अपर आयुक्त, सीमा शुल्क कार्यालय
OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS
सीमा शुल्क सदन, सूरत/**CUSTOMS HOUSE, SURAT**
4th Floor, CUSTOMS HOUSE, Beside SMC Ward Office,
Althan-Bhimrad Road, Althan, Surat – 395007
Tel. No.- 0261-2990051

आज़ादी का अमृत महोत्सव

DIN: 20240671MN00008328C7

PREAMBLE

A	फ़ाइल संख्या / File No.	:	F.No. VIII/26-04/AIU/CUS/2023-24
B	कारण बताओ नोटिस संख्या और तारीख / Show cause Notice No. and date	:	F.No. VIII/26-04/AIU/CUS/2023-24 dated 17.08.2023
C	ऑर्डर-इन-ओरिजिनल नंबर / Order-in-Original No.	:	04/AB/ADC/SRT-AIRPT/2024-25
D	आदेश तारीख/ Date of Order-in-Original	:	18.06.2024
E	जारी करने की तिथि/ Date of Issue	:	18.06.2024
F	द्वारा पारित / Passed by	:	Anunay Bhati Additional Commissioner, Customs I/c of International Airport, Surat
G	आयातक/यात्री का नाम और पता/ Name and address of Importer/ Passenger	:	Ms. Fatiwala Yasmin Gafurbhai, 1/1958, Ganchiwad, At Post Gandevi, Navsari, Pin - 396 360, Gujarat, India

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. इस आदेश से अपने को व्यथित महसुस करने वाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९६२ के अंतर्गत फार्म स सी. ए. १ और २ दी जानी चाहिए| इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

३. अपील के साथ निम्नलिखित चीजे संलग्न की जाए।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश की प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो।

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

Brief Facts of the case:-

Ms. Fatiwala Yasmin Gafurbhai (hereinafter referred to as the "Passenger/Noticee"), aged 32 years, residing at 1/1958, Ganchiwad, At Post Gandevi, Navsari, Pin - 396 360, Gujarat, India, having passport No. W3803374 arrived at Surat International Airport on 18.06.2023 from Sharjah in Air India Express Flight No. IX172.

2. On the basis of specific intelligence that international passenger, Ms. Fatiwala Yasmin Gafurbhai was carrying valuable items i.e., Gold concealed in person or in her baggage; the Air Intelligence Unit (AIU) and Customs officers of Surat International Airport (hereinafter referred to as the "officers"), intercepted the passenger in the presence of panchas under Panchnama proceedings dated 18/19.06.2023. The passenger was found to carrying 02 bags i.e. One blue Coloured Trolley bag and one lady purse. Upon preliminary checking and frisking of the passenger, the Passenger denied that she was carrying any valuable items like Gold concealed in person or in her baggage. The lady officer informed the passenger that they would be conducting her personal search and detailed examination of her baggage. The officers offered their personal search to the passenger, but the passenger denied saying that she had full trust on them. Then, the officers asked the passenger whether she wanted to be searched in the presence of the Magistrate or the lady Superintendent (Gazetted Officer) of Customs, in reply to which the passenger gave her consent to be searched before the Superintendent of Customs. Then, the passenger was requested to go through the Door Frame Metal Detector (DFMD) located near the green channel after removing all metallic objects from her possession and body. The Passenger took off her wallet, phone, etc. She put them on a table, and went through the DFMD machine. However no beep sound was heard. Thereafter, the officers scanned all baggage/hand baggage scanned through XBIS Scanner machine. During scanning nothing objectionable was observed in the baggage.

3. Thereafter, on repeatedly asking / interrogating by the officers, Ms. Fatiwala Yasmin Gafurbhai accepted that she had two (02) capsules of gold concealed in her rectum. Thereafter the officers took her to the Happy Bones Orthopaedic Centre for CT scan/X-Ray after taking her consent for the same. In the X-ray report of Ms. Fatiwala Yasmin Gafurbhai, 02 capsule shaped shadow was seen in her pelvic area. Thereafter, Ms. Fatiwala Yasmin Gafurbhai was brought back to the Surat Airport Premises and taken to washroom in arrival hall, where she removed two (02) capsules wrapped in black coloured tape.

