



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुरानेहाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
दूरभाष : (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-18/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या - तारीख / Show Cause Notice No. and Date	:	VIII/10-18/SVPIA-B/O&A/HQ/2024-25 dated: 16.04.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	132/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	आयातकानामऔरपता / Name and Address of Importer / Passenger	:	Shri Mushahid Husain Akthar Husain Ansari, Flat No.3, Kunal Apartment, Rahanuma Colony, Wadala Road, Nashik, Maharashtra-422 006.
(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 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 ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या डियूटी 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 Mushahid Husain Akhtar Hussain Ansari (hereinafter referred to as "the said person/ Noticee") residing at Flat No. 3, Kunal Apartment, Rahanuma Colony, Wadala Road, Nashik Maharashtra - 422 006, aged 40 years (DOB: 05.02.1983), holding passport number No. W2517790, travelled from Dubai to Ahmedabad on 01.12.2023 by Indigo Flight No. 6E1478 (Seat No. 28D) at SVPI Airport, Ahmedabad. On the basis of passenger profiling, one passenger who arrived by Indigo Flight No. 6E1478 and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 01.12.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggages.

2. Accordingly, on being asked about his identity by the AIU officers, one passenger identified himself as Mushahid Husain Akhtar Hussain Ansari, aged 40 years and shown his Passport, which is an Indian Passport bearing No. W2517790. The said passenger informed the officers that he has travelled by Indigo Flight No. 6E1478 from Dubai to Ahmedabad on 01.12.2023 and shown his Boarding Pass Bearing Seat No. 28D.

2.1 The AIU Officers asked the said Passenger in presence of the panchas, if he has anything dutiable or restricted/ prohibited to declare before the Customs, in reply to which he denied. The AIU Officers informed the passenger that he along with his accompanied officers will be conducting his personal search and detailed examination of his baggage. Here, the AIU Officers offered their personal search to which the passenger politely declined. Further, the AIU Officers asked the passenger whether they want to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which the passenger gave his consent to be searched in front of the Superintendent of Customs. 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 his body/ clothes. The passenger removed all the metallic objects such as Jewellery etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound heard indicating there is nothing objectionable/ metallic substance on his body/ clothes. Thereafter, the Officers, panchas and the said passenger, moved to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad.

2.2 The AIU Officers asked the said passenger again if he is having anything dutiable which is required to be declared to the Customs to which the said passenger denied. Thus, the AIU Officers, in presence of the Panchas, interrogated the said passenger and on sustained interrogation and repeated questioning, the passenger Shri Mushahid Husain Akthar Husain Ansari confessed that he carried one capsule containing gold paste concealed in his innerwear. Accordingly, the passenger has been taken to the AIU office, situated at Opposite Belt No. 2 of arrival hall, Terminal 2 by the Officer, where Shri Mushahid Husain Akthar Husain Ansari, in presence of AIU Officers, Panchas, removed one capsule covered with black coloured adhesive tape containing gold paste hidden in his innerwear. The Officers, in presence of panchas took the weight of one capsule removed by the said passenger, measured which came to approximately 533.860 Grams.

2.3 Thereafter, the Officers called the Government Approved Valuer and informed him that one black coloured capsule had been recovered from a passenger and hence, he needs to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the Customs (AIU) Officers that the testing of the said material is only possible at his workshop as the gold has to be extracted from such semi solid paste form by melting or burning it and also informed the address of his workshop.

2.4 Thereafter, the AIU Officers, the panchas along with the passenger left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad-380006.

2.5 On reaching the above referred premises, the AIU Officers introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, the Government Approved Valuer. Then, after weighment of the said semisolid substance covered with adhesive tape on his weighing scale, Shri Kartikey Vasantrai Soni informed that the weight of one capsule recovered from Shri Ansari Mushahid Husain Akthar Husain, contained gold paste wrapped in adhesive tape is 533.860 Grams.

