



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-269/SVPIA-C/O&A/HQ/2023-24
B	कारणबता ओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by Pax.
C	मूल आदेश संख्या/ Order-In-Original No.	:	18/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	30.04.2024
E	जारी करने की तारीख/ Date of Issue	:	30.04.2024
F	द्वारा पारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	To, Smt. Madeena Palagiri, 1-87-C2, Pagadalapalli Road, Kurabalakota, Chittoor, Andhra Pradesh - 517350.
(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), ४वीं मंजिल, हड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) 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 (5.00) 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 इयटी 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 Madeena Palagiri, a female passenger, holding Indian Passport No. V1346303, who arrived from Dubai to Ahmedabad by Flydubai Flight No. FZ-437 dated 05.02.2024 at Ahmedabad on 06.02.2024, was carrying 06 gold Bangles and 02 gold chains by way of concealment on her body. The passenger was intercepted by the officers of Air Intelligence Unit, SVPI A'bad when She arrived at Arrival Hall of T-2 Terminal of SVPI International Airport when she was about to exit through the green channel.

2. The passenger was questioned by the AIU officers as to whether she was carrying any contraband/ dutiable goods in person or in her baggage to which she denied. Then the officers scanned the baggage of the passenger in the X-Ray Baggage Scanning Machine, which is installed near Green Channel at Arrival Hall, Terminal II, SVPI Airport, Ahmedabad, but nothing objectionable found. Thereafter, Then the AIU officers offered their personal search to the passenger, but the passenger denied saying that she is having full trust on the AIU officers. Now, the AIU officers asked the passenger whether she want to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave her consent to be searched in front of the Superintendent of Customs. Now, the AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 Building, after removing all metallic objects from her body/ clothes. Further, the passenger readily removed all the metallic objects such as mobile, purse etc. and kept in a plastic tray and passed through the DFMD machine, and a beep sound is heard indicting something objectionable/ dutiable on her body/ clothes.

3. On thorough interrogation the passenger accepted that she is carrying 06 gold bangles and 02 gold chains. Further, she admitted that on arrival, she did not want to declare the same to Customs to clear it illicitly without payment of Custom duty.

4. Thereafter, the Government Approved Valuer was called for verification of said recovered item and the Government Approved Valuer after detailed verification, submitted the valuation report and confirmed that the said 06 bangles and 02 chains recovered from the passenger are made of pure gold. He informs that the net weight of 06 gold bangles and 02 gold chains recovered from Smt. Madeena Palagiri is as under:

S. No.	Details of items	Pcs	Net weight in gram	Purity	Market Value in Rs.	Tariff Value in Rs.
1	06 Gold Bangles	06	228.300	999.0/24 Kt	14,72,078/-	12,68,775/-
2	01 Gold Chain	01	151.800	999.0/24 Kt	9,78,806/-	8,43,627/-
3	01 Gold Chain	01	52.400	916.0/22kt	3,09,719/-	2,66,945/-
	Total	08	432.500		27,60,604/-	23,79,347/-

5. A statement of the aforesaid passenger was recorded under Section 108 of the Customs Act, 1962 wherein the passenger admitted that she did not want to declare the same to Customs to clear it illicitly for his personal gain and to avoid payment of Customs duty and had attempted to smuggle the said gold into India.

6. The said gold recovered from the passenger was clearly meant for commercial purpose and was seized under the reasonable belief that the same was liable for confiscation under the Customs Act, 1962. The seized goods have been handed over to the warehouse in-charge for safe keeping. Further, the said goods were also not declared before the Customs and was attempted to be smuggled into India by concealing the same by the pax.