4. Then the customs officer informed the Government Approved Valuer and requested him to come to airport for testing and Valuation of the material in two (02) capsules recovered from the passenger. The Government Approved Valuer informed that the testing of the said material is only possible at his workshop located at GA Westfiled, Opp. Surya Kiran Apartment, Ghod Dod Road, Surat – 395 001. On reaching the above referred premises, the customs officers introduced the panchas as well as the passenger to one person named Vikasraj Juneja, Government Approved Valuer. Shri Vikasraj Juneja informed that the said 02 capsule (covered by a brown adhesive tape) consisting of gold paste is weighting 527.630 gms. After completion of the melting and extraction process, the Government Approved Valuer informs that 03 Gold Nuggets weighing 420.820 gms, having purity 99% have been obtained from the 02 capsules recovered from the said passenger. The market value of 420.820 gms gold Nugget is Rs.25,50,553/- (Rupees Twenty Five Lacs Fifty thousand Five Hundred Fifty Three only) and its tariff value is Rs.21,76,978/- (Rupees Twenty One Lac Seventy Six Thousand Nine Hundred Seventy Eight only) as per Notification No. 44/2023-Cus (NT) dated 15.06.2023 and 45/2023-Cus(NT) dated 15.06.2023. Thereafter, Shri Vikasraj Jueja, Government Approved Valuer issues valuation certificate No. SC08/2023 dated 19.06.2023. The Customs officers took the custody of the gold derived from the above capsules.

5. The following documents were withdrawn from the Passenger for further investigation:-

(I) Boarding Pass, from Sharjah to Surat, of Air India Express Flight No. IX-172 dated 18.06.2023, Seat No.3E.
(II) Copy of Aadhar Card No. 214517902850
(III) Copy of ticket bearing PNR No. OTC6TB from Sharjah to Surat by flight No. IX-172 on 18.06.2023

(Iv) Copy of Passport No. W3803374 issued at Ahmedabad on 01.11.2022 and valid upto 31.10.2032.

6. The above mentioned 03 Gold Nuggets weighing 420.280 gms having purity of 99 % have been obtained from 02 capsules recovered from the said passenger, having market value Rs.25,50,553/- (Rupees Twenty Five Lacs Fifty thousand Five Hundred Fifty Three only) and its tariff value is Rs.21,76,978/- (Rupees Twenty One Lac Seventy Six Thousand Nine Hundred Seventy Eight only), brought inside India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Therefore, the officers have placed above said 03 Gold Nuggets weighing 420.280 gms. under seizure under Panchnama proceedings dated 18/19.06.2023, on a reasonable belief that the same are attempted to be smuggled by Ms. Fatiwala Yasmin Gafurbhai, are liable for confiscation as per the provisions of the Customs Act, 1962.

7. A statement of Ms. Fatiwala Yasmin Gafurbhai was recorded on 19.06.2023 under the provision of Section 108 of the Customs Act, 1962, wherein he inter alia stated that:-

- She is residing at residing at 1/1958, Ganchiwad, At Post Gandevi, Navsari, Pin - 396 360, Gujarat, India, with her family, that she is beautician by profession; that she has studied till Class XII, and she can read, write and understand English, Hindi and Gujarati Language.
- She was shown and explained the panchnama dated 18/19.06.2023 drawn at International Airport, Surat by the officers of Customs AIU, International Airport, Surat which is in English and after understanding the same she put her dated signature on the panchnama in token of acceptance of the facts stated therein.
- She has earlier visited Dubai for religious Umra; that for her current trip she had gone to Dubai on 07.06.2023 from Chhatrapati Shivaji International Airport, Mumbai; that she acted as per her discretion and placed 02 Gold capsule in her rectum; that after placing the capsule in her body, she was dropped at the Sharjah Airport where she boarded the Air India Express flight No. IX 172 on 18.06.2023 and landed at Surat Airport on 18.06.2023 where she was intercepted by the Customs officers and the proceedings thereafter are recorded in Panchnama dated 18/19.06.2023.
- She was aware that import of Gold without payment of Customs duty is an offence, but she intended to evade Customs duty and therefore, she tried to smuggle the gold into the country; that as she was to evade payment of Customs duty and smuggle the gold by concealing the same, she did not declare the goods brought by her before any Customs Officer; that after clearing the immigration procedures, she collected her check-in baggage and during checkout she was intercepted by Customs officers and further procedures as stated in Panchnama dated 18/19.06.2023 was carried out.
- She was aware that he had committed an offence by evading payment of Custom duty for which she had to face the consequences as prescribed under the Customs Law.

8. Here it is pertinent to mention that on the date 18.06.2023, two passengers i.e., (1) Ms. Fatiwala Yasmin Gafurbhai and (2) Shri Rajab Imtiyaz Ismail were intercepted and panchnama was drawn for both the passengers, which is Relied Upon Document and mentioned in the Show Cause Notice. However, the relevant portion pertaining to Ms. Fatiwala Yasmin Gafurbhai is mentioned here. A separate show cause notice is issued to Shri Rajab Imtiyaz Ismail.