2.6 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, led the Officers, panchas and the said passenger to the furnace, which is nearby his premises. Here, Shri Kartikey Vasantrai Soni started the process of converting one capsule containing semisolid substance consisting of gold and chemical mix recovered from the passenger, into solid gold. He removed the black colour adhesive tape of one capsule and brown coloured semisolid paste packed in transparent tape which was obtained, put into the furnace and upon heating the said substance, it turned into liquid material. The said substance in liquid state has been taken out of furnace, and poured into a mould and after got cooled for some time, it became golden coloured solid metal in form of a bar. After completion of the procedure, the Government Approved Valuer in presence of the Officers, panchas and the passenger took the weight which comes to net weight of 495.870 grams of the said golden coloured bar, which is derived from **533.860** Grams of capsules containing semisolid substance consisting of gold and chemical mix.

2.7 The Government Approved Valuer, in presence of the Officers, panchas, and the passenger tested and evaluated the said golden coloured bar and he confirmed that it is 24 Kt. gold having purity 999.0. The Govt. Approved Valuer summarized that this gold bar is made up of 24 Kt. gold having purity 999.0 weighing **495.870** Grams having market value of **Rs.32,07,287/-** (Rupees Thirty-Two Lakhs Seven Thousand Two Hundred Eighty-Seven Only) and having tariff value of **Rs.27,48,206/-** (Rupees Twenty-Seven Lakhs Forty-eight Thousand Two Hundred Six 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. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate). He submitted his valuation report to the AIU Officer and the Panchas and the said passenger put their dated signature on the said valuation report.

2.8 The details of the Valuation of the said gold bar is tabulated in below table:

Sl. No.	Details of Items	PCS	Gross Weight in Grams	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold bar derived from 533.860 Grams of capsule containing gold paste and chemical mix recovered from Shri Mushahid Husain Akthar Husain Ansari							
1.	Gold Bar	1	533.860	495.870	999.0 24Kt.	32,07,287/-	27,48,206/-

2.9 The proceedings of the conversion of gold items into gold bar at the workshop completed, the Officers, Panchas and the passenger came back to the Airport along with the extracted gold bar on 01.12.2023. Thereafter, on being asked by the AIU officers, in the presence of the panchas, the passenger produced the identity proof documents which have verified and confirmed by the AIU Officers. The panchas and the passenger put their dated signatures on the copies of the documents as token of having seen and agreed to the same.

2.10 Thereafter the Officers in the presence of the panchas, and the passenger, scrutinized the following identify proof documents produced the by the passenger, and found that Shri Mushahid Husain Akthar Husain Ansari, aged 40 years (DOB - 05.02.1983), S/o- Akhtar Husain Abdul Wahid Ansari, address (as per Passport), Flat No. 3, Kunal Aptt., Rahanuma Colony, Wadala Road, Nashik, Maharashtra – 422006.

- (i) Copy of Passport No. W2517790 issued at Dubai on 27.10.2022 and valid up to 26.10.2032.
- (ii) Boarding pass of IndiGo Flight No. 6E1478 from Dubai to Ahmedabad dated 01.12.2023 having seat No. 28D.

2.11 The AIU Officers shown the passenger Shri Mushahid Husain Akthar Husain Ansari in presence of panchas, the passenger's manifest of Indigo Flight No. 6E1478, in which name of Shri Ansari Mushahid

Husain Akthar Husain is mentioned at No. 0180 and Sr. No. 166. The Officers, the panchas as well as the passenger put their dated signatures on the copies of all the above-mentioned documents and the above passenger's manifest, as a token of having seen and agreed to the same.

