



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

A	फाइल संख्या/ File No.	:	VIII/10-251/SVPIA-A/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-251/SVPIA-A/O&A/HQ/2023-24 dated: 08.04.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	130/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	28.08.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	28.08.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Divyesh Ghanshyambhai Narigara, Shobhavadla Lashkar, Via Bhesan, Taluka:-Visavadar, Junagadh, Gujarat Pin: 362020.
(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, हुड्को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (५.००) 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 (५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ८.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्रूटी 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 Divyesh Ghanshyambhai Narigara, (hereinafter referred to as "the said passenger/ Noticee"), residing at Shobhavadla Lashkar, Via Bhesan, Taluka:- Visavadar, Junagadh, Pin: 362020, Gujarat, holding an Indian Passport No. U3763913 arrived from Bangkok to Ahmedabad by (Seat No:50 K) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of input from DRI, AZU, Ahmedabad and passenger profiling, one passenger Shri Divyesh Ghanshyambhai Narigara, who arrived by Thai Airways Flight No. TG 343 on 09.12.2023 from Bangkok to Ahmedabad at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad, was intercepted by the joint team of officers of DRI, AZU, Ahmedabad and Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 10.12.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2. The officers of DRI, AZU, Ahmedabad and officers of Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad identified Shri Divyesh Ghanshyambhai Narigara by his passport No. U3763913 and his boarding pass bearing Seat No. 50 K, in the Airplane TG 343 of Thai Airways on 09.12.2023. In presence of the panchas, the officers guided the passenger from the airplane to Immigration for immigration related formalities and thereafter to the Red Channel in the Arrival Hall of terminal T-2 of the SVPI Airport. In presence of the panchas, the officers asked Shri Divyesh Ghanshyambhai Narigara at the Customs Counter of the Red Channel, if he has anything to declare to the Customs, to which he denied. The officers offered their personal search to the passenger but the passenger politely denied and submitted that he is having full trust on the officers. The officers asked the passenger whether he wants to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which he consented to be searched in front of the Superintendent of Customs. The Officers in presence of the panchas, observed that Shri Divyesh Ghanshyambhai Narigara carried one hand bag and a trolley bag and the officers, in presence of the panchas carried out scanning of the hand bag and

trolley bag in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed.

2.1. Thereafter, the AIU officers in presence of the panchas asked Shri Divyesh Ghanshyambhai Narigara to walk through the Door Frame Metal Detector (DFMD) machine. Prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he wore on his body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and accordingly he passed through the DFMD Machine, but no beep sound/ alert was generated/heard.

2.2. The Officers, in presence of the panchas, asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough interrogation by the officers, in presence of the panchas, Shri Divyesh Ghanshyambhai Narigara confessed that he was carrying high valued dutiable goods as semi-solid substance consisting of gold & chemical mix and hided inside his underwear.

2.3. In presence of the panchas the officers, then asked the passenger to hand over the said undeclared gold substance consisting of gold & chemical mix. Thereafter, the passenger opened his trouser and removed the strip containing gold and chemical mix covered with white and black tape from his underwear and handed over to the officers. The officers then informed the panchas that they need to contact Shri Soni Kartikey Vasantrai, a Government Approved Valuer so as to confirm the contents of Gold in the strip containing gold and chemical mix recovered from the passenger concealed in his underwear. Accordingly, the officers telephonically contacted Shri Soni Kartikey Vasantrai and requested him to come to the office of the Air Intelligence Unit, SVPI Airport, Ahmedabad for testing and valuation purpose. In reply, the Government Approved Valuer informed the officers that the testing of the material is possible only at his workshop

as gold has to be extracted from semi-solid paste form by melting it and also informed the address of his workshop.