7. LEGAL PROVISIONS RELEVANT TO THE CASE

- a)** As per para 2.26 of Foreign Trade Policy 2015-20 Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.
- b)** As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or

otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

- c) As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
- d) As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.
- e) As per Section 11(3) of the Customs Act, 1962 Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.
- f) As per Section 2(3) — "baggage" includes unaccompanied baggage but does not include motor vehicles
- g) As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
 - a. vessels, aircrafts and vehicles;
 - b. stores;
 - c. baggage;
 - d. currency and negotiable instruments; and
 - e. any other kind of movable property;
- h) As per Section 2(33) of Customs Act 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force.
- i) As per Section 2(39) of the Customs Act 1962 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962.
- j) As per Section 77 of the Customs Act 1962 the owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.
- k) As per Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

- l)** Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation under section 111(d) of the Customs Act, 1962.
- m)** Any dutiable or prohibited goods required to be mentioned under the regulation in an arrival manifest, import manifest or import report which are no so mentioned are liable to confiscation under Section 111(f) of the Customs Act, 1962.
- n)** Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111(i) of the Customs Act, 1962.
- o)** Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under Section 111(j) of the Customs Act, 1962.
- p)** Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77 are liable to confiscation under Section 111(l) of the Customs Act, 1962.
- q)** Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section(1) of section 54 are liable to confiscation under Section 111(m) of the Customs Act, 1962.
- r)** As per Section 112 of the Customs Act, 1962 any person, (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.
- s)** As per Section 119 of Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.
- t)** As per Section 123 of Customs Act, 1962 (1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods,

the burden of proving that they are not smuggled goods shall be-

- (a) in a case where such seizure is made from the possession of any person –
 - (i) on the person from whose possession the goods were seized; and
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

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

u) As per Customs Baggage Declaration Regulations, 2013 all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

CONTRAVICTION AND VIOLATION OF LAWS

8. It therefore appears that:

a) Smt. Madeena Palagiri had actively involved herself in the instant case of smuggling of gold into India. Smt. Madeena Palagiri had improperly imported six gold bangles & two gold chains ('the said gold' for short) of 24 Kt. gold, totally weighing **432.500** grams made of 24kt/ 999.00 purity gold, having tariff value of **Rs.23,79,347/-** (Rupees Twenty-Three Lakhs Seventy-Nine Thousand Three Hundred Fourty-Seven Only) and market value of **Rs.27,60,604/-** (Rupees Twenty-Seven Lakhs Sixty Thousand Six Hundred Four Only) without declaring it to the Customs. She opted for Green Channel to exit the Airport with a deliberate intention to evade the payment of Customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported gold by the passenger without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. Smt. Madeena Palagiri 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 her, the said passenger has violated the provisions of Baggage Rules, 2016, read with Section 77 of the Customs Act, 1962 and Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

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

d) Smt. Madeena Palagiri, by her above-described acts of omission/ commission and/ or abetment on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.

f) As per Section 123 of the Customs Act, 1962, the burden of proving that the said improperly imported gold articles, i.e. six gold bangles & two gold chains, totally weighing 432.500 grams having tariff value of Rs.23,79,347/- and market value of Rs.27,60,604/- without declaring it to the Customs, are not smuggled goods, is upon the passenger and the Noticee, Smt. Madeena Palagiri.

9. The passenger Smt. Madeena Palagiri vide her letter dated 12.02.2024, forwarded through his Advocate Shri Rishikesh J Mehra, submitted that she wants to finish up the case at the earliest, hence she waives the issue of written Show Cause Notice and the case may be decided on merits. She requested for waiver of Show Cause Notice and requested to take lenient view in the matter and release the gold.

10. PERSONAL HEARING:

Personal hearing in this case was fixed on 17.04.2024, wherein Shri Rishikesh J Mehra, Advocate appeared on behalf of the passenger/Noticee. Shri Rishikesh Mehra submitted written submissions dated 12.02.2024 and reiterated the same. He submitted that his client visited Dubai to meet her husband, who is NRI and staying in Dubai since 1991. While coming back to India, she brought gold jewellery, i.e. 06 gold bangles and 02 gold chains worn by her. He also submitted that the gold was purchased by his client from her husband's personal savings and borrowed money from friends & relatives. He reiterated that his client brought Gold for her personal and family use. He submitted copies of gold purchase bills (i) No. 5959 dated 20.05.2023, (ii) 6074 dated 30.01.2024 and (iii) No. 4959 dated 14.09.2022, issued by M/s. Plaza Jewellery Co. WLL, Dubai showing legitimate purchase of the said gold in the name of her husband. He further submitted that one gold chain was old and having purity of 22 Kt. purchased from M/s. Radhakrishna Jewellers, Andhra Pradesh. She was always wearing the said gold chain in her neck as 'Stridhan'. He submitted copy of purchase bill dated 13.10.2020 for the said old gold chain. This is the first time she brought the said gold jewellery. Due to ignorance of law the gold was not declared by the passenger. He further submitted that his client is ready to pay applicable fine and penalty and requested for Re-Export/release of seized gold. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