2.12 The AIU Officers informed the panchas as well as the passenger that the recovered Gold bar of 24Kt. having purity 999.0/24 Kt. by net weighment of 495.870 Grams with the market value of Rs.32,07,287/- (Rupees Thirty Two Lakhs Seven Thousand Two Hundred Eighty Seven Only) and tariff value of Rs.27,48,206/- (Rupees Twenty Seven Lakhs Forty-Eight Thousand Two Hundred Six 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. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate), recovered from the above said passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty, which is a clear violation of the provisions of the Customs Act, 1962. Thus, the AIU officers informed that they have a reasonable belief that the above said Gold had been attempted to be smuggled by Shri Mushahid Husain Akthar Husain Ansari is liable for confiscation as per the provisions of the Customs Act, 1962; hence, the said gold bar along with packing material has been placed under seizure, vide Seizure Memo dated 01.12.2023, issued from F. No. VIII/10-201/AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

2.13 The AIU Officers, then, in presence of the panchas and the said passenger, placed the 24 Kt. gold bar of 999.0 purity weighing 495.870 grams recovered from the passenger in one transparent plastic box along with the respective packing materials i.e. black coloured adhesive tape and after placing the packing list on the same, tied it with white thread and seals it with the Customs lac seal in such a manner that same cannot be opened without tempering the Customs lac seal.

2.14 The Officers, the panchas, as well as the passengers put their dated signature on the packing lists placed over the boxes as a token

of having packed and sealed in the presence of the Officers, Panchas and passenger, Shri Mushahid Husain Akthar Husain Ansari. The said sealed transparent plastic container containing gold bar along with the packing materials are handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide Ware House Entry No. 5372 dated 01.12.2023.

2.15 The AIU Officers thereafter informed the passenger in presence of panchas that the copies of travelling documents and identity proof documents mentioned above duly signed by the Officers, the panchas, and the passenger have been taken into possession for further investigation.

3. A Statement of Shri Mushahid Husain Akthar Husain Ansari, 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:

Q1. His name, address and address stated above is true and correct. He involved in trading of Garments at Nasik and Bhiwandi, Maharashtra.

Q2. His lives with his family having his wife and one son and one daughter. His wife is a house wife, at present son is 3 years old and his daughter is seven months old.

Q.3- He studied upto 12th Std. His monthly income is approx. Rs.35,000/-

Q.4 He frequently visits Dubai and other places outside India during the last two to three years. This time, he went to Dubai on 04.11.2023 in Dubai and he stayed in the hotel room which was booked by himself at Dehra, Dubai. He had to come back to India on 01.12.2023, his return ticket from Dubai to Ahmedabad also booked by himself.

Q.5 This capsule of semi-solid substance of gold and chemical mix which is concealed inside his innerwear was given by his friend who lives in Dubai and his name is Ahmedbhai.

Q.6 Yes, he knows 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 one capsule consisting semi-solid substance of gold and chemical mix covered with black tape hidden inside his innerwear.

Q.8 On arrival at SVPI Airport at Ahmedabad at about 9.15 am, he was intercepted by AIU Officers when he tried to exit through green channel with one hand bag and two trolley bags. During personal search and interrogation by the AIU Officers. He confessed that he has hidden one capsule consisting semi-solid substance of gold and chemical mix covered with black tape

hidden inside his innerwear, having gross weight of 533.860 grams. The said items was taken by the Officers to the Govt. approved Valuer, who in his presence tested and reported that one gold bar recovered from the concealed gold items which is having weight of 495.870 grams having tariff value of Rs. 27,48,206/- and market value of Rs. 32,07,287/-. The said gold bar was seized by the Officers under Panchnama dated 01.12.2023 under the provisions of Customs Act, 1962. He stated that he was present during the entire course of the Panchnama dtd. 01.12.2023 and he confirmed the events narrated in the said panchnama drawn on 01.12.2023 at Terminal-2, SVPI Airport, Ahmedabad. In token of its correctness, he put his dated signature on the said panchnama.

