



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-228/SVPIA-B/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-228/SVPIA-B/O&A/HQ/2023-24 dated: 04.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 74/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 26.06.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 26.06.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: To, Shri Fesal Babu Mansori, R/No-03, 2 nd Floor, Bldg. No-49, Underia, Street Chowki Mohalla, Mumbai, Maharashtra-400008.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case: -

Shri Fesal Babu Mansori, residing at R/No-03,2nd Floor, Bldg – No-49, Underia, Street Chowki Mohalla, Mumbai, Maharashtra-400008 (hereinafter referred to as “the said passenger/ Noticee”) holding an Indian Passport Number No. W2179691, arrived by Flight No. TG 343 from Bangkok to Ahmedabad at terminal 2 (Seat No. 54K) 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 under Panchnama proceedings dated 30.11.2023 (**RUD-01**) in presence of two independent witnesses for passenger’s personal search and examination of his baggages.

2. Accordingly, in the presence of the panchas, the officers intercepted a passenger with his baggage 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. On being asked about his identity by the AIU officers, the passenger identified himself as Shri Fesal Babu Mansori and shown his Passport which is an Indian Passport bearing No. W2179691, and his Boarding Pass which shows that he had travelled from Bangkok to Ahmedabad on 30.11.2023 by Flight No. TG 343 (Seat No. 54K) at SVPI Airport, Ahmedabad and the Officers have strong belief that the suspected passenger had carried some dutiable/ objectionable goods with him but not declared the same before the customs authority and the officers in presence of panchas found that the passenger carried bags as detailed in the table below:

Sr. No.	Name of the Passenger	Indian Passport No. (Identity Proof)	Seat No. as mentioned in Boarding Pass	Details of baggage
1	Shri Fesal Babu Mansori	W2179691	54K	Black coloured trolley bag and a black handbag

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.

2.2 The AIU officers, in presence of the panchas, offered his personal search to the passenger, but he denied and said that he had full trust on the AIU officers. Then, the AIU officers asked the passenger whether he wants his baggage to be checked in front of Executive Magistrate or Superintendent of Customs, a Gazetted Officer, in reply to which the said passenger gave his consent for his baggage may be searched in front of the Superintendent of Customs.

2.3 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. Now in presence of the Panchas, the AIU officers asked Shri Fesal Babu Mansori 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 worn on his body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as mobile, wallet etc. and kept it on the tray placed on the table and after that the officers asks him to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound/ alert is generated indicating some dutiable/ objectionable item is there. Thereafter, the Officers in presence of the panchas, scanned the baggage of the passengers in X-ray Bag Scanning Machine placed opposite belt no. 2 at the arrival hall of Terminal-2, SVPIA, Ahmedabad. On scanning, some suspicious or dutiable goods are observed by the AIU officers in the check in baggages of the passenger.

2.4 The AIU Officers thoroughly checked all items of the baggage of the passenger and the AIU officers asked the passenger again if he is having anything dutiable which is required to be declared to the Customs to which the said passenger once again denied. Thereafter, the AIU officers informed the panchas that they have doubt that the said passenger had carried some high value dutiable goods by way of concealed inside the trolley bag. 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.

2.5 The officers of AIU, in presence of the panchas, checked the suspicious baggage as mentioned above, and details of the goods recovered from the Passenger’s baggage 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 Fesal Babu Mansori	W2179691	--	(i) A rectangular shaped thin gold plate in the guise of VISA Card/ ATM Cum Shopping Card of South Indian Bank. (ii) A gold Kada coated with white rhodium. (iii) A Gold chain coated with white rhodium.

2.6 Thereafter, the AIU officers in presence of the Panchas called the Government Approved Valuer and informed him that (i) a rectangular shaped thin gold plate in the guise of VISA Card/ ATM Cum Shopping Card of South Indian Bank, (ii) a gold Kada coated with white rhodium and (iii) a Gold chain coated with white rhodium have been recovered from a passenger, Shri Fesal Babu Mansori and hence, requested him to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the AIU Officers that the testing of the said material is only possible at his workshop as the same has to be converted into gold bar by melting it and also informed the address of his workshop.

