



## 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/10-226/SVPIA-B/O&A/HQ/2023-24
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-226/SVPIA-B/O&A/HQ/2023-24 dated: 27.03.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	<b>75/ADC/VM/O&amp;A/2024-25</b>
D	आदेश तिथि/ Date of Order-In-Original	:	<b>26.06.2024</b>
E	जारी करने की तारीख/ Date of Issue	:	<b>26.06.2024</b>
F	द्वारा पारित/ Passed By	:	<b>Vishal Malani,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयात करना मामूल पता / Name and Address of Importer / Passenger	:	<b>Shri Abdul Razzak Irfan Ahmed Shaikh,</b> 13, Floor 3, Plot 53, Qureshi Bldg, New Kazi, Street, Null Bazar, Mandvi, Mumbai, Maharashtra-400003
(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, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (५.००) रुपये पे न्यायालय 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 साथ केवल पांच (५.००) रुपये पे न्यायालय 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 Abdul Razzak Irfan Ahmed Shaikh**, residing at 13, Floor 3, Plot 53, Qureshi Bldg., New Kazi, Street, Null, Bazar Mandvi, Mumbai, Maharashtra-400003 (hereinafter referred to as "the said person/ Noticee"), holding an Indian Passport Number No. W3676130, arrived by Flight No. TG 343 arrived from Bangkok to Ahmedabad at terminal 2 (Seat No. 54A) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one passenger who arrived by Flight No. TG 343 on 30.11.2023 and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad when the said passenger tried to exit through Green Channel at the arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad.

2.1 The AIU Officers asked the passenger in the presence of the panchas, if he had anything to declare to Customs, in reply to which he denied. The AIU officers again asked the above said passenger whether he has anything dutiable to declare to the customs authorities, to which the said passenger denied again. While he passed through the DFMD Machine, no beep sound/ alert was generated. Thereafter, the Officers in presence of the panchas, scanned the baggages of the passenger in X-ray Bag Scanning Machine placed opposite belt no. 2 at the arrival hall of Terminal-2, SVPIA, Ahmedabad. Some suspicious or dutiable goods are observed by the AIU officers in the check in baggages of the passengers. Hence, during the continuous and meticulous scanning of suspicious baggages, the AIU officers found some suspicious x-ray images of the metal kept inside the baggage.

3. The officers of AIU, in presence of the panchas, checked the suspicious baggages as mentioned above and details of the goods recovered from the Passenger's baggages are mentioned below:

Sr. No.	Name of the Passenger	Indian Passport No. (Identity Proof)	Goods recovered from personal frisking	Details of goods found in her check-in baggage
1	Shri Abdul Razzak Irfan Ahmed Shaikh	W3676130	--	(i) A rectangular shaped thin gold plate in the guise of Debit Card of Bank of India. (ii) A gold Kada coated with white rhodium. (iii) A Gold chain coated with white rhodium

4. The Government Approved Valuer, in presence of the Officers, panchas, and the passenger started testing and valuation of the said gold bars/ Jewellery. After testing and valuation, the Govt. Approved Valuer confirmed that it is 24 Kt. gold having purity 999.0. Now, the Govt. Approved Valuer summarized that this gold bar/ jewelry is made up of 24 Kt. gold having purity 999.0. The value of the gold bars has been calculated as per the Notification No. 89/2023-Customs (N.T.) dated 28.11.2023 (gold) and Notification No. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate).

5. The details of the Valuation of the said gold bar and jewellery coated with white rhodium recovered from the passenger is tabulated in below table:

Table-A

Sl. No.	Name of the Passenger	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Shri Abdul Razzak Irfan Ahmed Shaikh	Gold Bar	1	79.930	999.0 24 Kt	516987	442987
		Gold chain coated with white rhodium	1	61.400		397135	340290
		Gold kada coated with white rhodium	1	50.190		324629	278163
<b>Total</b>			<b>3</b>	<b>191.52</b>		<b>1238751</b>	<b>1061440</b>

6. A Statement of Shri Abdul Razzak Irfan Ahmed Shaikh, was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 01.12.2023, wherein he explained as under:

**Q-1.** His name, age and address stated above is true and correct. He is engaged in the business of printing stickers i.e. mobile skin/animation and related to graphics in Mumbai.

