



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

A	फाइल संख्या/ File No.	: VIII/10-199/SVPIA-A/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-199/SVPIA-A/O&A/HQ/2023-24 dated: 23.01.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 37/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 27.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 27.05.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	To, Shri Khan Javed Babu, B-Sector, P-Line, Room No.17, Cheeta Camp, Trombaay, Mumbai - 400088.
(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 मंजिल, 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: -

Shri Khan Javed Babu, (hereinafter referred to as the said "passenger/ Noticee"), residing at B-Sector, P-Line, Room No. 17, Cheeta Camp, Trombaay, Mumbai - 400088, holding an Indian Passport Number No. R1168655 arrived from Dubai to Ahmedabad by (Seat No: 29D) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling and suspicious movement, one passenger who arrived by Spice jet Flight No. SG-16 on 21.09.2023 from Dubai to Ahmedabad at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad, was intercepted by the officers of Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 21.09.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage.

2. The AIU Officers identified Shri Khan Javed Babu by his passport No. R1168655 and his boarding pass bearing Seat No. 29D, after he had crossed the Green Channel at the SVPI Airport, Ahmedabad. In the presence of the Panchas, the AIU Officers asked Shri Khan Javed Babu if he has anything to declare to the Customs, to which he denied. The officers offered their personal search to the passenger, but the passenger politely denied and submitted that he is having full trust on the Officers. The officers asked the passenger whether he wants to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which he consented to be searched in front of the Superintendent of Customs. The Officers in presence of the Panchas, observed that Shri Khan Javed Babu carried one hand bag and a trolley bag and the officers, in presence of the Panchas carried out scanning of the hand bag and trolley bag in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed.

2.1. Thereafter, the AIU officers in presence of Panchas asked Shri Khan Javed Babu to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he wore on his

body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, but no beep sound/ alert was generated.

2.2. The Officers, in presence of the Panchas, asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough sustained interrogation by the officers, in presence of the Panchas, Shri Khan Javed Babu confessed that he had hidden one capsule covered with black plastic tape inside his rectum and the capsules contain gold paste and chemical in semi solid form.

2.3. The officers, then led the passenger to the washroom located near belt No. 5 of arrival hall, terminal 2, SVPI Airport, Ahmedabad. After sometime the passenger came out of the washroom with one capsule wrapped in black colour plastic. The officer then informed the Panchas that they need to contact Shri Soni Kartikey Vasantrai, a Government Approved Valuer so as to confirm the contents of the capsule. Accordingly, the officers telephonically contacted Shri Soni Kartikey Vasantrai and requested him to come to the office of the Air Intelligence Unit, SVPI Airport, Ahmedabad for testing and valuation purpose. In reply, the Government Approved Valuer informed the officers that the testing of the material is possible only at his workshop as gold has to be extracted from semi-solid paste form by melting it and also informs the address of his workshop.

2.4. Thereafter, the AIU Officers along with the passenger and the Panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G. Road, Ahmedabad - 380006. On reaching the above referred premises, the officers introduced the Panchas, as well as the passenger to one person namely Mr. Soni Kartikey Vasantrai, Government Approved Valuer. Mr. Soni Kartikey Vasantrai, Government Approved Valuer asked the officers in

presence of Panchas that he would do the examination of the Capsule. First, he started the detailed examination of the capsule recovered from Shri Khan Javed Babu. After weighing the said capsules on his weighing scale, Mr. Kartikey Vasantrai Soni provided detailed primary verification report of semi solid substance and informed that the capsule covered with black plastic tape contained semi solid substance consisting of Gold & chemical mix having Gross weight 268.530 grams.

2.5. The Officers took the photograph of the weighment of gold as under :



2.6. Thereafter, the Government approved valuer led the Officers, Panchas and the passenger to the furnace, which is located inside his business premises. Then, Mr. Kartikey Vasantrai Soni started the process of converting the semi solid material concealed in the capsule into solid gold. The black covering of the capsule had removed and semi solid substance consisting of Gold and Chemical mix was obtained which has put into the furnace and upon heating the semi solid substance, it turned into mixture of gold like material weighing 228.000 grams.

