



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/10-186/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-186/SVPIA-D/O&A/HQ/2023-24 dated: 05.02.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 46/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 28.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 28.05.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: To, Shri Asif S/O Saraj Khan, Ward No. 24, Losal, Sikar, Rajasthan.
(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 इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case: -

Shri Asif S/o Saraj Khan (herein after referred to as the 'passenger') residing at Ward No.24 Losal, Sikar, Rajasthan holding Indian Passport bearing No. N3400897 arrived from Jeddah by Indigo airlines, Flight No. 6E 92 at SVP International Airport, Ahmedabad on 28.10.2023. On the basis of specific intelligence that one Passenger is suspected to be carrying restricted/ prohibited goods and therefore a thorough search of all the baggage of the passenger as well as their personal search are required to be carried out. Also, they need to guide the passenger from the airplane to ensure that the goods are not handed over to someone else. The passenger would be arriving by Flight No. 6E 92 of Indigo Airline which will be landing at 06.30 on 28.10.2023.

Accordingly, in the presence of Panchas, the AIU officer has reached to the Airplane which has carried the flight No. 6E-92 arriving from Jeddah to Ahmedabad. The officers then check the passport of the passenger and deplaning from the flight. They find a passenger with the passport bearing No. N3400897 and the name Shri Asif (Seat No. 31B) and inform him that they will guide him from the airplane. The passenger is guided to the Immigration Hall where he gets his passport checked in. Thereafter, in the presence of the Panchas, the AIU officers guide the passenger to the Red Channel and asked passenger whether he is carrying any dutiable goods/ foreign currency or any restricted goods and whether he wishes to declare anything before Customs Authorities, to which the said passenger replied in negative.

2.1 The AIU officers under Panchnama proceedings dated 28.10.2023 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The said passenger was asked by officers whether he wished to be searched before a Gazetted officer or Magistrate for which he agreed to being

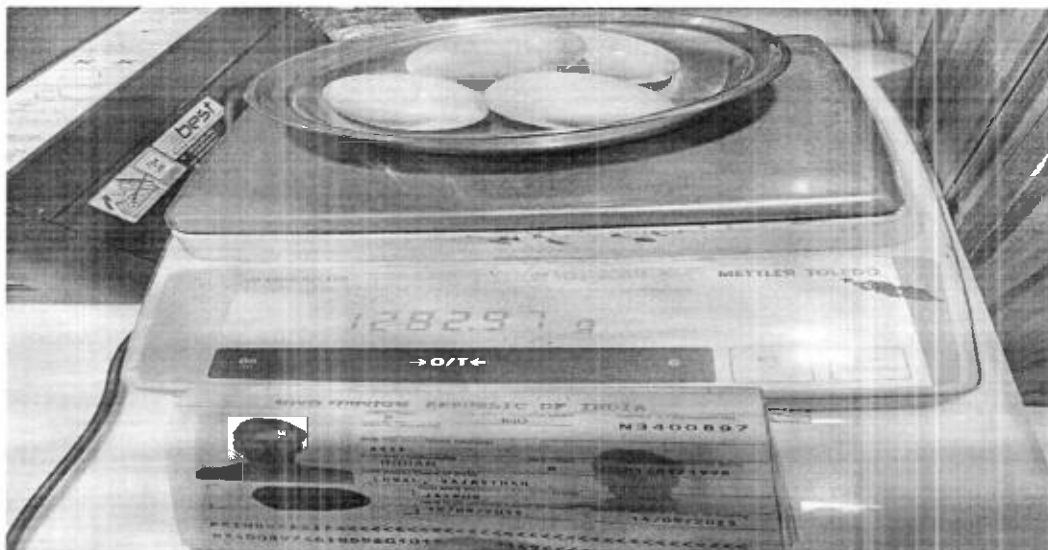
searched by a Gazetted officer. Before conducting the search, the AIU officers offer their personal search to which he denies and said that it is not necessary, and he has full faith in the officers. The officers asked the passenger for DFMD and put all the baggage in the Baggage Scanning Machine (BSM) placed in the hall in front of Belt No. 2 near green channel in the arrival hall of Terminal-2, SVPI Airport and his checked in and hand bags were scanned through the X-Ray Baggage Inspection machine, but nothing objectionable is observed. However, the officers of AIU have strong belief that the passenger carrying some contraband or dutiable item with him hence the officer repeatedly asked the passenger whether he is carrying anything dutiable but the passenger denies. After sustained interrogation, the passenger admitted that he has concealed gold paste in form of four capsules in his body i.e. rectum. Thereafter, the same is removed from his body in the bathroom and handed over to the AIU officer.