2.7 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. On reaching the above referred premises, the AIU officer introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. Here, after weighment together of the recovered (i) a

rectangular shaped thin gold plate in the guise of VISA Card/ ATM Cum Shopping Card of South Indian Bank, (ii) a gold Kada coated with white rhodium and (iii) a Gold chain coated with white rhodium recovered from Shri Fesal Babu Mansori, Shri Kartikey Vasantryai Soni informed that total weight is **192.540** grams (i.e. 50.19 grams of Kada coated with white rhodium + 61.24 grams of gold chain coated with white rhodium + 81.11 grams of gold in the guise of VISA Card) of gold is recovered from Shri Fesal Babu Mansori. The AIU officers took the photograph of the same as below:



2.8 Thereafter, the Officers in presence of the Panchas as well as in presence of the passenger, Shri Soni Kartikey Vasantryai tested the said gold kada and gold chain of the passenger and confirmed that the same are made up of pure gold. Shri Soni Kartikey Vasantryai prepared the valuation report for the same wherein he is certified that the said item mentioned above are made up of 24 Çarat gold of purity 999.0.

2.9 In the case of Visa Card/ ATM card, Shri Soni Kartikey Vasantryai led the Officers, Panchas and the Passenger to the furnace, which is nearby in his premises. Then, Shri Kartikey Vasantryai Soni started the process of converting the recovered thin rectangular shaped gold plates from Shri Fesal Babu Mansori to gold bar. The above said item were put into the furnace and after some time the substance in liquid state taken out of furnace, and poured into a mould and after cooling

for some time, it became golden coloured solid metal in form of one gold bar. After completion of the procedure, Government Approved Valuer took the total weight of the said golden coloured 1 bar which is derived from Visa Card and gold jewelry with white coated rhodium of kada and gold chain separately, recovered from the passengers, in presence of the Panchas, the Officers and the passengers, which comes to as below:

Sr. No.	Passenger Name	Gross weight	Net Weight
1	Shri Fesal Babu Mansori	192.540 grams	191.390 grams

2.10 The Government Approved Valuer, in presence of the Officers, the 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/ jewellery is made up of 24 Kt. gold having purity 999.0. 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 No. 928/2023-24 dated 01.12.2023 to the AIU Officers which is in Annexure-A and Annexure-B attached with the show cause notice. The Officers, the above panchas and the said passenger put their dated signatures on the said valuation reports.

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

Table-A

Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold Bar	1	79.960	999.0 24 Kt	5,17,181/-	4,43,154/-
Gold chain coated with white rhodium	1	61.240		3,96,100/-	3,39,404/-
Gold kada coated with white rhodium	1	50.190		3,24,629/-	2,78,163/-
TOTAL	3	191.390	-	12,37,911/-	10,60,720/-

2.12 The AIU officer took the photograph of the said gold bar and Jewellery separately which is as under:



2.13 The proceedings of the conversion of gold items into gold bar at the workshop completed, the Officers, the Panchas and the passenger came back to the Airport along with the extracted gold bar/ jewellery 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 by way of passenger's manifest.

2.14 The AIU Officers informed the panchas as well as the passenger that the gold bar and gold jewellery of 24 Kt. gold having purity 999.0 weight, Market Value & Tariff value as mentioned in Table-A above recovered from the above said passenger are 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 reasonable belief that the above said Gold totally weighing 191.390 grams is being attempted to be smuggled by Shri Fesal Babu Mansori, is liable for confiscation as per the provisions of the Customs Act, 1962; hence, the said gold bar and gold jewellery were placed under seizure.

2.15 The AIU officer, then, in presence of the panchas and in the presence of the said passenger namely Shri Fesal Babu Mansori, placed the 24 Kt. gold having purity 999.0 weighing **191.390 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*) recovered from Shri Fesal Babu Mansori in a transparent plastic boxes and after placing the packing list on the same, ties them with white thread and seals them with the Customs lac seal in such a manner that same cannot be opened without tempering the Customs lac seal.

