



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमा शुल्क भवन," पहली मंजिल ,पुराने हाईकोर्टके सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

दूरभाष : (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

PREAMBLE

A	फाइलसंख्या/ File No.	:	VIII/10-107/SVPIA-D/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by the Pax.
C	मूलआदेशसंख्या / Order-In-Original No.	:	109/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	26.07.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	26.07.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Amirkhan Aiyubkhan Khan, 1658/3, Sindhiwad, Near Jamudi Ni Pole, Jamalpur, Ahmedabad, Pin – 380 001.
(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), 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 ड्यूटी 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 Amirkhan Aiyubkhan Khan (hereinafter referred to as the 'passenger'), Age 35 years (D.O.B. 22/11/1991), resident of "1658/3, Sindhiwad, Near Jamudi Ni Pole, Jamalpur, Ahmedabad, Gujrat - 380001", holding an Indian Passport No. V5916371 had arrived at Sardar Vallabhbhai Patel International Airport, Ahmedabad from Dubai by Spicejet Flight No. SG 16 (Seat No. 22A) from Dubai on 27/05/2024. The passenger had opted for green channel but on the basis of his profiling, his personal search and examination of the baggage were required and hence he was intercepted by the Air Intelligence Officers, Customs, SVP International Airport, Ahmedabad.

2. The officers of Customs, Air Intelligence Unit (AIU), SVPIA, Ahmedabad identified the said passenger from his passport and intercepted him when he was about to exit through the green channel for personal search and examination of his baggage under Panchnama proceedings dated 27/05/2024 in presence of two independent Panch witnesses. The passenger was asked as to whether he is carrying any dutiable goods or foreign currency or any restricted goods declarable to Customs, in reply he denied of having any such goods. The AIU officers offered their personal search to the passenger but he denied saying that he is having full trust on the AIU officers. He was subject to be checked in the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, therefore he was asked as to whether he wanted to be checked in front of executive magistrate or Superintendent of Customs, in reply the said passenger gave his consent to be searched in front of the Superintendent of Customs.

2.1 Thereafter, the baggage of the passenger was checked one by one by the AIU officers in the baggage Scanning machine installed near the Green Channel of the arrival hall of Terminal-2. On scanning the baggage, the officers informed that baggage were showing some suspicious dark image. The officers then requested the passenger to open the baggage and re-examined all the goods of the baggage thoroughly in BSM machine and found that one electronic device i.e. electronic egg boiler was having dark images which showed that some

heavy metal was concealed inside the electronic device. The egg boiler was then opened in front of the passenger and the panch witnesses and found some white coloured round shaped shown in the electronic egg boiler. Further, on cutting the white coloured round shaped object a yellow-coloured metal found. On being asked the passenger agreed that he had carried gold in the electronic egg boiler in concealed form.

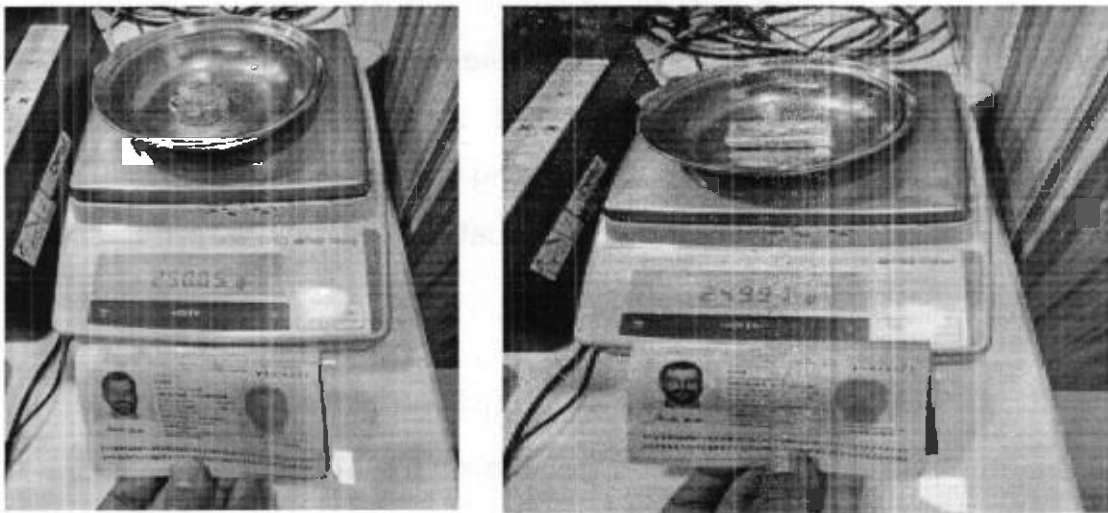
2.2 Thereafter, the officers asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects, Purse, Ring and jewellery etc. from his body/ clothes. The pax placed his mobile, wallet etc. in the plastic tray and passed through the DFMD machine. On passing through the DFMD the officers did not notice/ hear beep sound indicating the pax was not carrying any metallic objects.