DISCUSSION & FINDINGS :

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

12. In the instant case, I find that the main issues that are to be decided is whether the said gold, i.e. six gold bangles & two gold chains, of 24Kt/ 999.0 purity & 22 Kt./ 916.0, totally weighing 432.500 grams and having tariff value of Rs.23,79,347/- (Rupees Twenty-Three Lakhs Seventy-Nine Thousand Three Hundred Fourty-Seven only) and market value of Rs.27,60,604/- (Rupees Twenty-Seven Lakhs Sixty Thousand Six Hundred Four only) carried by the passenger, which was seized vide Seizure Order dated 06.02.2024 under the Panchnama proceedings dated 06.02.2024 on the reasonable belief that the said goods were smuggled into India, is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not and whether the passenger is liable for penalty under the provisions of Section 112 of the Act or not.

13. I find that on the basis of suspicious movement of Smt. Madeena Palagiri, she was intercepted when she was trying to exit through green channel. The baggage of Smt. Madeena Palagiri was passed through the X-Ray Baggage Scanning Machine, on detailed examination of her baggage, nothing objectionable substance was noticed. Further, the passenger, Smt. Madeena Palagiri in presence of panchas confessed that she has carried gold in jewellery form viz. six gold bangles & two gold chains. Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in the present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and he intentionally wanted to clear the same without payment of Customs duty which is also admitted by her in her statement dated 06.02.2024. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which

are found to be violated in the present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

14. In this regard, I find that the Customs Baggage Rules, 2016 nowhere mentions about carrying gold in commercial quantity. It simply mentions about the restrictions on gold carried by the international passengers. Further, the Hon'ble Apex Court in Om Prakash Bhatia case reported at 2003 (155) ELT 423 (SC) has held that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, goods would fall within the ambit of 'prohibited goods' if such conditions are not fulfilled. In the instant case, the passenger had concealed/ hidden the gold and did not declare the same even after asking by the Customs officers until the same was detected. Hence, I find that in view of the above-mentioned case citing, the passenger by her act of concealing the gold with an intention of clearing the same illicitly from Customs area by not declaring the same to Customs has held the impugned gold liable for confiscation under Section 111 of the Customs Act, 1962.

15. I find that the said gold was placed under seizure vide Seizure Order dated 06.02.2024 under Panchnama proceedings dated 06.02.2024. The seizure was made under Section 110 of the Customs Act, 1962 on a reasonable belief that the said goods were attempted to be smuggled into India and liable for confiscation. In the statement recorded on 06.02.2024, the passenger had admitted that she did not want to declare the seized gold carried by her to the Customs on her arrival in the SVPI Airport so that she could clear it illicitly and evade the payment of Customs duty payable thereon. It is also on record that the Government Approved Valuer has tested and certified that the said gold was made of 24Kt/999.0 & 22Kt./ 916.00 purity, totally weighing 432.500 Grams, having tariff value of Rs.23,79,347/- and market value of Rs.27,60,604/-. The recovered gold was accordingly seized vide Seizure Order dated 06.02.2024 under Panchnama proceedings dated 06.02.2024 in the presence of the passenger and the Panchas.

16. 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 her statement, she has clearly admitted that she was aware that import of gold without payment of Customs duty was an offence but as she wants to save Customs duty, she had concealed the same 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.

17. Further, the passenger has accepted that she had not declared the said gold concealed/ hidden on her 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 said gold which was in her possession and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from her possession and which was kept undeclared with 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.

18. From the facts discussed above, it is evident that the passenger had carried the said gold weighing 432.500 grams, 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 totally weighing 432.500 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 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.

19. It is seen that the Noticee had not filled the baggage declaration form and had not declared the said gold which was in her 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 weighing 432.500 grams concealed by the passenger 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.

20. It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold weighing 432.500 grams, recovered, and seized from the passenger vide Seizure Memo/ Order dated 06.02.2024 under Panchnama proceedings dated 06.02.2024, 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 concealed/ hidden, 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 she has knowingly carried the gold and failed to declare the same on her arrival at the Airport.