2.2 Now, the Customs officer calls the Government Approved Valuer and informs him that four capsule covered with white rubber have been recovered from one passenger and the passenger has informed that it is gold in paste form and hence, he needs to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informs the Customs officer that the testing of the said material is only possible at his workshop as gold must be extracted from such paste form by melting it and informs the address of his workshop.

2.3 Thereafter, Panchas along with the passenger Shri Asif and AIU officers leave the Airport premises in a Government Vehicle and reach at the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G Road, Ahmedabad-380006.

2.4 On reaching the above referred premises, the AIU officer introduces the Panchas as well as the passenger to one person named Shri Kartikey Vasantraai Soni, Government Approved Valuer. Here, after weighing the said capsules on his weighing scale, Shri Kartikey

Vasantrai Soni informs that the four capsules are weighing 1282.970 grams (gross weight) and photograph of the same is as under:



2.5 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of extracting the gold from the four capsules containing gold and chemical mix. After completion of extraction, Government Approved Valuer informed that gold bar weighing **1162.830** Grams having purity 999.0/24kt is derived from the 1282.970 Grams of semisolid paste substance consisting of gold paste and chemical mix (04 capsules). After testing and valuation, the Govt. Approved Valuer vide his certificate no 806/2023-24 dated 28.10.2023 confirmed that it is gold having purity 999.0/24 Kt. The govt. Approved Valuer summarized that this gold bar is made up of 24kt gold having purity 999.0 weighing 1162.830 grams derived from 1282.970 grams of semisolid paste substance consisting of (04 Capsules) Gold paste and chemical mix concealed inside the rectum of the passenger. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.62,66,258/-** (Rupees Sixty-Two Lakhs Sixty-Six Thousand Two Hundred Fifty-Eight only) and market value is **Rs.73,90,947/-** (Rupees Seventy-Three Lakhs Ninety Thousand Nine Hundred Forty-Seven only) which has been calculated as per the Notification No. 78/2023-Customs (N.T.) dated 23.10.2023 (gold) and Notification No. 76/2023-Customs (N.T.) dated 15.10.2023 (exchange rate).

2.6. The Photograph of recovered gold bar derived from the semisolid paste substance consisting of Gold paste and chemical mix capsules is as under :



The outcome of the said testing is summarized in below table.

Sl. No.	Details of Items	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	1162.830	999.0 24Kt.	73,90,947/-	62,66,258/-

3. The said pure gold of 24 Kt. having 999.0 purity retrieved from the semisolid paste substance consisting of gold paste and chemical mix capsule inside the rectum of the passenger, weighing 1162.830 Grams, has Market Value at Rs.73,90,947/- (Rupees Seventy Three Lakhs Ninety Thousand Nine Hundred Forty Seven only) and Tariff value at Rs.62,66,258/- (Rupees Sixty Two Lakhs Sixty Six Thousand Two Hundred and Fifty Eight only). The said gold recovered from the passenger was attempted to be smuggled inside India with intent to evade payment of Customs duty and was a clear violation of the provisions of the Customs Act, 1962. Thus, having a reasonable belief that the said gold Bar (1 piece) having weight 1162.830 Grams was attempted to be smuggled by the passenger, was liable for confiscation under the provisions of the Customs Act, 1962; they were placed under seizure vide Panchnama dated 28.10.2023 drawn by the Officer of Customs (AIU) under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962 **(Seizure Report dated 28.10.2023)**. Further, the gold, recovered from the passenger, was placed under seizure under section 110 of the Customs Act, 1962 vide Panchnama dated 28.10.2023.

