arrival at Surat International Airport, Surat. 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, the passenger has violated Section 77, Section 79 of the Customs Act for import of gold which was not for bona fide use and thereby has violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20/Para 2.27 of Foreign Trade Policy 2023. Since, 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, then as per Section 123 of the Customs Act, 1962, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized. In the instant case, the passenger has confessed in his statement that he was not the owner of the impugned gold and was working as carrier with an intent of smuggling of the gold for monetary benefit.

20. From the facts discussed above, it is evident that Shri Mohammad Vakas had carried 02 packets containing gold paste concealed inside a black pouch in his baggage, while arriving from Sharjah to Surat, with sole intention to smuggle and remove the same without payment of Customs duty. The offence committed by him has rendered the gold nugget (extracted post melting of the said gold paste) having purity 99% and weighing 136.720 gram, liable for confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. By concealing the said gold in black pouch 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 acts have made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

21. It is seen that the noticee had not filled the baggage declaration form and had not declared the said gold paste in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules, 2016 and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the import was also for non-bonafide purpose, as the same was carried for monetary consideraton working as carrier as confessed by the noticee in his statement. Therefore, the said improperly imported gold paste by the passenger Shri Mohammad Vakas without declaring to the Customs on his arrival in India cannot be treated as bonafide household goods or personal effects. The passenger thus has contravened the 2.26 of the Foreign Trade Policy 2015-20/Para 2.27 of Foreign Trade Policy 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. It is therefore, proved that by the above acts of contravention, the noticee has rendered the gold weighing 136.720 grams (net weight), having market value of Rs. 8,32,420 and Tariff value of Rs. 6,95,393/-, seized under Panchnama dated 21.09.2023, liable for confiscation under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.

22. I find that the noticee in his statement, has confessed to carrying gold in paste form concealed in black pouch and attempted to remove the said gold from the Surat Airport without declaring it to the Customs Authorities and thereby has violated the provisions of

para 2.27 of the Foreign Trade Policy 2023 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. 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 has thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

23. I 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**, 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'. Non-fulfilment of the conditions has made the gold seize 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. Shri Mohammad Vakas confessed to carrying the said gold paste and 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. Thus, the conditions are not fulfilled by the passenger.

24. In view of the above discussions, I hold that the gold paste, carried and kept undeclared by the passenger Shri Mohammad Vakas with an intention to clear the same illicitly from Customs Airport and evade payment of Customs duty as he was working as carrier for clearance of smuggled goods into India for monetary consideration as confessed by the passenger in his statement dated 21.09.2023 that one person Mr. Asimbhai had handed over the gold him at Sharjah Airport for clearance into India and promised him that the person who would collect the gold at Surat Airport would give him Rs.8,000/- on handing over the gold to him., are liable for absolute confiscation. In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the 01 gold nugget (extracted from the said 2 packets of gold paste) on payment of redemption fine, as envisaged under Section 125 of the Act.

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

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

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

27. Further I find that in a 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)*.

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

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

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

29. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 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".

30. Given the facts of the present case and the judgements and rulings cited above, the gold carried by the noticee is liable to be confiscated absolutely. Moreover, the noticee in his statement dated 21.09.2023 confessed that he had concealed the gold in paste form in two packets kept in black pouch with the intention to smuggle the same into the country as he was working as carrier for clearance of smuggled goods into India for monetary consideration and one person Mr. Asimbhai had handed over the gold him at Sharjah Airport for clearance into India and promised him that the person who would collect the gold at Surat Airport would give him Rs.8,000/- on handing over the gold to him.. I therefore hold in unequivocal terms that the gold weighing 136.720 grams (net weight) carried by the noticee and placed under seizure vide Seizure Order/Memo under Panchnama dated 21.09.2023, is liable for absolute confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962. Further, the small black coloured pouch used for concealment of gold paste, seized vide Seizure Order under Panchnama dated 21.09.2023 is also liable for confiscation under Section 119 of the Customs Act, 1962.

31. I find that by using the modus of concealing gold paste in 02 packets inside a black pouch in his baggage and not making declaration of it to the Customs Officers, the passenger has involved himself in the act of smuggling of gold totally weighing 136.720 grams (net weight), carried by way of concealing in paste form in black pouch for monetary consideration. Despite the knowledge that the goods are offending in the nature and such an act is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder, the noticee attempted to smuggle the same. It is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled goods which he knew very well and had reason to believe that the same was liable for confiscation under Section 111 of the Customs Act, 1962. Thus, mens rea on the part of the passenger is established beyond doubt. Thus, the noticee has committed an offence of

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the nature described in Section 112 of Customs Act, 1962 rendering him liable for penalty under Section 112 (b) (i) of the Customs Act, 1962 as amended and I hold accordingly.

32. Accordingly, I pass the following order:

ORDER

- (i)** I order **absolute confiscation** of the gold nugget weighing **136.720 grams** of 99% purity having market value of **Rs.8,32,420/-** (Rupees Eight Lakh Thirty-Two Thousand Four Hundred Twenty Only) under Section 111(d), 111(i), and 111(j) of the Customs Act, 1962.
- (ii)** I order **confiscation of the black pouch** used for concealing the gold paste under Section 119 of the Customs Act, 1962.
- (iii)** I impose a **penalty** of **Rs. 8,32,420/-** (Rupees Eight Lakh Thirty-Two Thousand Four Hundred Twenty Only) on Shri Mohammad Vakas under Section 112(b)(i) of the Customs Act, 1962.

33. This order is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Customs Act, 1962 as amended or rules made thereunder or under any law for the time being in force.

(Anunay Bhati)
Additional Commissioner,
Surat International Airport,
Customs, Surat

BY SPEED POST AD/E.MAIL/WEBSITE

F. No. VIII/ 26-16/AIU/CUS/2023-24

Date: 27-12-2024

DIN: 20250171MN0000710182

To,
Shri Mohammad Vakas,
S/o Shri Matloob, H. No. 83, Chak No. 15,
Mohalla Senta Khera, Tanda,Rampur, Uttar Pradesh, PIN- 244925

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy/Assistant Commissioner of Customs (TRC), Ahmedabad.
3. The System In-Charge, Customs, H.Q., Ahmedabad for uploading on the official website (via post and email)
4. The Superintendent (Disposal), Customs, Surat International Airport
5. The Superintendent (Recovery), Customs, Surat International Airport.
6. Guard File.