9. <u>LEGAL PROVISIONS RELEVANT TO THE CASE</u>

a) As per para 2.26 of Foreign Trade Policy 2015-20- "Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance."

b) As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 – "the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or

technology."

c) As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992- "All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."

d) As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 – "no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."

e) As per Section 11(3) of the Customs Act, 1962- "Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit."

f) As per Section 2(3) of the Customs Act, 1962 — "baggage" includes unaccompanied baggage but does not include motor vehicles

g) As per Section 2(22), of Customs Act, 1962 definition of 'goods' includes-
   a. vessels, aircrafts and vehicles;
   b. stores;
   c. baggage;
   d. currency and negotiable instruments; and
   e. any other kind of movable property;

h) As per Section 2(33) of Customs Act 1962,- "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 such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

i) As per Section 2(39) of the Customs Act 1962 –"'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113."

j) As per Section 77 of the Customs Act 1962- "the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

k) As per Section 110 of Customs Act, 1962- "if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods."

l) Any goods which are imported or attempted to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation under section 111 (d) of the Customs Act 1962.

m) Any dutiable or prohibited goods found concealed in any manner in any conveyance are liable to confiscation under Section 111 (e) of the Customs Act 1962.

n) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof are liable to confiscation under Section 111 (i) of the Customs Act 1962.

o) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission are liable to confiscation under Section 111 (j) of the Customs Act 1962.

p) As per Section 112 of the Customs Act 1962- "any person, (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty."

q) As per Section 119 of Customs Act 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

r) As per Section 123 of Customs Act 1962 (Burden of proof in certain cases)

(1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, [and manufactures thiseof,] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

s) As per Customs Baggage Declaration Regulations, 2013 all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.

t) As per Notification No.50/2017-Customs dated 30.06.2017 as amended, the rate of Basic Customs Duty is 12.5% as per Sl. No. 356(ii) subject to corresponding conditions stipulated under Sl. No. 41 which states that;

the gold or silver is, -

(a)carried by the eligible passenger at the time of his arrival in India, or

(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and

(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions that duty is paid inconvertible foreign currency;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

10. CONTRAVENTION AND VIOLATION OF LAWS

(a) Ms. Fatiwala Yasmin Gafurbhai had actively involved herself in the instant case of smuggling of gold into India. Ms. Fatiwala Yasmin Gafurbhai had improperly imported Gold Concealed in her rectum, totally weighing 420.280 gms gold is Rs.25,50,553/- (Rupees Twenty Five Lacs Fifty thousand Five Hundred Fifty Three only) and its tariff value is Rs.21,76,978/- (Rupees Twenty One Lac Seventy Six Thousand Nine Hundred Seventy Eight only) as per Notification No. 44/2023-Cus (NT) dated 15.06.2023 and 45/2023-Cus(NT) dated 15.06.2023 without declaring it to the Customs. She concealed gold in her rectum with a deliberate and malafide intention to evade the payment of customs duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. She is also not an eligible passenger who can import gold of the said quantity and value as per the conditions of Customs Notification No.50/2017 dated 30.06.2017 as amended. Neither the gold imported by her with commercial considerations without declaration before the proper officer of Customs can be treated as bonafide household goods or personnel effects. Ms. Fatiwala Yasmin Gafurbhai 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.

(b) By not declaring the contents of her baggage which included dutiable and prohibited goods to the proper officer of the Customs the passenger Ms. Fatiwala Yasmin Gafurbhai has contravened Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold by the passenger Ms. Fatiwala Yasmin Gafurbhai by concealing in her rectum without declaring it to the Customs is thus liable for confiscation under Section 111(d), (e), (i) and (j) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.

(d) Ms. Fatiwala Yasmin Gafurbhai, by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.

(e) Goods used for concealing the smuggled goods by the passenger Ms. Fatiwala Yasmin Gafurbhai are also liable for confiscation under Section 119 of the Customs Act, 1962.

(f) As per Section 123 of the Customs Act 1962, the burden of proving that the said improperly imported gold, totally weighing 420.280 gms, market value Rs.25,50,553/- (Rupees Twenty Five Lacs Fifty thousand Five Hundred Fifty Three only) and its tariff value is Rs.21,76,978/- (Rupees Twenty One Lac Seventy Six Thousand Nine Hundred Seventy Eight only) as per Notification No. 44/2023-Cus (NT) dated 15.06.2023 and 45/2023-Cus(NT) dated 15.06.2023 without declaring it to the Customs in her rectum without declaring it to the Customs, are not smuggled goods, is upon the passenger/Noticee, Ms. Fatiwala Yasmin Gafurbhai.

