



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

A	फाइल संख्या/ File No.	:	VIII/10-206/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-206/SVPIA-D/O&A/HQ/2023-24 dated: 04.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	<b>77-A/ADC/VM/O&amp;A/2024-25</b>
D	आदेशतिथि/ Date of Order-In-Original	:	<b>28.06.2024</b>
E	जारीकरनेकीतारीख/ Date of Issue	:	<b>28.06.2024</b>
F	द्वारापारित/ Passed By	:	<b>Vishal Malani,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातकानामऔरपता / Name and Address of Importer / Passenger	:	<b>Shri Jishan S/o Shri Amir,</b> Mohalla Bhabbalpuri, Chak No. 22, Tahsil-Tanda, Badli, Rampur, U.P. -244925.
(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, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (₹.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (₹.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या डॉटी 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 Jishan S/o Shri Amir** (herein after referred to as 'the passenger/ Noticee') residing at Mohalla Bhabbalpuri, Chak No. 22, Tahsil-Tanda, Badli, Rampur, U.P.-244925 holding Indian Passport bearing No. V9474811 arrived from Dubai by Fly Dubai Flight No. FZ437 dated 23.10.2023 at SVP International Airport, Ahmedabad on 24.10.2023. On the basis of passenger profiling, officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU"), Sardar Vallabhbhai Patel International Airport (hereinafter referred to as "SVPIA"), Ahmedabad, guided the passenger namely Shri Jishan (seat no. 9B) in presence of independent Panchas from flight to the Immigration Hall where he gets his passport checked in. Thereafter, the passenger was guided to the Red Channel and asked whether he was carrying any dutiable goods or foreign currency or any restricted goods and whether he wished to declare anything before the Customs Authorities. In response, the passenger submitted that he did not wish to declare anything and that he did not carry any dutiable/objectionable goods with him. Thereafter, the passenger is guided to the Air Intelligence Unit office for his personal search and examination of his baggage as recorded under Panchnama proceedings dated 24.10.2023.

2. Thereafter, the passenger was again asked if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The AIU officers again offered their personal search to the passenger, but the passenger denied saying that he is having full trust on the AIU officers. Thereafter, the AIU officers asked the passenger whether he wanted to be checked in front of Executive Magistrate or Superintendent of Customs, in reply, the passenger gave his consent to be searched in front of the Superintendent of Customs. The AIU officers asked the 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 mobile, purse etc. and kept in a plastic tray and passed through the DFMD machine. However, no beep sound was heard indicating there was nothing objectionable/metallic substance on his body/ clothes. Thereafter, the said passenger along with the Panchas and the officers moved to the AIU office located opposite belt No.1 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with his baggage. Now, the AIU officers, in presence of the Panchas carried out scanning of his black-colored hand baggage in the X-ray Bag Scanning Machine placed opposite belt no. 1 at the arrival hall of Terminal-2, SVPIA, Ahmedabad, however, nothing suspicious was observed. Further, in presence of the Panchas, the AIU Officers scanned the blue colored trolley bag of the passenger in the X-ray Bag Scanning Machine. On scanning, some dark suspicious images were observed by the AIU officers inside the said blue colored trolley bag. Thereafter, the AIU Officers asked the passenger about that suspicious image appeared inside the said blue colored trolley bag, to which the said passenger could not give satisfactory answer. Thereafter, the AIU officers thoroughly checked all items of the trolley bag and observed some white Rhodium coated screws fitted inside the black color trolley bag. Now, the said white Rhodium coated screws were taken out with help of a screwdriver and plier. On counting, the numbers of these white Rhodium coated screws came to a total of 35 (thirty-five) screws. Thereafter, the AIU officers put the said 35 (thirty-five) white Rhodium coated screws in a tray and put the tray in the X Ray scanning machine, wherein dark image was observed on each of the said screw. The AIU officers informed the Panchas that the dark image appearing on the said screws reflect concealment of some heavy metal substance like gold in each of said white Rhodium coated screws. On being once again asked by the AIU officers, the passenger, in presence of the Panchas, admitted that those screws consisted of gold and he was trying to exit from the Airport with intent to smuggle the said gold without making any declaration to Customs and without payment of Customs duty.