2.4. Thereafter, the Officers along with the passenger and the panchas left the Airport premises in a government vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, B/h Ratnam Complex, C.G. Road, Ahmedabad-380006. On reaching the above referred premises, the officers introduced the panchas, as well as the passenger to one person namely Mr. Soni Kartikey Vasantrai, Government Approved Valuer. Mr. Soni Kartikey Vasantrai, Government Approved Valuer asked the officers in presence of panchas that he would do the examination of the strip. First, he started the detailed examination of the strip recovered from Shri Divyesh Ghanshyambhai Narigara and after weighing the said strip on his weighing scale, Mr. Kartikey Vasantrai Soni provided detailed primary verification report of semi solid substance and informed that the strip covered with white and black tape contained semi solid substance consisting of Gold & chemical mix having Gross weight 1639.200 grams.

2.5. Thereafter, the Government approved valuer led the officers, panchas and the passenger to the furnace, which is located inside his business premises. Then, Mr. Kartikey Vasantrai Soni started the process of converting the semi solid material concealed in the strip into solid gold. The white and black covering of the strip was removed and semi solid substance consisting of Gold and Chemical mix was obtained which was put into the furnace and upon heating the semi solid substance, it turned into mixture of gold like material weighing **1407.300 grams.**

2.6. The said substance consisting of gold was tested by the valuer and the gold component was put in the furnace, heated and taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in the form of a bar. After completion of the procedure, Government Approved Valuer informed that **1 Gold bar weighing 1407.300 grams** having purity 999.0/ 24 Kt. derived from **1639.200 grams** of Strip containing gold and

chemical mix wrapped in the white and black colored tape. After testing the said bar, the Government Approved Valuer confirmed that it is pure gold and Shri Soni Kartikey Vasantrai issued Certificate, vide Certificate No. 968/2023-24 dated 10/12/2023, wherein it is certified that the gold bar is having purity 999.0/24kt, having **tariff value of Rs.78,18,072/-** (Rupees Seventy Eight Lakhs Eighteen Thousand and Seventy Two Only) and **market value of Rs.89,84,203/-** (Rupees Eighty Nine Lakhs Eighty Four Thousand Two Hundred and Three Only). The value of the gold bar has been calculated as per the Notification No. 89/2023-Customs (N.T.) dated 28.11.2023 (Gold) and Notification No. 90/2023-Customs (N.T.) dated 07.12.2023 (Exchange Rate).

2.7. Then, the Officers, panchas and the passenger came back to the SVPI Airport in a Government Vehicle, after the proceedings of the extraction of gold at the workshop, along with the extracted gold bar on 10.12.2023. Thereafter, the Officers in the presence of the panchas asked the passenger Shri Divyesh Ghanshyambhai Narigara, to produce the documents in his possession and he produced the below mentioned documents: -

- i) Copy of Stamped pages of Passport No. U3763913 issued at Ahmedabad on 27.01.2021 and valid up to 26.01.2031.
- ii) Boarding pass dated 09.12.2023 showing seat No. 50 K of Flight No. TG 343 from Bangkok to Ahmedabad.

The Officers in presence of the panchas and passenger carried out scrutiny of the documents of the passenger, and found that Shri Divyesh Ghanshyambhai Narigara, aged 23 years, holding Indian Passport No. U3763913 was issued on 27.01.2021 and his address as per Passport is Shobhavadla Lashkar, Via Bhesan, Taluka:-Visavadar, Junagadh, Pin: 362020, Gujarat, India.

2.8. The Customs officers informed that the copies of travelling documents and identity proof documents mentioned above taken into possession of the Officers for further investigation and the panchas as well as the passenger put their dated signatures on copies of all the above-mentioned travelling documents and the passenger manifest, as a token of having seen and agreed to the same.