11. Therefore, Ms. Fatiwala Yasmin Gafurbhai was called upon to show cause in writing to the Joint/Additional Commissioner of Customs, I/c of Surat International Airport, Surat, having his office situated on 4th Floor, CUSTOMS HOUSE, Beside SMC Ward Office, Althan-Bhimrad Road, Althan, Surat – 395007 within 30 days from the receipt of the notice as to why :

(i) The recovered 03 gold Nuggets of purity 99% totally weighing 420.280 gms gold is Rs.25,50,553/- (Rupees Twenty Five Lacs Fifty thousand Five Hundred Fifty Three only) and its tariff value is Rs.21,76,978/- (Rupees Twenty One Lac Seventy Six Thousand Nine Hundred Seventy Eight only) as per Notification No. 44/2023-Cus (NT) dated 15.06.2023 and 45/2023-Cus(NT) dated 15.06.2023, seized under panchnama proceeding dated 18/19.06.2023 should not be confiscated under Section 111(d), 111(e), 111(i), and 111(j) of the Customs Act,1962;

(ii) A penalty should not be imposed on her under Section 112 of the Customs Act, 1962.

Defense reply and record of personal hearing

12. The noticee has not submitted any written submission to the Show Cause Notice issued to her.

13. The noticee was given an opportunity to appear in person to represent her case on 01.03.2024; 14.03.2024 & 28.05.2024, but she did not appear on the said dates. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for but she failed to appear.

Discussion and Findings

14. I have carefully gone through the facts of this case and find that the noticee has not submitted any written reply to the notice issued to her and also not appeared for personal hearing. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

15. In the instant case, I find that the main issues that are to be decided is whether the gold weighing 420.280 gms of 99% purity having market value of Rs. 25,50,553/- and tariff value of Rs. 21,76,978/-, recovered from Ms. Fatiwala Yasmin Gafurbhai, which were seized vide Seizure Order/ Memo dated 19.06.2023 under Panchnama proceedings dated 18/19.06.2023 on the reasonable belief that the said goods were smuggled into India, are liable for confiscation under Section 111 of the Customs Act,

1962 and whether the said passenger is liable for penalty under the provisions of Section 112 of the Act.

16. I find that it is on record that on the basis of specific intelligence, the passenger, Ms. Fatiwala Yasmin Gafurbhai was intercepted when she was attempting to exit the Airport by opting for Green Channel clearance without any declaration to Customs. I find that on being asked, the passenger denied to be carrying any valuable item and did not declare anything before the Customs. I further find that on persistent questioning, the passenger admitted to have hidden gold capsules in her rectum. Further, the X-ray report of the passenger revealed the presence of 02 capsule shaped shadow in her pelvic area. I find it on record that the said 02 capsules recovered from her body contained gold. I also find that the Govt. approved valuer, after extraction of gold from the aforesaid capsules, has certified that 03 gold nuggets weighing 420.820 gms (net weight) having purity of 99% have been extracted, having the market value of Rs. 25,50,553/- and tariff value of Rs. 21,76,978/- as per Notification No. 44/2023-Cus(NT) dated 15.06.2023 and Notification No 45/2023-Cus(NT) dated 15.06.2023. The gold weighing 420.820 gms (net weight), so recovered from the passenger was seized vide Seizure Memo/Order dated 19.06.2023, in the presence of the passenger and Panchas. I also find that the passenger had admitted that she was carrying the said goods concealed without declaring before the Customs officers to evade payment of Customs duty.

17. I further find that the passenger had neither questioned the manner of the panchnama proceedings at the material time nor contested the facts detailed in the panchnama during the course of recording her statement under Section 108 of the Customs Act, 1962. 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 her statement, the passenger has clearly admitted that she had intentionally carried the gold concealed in her body and did not declare the same on her arrival before the Customs with an intent to clear the same illicitly and evade payment of customs duty and thereby, violated provisions of 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. The case of smuggling of gold recovered from her possession, which was kept undeclared with an intent to smuggle the same, is conclusively proved. Moreover, I find that it is on record that the gold was concealed in her rectum in capsule form and the same was not declared before the Customs authorities upon her arrival at Surat Airport. It is also admitted by the passenger during her statement recorded under Section 108 of the Customs Act, 1962 that she had concealed the gold so that she could evade the eyes of Customs and smuggle the Gold into the country. Thus, the passenger violated Section 77 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.