2.1 Thereafter, the AIU officer called the Government Approved Valuer Shri Kartikey Vasantrai Soni, and informed him that 35 (thirty-five) white Rhodium coated screws has been recovered from a

passenger and the passenger has informed that it is gold and therefore he is required to come to the Airport for testing and valuation of the said material. In reply, the Government approved valuer informed the AIU Officer that the testing of the said material is only possible at his workshop as the 35 (thirty-five) white Rhodium coated screws needs to be extracted and must be converted into gold bar by melting it and informed the address of his workshop and requested officers to come at his workshop.

2.2. Thereafter, at around 13:00 hrs. on 24.10.2023, the AIU Officers along with Panchas and 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 officers introduced the Panchas as well as the passenger to Shri Kartikey Vasantrai Soni, Government approved valuer. Here, after weighing the 35 (thirty-five) white Rhodium coated screws on his weighing scale, Shri Kartikey Vasantrai Soni informed that the weight of the said material recovered from the passenger is 250.890 grams.

2.3 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of melting the 35 (thirty-five) white Rhodium coated screws. After completion of extraction, Government Approved Valuer informed that Gold bar weighing 245.160 Grams having purity of 999.0/24 Kt was derived from the 35 (thirty-five) white Rhodium coated screws weighing 250.890 grams recovered from trolley bag. After testing and valuation, the Govt. Approved Valuer vide his certificate no. 781/2023-24 dated 24.10.2023 confirmed that it is gold having purity 999.0/24 Kt. The Government Approved Valuer summarized that this gold bar is made up of 24kt gold having purity 999.0 weighing 245.160 grams derived from 250.890 grams 35 (thirty-five) white Rhodium coated screws fitted in a trolley bag of the passenger. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is Rs.13,21,118/- and market value is Rs.15,24,895/- which has been calculated as per the Notification No. 78/2023-Customs (NT) dated

23.10.2023 (gold) and Notification No. 76/2023-Customs (NT) dated 15.10.2023 (exchange rate).

-The outcome of the said testing is summarized in the below table.

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	245.160	999.0/ 24 Kt	15,24,895/-	13,21,118/-

3. The said pure gold of 24 kt having 999.0 purity retrieved from the 35 (thirty-five) white Rhodium coated screws fitted in a trolley bag of the passenger, weighing **245.160** Grams, has Tariff Value of **Rs.13,21,118/-** (Rupees Thirteen Lakh Twenty-one thousand one hundred eighteen only) and market Value of **Rs.15,24,895/-** (Rupees Fifteen Lakh twenty-four thousand eight hundred ninety-five Only). The said gold recovered from the passenger was attempted to be smuggled inside India with intent to evade payment of Customs duty and was a clear violation of the provisions of the Customs Act, 1962. Thus, having a reasonable belief that the said gold Bar (1 piece) having weight 245.160 Grams was attempted to be smuggled by the passenger, was liable for confiscation under the provisions of the Customs Act, 1962; they were placed under seizure vide Panchnama dated 24.10.2023 under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962. Further, the gold, recovered from the passenger, was placed under seizure under section 110 of the Customs Act, 1962 vide Panchnama dated 24.10.2023.

4. A statement of the passenger was recorded on 24.10.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he arrived from Fly Dubai Flight No. FZ 437 from Dubai to Ahmedabad dated 23.10.2023, having Passport No. V9474811, at Sardar Vallabhbhai Patel International Airport, Ahmedabad. Furthermore, the passenger accepted that the said Gold Bar (1 Piece) having weight 245.160 Grams which was derived from 35 (thirty-five) white Rhodium coated screws having gross weight 250.890 grams concealed in a trolley bag (as discussed herein above) belong to

someone else. He admitted that some unknown person has given this bag to him at Taxi stand of Dubai to handover in India to that person's friend, who will meet him at Delhi Railway Station, and he would give him Rs.20,000 in India for carrying/ trading this luggage. The same was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before the Customs by the pax. Since, he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying Customs duty. Further, he again confirmed the recovery of gold bar weighing 245.160 grams of 999.0/24 Kt purity valued at Rs.15,24,895/- (market value) and Rs.13,21,118/- (tariff value) from him during Panchnama dated 24.10.2023.