Q.9 He stated that he is aware that smuggling of gold without payment of Customs Duty is an offence. Since he was aware of the concealment of one capsule consisting semi-solid substance of gold and chemical mix covered with black tape hidden inside his innerwear, but he did not make any declarations in this regard, he confirmed the recovery of 495.870 grams having tariff value of Rs. 27,48,206/- and market value of Rs. 32,07,287/-of the said 1 gold bar recovered from him which is hidden inside his trolley bag by him under the Panchnama dated 01.12.2023. He opted for green channel so that he could attempt to smuggle the gold without paying customs duty.

Q.10 After reaching in Ahmedabad on 01.12.2023, the gold is to be handed over to him to a person who was coming at the SVPIA at the time of arrival of the flight 6E 1478 on 01.12.2023. He don't know the person who was coming at the outside of the SVPIA, he was paid for this Rs. 10,000/-by his friend who lives in Dubai.

4. The above said gold bar with a net weight of 495.870 grams having purity of 999.0/24 Kt. involving market value of Rs.32,07,287/- (Rupees Thirty Two Lakhs Seven Thousand Two Hundred Eighty Seven Only) and tariff value of Rs.27,48,206/- (Rupees Twenty Seven Lakhs Forty-eight Thousand Two Hundred Six 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 the Customs Act, 1962. Thus, on a reasonable belief that the Gold bar totally weighing 533.860 Grams with a net weight of 495.870 Grams, which were attempted to be smuggled by the passenger, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar net weighing 495.870 grams, 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/10-201/AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

5. In view of the above, **Shri Mushahid Husain Akthar Husain Ansari**, (holding passport number No. W2517790) residing at Flat No.3, Kunal Apartment, Rahanuma Colony, Wadala Road, Nashik, Maharashtra - 422 006, 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 **495.870** Grams having purity 999.0/24 Kt. and involving market value of **Rs.32,07,287/-** (Rupees Thirty Two Lakhs Seven Thousand Two Hundred Eighty Seven Only) and tariff value of **Rs.27,48,206/-** (Rupees Twenty Seven Lakhs Forty-Eight Thousand Two Hundred Six Only), recovered from the Passenger who carried one capsule covered with black coloured adhesive tape containing gold paste hidden in his innerwear having gross weight of Gold Bar of 533.860 Grams and net weight of 495.870 Grams, which has been placed under seizure under panchnama proceedings dated 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) The packing materials seizure on the reasonable belief that the same was used for packing and concealment of the above-mentioned gold which were attempted to be smuggled into India in violation of Section 135, of the Customs Act, 1962, under panchnama dated 01.12.2023 and seized under Seizure memo order dated 01.12.2023, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

6. Shri Mushahid Husain Akthar Husain Ansari has not submitted written reply to the Show Cause Notice.

7. Shri Mushahid Husain Akthar Husain Ansari 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:

8. 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.

9. In the instant case, I find that the main issue to be decided is whether the 495.870 grams of 01 gold bar, recovered/ derived from the Passenger who carried one capsule covered with black coloured adhesive tape containing gold paste hidden in his innerwear, having Tariff Value of Rs.27,48,206/- (Rupees Twenty-Seven Lakhs Fourty-Eight Thousand Two Hundred Six Only) and Market Value of Rs.32,07,287/- (Rupees Thirty-Two Lakhs Seven Thousand Two Hundred Eighty-Seven Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 01.12.1023, 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. black coloured adhesive 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.

10. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling, one passenger who arrived by Indigo Flight No. 6E1478 and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers,

SVPI Airport, Customs, Ahmedabad. The AIU Officers asked the said Passenger in presence of the panchas, if he has anything dutiable or restricted/ prohibited to declare before the Customs, in reply to which he denied. The AIU Officers interrogated the said passenger and on sustained interrogation and repeated questioning, the passenger Shri Mushahid Husain Akthar Husain Ansari confessed that he carried one capsule containing gold paste concealed in his innerwear. Shri Mushahid Husain Akthar Husain Ansari, in presence of AIU Officers and Panchas, removed one capsule covered with black coloured adhesive tape containing gold paste hidden in his innerwear. The AIU Officers, took the weight of one capsule removed by the said passenger, which came to approximately 533.860 Grams.

11. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said one capsule covered with black coloured adhesive tape containing gold paste hidden in his innerwear, which was weighing 533.860 grams. After completion of extraction, the Government Approved Valuer informed that Gold Bar weighing **495.870** Grams having purity 999.0/ 24kt is derived from the 533.860 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.27,48,206/-** (Rupees Sixteen Lakhs Thirty Thousand Five Hundred One only) and Market value is **Rs.32,07,287/-** (Rupees Thirty-Two Lakhs Seven Thousand Two Hundred Eighty-Seven 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	495.870	999.0/ 24 Kt	27,48,206/-	32,07,287/-

12. Accordingly, the said gold bar having purity 999.0/24 Kt. weighing 495.870 grams, recovered from Shri Mushahid Husain Akthar Husain Ansari was seized vide Panchnama dated 01.12.1023, 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 495.870 grams of 1 gold bar obtained from the 533.860 Grams, having Tariff Value of Rs.27,48,206/- and Market Value of Rs.32,07,287/- carried by the passenger Shri Mushahid Husain Akthar Husain Ansari 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 01.12.1023 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 wanted to save Customs duty, he had concealed the same in his clothes, i.e. innerwear/ 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.

14. 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.

15. From the facts discussed above, it is evident that Shri Mushahid Husain Akthar Husain Ansari had carried the said gold weighing 495.870 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 of 24Kt/999.00 purity totally weighing 495.870 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.

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 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 495.870 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 495.870 grams,

having Tariff Value of Rs.27,48,206/- and Market Value of Rs.32,07,287/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 01.12.1023 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.

17. I find that the Noticee confessed of carrying the said gold of 495.870 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.

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 with the wilful intention to smuggle the impugned goods. The said gold bar weighing 495.870 grams, having Tariff Value of Rs.27,48,206/- and Market Value of Rs.32,07,287/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 01.12.1023. 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 495.870 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.

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 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 495.870 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. innerwear. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

20. In view of the above discussions, I hold that the said gold bar weighing 495.870 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 01.12.1023 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.

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 bar weighing 495.870 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 495.870 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 bar weighing 495.870 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 495.870 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.

28. Accordingly, I pass the following Order:

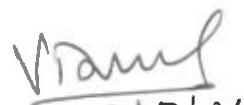
ORDER

- i) I order absolute confiscation of One gold bar weighing 495.870 grams having purity of 999.0 (24 Kt.) recovered/ derived from one capsule containing gold paste concealed in the passenger's innerwear was placed under seizure under the Panchnama proceedings dated 01.12.1023, having Market Value at **Rs.32,07,287/-** (Rupees Thirty-Two Lakhs Seven Thousand Two Hundred Eighty-Seven only) and Tariff Value at **Rs.27,48,206/-** (Rupees Twenty-Seven Lakhs Fourty-Eight Thousand Two Hundred Six Only), placed under seizure under Panchnama dated 01.12.1023 and seizure

memo order dated 01.12.2023, 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, used for packing and concealment of the above-mentioned gold, which were attempted to be smuggled into India in violation of Section 135, of the Customs Act, 1962, under Panchnama dated 01.12.2023 and seized under Seizure memo order dated 01.12.2023, under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.10,00,000/-** (Rupees Ten Lakhs Only) on Shri Mushahid Husain Akthar Husain Ansari under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-18/SVPIA-B/O&A/HQ/2024-25 dated 16.04.2024 stands disposed of.


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

F. No: VIII/10-18/SVPIA-B/O&A/HQ/2024-25 Date: 28.08.2024
DIN: 20240871MN000099409B

BY SPEED POST AD

To,
Shri Mushahid Husain Akthar Husain Ansari,
Flat No.3, Kunal Apartment, Rahanuma Colony,
Wadala Road, Nashik,
Maharashtra-422 006.

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.