21. It is seen that she has involved herself in carrying, keeping,

concealing, hiding and dealing with the impugned goods in a manner which she 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 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.

22. I find that based on suspicious movement of Smt. Madeena Palagiri, she was intercepted at green channel when she was trying to exit through green channel. At the time of scanning of her baggage, it was found that the passenger has concealed/ hidden six gold bangles & two gold chains, totally weighing 432.500 grams, which was hidden/ concealed. Hence, I find that the passenger was well aware about the fact that the gold is dutiable item and she intentionally wanted to clear the same without payment of Customs duty which is also admitted by her in her statement dated 06.02.2024. Further, the Baggage Rules, 2016 nowhere mentions anything about import of gold in commercial quantity. It simply mentions the restrictions on import of gold which are found to be violated in present case. Ignorance of law is not an excuse but an attempt to divert adjudication proceedings.

23. I find that the passenger confessed of carrying the said gold of 432.500 grams, concealed/ hidden 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.

24. It is quite clear from the above discussions that the impugned gold was concealed/ hidden 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 totally weighing 432.500 grams, having Tariff Value of Rs.23,79,347/- and Market Value of Rs.27,60,604/- recovered and seized from the passenger vide Seizure Memo/ Order dated 06.02.2024 under the Pachamama proceedings dated 06.02.2024. Despite having knowledge that the said gold/ goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said gold, totally weighing 432.500 grams by deliberately not declaring the same by her on arrival at the 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 her liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

25. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold, totally weighing 432.500 grams, made up of 24 Kt.

gold having purity 999.0, in the form of gold cut bars, was recovered from her possession and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

26. In view of the above discussions, I hold that the said gold weighing 432.500 grams, carried and undeclared by the passenger 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 has carried the said gold by concealing/ hidden to evade payment of Customs duty, to earn easy money. In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the said gold on payment of redemption fine, as envisaged under Section 125 of the Act.

27. Further, before the Hon'ble 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."

28. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble 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 Hon'ble 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.

29. 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).

30. The Hon'ble High Court of Madras in the matter of Commissioner of Customs reported in (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.

31. 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 07.10.2019 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 10.05.1993 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".

32. Given the facts of the present case before me and the judgements and rulings cited above, the said gold, totally weighing 432.500 grams carried by the passenger is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold, totally weighing 432.500 grams, placed under seizure on 06.02.2024 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.

33. I further find that the passenger had involved herself and abetted the act of smuggling of the said gold carried by her. She has agreed and admitted in her statement that she travelled with the said gold, totally weighing 432.500 grams from Dubai to Ahmedabad. Despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 432.500 grams by concealing/ hiding in the form of gold jewellery. Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she 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 Section 112(a)(i) of the Act and I hold accordingly.

34. Accordingly, I pass the following Order:

ORDER

- (i) I order absolute confiscation of the impugned gold, in the form of gold jewellery, i.e. six gold bangles & two gold chains, of 999.0/ 24Kt. & 916.0/ 22 Kt. purity gold, having total weight of **432.500 Grams** hidden/concealed and having total tariff value of

Rs.23,79,347/- (Rupees Twenty-Three Lakhs Seventy-Nine Thousand Three Hundred Fourty-Seven only) and market value of **Rs.27,60,604/-** (Rupees Twenty-Seven Lakhs Sixty Thousand Six Hundred Four only) recovered and seized from the passenger **Smt. Madeena Palagiri** vide Seizure Order dated 06.02.2024 under Panchnama proceedings dated 06.02.2024 under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

(ii) I impose a penalty of **Rs.9,00,000/-** (Rupees Nine Lakhs Only) on Smt. Madeena Palagiri under the provisions of Section 112(a)(i) of the Customs Act, 1962.

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

Vishal
30/4/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-269/SVPIA-C/O&A/HQ/2023-24 Date: 30.04.2024
DIN: 20240471MN0000619076

BY SPEED POST A.D.

To,
Smt. Madeena Palagiri,
1-87-C2, Pagadalapalli Road,
Kurabalakota, Chittoor,
Andhra Pradesh - 517350.

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.