5. Therefore, on the basis of facts narrated above, the said gold Bar (1 Piece) weighing 245.160 grams of 999.0/24 Kt purity valued at Rs.15,24,895/- (market value) and Rs.13,21,118/- (tariff value), derived from 250.890 grams of 35 (thirty-five) white Rhodium coated screws fitted in a trolley bag of the passenger, appeared liable for confiscation, was placed under seizure under Panchnama dated 24.10.2023 as said gold totally weighing 245.160 grams seized under Panchnama dated 24.10.2023 was "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. It also appeared that the said pax has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 24.10.2023 under Section 108 of the Customs Act, 1962.

#### **Defence Reply and Personal Hearing:**

6. Shri Jishan has not submitted written reply to the Show Cause Notice.
7. Shri Jishan was given opportunity to appear for personal hearing on 19.06.2024; 21.06.2024 and 24.06.2024 but he did not 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 245.160 grams of 01 gold bar, obtained from the 35 screws weighing 250.890 grams, having Tariff Value of Rs.13,21,118/- (Rupees Thirteen Lakhs Twenty-One Thousand One Hundred Eighteen Only) and Market Value of Rs.15,24,895/- (Rupees Fifteen Lakhs Twenty-Four Thousand Eight Hundred Ninety-Five Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 24.10.2023, 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; the packing material used for packing and concealment of the seized goods, i.e. grey coloured trolley bag, is liable for confiscation under Section 119 of the Act; 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, officers of Customs, Air Intelligence Unit (hereinafter referred to as "AIU"), Sardar Vallabhbhai Patel International Airport (hereinafter referred to as "SVPIA"), Ahmedabad, guided the passenger namely Shri Jishan (seat no. 9B) in presence of independent Panchas from flight to the Immigration Hall where he gets his passport checked in. Thereafter, the passenger is guided to the Red Channel and asked whether he was carrying any dutiable goods or foreign currency or any restricted goods and whether he wished to declare anything before the Customs Authorities. In response, the

passenger submitted that he did not wish to declare anything and that he did not carry any dutiable/ objectionable goods with him. Thereafter, the passenger was guided to the Air Intelligence Unit office for conducting his personal search and examination of his baggage.

11. Thereafter, the passenger is again asked if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. While passing through the DFMD machine, no beep sound was heard indicating there was nothing objectionable/ metallic substance on his body/ clothes. The AIU officers, carried out scanning of his black-colored hand baggage in the X-ray Bag Scanning Machine, however, nothing suspicious was observed. Further, on scanning the blue colored trolley bag of the passenger, some dark suspicious images were observed by the AIU officers inside the said blue colored trolley bag. Thereafter, the AIU Officers asked the passenger about that suspicious image appeared inside the said blue colored trolley bag, to which the said passenger could not give satisfactory answer. Thereafter, the AIU officers thoroughly checked all items of the trolley bag and observed some white Rhodium coated screws fitted inside the said trolley bag. Now, the said white Rhodium coated screws were taken out with help of a screwdriver and plier. On counting, the numbers of these white Rhodium coated screws came to a total of 35 (thirty-five) screws. Thereafter, the AIU officers put the said 35 (thirty-five) white Rhodium coated screws in a tray and put the tray in the X Ray scanning machine, wherein dark image was observed on each of the said screw. The AIU officers informed the panchas that the dark image appearing on the said screws reflect concealment of some heavy metal substance like gold in each of said white Rhodium coated screws. On being once again asked by the AIU officers, the passenger admitted that those screws consisted of gold and he was trying to exit from the Airport with intent to smuggle the said gold without making any declaration to Customs and without payment of Customs duty.