2.16 The AIU Officers and the Panchas, as well as the passenger put their dated signatures on the packing list placed over the box as a token of having packed and sealed in presence of Panchas and in the presence of the passenger. The said one sealed transparent plastic container containing 1 Gold Bar, 1 Gold chain coated with white rhodium and 1 Gold kada coated with white rhodium gold bar each is handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide Ware House Entry No. 5370 dated 01.12.2023.

2.17 Thereafter, the AIU officers informed that the copies of travelling documents and identity proof documents mentioned above have been taken into possession for further investigation which are signed by the Officers, the panchas, and the passenger Shri Fesal Babu Mansori.

3. A Statement of Shri Fesal Babu Mansori, 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 related to electronic goods in Mumbai.

Q-2. He lives with his parent. His wife is a house wife and she is in Bangkok for the last one year.

Q-3. He passed HSC and his monthly income is approx.Rs. 30,000/-.

Q.4. He frequently visits as his wife is a citizen of Thailand and he also tried to settle there in the near future. He visited to Bangkok on

20.11.2023 and stayed his wife. To and fro tickets were booked by himself. He had to come back to India on 30.11.2023

Q.5. Nobody gave him these gold items concealed in the guise of VISA Card of South Indian Bank, gold chain and gold kada coated with white rhodium. This was imported by him illegally with best of his knowledge inside his trolley bag.

Q.6. Yes, he know 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 carried, a rectangular shaped thin gold plate in the guise of VISA Card of South Indian Bank, (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 Black coloured trolley bag and a black handbag. During by personal search and interrogation by the AIU Officers, he confessed that he carried gold gross weight of 192.540 (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). 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 191.390 grams, having tariff value of Rs.10,60,720/- and market value of Rs.12,37,911/-. The said gold total weighing 191.390 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 the 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 is 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 191.390 grams, having tariff value of Rs.10,60,720/- and market value of Rs.12,37,911/- 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 gold bar) recovered from him which is hidden inside his trolley bag by him under the Panchnama dated 30.11.2023-01.12.2023. He has 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 weighment of **191.390** grams having purity of 999.0/24 Kt. involving Tariff value of **Rs.10,60,720/-** (Rupees Ten Lakhs Sixty Thousand Seven Hundred Twenty Only) and market value of **Rs.12,37,911/-** (Rupees Twelve Lakhs Thirty Seven Thousand Nine Hundred eleven only), recovered from the said passenger, 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 191.390 Grams which were attempted to be smuggled by Shri Fesal Babu Mansori, are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 191.390 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/10-199/AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962.

5. In view of the above, Shri Fesal Babu Mansori, holding an Indian Passport Number No. W2179691, residing at R/No-03, 2nd Floor, Bldg No-49, Underia, Street Chowki Mohalla, Mumbai, Maharashtra-400008, was called upon to show cause in writing to the Additional Commissioner of Customs, as to why:

- (i) The said Gold (1 Gold Bar, 1 Gold chain coated with white rhodium and 1 Gold kada coated with white rhodium) totally weighing **191.390** Grams having purity 999.0/24 Kt. and having total Tariff value of **Rs.10,60,720/-** (Rupees Ten Lakhs Sixty Thousand Seven Hundred Twenty Only) and market value of **Rs.12,37,911/-** (Rupees Twelve Lakhs Thirty Seven Thousand Nine Hundred eleven only), recovered from **Shri Fesal Babu Mansori** recovered from him which is 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, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply :

6. 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 Fesal Babu Mansori, 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) His wife is residing at Bangkok from last 15 years and she is handling textile business.
- (iii) 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.
- (iv) The gold was brought for personal use and the quantity is not of commercial purpose at all.
- (v) 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:

7. 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 Fesal Babu Mansori. Smt. Tehzib J Kazmi, Advocate submitted that her client has purchased gold for their personal and family use from Bangkok.