The following travelling documents and identity documents of the passenger were recovered and withdrawn for further investigation:

- (i) Copy of Passport No. N3400897 issued at on 15.09.2015 valid up to 14.09.2025.
- (ii) Boarding pass of Indigo Flight number 6E-92 having seat No. 31B and sequence no. 172 from Dubai to Ahmedabad dated 27.10.2023.
- (iii) Passenger Manifest of Indigo Flight number 6E-92 from Dubai to Ahmedabad dated 27.10.2023 depicting name of Shri Asif at Sr. No. 26 Seq.No.172.

4. A statement of the passenger was recorded on 28.10.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he arrived from Dubai, Flight Number 6E-92 on 28.10.2023 having seat no. 31B, having Passport No. N3400897, at Sardar Vallabhbhai Patel International Airport, Ahmedabad. Furthermore, the passenger accepted that the said Gold Bar (1 Piece) having weight 1162.830 Grams which was derived from four capsules having gross weight 1282.970 concealed inside his rectum belonged to him only. Under his statement, the passenger admitted that the said gold is purchased by him only and borrowed money without interest from his friend which he will pay after sell of the gold in India, he is not a frequent flyer, prior to this he has traveled abroad for 1 to 2 times. He is working in Saudi Arabia as a labour in a factory. This time due to temptation to earn speedy/ quick and easy money he has purchased gold from Jeddah and not declared to Customs. The same was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before Customs by the pax. He stated that he was aware that smuggling of gold without payment of customs duty is an offence. Since, he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty. Further, he again confirmed the recovery of gold bar weighing 1162.830 grams of 999.0/24 Kt purity valued at Rs.73,90,947/- (market value) and Rs.62,66,258/- (tariff value) from him during the course of Panchnama dated 28.10.2023.

5.1 Therefore, on the basis of facts narrated above, the said gold Bar (1 Piece) weighing 1162.830 grams of 999.0/24 Kt purity valued at Rs.73.90,947/- (market value) and Rs.62,66,258/- (tariff value), derived from 1282.970 grams gold & chemical mix four capsules concealed inside the rectum of the passenger, appeared liable for confiscation, was placed under

seizure under Panchnama dated 28.10.2023 as the said gold totally weighing 1162.830 grams seized under Panchnama dated 28.10.2023 was "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. It also appeared that the said pax has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 28.10.2023 under Section 108 of the Customs Act, 1962. He has committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962.

5.2 In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold amounting to **Rs.73,90,947/-** totally weighing **1162.830** grams recovered from **Shri Asif** is more than Rs.50,00,000/-, hence this case is fit for arrest of the said passenger under Section 104 of the Customs Act, 1962.

The provisions of Section 104 (6) & (7) of the Customs Act, 1962 are reproduced as under:-

(6) Notwithstanding anything contained in the Code of [(6) Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to —

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

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

5.3 From the above, it is clear that cases other than those mentioned in 104 (6) are bailable offences. In the instant case, tariff value of the gold weighing **1162.830** grams is **Rs.62,66,258/-** and Market value is **Rs.73,90,947/-**, therefore, the offence committed by the above passenger was bailable offence as the value of goods was not more than Rs.1 Crore. Therefore, Superintendent of Customs (AIU), SVPI Airport, Ahmedabad was authorized to arrest **Shri Asif** under Section 104 of the Customs Act, 1962 and after arresting the passenger, he was offered bail subject to conditions in terms of Circular No. 38/2013-Cus dated 17.09.2013. The passenger, accepted the bail conditions, deposited bail bond amount of Rs.1,20,000/- and released on bail.