2.3 The passenger after removed all metallic objects from his body and cloths passed through the Door Frame Metal Detector placed in the hall in front of Belt No.2 near green channel in the arrival hall of Terminal-2, SVPI Airport but no beep sound was heard indicating he was not carrying any high valued dutiable goods.

2.4 Thereafter, passenger was taken to the AIU office located at opposite of Belt No. 2, in arrival Hall of SVPI Airport, Ahmedabad for further examination. On detailed examination of his baggage and personal search nothing other objectionable noticed. The passenger in presence of the panch witnesses confessed that he had carried gold in concealed form in electronic egg boiler.

2.5 The officers informed the panch witnesses and passenger that in order to ensure the correctness of purity, weight and value of the recovered concealed gold in electronic egg boiler the same is required to be examined by the Government approved Valuer. The officers called the Govt. approved valuer and the Govt. approved valuer informed that the testing of the said materials is only possible at his workshop. Thereafter, the panchas along with the passenger and the AIU officers reached at the referred premises of the Government

approved Valuer. The Government Approved valuer, at the premises of the workshop, weighed the said gold concealed in the electronic egg boiler on his weighing scale informed that the concealed gold is 250.050 Grams. The Valuer then converted the said gold recovered from Shri Amirkhan Aiyubkhan Khan into solid gold bar by melting in furnace. After completion of the procedure, the Government Approved Valuer informed that Solid bar weighing **249.970 Grams** retrieved from the 250.050 Grams Gold concealed in the electronic egg boiler. The photographs/ images of the concealment of Gold in electronic egg boiler and Gold Bar retrieved/ derived are as under:



2.6 Shri Kartikey Soni, Government Approved Valuer after detailed examination and testing submitted a valuation Report as Annexure-A dated 24.03.2024, wherein he provided weighment of recovered Gold, purity, Market Value and Tariff Value. The Tariff value has been determined in terms of Customs Notification No. 37/2024-Customs (N.T.) dated 21/05/2024 (Gold) and Notification No. 36/2024-Customs (N.T.) dated 16/05/2024 (Exchange Rate). The passenger and the panch witnesses were satisfied and agreed with the testing and Valuation Reports (Annexure- 'A') dated 27/05/2024 given by Shri Kartikey Soni, Government Approved Valuer and they put their dated signature on the said valuation report as a token of the fact that everything was done before them in a perfect manner. The report is as below mentioned:

Name of Passenger from whose possession goods recovered	Details of Article / Items	PCS / NOS	Gross Weight (In Grams)	Net Weight (In Grams)	Purity	Market Value (In Rs.)	Tariff Value (In Rs.)
Shri Amirkhan Aiyubkhan Khan	Gold Bar	01	250.050	249.970	999.0 24KT	18,53,278/-	15,83,481/-

2.7 Thereafter, the Government Approved Valuer informed that 01 Gold bar recovered from Shri Amirkhan Aiyubkhan Khan, totally weighing **249.970 Grams** are of 24 KT (999.0 Purity) was having value of **Rs.18,53,278/-** [Market Value] and **Rs.15,83,481/-** [Tariff Value]. The Tariff Value was calculated as per the Notification No. 37/2024-Customs (N.T.) dated 21/05/2024 (Gold) and Notification No. 36/2024-Customs (N.T.) dated 16/05/2024 (Exchange Rate).