3. The Officers informed the panchas as well as the passenger, that the recovered gold bar of 24Kt. with purity 999.0 weighing **1407.300** grams having tariff value of **Rs.78,18,072/-** (Rupees Seventy-Eight Lakhs Eighteen Thousand and Seventy-Two Only) and market value of **Rs.89,84,203/-** (Rupees Eighty-Nine Lakhs Eighty-Four Thousand Two Hundred and Three Only). The said passenger had attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the officers informed that they have a reasonable belief that the aforesaid gold bar was attempted to be smuggled by the passenger was liable for confiscation as per the provisions of the Customs Act, 1962, hence the aforesaid Gold was placed under seizure, vide Seizure Memo dated 10.12.2023, under Section 110 (1) & (3) of the Customs Act, 1962.

4. A Statement of Shri Divyesh Ghanshyambhai Narigara, residing at Shobhavadla Lashkar, Via Bhesan, Taluka:-Visavadar, Junagadh, Pin: 362020, Gujarat, holding an Indian Passport Number No. U3763913 was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 10.12.2023, wherein he inter alia stated that he took flight for Bangkok by flight Thai Smile of Thai Airways on 05.12.2023 from SVPI Airport, Ahmedabad; that after spending 4 days in Bangkok he boarded flight TG 343 of Thai Smile Airlines from Bangkok to Ahmedabad on 09.12.2023 and returned back to Ahmedabad on 09.12.2023; that the travel ticket was booked by an agent; that this was the first time when he took attempt to smuggle Gold by way of concealment of Gold paste between the layers of underwear. On being asked he further stated that this was his first abroad visit i.e. Bangkok and he used Ahmedabad as departure point and arrival points both. He further stated that a local person of Bangkok had contacted him as per the direction of travel agent whose details are not available to him and handed over to him an underwear which was unusually heavy and instructed him to wear the same before start of the journey from Bangkok to Ahmedabad. He stated that as the underwear was handed over to him by an unknown local person at Bangkok it appeared that the gold paste concealed in between the layers of the underwear was purchased by the said

unknown person only in Bangkok. He also stated that he was never asked by any one either by the travel agent or the local person at Bangkok for fund for purchasing of the gold paste for the purpose of smuggling without payment of Customs duty into India. On being asked he stated that the address of the Shiv Bhai is not known to him, however, he was instructed to deliver the gold paste concealed between the layers of the underwear to a person at Ahmedabad Airport who would contact him after arrival of the flight TG 343 at Ahmedabad. He confirmed the contents of the Panchnama dated 10.12.2023 and as a token of agreement and its correctness he signed each page of the Panchnama. He stated that he was in temptation of earning money and opted this illegal smuggling of gold though he was fully aware that smuggling of gold without payment of Customs duty is an offence but he did not make any declarations in this regard to evade the Customs duty. He confirmed the recovery of 1407.300 grams of Gold in Gold bar form, having tariff value of Rs.78,18,072/- and Market value of Rs.89,84,203/- having purity 999.0/24 KT as narrated under the Panchnama dated 10.12.2023 and he opted for green channel and attempted to smuggle the gold without paying Customs duty.

5. The above said gold bar with a net weight of **1407.300 grams** having purity of 999.0/24 Kt. involving tariff value of **Rs.78,18,072/-** (Rupees Seventy Eight Lakhs Eighteen Thousand and Seventy Two Only) and market value of **Rs.89,84,203/-** (Rupees Eighty Nine Lakhs Eighty Four Thousand Two Hundred and Three Only) recovered from the said passenger which was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealment in the strip wrapped in white and black tape containing gold in semi solid paste form in his underwear, which was in clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the Gold bar totally weighing 1407.300 grams which was attempted to be smuggled by Shri Divyesh Ghanshyambhai Narigara, is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, hence, the above said gold bar weighing 1407.300 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated

10.12.2023, issued from F. No. VIII/10-210/AIU/A/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

6. In terms of Board's Circular No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dtd. 23.10.2015 and 27/2015-Cus issued from 394/68/2013-Cus (AS) dtd. 23.10.2015 as revised vide circular No. 13/2022-Customs dtd. 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 were the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more.