2.7. The Officers took the photograph of the net weighment of the gold as under:



2.8. The said substance consisting of gold has been tested by the valuer and the gold component has put in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that **1 Gold bar weighing 228.000 grams** having purity 999.0/24 Kt. derived from 268.530 grams of capsule containing gold and Chemical mix wrapped in the black colored plastic tape. After testing the said bar, the Government Approved Valuer confirmed that it is pure gold and Shri Soni Kartikey Vasantrao issued Certificate, vide Certificate No. 596/2023-24 dated 21.09.2023, wherein it is certified that the gold bar is having purity 999.0/24kt, having Tariff Value of **Rs.11,71,405/-** (Rupees Eleven Lakhs Seventy One Thousand Four Hundred and Five Only) and Market Value of **Rs.13,95,360/-** (Rupees Thirteen Lakhs Ninety Five Thousand Three Hundred and Sixty Only). The value of the gold bar has been calculated as per the Notification No.67/2023-Customs (N.T.) dated 15.09.2023 (Gold) and Notification No.64/2023-Customs (N.T.) dated 06.09.2023 (Exchange Rate).

2.9. Then, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the proceedings of the extraction of gold at the workshop, along with the extracted gold bar on 21.09.2023. Thereafter, the Officers in the presence of the panchas asked the passenger, Shri Khan Javed Babu, to produce the documents in his possession and he produced the below mentioned documents. The Officers in presence of panchas and passenger carried out scrutiny of the documents of the passenger, and found that Shri Khan Javed Babu, aged 45 years, holding Indian Passport No. R1168655 issued on 06.06.2017 and his address as per Passport is B-Sector, P-Line, Room No.17, Cheeta Camp, Trombaay, Mumbai - 400088.

- i) Copy of Stamped pages of Passport No. R1168655 issued at Mumbai on 06.06.2017 valid up to 05.06.2027.
- ii) Boarding pass dated 21.09.2023 showing seat No. 29D of Flight No. SG-16 from Dubai to Ahmedabad.

2.10. The Customs officers informed that the copies of travelling documents and identity proof documents mentioned above taken into possession of the Officers for further investigation and the panchas as

well as the passenger put their dated signatures on copies of all the above-mentioned travelling documents and the passenger manifest, as a token of having seen and agreed to the same.

3. The AIU Officers informed the Panchas as well as the passenger, that the recovered gold bar of 24Kt. with purity 999.0 weighing 228.000 grams having Tariff Value of Rs.11,71,405/- (Rupees Eleven Lac Seventy-One Thousand Four Hundred and Five Only) and Market Value of Rs.13,95,360/- (Rupees Thirteen Lac Ninety-Five Thousand Three Hundred and Sixty Only). The said passenger had attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the officers informed that they have a reasonable belief that the aforesaid Gold had attempted to be smuggled by the passenger, resulted in liable for confiscation as per the provisions of the Customs Act, 1962, hence the aforesaid Gold was placed under seizure, vide Seizure Memo dated 21.09.2023, under Section 110 (1) & (3) of the Customs Act, 1962.

4. A Statement of Shri Khan Javed Babu, residing at B-Sector, P-Line, Room No. 17, Cheeta Camp, Trombaay, Mumbai - 400088, holding an Indian Passport Number No. R1168655 was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 21.09.2023, wherein he explained as under:

- i. He went to Dubai on 19.09.2023 from Mumbai Airport.
- ii. He went to Dubai for business purpose. He was doing business of selling car parts in Mumbai, Maharashtra.
- iii. The to and fro tickets were booked by him.
- iv. He purchased the said gold in Dubai through his own money and his friend, which was borrowed on interest.
- v. He does not know his friend's mobile number and other details.
- vi. He had visited Dubai (UAE) two times. But this is the first time he had brought gold through SVPI, Ahmedabad.
- vii. The ticket for his return journey from Dubai to Ahmedabad was cheaper than Dubai to Mumbai.
- viii. He was supposed to go to Mumbai by train.

- ix. As informed, a person was supposed to come at Mumbai to collect the smuggled gold.
- x. He had intentionally not declared the seized items, i.e., gold before the Customs Authorities on his arrival at SVP International Airport Ahmedabad, as he wanted to clear it illicitly and evade payment of Customs Duty. He was fully aware that clearing gold without declaring before Customs, with an intent to evade payment of customs duty is an offence, under the provisions of Customs Act, 1962 and Regulations. He also did not fill any Declaration form for declaring dutiable goods to Customs. He had agreed that he had done to evade Customs duty on total 228 grams of 24Kt, with purity 999.0 is having Tariff Value of Rs.11,71,405/- (Rupees Eleven Lac Seventy One Thousand Four Hundred and Five Only) and Market Value of Rs.13,95,360/- (Rupees Thirteen Lac Ninety Five Thousand Three Hundred and Sixty Only), which were recovered from him.