18. From the facts discussed above, it is evident that Ms. Fatiwala Yasmin Gafurbhai had carried gold, totally weighing 420.820 gms (net weight), concealed in her rectum in capsule form, while arriving from Sharjah to Surat, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold liable for confiscation, under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962. By concealing the gold and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

19. It is seen that the noticee had not declared the gold which was in her possession, as envisaged under Section 77 of the Customs Act. The improperly imported gold by way of concealment in body without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee 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 noticee has rendered the gold

totally weighing 420.820 gms (net weight), having Market Value of Rs. 25,50,553/- and tariff value of Rs. 21,76,978/-, seized vide Seizure Memo/Order dated 19.06.2023 under Panchnama proceedings dated 18/19.06.2023, liable for confiscation under the provisions of Sections 111(d), 111(i), and 111(j) of the Customs Act, 1962. By using the modus of concealing the gold in capsule form inside the body, it is evident that the passenger was fully aware that the import of said goods is offending in nature and she had the malafide intention to clear the same illicitly without declaring it before the customs officers. It is therefore very clear that she has knowingly carried the gold and intentionally chose not to declare the same on his arrival at the Customs Airport and thereby rendered the said goods liable for absolute confiscation under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act, 1962. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same were liable for 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 Customs Act, 1962 thereby making her liable for penalty under Section 112 of the Customs Act, 1962.

20. I find that the noticee confessed to carrying gold concealed in her body and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities and thereby violated the provisions of para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. 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. The record before me shows that the passenger did not choose to declare the impugned goods carried by her with the willful intention to smuggle the same. 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 clandestinely remove the goods, by deliberately not declaring the same on arrival at airport with the willful intention to smuggle the impugned goods into India. I therefore, find that the passenger has committed an offence of the nature described in Section 112(a) of Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

21. I further find that the view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia, 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 was trying to smuggle it. The gold was recovered from the body of the passenger which was kept undeclared with an intention to smuggle the same and evade payment of customs duty. By using this modus, it is conclusively proved that the goods are offending in nature and therefore prohibited on its importation.

22. 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."*

23. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)] relating to smuggling of gold, the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. The High Court ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

24. Further I find that in a 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).*

25. 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.*

26. 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 case of 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.49515/92-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".

27. Given the facts of the present case and the judgements and rulings cited above, the gold carried by the passenger is liable to be confiscated absolutely. Moreover, the passenger in her statement recorded under Section 108 of the Customs Act, 1962 has accepted that she had concealed the gold in her body with the intention to smuggle the same into the country. I therefore hold in unequivocal terms that the gold weighing 420.280 gms (net weight) carried by the noticee and placed under seizure, is liable to absolute confiscation under Section 111(d), 111(i) and 111(j) of the Customs Act, 1962.

28. I further find that the passenger had involved herself in the act of smuggling of gold totally weighing 420.280 grams (net weight), carried by way of concealing in capsule form in her body. Despite the knowledge that such an act is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the passenger attempted to smuggle the same. Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled goods which she knew very well and had reason to believe that the same was 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 of the Customs Act, 1962 and I hold accordingly.

29. Accordingly, I pass the following Order:

ORDER

(i) I order absolute confiscation of three gold nuggets of purity 99% totally weighing 420.280 gms, having market value of Rs. 25,50,553/- (Rupees Twenty Five Lakh Fifty Thousand Five Hundred Fifty Three Only) and tariff value of Rs. 21,76,978/- (Rupees Twenty One Lakh Seventy Six Thousand Nine Hundred Seventy Eight Only), recovered and seized from the passenger, Ms. Fatiwala Yasmin Gafurbhai vide Seizure Memo/Order dated 19.06.2023, under the provisions of Sections 111(d), 111(i) and 111(j) of the Customs Act 1962;

(ii) I impose a penalty of Rs. 25,50,553/- (Rupees Twenty Five Lakh Fifty Thousand Five Hundred Fifty Three Only) on Ms. Fatiwala Yasmin Gafurbhai under the provisions of Section 112(a)(i) of the Customs Act 1962.

(Anunay Bhati)
Additional Commissioner

BY SPEED POST AD/E.MAIL/NOTICE BOARD /WEBSITE/ OTHER LEGALLY PERMISSIBLE MODE

F.No. VIII/26-04/AIU/CUS/2023-24

DIN: 20240671MN00008328C7 Dated: 18.06.2024

To
Ms. Fatiwala Yasmin Gafurbhai,
1/1958, Ganchiwad, At Post Gandevi,
Navsari, Pin - 396 360,
Gujarat, India

Copy to:-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy Commissioner of Customs (TRC), Ahmedabad.
3. The Superintendent (Recovery), Customs, Surat International Airport.
4. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official website.
5. Guard File.

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CUSTOMS DIVISION SURAT.
20 JUN 2024
सं. / No. 4
हस्ताक्षर / Sign.