6.1 Since, the value of gold recovered from Shri Divyesh Ghanshyambhai Narigara weighing 1407.300 grams is more than Rs.50,00,000/-, hence Shri Divyesh Ghanshyambhai Narigara was arrested under Section 104 of the Customs Act, 1962 on 10.12.2023. Subsequently, the passenger Shri Divyesh Ghanshyambhai Narigara was released on Bail on payment of Bail amount of Rs.1,40,000/- vide Challan No.35180 dtd.10.12.2023 as per bail bond dtd. 10.12.2023.

7. In view of the above, **Shri Divyesh Ghanshyambhai Narigara**, residing at Sadar Bazar, Opposite Head Post Office, Rajkot, Pin: 360001, Gujarat, India holding an Indian Passport Number No. U3763913, was called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why: -

(i) One Gold Bar weighing **1407.300** Grams having purity 999.0/24 Kt. and having tariff value of **Rs.78,18,072/-** (Rupees Seventy Eight Lakhs Eighteen Thousand and Seventy Two Only) and market value of **Rs.89,84,203/-** (Rupees Eighty Nine Lakhs Eighty Four Thousand Two Hundred and Three Only), derived from strip wrapped in white and black colored tape containing gold in semi solid paste form in the passenger's underwear was placed under seizure under the Panchnama proceedings dated 10.12.2023 and Seizure Memo

Order dated 10.12.2023, 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) The packing material i.e. white and black coloured tape, used for packing and concealment of the above-mentioned gold bar which was attempted to be smuggled into India, seized under panchnama dated 10.12.2023 and Seizure memo order dated 10.12.2023, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger Shri Divyesh Ghanshyambhai Narigara holding Indian Passport No. U3763913 under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

8. Shri Divyesh Ghanshyambhai Narigara has not submitted written reply to the Show Cause Notice.
9. Shri Divyesh Ghanshyambhai Narigara was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but neither the Noticee nor his representative 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 1407.300 grams of 01 gold bar, recovered/ derived from strip wrapped in white and black colored tape containing gold in semi solid paste form, having Tariff Value of Rs.78,18,072/- (Rupees Seventy-Eight Lakhs Eighteen Thousand Seventy-Two Only) and Market Value of Rs.89,84,203/- (Rupees Eighty-Nine Lakhs Eighty-Four Thousand Two Hundred Three Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 10.12.2023, 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; whether the packing material used for concealment of the said gold, i.e. white and black coloured tape is liable for confiscation under Section 119 of the Customs Act, 1962; 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 input from DRI, AZU, Ahmedabad and passenger profiling, one passenger Shri Divyesh Ghanshyambhai Narigara, who arrived by Thai Airways Flight No. TG 343 on 09.12.2023 from Bangkok to Ahmedabad was intercepted by the joint team of officers of DRI, AZU, Ahmedabad and Air Intelligence Unit (AIU), SVPI Airport, Customs, Ahmedabad. The officers guided the passenger from the airplane to Immigration for immigration related formalities and thereafter to the Red Channel in the Arrival Hall of terminal T-2 of the SVPI Airport. The officers asked Shri Divyesh Ghanshyambhai Narigara, if he has anything to declare to the Customs, to which he denied. The Officers asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough interrogation by the officers, Shri Divyesh Ghanshyambhai Narigara confessed that he was carrying high valued dutiable goods as semi-solid substance consisting of gold & chemical mix and hided inside his underwear. Thereafter, the passenger opened his trouser and removed the strip containing gold and chemical mix covered with white and black tape from his underwear and handed over to the officers.

13. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said strip containing gold and chemical

mix covered with white and black tape, which was weighing 1639.200 grams. After completion of extraction, the Government Approved Valuer informed that Gold Bar weighing **1407.300** Grams having purity 999.0/ 24kt is derived from the 1639.200 Grams of strip containing gold and chemical mix covered with white and black tape concealed inside underwear ('**the said gold/ gold bar**' for short). Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.78,18,072/-** (Rupees Thirteen Lakhs Twenty-Six Thousand One Hundred Eight only) and Market value is **Rs.89,84,203/-** (Rupees Eighty-Nine Lakhs Eighty-Four Thousand Two Hundred Three only). The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Tariff Value (Rs.)	Market Value (Rs.)
1.	Gold Bar	1	1407.300	999.0/ 24 Kt	78,18,072/-	89,84,203/-

14. Accordingly, the said gold bar having purity 999.0/24 Kt. weighing 1407.300 grams, recovered from Shri Divyesh Ghanshyambhai Narigara was seized vide Panchnama dated 10.12.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 1407.300 grams of 1 gold bar obtained from the 1639.200 Grams, having Tariff Value of Rs.78,18,072/- and Market Value of Rs.89,84,203/- carried by the passenger Shri Divyesh Ghanshyambhai Narigara 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 10.12.2023 under Section 108 of the Customs Act, 1962.

15. 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 wanted to save Customs duty, he had concealed the same in his clothes, i.e. underwear, 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.

16. Further, the passenger has accepted that he had not declared the said gold concealed by him, 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 1 gold bar, 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 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.

17. From the facts discussed above, it is evident that Shri Divyesh Ghanshyambhai Narigara had carried the said gold weighing 1407.300 grams, 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 of 24Kt/999.00 purity totally weighing 1407.300 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.

18. 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 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 1407.300 grams concealed by him, 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 said gold bar weighing 1407.300 grams, having Tariff Value of Rs.78,18,072/- and Market Value of Rs.89,84,203/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 10.12.2023 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 by him, 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.

19. I find that the Noticee confessed of carrying the said gold of 1407.300 grams concealed by him 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.

20. 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 with the wilful intention to smuggle the impugned goods. The said gold bar weighing 1407.300 grams, having Tariff Value of Rs.78,18,072/- and Market Value of Rs.89,84,203/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 10.12.2023. 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 said gold bar weighing 1407.300 grams, 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.

21. 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 the 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 bar weighing 1407.300 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 concealed the said gold in his clothes, i.e. underwear. 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.

22. In view of the above discussions, I hold that the said gold bar weighing 1407.300 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 10.12.2023 stated that he has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the said 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.

23. 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."

24. 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.

25. 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).

26. 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.

27. 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".

28. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 1407.300 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the

said gold bar weighing 1407.300 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.

29. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold bar weighing 1407.300 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Bangkok 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 1407.300 grams, having purity 999.0 by concealment. 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.

30. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of One gold bar weighing 1407.300 grams having purity of 999.0 (24 Kt.) recovered/ derived from strip wrapped in white and black colored tape containing gold in semi solid paste form in the passenger's underwear was placed under seizure under the Panchnama proceedings dated 10.12.2023, having Market Value at **Rs.89,84,203/-** (Rupees Eighty-Nine Lakhs Eighty-Four Thousand Two Hundred Three only) and Tariff Value at **Rs.78,18,072/-** (Rupees Seventy-Eight Lakhs Eighteen Thousand Seventy-Two Only), placed under seizure under Panchnama dated 10.12.2023 and seizure memo order dated 10.12.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- ii) I order absolute confiscation of the packing material, i.e. white and black coloured tape, used for packing and concealment of the above-mentioned gold bar, seized under Seizure memo order dated 10.12.2023, under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.28,00,000/-** (Rupees Twenty-Eight Lakhs Only) on Shri Divyesh Ghanshyambhai Narigara under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-251/SVPIA-A/O&A/HQ/2023-24 dated 08.04.2024 stands disposed of.

Vishal
28/8/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-251/SVPIA-A/O&A/HQ/2023-24 Date: 28.08.2024
DIN: 20240871MN00008184E8

BY SPEED POST AD

To,
Shri Divyesh Ghanshyambhai Narigara,
Shobhavadla Lashkar,
Via Bhesan, Taluka:-Visavadar,
Junagadh, Gujarat,
Pin: 362020.

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.