2.8 Whereas, Shri Amirkhan Aiyubkhan Khan produced the following travelling documents and identity proof documents, which are as under:-

- (i) Boarding Pass of Spicejet Flight No. SG 16 (Seat No.22A) from Dubai to Ahmedabad dated 26/05/2024.
- (ii) Copy of Passport No. V5916371 issued at Dubai on 19/01/2022 valid up to 18/01/2032.

2.9 The AIU Officers showed the passenger manifest of Spicejet Flight No. SG 16 from Dubai to Ahmedabad, in which name of Shri Amirkhan Aiyubkhan Khan was mentioned at Seq. No. 0036 to passenger as well as to the panch witnesses. The panch witnesses as well as the passenger put their dated signatures on copies of all the above-mentioned travelling documents and the above passenger manifest, as a token of having seen and agreed to the same.

2.10 Whereas, the said Gold Bar, totally weighing 249.970 Grams of 999.0/24 KT having value of Rs.18,53,278/- [Market Value] and Rs.15,83,481/- [Tariff Value] recovered from Shri Amirkhan Aiyubkhan Khan in form of concealment in electronic egg boiler was placed under seizure vide panchnama drawn on 27/05/2024. The seizure was made under the provisions of Section 110 of the Customs Act, 1962, on the reasonable belief that the said goods was smuggled into India and are liable for confiscation. The passenger had attempted to smuggle gold into India by way of concealment in electronic egg boiler, with an intent

to evade payment of Customs duty which was clear violation of the provisions of the Customs Act, 1962. Further, the electronic egg boiler used for concealment of the said gold was also placed under seizure vide panchnama drawn on 27/05/2024 under reasonable belief that same was liable for confiscation under the provisions of the Customs Act, 1962.

3. Statement of Shri Amirkhan Aiyubkhan Khan S/o Shri Aiyubkhan Hasankhan Khan resident of 1658/3, Sindhiwad, Near Jamudi Ni Pole, Jamalpur, Ahmedabad, Gujarat -380001 was recorded on 27/05/2024 under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that:

- He was owner of Readymade Garment Shop in Ahmedabad; that he studied till 8th class; that he can understand Hindi and English very well. He had three members in his family his wife and his daughter, they are living in India. He was the only earning member of my family. His monthly income was Rs. 15,000/- approx.
- He was owner of Readymade Garment Shop in Ahmedabad; that he visited Dubai for purchase of Clothes for his Readymade Shop because the cloth quality is better and cheap in Dubai. He was regular and frequent flier for the said purpose. During this visit he planned to buy some gold to smuggle into India in temptation of earning of quick money. For that he purchased said gold by his savings. Accordingly, he took flight from Dubai to Ahmedabad in Flight No. SG-16 of Spicejet. For flight ticket booking he contacted travel agent who booked his travel ticket for Ahmedabad. He stated that he had made payments to the travel agent from his savings; that the it was his first attempt of smuggling of Gold in the form round shaped concealed in an electronic egg boiler.
- He had travelled many times for business purpose; that he had arrived many times at Ahmedabad from Dubai; that being cheaper flight fare and business purpose he opted Ahmedabad as arrival point in case of his abroad travel.
- On being asked to peruse Panchnama dated 27/05/2024 drawn at SVP International Airport, Ahmedabad and offer his comments, he stated that he perused the said Panchnama Dated 27/05/2024 drawn at Terminal-2 of SVP International Airport, Ahmedabad and he stated that he was present during the entire course of the said panchnama proceedings and he agreed with the contents of the said Panchnama. He had been explained the said Panchnama in Hindi Language. Upon perusal of the panchnama, in token of its correctness, he put his dated signature on last page of the panchnama.