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 112 – Penalty for improper importation of goods, etc.–
Any person,-

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

VII) "SECTION 119- Confiscation of goods used for concealing smuggled goods – *Any goods used for concealing smuggled goods shall also be liable to confiscation.*
Explanation. – In this section, "goods" does not include a conveyance used as a means of transport.

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) Shri Asif improperly imported the Gold Bar one (01), weighing 1162.830 Grams of purity 999.0 (24KT) having Market Value at Rs.73,90,947/- (Rupees Seventy Three Lakhs Ninety Thousand Nine Hundred Forty Seven only) and Tariff value at Rs.62,66,258/- (Rupees Sixty Two Lakhs Sixty Six Thousand Two Hundred and Fifty Eight only) derived from the 1282.970 grams of Gold capsules concealed inside the rectum of the passenger (as discussed herein above) without declaring it to the Customs 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. The passenger had knowingly and intentionally imported the said Gold Bar improperly without declaring the same to the Customs authority under temptation to evade Customs Duty. Therefore, the gold imported by the passenger which was not declared to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Shri Asif 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) The passenger, by not declaring the contents of his baggage which included dutiable and prohibited goods to the proper officer of the Customs has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported gold capsule concealed inside the rectum by the passenger without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(i) and 111(j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.
- (d) The passenger, 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 the Customs Act, 1962, the burden of proving that the One Gold Bar, weighing 1162.830 grams having purity 999.0 (24KT), Market Value at Rs.73,90,947/- (Rupees Seventy Three Lakhs Ninety Thousand Nine Hundred Forty Seven only) and Tariff value at Rs.62,66,258/- (Rupees Sixty Two Lakhs Sixty Six Thousand Two Hundred and Fifty Eight only) derived/recovered from 1282.970 grams i.e. gold & chemical mix capsules concealed inside the rectum by the passenger without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Shri Asif.

8. Now therefore, **Shri Asif S/o Saraj Khan**, resident of Ward No. 24, Losal, Sikar, Rajasthan, holding Indian Passport bearing No. N3400897, is called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad, as to why:

- i) One Gold Bar, weighing **1162.830** grams having purity 999.0 (24KT) recovered/ derived from gold & chemical mix four capsules weighing 1282.970 grams, having Market Value at **Rs.73,90,947/-** (Rupees Seventy-Three Lakhs Ninety Thousand Nine Hundred Forty-Seven only) and Tariff value at **Rs.62,66,258/-** (Rupees Sixty-Two Lakhs Sixty Six Thousand Two Hundred and Fifty Eight only) placed under

seizure under Panchnama dated 28.10.2023 and seizure memo order dated 28.10.2023 should not be confiscated under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- ii) Penalty should not be imposed upon the passenger Shri Asif under Section 112(a) and 112(b) of the Customs Act, 1962.

Defence Reply and Personal Hearing:

9. Shri Asif S/o Saraj Khan has not submitted written reply to the Show Cause Notice.

9.1. Shri Asif S/o Saraj Khan 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 1162.830 grams of gold bar, obtained from four capsules containing paste of gold and chemical mixture weighing 1282.970 grams, having Tariff Value of Rs.62,66,258/- (Rupees Sixty-Two Lakhs Sixty-Six Thousand Two Hundred Fifty-Eight Only) and Market Value of Rs.73,90,947/- (Rupees Seventy-Three Lakhs Ninety Thousand Nine Hundred Forty-Seven Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 28.10.2023, 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 specific intelligence that one Passenger is suspected to be carrying restricted/ prohibited goods and therefore a thorough search of all the baggage of the passenger as well as their personal search are required to be carried out. Also, they need to guide the passenger from the airplane to ensure that the goods are not handed over to someone else. The passenger would be arriving by Flight No. 6E 92 of Indigo Airline which will be landing at 06.30 on 28.10.2023. Accordingly, the AIU officer reached to the Airplane which has carried the flight No. 6E-92 arriving from Jeddah to Ahmedabad. The officers found a passenger with the passport bearing No. N3400897 and the name Shri Asif (Seat No. 31B) and informed him that they will guide him from the airplane. The passenger is guided to the Immigration Hall where he gets his passport checked in. Thereafter, in the presence of the Panchas, the AIU officers guided the passenger to the Red Channel and asked passenger whether he is carrying any dutiable goods/ foreign currency or any restricted goods and whether he wishes to declare anything before Customs Authorities, to which the said passenger replied in negative.