5. The above said gold bar with a net weightment of 228.000 grams having purity of 999.0/24 Kt. involving Tariff Value of Rs.11,71,405/- (Rupees Eleven Lac Seventy One Thousand Four Hundred and Five Only) and Market Value of Rs.13,95,360/- (Rupees Thirteen Lac Ninety Five Thousand Three Hundred and Sixty Only) recovered from the said passenger which were attempted to be smuggled into India with an intent to evade payment of Customs duty by concealed in one capsule wrapped in black coloured plastic tape containing gold in semi solid paste form in his rectum, which was in clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar totally weighing 228.000 Grams which were attempted to be smuggled by Shri Khan Javed Babu, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, hence, the above said gold bar weighing 228.000 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 21.09.2023, issued from F. No. VIII/10-113/AIU/A/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

6. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) **Section 2 - Definitions.**—*In this Act, unless the context otherwise requires,—*

(22) "goods" includes-

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

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

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

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

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

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

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

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

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

of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VI) "Section 119 – Confiscation of goods used for concealing smuggled goods–Any goods used for concealing smuggled goods shall also be liable to confiscation."

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

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

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

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

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

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

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

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

Contravention and violation of laws:

7. It therefore appears that:

- (a) The passenger had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold bar weighing 228.000 Grams having purity 999.0/24 Kt., by concealing in one capsule wrapped in black coloured plastic tape containing gold in semi solid paste form in his rectum, totally weighing **228.000** grams and involving Tariff Value of **Rs.11,71,405/-** (Rupees Eleven Lac Seventy-One Thousand Four Hundred and Five Only) and Market Value of **Rs.13,95,360/-** (Rupees Thirteen Lac Ninety-Five Thousand Three Hundred and Sixty Only). The said gold was concealed in one capsule wrapped in black colored plastic tape containing gold in semi solid paste form in his rectum not declared to the Customs. The passenger opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported 228.000 Grams of gold bar of purity 999.0/24 Kt. by the passenger by way of concealed in one capsule wrapped in black colored plastic tape containing gold in semi solid paste form in his rectum, without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.
- (b) By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported gold bar by the passenger,

Shri Khan Javed Babu, found concealed in one capsule wrapped in black coloured plastic tape containing gold in semi solid paste form in his rectum, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

- (d) Shri Khan Javed Babu, by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (e) As per Section 123 of Customs Act 1962, the burden of proving that the gold bar weighing 228.000 Grams having purity 999.0/24 Kt. and having Tariff Value of Rs.11,71,405/- (Rupees Eleven Lac Seventy One Thousand Four Hundred and Five Only) and Market Value of Rs.13,95,360/- (Rupees Thirteen Lac Ninety Five Thousand Three Hundred and Sixty Only), which was concealed in one capsule wrapped in black colored plastic tape containing gold in semi solid paste form in his rectum, by the passenger, totally weighing 228.000 grams without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee, Shri . Khan Javed Babu.

8. Now, therefore, **Shri Khan Javed Babu**, residing at B-Sector, P-Line, Room No.17, Cheeta Camp, Trombaay, Mumbai - 400088, India holding an Indian Passport Number No. R1168655, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:

- (i) The One Gold Bar weighing **228.000** grams having purity 999.0/24 Kt. and having Tariff Value of **Rs.11,71,405/-** (Rupees Eleven Lac Seventy One Thousand Four Hundred and Five Only) and Market Value of **Rs.13,95,360/-** (Rupees

Thirteen Lac Ninety Five Thousand Three Hundred and Sixty Only)), which was concealed in one capsule wrapped in black colored plastic tape containing gold in semi solid paste form in his rectum, was placed under seizure under Panchnama proceedings dated 21.09.2023 and Seizure Memo Order dated 21.09.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962 and ;

- (ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

9. Shri Khan Javed Babu has not submitted written reply to the Show Cause Notice.

9.1. Shri Khan Javed Babu was given opportunity to appear for personal hearing on 02.05.2024; 05.05.2024 and 10.05.2024 but he did not appear for personal hearing on the given dates.