- On being asked about the smuggling of Gold in the form round shaped concealed in an Electric egg boiler recovered from his possession and recorded under Panchnama dated 27/05/2024, and who had purchased the said Gold and handed over the same to him, he stated that he had purchased himself the Gold in form of round shape concealed in an Electric egg boiler, he did not have any purchase bill.
- On being asked how he had arranged funds for the said purchase as his monthly income was only Rs. 15,000/-, he stated that for purchase of the smuggling of Gold in the form round shaped concealed in an Electric egg boiler from his savings and he had borrowed some money from his father as non-refundable loan without any interest.
- On being asked to give the details of the property owned by him and his family members, he stated that he did not possess any property.
- On being asked to give the details of Bank Accounts in his name and in the name of his family members, he stated that he had one bank account in Bank of Baroda. However, he did not remember Bank Account number at that time. His wife did not have bank account.
- On being asked to explain in detail about his journey from Dubai to Ahmedabad and the incidents took place on 27/05/2024 at the time of arrival at Ahmedabad Airport, he stated that he boarded the flight SG-16 of Spice jet from Dubai to Ahmedabad on 27/05/2024, when he crossed the red channel of Arrival area of terminal-2 SVPI, Ahmedabad, the AIU officers asked him to show the passport. The AIU officers explained him the purpose and informed him about his personal search and search of his baggage. Thereafter, in the presence of the panchas, the officers put/place the baggage into the Baggage Screening Machine (BSM) for examination/ checking in presence of the panchas. On examination of baggage, the AIU officers noticed dark images. The officers requested to open the baggage and re-examined all the goods of the baggage thoroughly in BSM machine and found that one electronic device i.e. electronic egg boiler was having dark images. The egg boiler was opened in front of panchas and some white coloured round shaped shown in the electronic egg boiler. Further, on cutting the white coloured round shaped, shown a yellow coloured metal in presence of the panchas.
- On being asked to state specifically why he had not declared the Gold on arrival and opted for green channel, he stated that in greed of earning quick money he opted the illegal smuggling of Gold by way of concealment in electronic egg boiler though he was fully aware that smuggling of gold without payment of Custom duty is an offence. He did not make any declarations in this regard to evade the Custom duty. He confirmed the recovery of 249.970grams, Tariff Value of Rs. 15,83,481/-and Market Value of Rs. 18,53,278/-

having purity 999.0/ 24 KT as narrated under the Panchnama dated 27/05/2024. He had opted for green channel so that he could smuggle the gold without paying custom duty.

- On being asked whether he was that bringing dutiable/ prohibited/ restricted goods without declaration and without payment of duty is an offence, he stated that he was aware that bringing dutiable/ prohibited/ restricted goods without declaration and without payment of duty is an offence but not much in detail.

4. Whereas, from the foregoing paras, it appears that Shri Amirkhan Aiyubkhan Khan had brought gold totally weighing 249.970grams of purity 24K Gold (999.0) valued at Rs.15,83,481/- [Tariff Value] and Rs.18,53,278/- [Local Market Value] in form of some white coloured round shaped concealed in electronic egg boiler to evade normal detection in Baggage Scanning Machine (BSM scanners Machine). The above said white coloured round shaped recovered from the said passenger was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealment in heating plate of electronic egg boiler, which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 249.970 grams retrieved from the 250.050 grams of white coloured round shaped recovered from Shri Amirkhan Aiyubkhan Khan, having purity of 24 KT (999.0) and valued at Rs.15,83,481/- [Tariff Value] and Rs.18,53,278/- [Local Market Value], which was an attempt to smuggle by the passenger in concealed manner, liable for confiscation as per the provisions of the Customs Act, 1962; hence, the said gold bar alongwith the electric egg boiler used for concealment of the said gold were placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo/Order dated 27/05/2024.