The AIU officers asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The officers asked the passenger for DFMD and put all the baggage in the Baggage Scanning Machine (BSM), and his checked in and hand bags were scanned through the X-Ray Baggage Inspection machine, but nothing objectionable is observed. However, the officers of AIU have strong belief that the passenger was carrying some contraband or dutiable item with him hence the officers repeatedly asked the passenger whether he is carrying anything dutiable but the passenger denies. After sustained interrogation, the passenger admitted that he has concealed gold paste in form of four capsules in his body i.e. rectum. Thereafter, the same was removed from his body in the bathroom and handed over to the AIU officers.

I also find that the said 1162.830 grams of gold bar obtained from the 1282.970 grams of gold paste having Tariff Value of Rs.62,66,258/- and Market Value of Rs.73,90,947/- carried by the passenger Shri Asif S/o Saraj Khan 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 28.10.2023 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 Asif S/o Saraj Khan had carried gold paste weighing 1282.970 grams, (wherefrom 1162.830 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste) while arriving from Jeddah 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 1162.830 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 passenger & 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 1282.970 grams concealed in his body i.e. rectum (extracted gold bar of 1162.830 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 1162.830 grams (derived from the gold paste, totally weighing 1282.970 grams), having Tariff Value of Rs.62,66,258/-/- and Market Value of Rs.73,90,947/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 28.10.2023 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 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 passenger & 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 1282.970 grams concealed in his body (extracted gold bar of 1162.830 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 1162.830 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1282.970 grams, having Tariff Value of Rs.62,66,258/- and Market Value of Rs.73,90,947/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 28.10.2023. 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 1282.970 grams (Gold bar weighing 1162.830 grams derived from the same) by deliberately not declaring the same by him on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making 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 1162.830 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1282.970 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 said 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 said gold bar weighing 1162.830 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1282.970 grams), carried and undeclared by the Noticee with an intention to clear the same illicitly from the Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the passenger & Noticee in his statement dated 28.10.2023 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, the said gold bar weighing 1162.830 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 1282.970 grams carried by the passenger is therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold bar weighing 1162.830 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 1162.830 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 1282.970 grams from Jeddah 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 1282.970 grams by concealing in his body (extracted gold bar of 1162.830 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 **1162.830** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.62,66,258/-** (Rupees Sixty-Two Lakhs Sixty-Six Thousand Two Hundred Fifty-Eight Only) and Market Value of **Rs.73,90,947/-** (Rupees Seventy-Three Lakhs Ninety Thousand Nine Hundred Fourty-Seven Only) derived from 04 capsules of Semi Solid substance Material consisting of Gold & Chemical Mix, recovered and seized from the passenger **Shri Asif S/o Saraj Khan** vide Seizure Order under Panchnama proceedings both dated 28.10.2023, 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.25,00,000/-** (Rupees Twenty-Five Lakhs Only) on Shri Asif S/o Saraj Khan under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-186/SVPIA-D/O&A/HQ/2023-24 dated 05.02.2024 stands disposed of.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-186/SVPIA-D/O&A/HQ/2023-24 Date: 28.05.2024
DIN: 20240571MN000000CB75

BY SPEED POST AD

To,
Shri Asif S/O Saraj Khan,
Ward No. 24, Losal, Sikar,
Rajasthan.

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 Dy./Asstt. Commissioner of Customs (Prosecution), Ahmedabad.
- (v) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (vi) Guard File.