**Q-2:-** He lives with his mother at 13, Floor 3, Plot 53, Qureshi Bldg, New Kazi, Street, Null, Bazar Mandvi, Mumbai, Maharashtra-400003

**Q-3 :-** He studied 12<sup>th</sup> and his monthly income is approx.. Rs.40,000/-.

**Q.4:-** He frequently visits abroad relating to his business during the last two years. First time, he visited to Bangkok on 27.11.2023 related to his business and he stayed in the hotel room which was booked by himself. He had to come back to India on 30.11.2023. His return ticket from Bangkok to Ahmedabad also booked by himself.

**Q.5.** Nobody gave him these gold items concealed in the guise of ATM debit Card/ gold chain and gold kada coated with white rhodium. This is imported by him illegally with best of his knowledge inside his trolley bag.

**Q.6** Yes, he knew bringing of gold or handing and taking over of the gold in an illegal way is an offense.

**Q.7.** He stated that he never indulged in any smuggling activity in the past. This is the first time he has carried, a rectangular shaped thin gold plate in the guise of Debit Card of Bank of India, (ii) a gold Kada coated with white rhodium and (iii) Gold chain coated with white rhodium.

**Q.8.** On arrival at SVPI Airport at Ahmedabad at about 00:15 AM he was intercepted by AIU Officers when he tried to exit through green channel with Silver coloured trolley bag and a small light brown coloured carry bag and a black handbag. During by personal search and interrogation by the AIU Officers, he confessed that he has carried gold gross weighs of 192.710 (81.12 grams of gold in the guise of ATM Card + 50.19 grams of Kada coated with white rhodium + 61.40 grams of gold chain coated with white rhodium). The said gold items were taken by the officers to the govt. approved Valuer, who in his presence tested and reported that the gold bar recovered from the concealed gold items is having weight 191.520 grams, having tariff value of Rs.10,61,440/- and market value of Rs. 12,38,751/- The said gold total weighing 191.520 grams (total three pcs i.e. 1 Gold Bar, 1 Gold chain coated with white rhodium and 1 Gold kada coated with white rhodium gold bar) was seized by the officers under Panchnama dated 30.11.2023-01.12.2023 under the provision of Customs Act, 1962. He stated that he was present during the entire course of the Panchnama dated 30.11.2023-01.12.2023 and he confirmed the events narrated in the said panchnama drawn on 30.11.2023/01.12.2023 at Terminal -2, SVPI Airport, Ahmedabad. In token of its correctness, he put his dated signature on the said Panchnama.

**Q.10:-** He stated that he aware that smuggling of gold without payment of customs duty is an offence. Since, he was aware of the concealment of the gold items inside his trolley bags but he did not make any declarations in this regard. He confirmed the recovery of 191.520 grams, having tariff value of Rs.10,61,440/- and market value of Rs. 12,38,751/- of 191.520 grams of gold (total three pcs i.e. 1 Gold Bar, 1 Gold chain coated with white rhodium and 1 Gold kada coated with white rhodium) recovered from him which is hidden inside his trolley bag by him under the Panchnama dated 30.11.2023-01.12.2023. He opted for green channel so that he can attempt to smuggle the gold without paying customs duty.

Q.11. After reaching in Ahmedabad on 01.12.2023, he was not going to hand over these items to anyone else because these all are brought by him and for him.

4. The above said gold bar with a net weightment of 191.520 grams having purity of 999.0/24 Kt. involving Tariff value of tariff value of **Rs.10,61,440/-** (Rupees Ten Lakhs Sixty-One Thousand Four Hundred Forty Only) and market value of **Rs.12,38,751/-** (Rupees Twelve Lakhs Thirty Eight Thousand Seven Hundred Fifty One Only), recovered from the said person, which were attempted to be smuggled into India with an intent to evade payment of Customs duty which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar totally weighing 191.520 Grams which were attempted to be smuggled by Shri Abdul Razzak Irfan Ahmed Shaikh, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 191.520 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 01.12.2023, issued from F. No. VIII/10-200/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

7. In view of the above, **Shri Abdul Razzak Irfan Ahmed Shaikh**, residing at 13, Floor 3, Plot 53, Qureshi Bldg, New Kazi, Street, Null, Bazar Mandvi, Mumbai, Maharashtra-400003, was called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2<sup>nd</sup> Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:

- (i) The impugned Gold totally weighing **191.520** Grams having purity 999.0/24 Kt. and having Tariff value of **Rs.10,61,440/-** (Rupees Ten Lakhs Sixty One Thousand Four Hundred Forty Only) and market value of **Rs.12,38,751/-** (Rupees Twelve Lakhs Thirty Eight Thousand Seven Hundred Fifty One Only), recovered from him, who carried *total three pcs, i.e. 1 Gold Bar (converted from ATM Card), 1 Gold Chain coated with white rhodium and 1 Gold Kada coated with white rhodium gold bar*) recovered from him, which was hidden inside his trolley bag, was placed under seizure under panchnama proceedings dated 30.11.2023/ 01.12.2023 and Seizure Memo Order dated 01.12.2023, 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;
- (ii) Penalty should not be imposed upon the passenger, Shri Abdul Razzak Irfan Ahmed Shaikh under Section 112 of the Customs

Act, 1962, for the omissions and commissions mentioned hereinabove.

**Defence Reply :**

**8.** Smt. Tehzib J Kazmi, Advocate vide letter dated 14.06.2024, submitted written reply to the Show Cause Notice on behalf of the Noticee Shri Abdul Razzak Irfan Ahmed Shaikh, wherein she inter alia stated that -

- (i) The Noticee admits the possession, carriage, non-declaration and recovery of the seize gold, which is purchased by the Noticee for personal use only from Bangkok. A copy of purchase bill dated 30.11.2023, issued by M/s. Kim Thai Heng Gold Smith, Bangkok in the name of the Noticee is produced by the Advocate, showing legitimate purchase.
- (ii) There was no intention of selling this goods to anyone in India; the Noticee made cash payment for the same which he managed from his wife who lived in Bangkok. There is no intention to smuggle these goods in India.
- (iii) The gold was brought for personal use and the quantity is not of commercial purpose at all.
- (iv) The Noticee should be construed to be valid and treat the passenger to be rightful owner of the goods and offer him the option to redeem the seized gold in the present case.

**Personal Hearing:**

**9.** Personal Hearing in this case was fixed on 24.06.2024 in virtual mode. Smt. Tehzib J Kazmi, Advocate appeared for personal hearing on 24.06.2024 (in virtual mode) on behalf of the Noticee, Shri Abdul Razzak Irfan Ahmed Shaikh. Smt. Tehzib J Kazmi, Advocate submitted that her client has purchased gold for his personal and family use from Bangkok. After long stay at Bangkok and while coming back to India he brought gold as he was eligible passenger. She further submitted the said gold was purchased by her client from his own money, i.e.

personal savings and also produced copy of the gold purchase bill dated 30.11.2023. He was not aware about Customs law and therefore the same was not declared by him. There was no intention of selling of gold to anyone in India as well as there is no intention of smuggling of the gold in India. The quantity of gold is small and not for commercial use. She requested to take lenient view in the matter and release of the gold on payment of reasonable fine and penalty.

**Discussion and Findings:**

**10.** I have carefully gone through the facts of the case and submissions made by the Advocate of the Noticee during personal hearing and documents available on record.

**11.** In the instant case, I find that the main issue to be decided is whether the 191.520 grams of gold, obtained from gold chain & gold kada, coated with white rhodium and gold plate concealed in fake ATM Card, totally weighing 192.710 grams (gross), having Tariff Value of Rs.10,61,440/- (Rupees Ten Lakhs Sixty One Thousand Four Hundred Fourty Only) and Market Value of Rs.12,38,751/- (Rupees Twelve Lakhs Thirty-Eight Thousand Seven Hundred Fifty-One Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 01.12.2023, 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 passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs. The AIU Officers asked the passenger in the presence of the Panchas, if he had anything to declare to Customs, in reply to which he denied. The AIU officers again asked the above said passenger whether he has anything dutiable to declare to the customs authorities, to which the said passenger denied again. While he passed through

the DFMD Machine, no beep sound/ alert was generated. Thereafter, the Officers in presence of the panchas, scanned the baggage of the passengers in X-ray Bag Scanning Machine and on scanning, some suspicious or dutiable goods were observed by the AIU officers in the check in baggages of the passenger.