12. Shri Kartikey Vasantrai Soni, the Government Approved Valuer, after completion of extraction, informed that one gold bar weighing 245.160 Grams having purity of 999.0/24 Kt was derived from the 35

(thirty-five) white Rhodium coated screws weighing 250.890 grams recovered from the trolley bag. The Government Approved Valuer summarized that this gold bar is made up of 24kt gold having purity 999.0 weighing 245.160 grams derived from 250.890 grams 35 (thirty-five) white Rhodium coated screws fitted in a trolley bag of the passenger. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is Rs.13,21,118/- and market value is Rs.15,24,895/-.

I also find that the said 245.160 grams of 1 gold bar obtained from the 250.890 Grams of gold screws having Tariff Value of Rs.13,21,118/- and Market Value of Rs.15,24,895/- carried by the passenger Shri Jishan 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 24.10.2023 under Section 108 of the Customs Act, 1962.

**13.** I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wanted to save Customs duty, he had concealed the same in his baggage 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 screws 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 (derived from 35 gold screws),

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 Jishan had carried the said gold weighing 250.890 grams, (wherfrom 245.160 grams of 1 gold bar having purity 999.0 recovered on the process of extracting gold from 35 Screws) 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 derived of 24Kt/999.00 purity totally weighing 245.160 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

250.890 grams concealed by him, (extracted gold bar of 245.160 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.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 245.160 grams, having Tariff Value of Rs.13,21,118/- and Market Value of Rs.15,24,895/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 24.10.2023 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.

**17.** I find that the Noticee confessed of carrying the said gold of 250.890 grams (gross weight) 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 245.160 grams, derived from the 35 screws, having Tariff Value of Rs.13,21,118/- and Market Value of Rs.15,24,895/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 24.10.2023. 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 two gold bars weighing 245.160 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 provisions of Section 112 of the Customs Act, 1962.

**19.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited

goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 245.160 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 bar in his baggage. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

**20.** In view of the above discussions, I hold that the said gold bar weighing 245.160 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 24.10.2023 stated that he has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

**21.** Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

*"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."*

**22.** In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was

concealment, the Commissioner's order for absolute confiscation was upheld.

**23.** Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

*89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).*

**24.** The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -*

*Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.*

**25.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government Of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 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 10-5-1993 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 245.160 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 245.160 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 245.160 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 245.160 grams by concealing having purity 999.0. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

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

**ORDER**

- i) I order absolute confiscation of the said gold bar weighing **245.160** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.13,21,118/-** (Rupees Thirteen Lakhs Twenty-One Thousand One Hundred Eighteen Only) and Market Value of **Rs.15,24,895/-** (Rupees Fifteen Lakhs Twenty-Four Thousand Eight Hundred Ninety-Five Only) as discussed above, recovered and seized from the passenger **Shri Jishan** vide Seizure Order under Panchnama proceedings both dated

24.10.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- ii) I order absolute confiscation of the packing material, i.e. Grey Coloured Trolley Bag used for concealment of 35 white rhodium coated gold screws under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.5,00,000/-** (Rupees Five Lakhs Only) on Shri Jishan under the provisions of Section 112(a)(i) of the Customs Act, 1962.

**29.** Accordingly, the Show Cause Notice No. VIII/10-206/SVPIA-D/O&A/HQ/2023-24 dated 04.03.2024 stands disposed of.

*Vishal*  
28/6/24

**(Vishal Malani)**  
Additional Commissioner  
Customs, Ahmedabad

F. No: VIII/10-206/SVPIA-D/O&A/HQ/2023-24 Date: 28.06.2024  
**DIN:** 20240671MN0000812438

**BY SPEED POST AD**

To,

**Shri Jishan S/o Shri Amir,**  
Mohalla Bhabbalpuri, Chak No. 22,  
Tahsil-Tanda, Badli,  
Rampur, U.P.-244925.

**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.