Discussion and Findings:

10. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

11. In the instant case, I find that the main issue to be decided is whether the 228.000 grams of gold bar, obtained from the paste of gold and chemical mixture weighing 268.530 grams, having Tariff Value of Rs.11,71,405/- (Rupees Eleven Lakhs Seventy-One Thousand

Four Hundred Five Only) and Market Value of Rs.13,95,360/- (Rupees Thirteen Lakhs Ninety-Five Thousand Three Hundred Sixty Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 21.09.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

12. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement, the said passenger, Shri Khan Javed Babu, was intercepted by the officers of Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad, after he had crossed the Green Channel at the SVPI Airport, Ahmedabad. The AIU Officers asked Shri Khan Javed Babu if he has anything to declare to the Customs, to which he denied. On scanning of the baggage carried by the said passenger nothing suspicious was observed, and while the said passenger passed through the DFMD Machine, no beep sound/ alert was generated. The AIU Officers asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough sustained interrogation by the officers, Shri Khan Javed Babu confessed that he had hidden one capsule covered with black plastic tape inside his rectum and the capsules contain gold paste and chemical in semi solid form. The officers, then led the passenger to the washroom located near belt No. 5 of arrival hall, terminal 2, SVPI Airport, Ahmedabad. After sometime the passenger came out of the washroom with one capsule wrapped in black colour plastic.

I also find that the said 228.000 grams of gold bar obtained from the 268.530 Grams of gold paste having Tariff Value of Rs.11,71,405/- and Market Value of Rs.13,95,360/- carried by the passenger Shri Khan Javed Babu appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 21.09.2023 under Section 108 of the Customs Act, 1962.

13. I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wants to save Customs duty, he had concealed the same in his body with an intention to clear the gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

14. Further, the passenger has accepted that he had not declared the said gold paste concealed in his body on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the gold paste 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 paste recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

15. From the facts discussed above, it is evident that Shri Khan Javed Babu had carried gold paste weighing 268.530 grams, (wherefrom 228.000 grams of gold bar having purity 999.0 recovered on the

process of extracting gold from the said paste) while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 228.000 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold paste in his body 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.

16. It is seen that the noticee had not filed the baggage declaration form and had not declared the said gold paste 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. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold paste weighing 268.530 grams concealed in his body i.e. rectum (extracted gold bar of 228.000 grams) by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the gold bar weighing 228.000 grams (derived from the gold paste, totally weighing 268.530 grams), having Tariff Value of Rs.11,71,405/- and Market Value of Rs.13,95,360/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 21.09.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold paste concealed in his body, 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 paste of 268.530 grams concealed in his body (extracted gold bar of 228.000 grams having purity 999.0) 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 and opted for green channel Customs clearance after arriving from foreign destination with the wilful intention to smuggle the impugned goods.

The said gold bar weighing 228.000 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 268.530 grams, having Tariff Value of Rs.11,71,405/- and Market Value of Rs.13,95,360/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 21.09.2023. 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 Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 268.530 grams (Gold bar weighing 228.000 grams derived from the same) by deliberately not declaring the same by his on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under 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. Gold bar weighing 228.000 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 268.530 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, passenger concealed the gold paste in his body. 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 gold bar weighing 228.000 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 268.530 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 21.09.2023 stated that he has carried the gold by concealment in his body (rectum) 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 in the body. 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 bar weighing 228.000 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 268.530 grams carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that gold bar weighing 228.000 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

27. I further find that the passenger had involved himself and abetted the act of smuggling of gold bar weighing 228.000 grams, carried by him. He has agreed and admitted in his statement that he travelled with gold paste consisting of Gold & Chemical Mix, totally weighing 268.530 grams from Dubai to Ahmedabad. Despite his knowledge and belief that the gold paste 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 paste of 268.530 grams by concealing in his body (extracted gold bar of 228.000 grams having purity 999.0). 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 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 gold bar weighing **228.000** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.11,71,405/-** (Rupees Eleven Lakhs Seventy-One Thousand Four Hundred Five Only) and Market Value of **Rs.13,95,360/-** (Rupees Thirteen Lakhs Ninety-Five

Thousand Three Hundred Sixty Only) derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, recovered and seized from the passenger Shri Khan Javed Babu vide Seizure Order under Panchnama proceedings both dated 21.09.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- ii) I impose a penalty of **Rs.4,50,000/-** (Rupees Four Lakhs Fifty Thousand Only) on Shri Khan Javed Babu under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-199/SVPIA-A/O&A/HQ/2023-24 dated 23.01.2024 stands disposed of.


27/5/24

(Vishal Malani)

Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-199/SVPIA-A/O&A/HQ/2023-24 Date: 27.05.2024
DIN: 20240571MN000000ECD2

BY SPEED POST AD

To,

Shri Khan Javed Babu,
102, 1st Floor Makkah Apartment,
Opposite Kashmiri Masjid, Nanpura Market,
Surat-395001.

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.