I also find that the said 191.520 grams of gold obtained from the 192.710 grams (gross) of gold chain & Kada & fake ATM Card, having Tariff Value of Rs.10,61,440/- and Market Value of Rs.12,38,751/- carried by the passenger Shri Shaikh Abdul Razzak Irfan Ahmed 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 01.12.2023 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, 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 concealed in his baggage 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 said gold 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 Shaikh Abdul Razzak Irfan Ahmed had carried the said gold weighing 192.710 grams (gross), (wherfrom 191.520 grams of gold having purity 999.0 recovered on the process of extracting gold from the said gold chain & kada, coated with white rhodium & fake ATM Card) while arriving from Bangkok 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 191.520 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 in his baggage 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 which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of the 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 192.710 grams (gross) concealed in his baggage, as discussed above, (extracted gold of 191.520 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.

The Advocate of the Noticee claimed that due to ignorance of the Customs laws, the Noticee did not declare the gold in his possession, is not sustainable, as the Noticee concealed the gold in ATM Card and gold kada and chain coated with Rhodium, which shows intention of the passenger to evade payment of customs duty and without declaring it to the Customs. I also find that the cases relied upon by the Advocate are having different facts and circumstances and hence not applicable in this case.

It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold weighing 191.520 grams, having Tariff Value of Rs.10,61,440/- and Market Value of Rs.12,38,751/- recovered and seized from the passenger vide Seizure Order under the Panchnama proceedings both dated 01.12.2023 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 concealed in his baggage, 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 of 192.710 grams (gross) concealed in his baggage, (extracted gold of

191.520 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 weighing 191.520 grams, having Tariff Value of Rs.10,61,440/- and Market Value of Rs.12,38,751/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 01.12.2023. 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 Gold, totally weighing 192.710 grams (gross) 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 the 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 of gold into India in baggage. The said gold bar weighing 191.520 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger had concealed the gold in his baggage. 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 totally weighing 191.520 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 01.12.2023 stated that he has carried the gold by concealment 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. 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 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".

**26.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold weighing 191.520 grams, carried by the passenger is, therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold weighing 191.520 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 the said gold weighing 191.520 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Dubai to Ahmedabad. Despite his knowledge and belief that the gold 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 of 192.710 grams (gross) by concealing in his baggage (Net weight of gold is 191.520 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

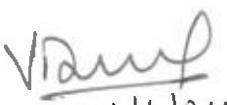
passenger is liable for penal action under Sections 112(a)(i) of the Act, and I hold accordingly.

**28.** Accordingly, I pass the following Order:

**ORDER**

- i) I order absolute confiscation of the gold totally weighing **191.520** grams (net weight), of 24Kt/999.0 purity having Tariff Value of **Rs.10,61,440/-** (Rupees Ten Lakhs Sixty One Thousand Four Hundred Fourty Only) and market value of **Rs.12,38,751/-** (Rupees Twelve Lakhs Thirty-Eight Thousand Seven Hundred Fifty-One Only) derived from the gold chain & kada coated with white rhodium & gold plate concealed in fake ATM Card, recovered and seized from the passenger Shri Shaikh Abdul Razzak Irfan Ahmed vide Seizure Order under Panchnama proceedings both dated 01.12.2023, 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.4,00,000/-** (Rupees Four Lakhs Only) on Shri Shaikh Abdul Razzak Irfan Ahmed under the provisions of Section 112(a)(i) of the Customs Act, 1962.

**29.** Accordingly, the Show Cause Notice No. VIII/10-226/SVPIA-B/O&A/HQ/2023-24 dated 27.03.2024 stands disposed of.

  
26/6/24  
**(Vishal Malani)**  
Additional Commissioner  
Customs, Ahmedabad

F. No: VIII/10-226/SVPIA-B/O&A/HQ/2023-24  
DIN: 20240671MN000000E867

Date: 26.06.2024

**BY SPEED POST AD**

To,

**Shri Abdul Razzak Irfan Ahmed Shaikh,**  
13, Floor 3, Plot 53, Qureshi Bldg,  
New Kazi, Street, Null,  
Bazar Mandvi, Mumbai, Maharashtra-400003

**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.