His wife is settled in Bangkok and while coming back to India he purchased gold, as he was eligible passenger. She further submitted that 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 very small and not for commercial use. Due to ignorance of law the genuine lapse took place. She requested to take lenient view in the matter and release of the gold on payment of reasonable fine and penalty.

Discussion and Findings:

8. 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.

9. In the instant case, I find that the main issue to be decided is whether the 191.390 grams of gold bar, obtained from gold chain & gold kada, coated with white rhodium and gold plate concealed in fake ATM Card, totally weighing 192.540 grams (gross), having Tariff Value of Rs.10,60,720/- (Rupees Ten Lakhs Sixty Thousand Seven Hundred Twenty Only) and Market Value of Rs.12,37,911/- (Rupees Twelve Lakhs Thirty-Seven Thousand Nine Hundred Eleven 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.

10. 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 indicating some dutiable/ objectionable item is there. 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. The officers of AIU, in presence of the panchas, checked the suspicious baggage as mentioned above, and details of the goods recovered from the Passenger's baggage 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 Fesal Babu Mansori	W2179691	--	(i) A rectangular shaped thin gold plate in the guise of VISA Card/ ATM Cum Shopping Card of South Indian Bank. (ii) A gold Kada coated with white rhodium. (iii) A Gold chain coated with white rhodium.

I also find that the said 191.390 grams of gold obtained from the 192.540 grams (gross) of gold chain & Kada & fake ATM Card, having Tariff Value of Rs.10,60,720/- and Market Value of Rs.12,37,911/- carried by the passenger Shri Fesal Babu Mansori 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.

11. 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.

12. 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.

13. From the facts discussed above, it is evident that Shri Fesal Babu Mansori had carried the said gold weighing 192.540 grams (gross), (wherefrom 191.390 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 191.390 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.

14. 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 192.540 grams (gross) concealed in his baggage, as discussed above, (extracted gold of 191.390 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 191.390 grams, having Tariff Value of Rs.10,60,720/- and Market Value of Rs.12,37,911/- 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 paste 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.

15. I find that the Noticee confessed of carrying the said gold of 192.540 grams (gross) concealed in his baggage, (extracted gold bar of 191.390 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.

16. 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 191.390 grams, having Tariff Value of Rs.10,60,720/- and Market Value of Rs.12,37,911/- 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 192.540 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.

17. 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 191.390 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 paste 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.

18. In view of the above discussions, I hold that the said gold totally weighing 191.390 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.

19. 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."

20. 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.

21. 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).

22. 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.

23. 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”.

24. Given the facts of the present case before me and the judgements and rulings cited above, the said gold weighing 191.390 grams, carried by the passenger is, therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold weighing 191.390 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.

25. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold weighing 191.390 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 192.540 grams (gross) by concealing in his baggage (Net weight of gold is 191.390 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.

26. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the gold totally weighing **191.390** grams (net weight), of 24Kt/999.0 purity having Tariff Value of **Rs.10,60,720/-** (Rupees Ten Lakhs Sixty Thousand Seven Hundred Twenty Only) and market value of **Rs.12,37,911/-** (Rupees Twelve Lakhs Thirty-Seven Thousand Nine Hundred Eleven 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 Fesal Babu Mansori 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 Fesal Babu Mansori under the provisions of Section 112(a)(i) of the Customs Act, 1962.

27. Accordingly, the Show Cause Notice No. VIII/10-228/SVPIA-B/O&A/HQ/2023-24 dated 04.03.2024 stands disposed of.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-228/SVPIA-B/O&A/HQ/2023-24
DIN: 20240671MN0000312237

Date: 26.06.2024

BY SPEED POST AD

To,
Shri Fesal Babu Mansori,
R/No-03, 2nd Floor, Bldg. No-49,
Underia, Street Chowki Mohalla,
Mumbai, Maharashtra-400008.

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.