Relevant legal provisions of the Customs Act, 1962

5. From the facts and circumstances discussed above, it is evident that Shri Amirkhan Aiyubkhan Khan had attempted to smuggle gold in the form of some white coloured round shaped concealed in electronic egg boiler, totally weighing 249.970 grams of purity 24K Gold (999.0) valued at Rs.15,83,481/- [Tariff Value] and Rs.18,53,278/- [Local Market Value] with an intention to evade payment of Customs duty. The said gold was brought into India by Shri

Amirkhan Aiyubkhan Khan for commercial purpose and cannot be construed as 'bonafide baggage' within the meaning of Section 79 of the Act read with Para 2.27 of the Foreign Trade Policy, 2023. As per Para 2.27 of the Foreign Trade Policy, a passenger is allowed to import Bona-fide household goods and personal effects as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance. It appeared that the import of goods in commercial quantity was with intent to evade customs duty & earn profit and not covered within the ambit of 'bonafide baggage'. Therefore, imports of such goods are not permitted through the baggage mode. It also appeared that the passenger attempted to smuggle the goods without filing the Customs declaration form, which appears to be in contravention of Section 77 of the Act read with the Baggage Rules, 2016 ('Baggage Rules') and Regulation 3 of the Customs Baggage Declaration Regulations, 2013 ('Baggage Regulations'). The above act on the part of the passenger appears to be amounting to smuggling within the meaning of Section 2(39) of the Act. It also appears that the gold is to be construed as 'Prohibited' in terms of the provisions of Section 2(33) of the Act.

6. Shri Amirkhan Aiyubkhan Khan had carried the above said gold in his baggage. As per Section 123 of the Customs Act, 1962 Gold is a notified item and as per Section 123 (1) of Customs Act, 1962:

"123 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.*

Further, sub section (2) of the Section 123 of Customs Act, 1962 stipulates that
(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify. Thus, it appears that the said gold brought into India by the passenger was liable for seizure under the

Customs Act., 1962, on the reasonable belief that same was smuggled goods, and the burden of proof that the goods have been legally imported lies upon the claimant or on the person from whose possession the said goods were recovered. In the instant case the passenger, Shri Amirkhan Aiyubkhan Khan was unable to produce any documents showing the legitimate import of the said gold into India on payment of duty and through legal channels. Further, the passenger, Shri Amirkhan Aiyubkhan Khan had played pivotal role in smuggling of gold in form of some white coloured round shaped, totally weighing 249.970grams of purity 24K Gold (999.0) valued at Rs. 15,83,481/- [Tariff Value] and Rs. 18,53,278/- [Local Market Value] by way of concealment in electronic egg boiler; that he had admitted that he had brought the said gold to gain pecuniary/financial benefits, therefore same cannot be considered as his bonafide baggage; that though he was having full knowledge that 'electronic egg boiler' carried/imported by him contained Gold in concealed manner still he had not declared the said facts before the Customs authorities at SVPI airport, Ahmedabad on arrival and suppressed such facts and committed fraud on the Government. Therefore, it appears that Shri Amirkhan Aiyubkhan Khan knowingly dealt with the said goods, i.e. carrying, keeping, concealing or in any other manner dealing with the goods which he knew or had reason to believe that the same was liable for confiscation under the Customs Act. All these acts on his part constitute an offence and *tantamounts* to "smuggling" within the meaning of Section 2(39) of Customs Act, 1962, which have rendered such smuggled goods liable for confiscation under section 111(d), 111(i), 111(l), and 111(m) of the Customs Act, 1962. Further, the Electric egg boiler was used to conceal the said gold are also liable for confiscation under Section 118(a) and 119 of the Customs Act, 1962. It also appears that Shri Amirkhan Aiyubkhan Khan dealt with the said goods, i.e. carrying, keeping, concealing or in any other manner dealing with the goods which he knew or had reason to believe that the same were liable for confiscation under the Customs Act. Hence, the acts of omission and commission on the part of Shri Amirkhan Aiyubkhan Khan, **has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.**

7. It thus appears that the various provisions of the Customs Act have been contravened in the instant case of smuggling:

- Section 77 of the Act as Shri Amirkhan Aiyubkhan Khan had failed to make a declaration of the imported gold in form of some white coloured round shaped totally weighing 250.050 grams concealed in Electric egg boiler and was recovered from his possession; search of said Electric egg boiler resulted into recovery of 249.970grams of purity 24K Gold (999.0) valued at Rs.15,83,481/- [Tariff Value] and Rs.18,53,278/- [Local Market Value];
- Section 79 of the Act as he had imported the said gold meant for commercial purpose, which was not for his bonafide use;
- Section 7 of the Foreign Trade (Development & Regulations) Act, 1992 as he had imported gold in form of some white coloured round shaped by way of concealment in in Electric egg boiler meant for commercial purpose.

- Rule 11 of the Foreign Trade (Regulation) Rules, 1993 as he failed to declare the value, quantity and description of the goods imported by him, which was not his bonafide baggage;
- Para 2.27 of the Foreign Trade Policy 2023 as he acted in contrary to the restrictions imposed and imported non bonafide baggage.

8. It is seen that the passenger Shri Amirkhan Aiyubkhan Khan had not filed the baggage declaration form in respect of Electric egg boiler and had not declared that he had imported goods other than his bonafide baggage and search/ examination of said baggage resulted into recovery of 249.970 grams of gold concealed in the Electric egg boiler, as envisaged under Section 77 of the Act read with the Baggage Rules and Baggage Regulations. It also appeared that the import was for non bonafide purpose. Moreover, gold or silver, in any form, other than ornaments is not allowed free of duty. Further, one kg of gold can also be imported by an eligible passenger as envisaged under Notification No 50/2017-Cus dated 30/06/2017 (Sr. No 356 read with condition no: 41) wherein an 'eligible passenger' means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 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. In the instant case Shri Amirkhan Aiyubkhan Khan had carried the Gold and not declared before the Customs Authority at Ahmedabad Airport and in contrary he concealed the said gold in form of some white coloured round shaped in Electric egg boiler with an intent to evade payment of applicable Customs duty. He had also not declared the said facts before the Customs Authority at Ahmedabad Airport and he had tried to exit the airport through green channel. It, therefore, appears that all the above acts of contravention on the part of the passenger had rendered the seizure of gold recovered from his possession in concealed manner, liable to confiscation, under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Act. It further appears that the 249.970 grams of gold of purity 24K Gold (999.0) valued at Rs.15,83,481/- [Tariff Value] and Rs.18,53,278/- [Local Market Value] imported by

Shri Amirkhan Aiyubkhan Khan is to be construed as 'smuggling' within the meaning of Section 2(39) of the Act and the said gold also appears to be 'prohibited' within the meaning of Section 2(33) of the Act. It categorically appears that he had involved himself in carrying, keeping, concealing and dealt with the offending goods in a manner which he knew or had reasons to believe is liable to confiscation under the Act. The 'Electric egg boiler' used to conceal the said gold are also liable for confiscation under Section 118(a) and 119 of the Customs Act, 1962. It, therefore, appears that the passenger has rendered himself liable for penal action under the provisions of Section 112(a) and 112(b) of the Act.

9. Further the passenger had not produced any valid declaration for possession of non-bonafide baggage as required in terms of Regulation No. 3 of the Customs Baggage Declaration Regulations, 2013, framed under Section 81 of the Customs Act, 1962, with an intention to evade payment of Customs duty. The passenger therefore appears to have rendered himself liable for penalty under the Customs Act, 1962.

REQUEST FOR WAIVER OF SCN

10. The passenger, Shri Amirkhan Aiyubkhan Khan through his advocate, vide letter dated 04/06/2024 had requested for waiver of Show Cause Notice and release of Gold Bar on payment of fine and penalty or allow re-export in the case of smuggled Gold Bar. Vide said letter it has been submitted that 01 Gold Bar Weighing 250.050 grams 24 kt. valued at Rs.15,83,481/- (Tariff Value) was placed under seizure under the reasonable belief that the said gold Bar was attempted to be smuggled by way of concealment and the same was recovered during the course of panchnama dated 27.05.2024 as such is liable for confiscation as per the provisions of the Customs Act, 1962.

10.1 The advocate of Shri Amirkhan Aiyubkhan Khan further submitted certain point for consideration:

- His client is engaged in business of Cloth & Cosmetics and Electronics items, who purchased the items from Dubai, as he came back to India and had brought gold for his family

from his personal savings and borrowed money from his friend.

- That Bill copy of said seized gold is produced in the name of the pax to show the legitimate purchase from SWITZGOLD Trading LLC in the name of Shri Amirkhan Aiyubkhan Khan (Enclosed Copy of Bill) Pax has brought the gold Bar form personal savings for his family members.
- That his client orally declared about said goods. Further, reference has also been invited to CBEC Circular No.09/2001. There is plethora of judgements wherein release of gold has been allowed on payment redemption fine & duty, wherein the pax had been allowed for release/ Re-Export in lieu of fine. In the circumstances narrated above, the goods seized in question may be allowed for released on payment of fine/re-export of goods or as per the procedure laid down under the Customs Act, 1962.
- That his client has been explained the clauses and provisions of the Customs Act, 1962 to be included in Show Cause Notice orally and that he has understood it very well. After understanding the clauses and provisions of the Customs Act, 1962 that are to be mentioned in Show Cause Notice, he has requested for waiver of Show Cause Notice and that he does not want any further investigation and his case may be decided on merits of the case fact and personal hearing may be granted, that his client is ready for any outcome of the case.
- His client is ready to pay applicable duty, penalty, and fine. His client also opts for waiver of Show Cause Notice. His client may be given an opportunity to be heard in person before adjudicating the case. The goods are not in commercial quantity were brought for his family members, due to ignorance of law and first time he has brought the gold along with him was unable to declare. A lenient view may be taken before deciding the case on merits.

11. Personal Hearing:

Personal Hearing in this case was held on 24.07.2024. Shri Rishikesh Mehra, Advocate appeared for personal hearing on 24.07.2024 on behalf of Shri Amirkhan Aiyubkhan Khan. Shri Rishikesh Mehra, Advocate submitted that he has filed written reply dated 04.06.2024 and reiterated the same. He submitted that his client Shri Amirkhan Aiyubkhan Khan visited Dubai for exploring business of cloth, cosmetic and Electronics. He also submitted that the gold was purchased by him (client) from his personal savings and borrowed money from his friends. He reiterated that his client brought Gold, for

his personal and family use. There was no malafide intention of smuggling or illegal activity by the Noticee. This is the first time he brought gold. He submitted copy of gold purchase bill No. HO - 350 dated 24.05.2024 issued by Switzerland Gold Trading LLC, Dubai showing legitimate purchase of gold. Due to ignorance of law the gold was not declared by the passenger. He further submitted that his client is ready to pay applicable Customs Duty, fine and penalty and requested for release of the seized gold. He requested to take lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty.

Discussion and Findings:

12. I have carefully gone through the facts of the case and submissions made by the Advocate of the passenger/ Noticee during the personal hearing. I find that the passenger had requested for waiver of Show Cause Notice. The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

13. In the instant case, I find that the main issue to be decided is whether the 249.970 grams retrieved from the 250.050 grams of white coloured round shaped, having purity of 24 KT (999.0) and valued at Rs.15,83,481/- [Tariff Value] and Rs.18,53,278/- [Local Market Value] seized vide Panchnama proceedings dated 27/05/2024 and Seizure Memo/ Order dated 27/05/2024, 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.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and spot intelligence, the passenger was intercepted by the officers of Air Intelligence unit (hereinafter referred to as "AIU"), SVPIA, Customs, Ahmedabad while passenger was attempting to exit through green channel without making any declaration to Customs. The passenger was asked as to whether he is

carrying any dutiable goods or foreign currency or any restricted goods declarable to Customs, in reply he denied of having any such goods. On scanning of the baggage of the passenger in the Baggage Scanning Machine some suspicious dark image was noticed. On detailed/thorough examination of the baggage, the officers found some white coloured round shaped object concealed in the electronic egg boiler in his baggage. Further, on cutting the white coloured round shaped a yellow-coloured metal found. The passenger admitted that he had carried gold in the electronic egg boiler in concealed form.

15. I find that the Govt. Approved Valuer converted the said round shaped yellow-coloured metal recovered from Shri Amirkhan Aiyubkhan Khan into solid gold bar by melting in furnace and retrieved 249.970 Grams of 24 KT (999.0 Purity) from the 250.050 Grams of said round shaped yellow-coloured metal concealed in the electronic egg boiler.

16. I also find that the gold bar having purity of 999.0/ 24KT, weighing 249.970 Grams retrieved from the said white coloured round shaped object, totally weighing 250.050 grams having total value of Rs.18,53,278/- [Market Value] and Rs.15,83,481/- [Tariff Value] carried by the passenger Shri Amirkhan Aiyubkhan Khan concealed in electronic egg boiler 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 27/05/2024 under Section 108 of the Customs Act, 1962.

17. 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 2023.

18. Further, the passenger has accepted that he had not declared the said gold concealed in form of white coloured round shaped object in Electric egg boiler 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 gold in form of white coloured round shaped object 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 2.27 of the Foreign Trade Policy 2023. Further, as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified there under 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.

19. From the facts discussed above, it is evident that Shri passenger Shri Amirkhan Aiyubkhan Khan had carried Gold concealed in the electronic egg boiler, (wherefrom 249.970 Grams of gold bar having purity 999.0 /24 Kt recovered on the process of extracting gold) 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 249.970 grams, liable for confiscation, under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. By concealing the said gold in electronic egg boiler 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.

20. It is seen that the passenger 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 import was also for non-bonafide purpose. Therefore, the said improperly imported gold concealed in electronic egg boiler 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 2023 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.

21. It is therefore, proved that by the above acts of contravention, the passenger has rendered the gold bar weighing 249.970 grams (derived from the white coloured round shaped object, totally weighing 250.050 Grams), having Tariff Value of Rs.15,83,481/- and Market Value of Rs.18,53,278/- recovered and seized from the passenger vide Seizure Order and under Panchnama proceedings both dated 27/05/2024 liable to confiscation under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealment in electronic egg boiler, 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 said gold and failed to declare the same on his arrival at the 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 passenger 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.

22. I find that the passenger confessed of carrying the said gold in form of white coloured round shaped object of 250.050 Grams concealed in electronic egg boiler (extracted gold bar of 249.970 Grams having purity 999.0) and attempted to clear the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.27 of the Foreign Trade Policy 2023 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.

23. 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 the foreign destination with the wilful intention to smuggle the impugned goods. 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 clear the gold in concealed manner deliberately without 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.

24. 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. Gold in concealed manner was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in electronic egg boiler 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.

25. In view of the above discussions, I hold that the said gold bar weighing 249.970 Grams, (derived from the said white coloured round shaped object consisting of Gold, totally weighing 250.050 Grams), carried and undeclared by the passenger with an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the passenger in his statement dated 27/05/2024 stated that he has carried the gold by concealment in his baggage (Electronic Egg Boiler) to evade payment of Customs duty. In the instant case, I find that the gold was carried by the passenger for getting monetary benefit and that too by concealment in his baggage (Electronic Egg Boiler). 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.

26. 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."

27. 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.

28. 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).

29. 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.

30. 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".

31.1 Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 249.970 Grams, derived from the said white coloured round shaped object consisting of Gold, totally weighing 250.050 grams carried by the passenger in concealed manner is, therefore, liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that said gold bar weighing 249.970 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962.

31.2 I further find that the passenger had involved himself and abetted the act of smuggling of gold, carried by him. He has agreed and admitted in his statement that he travelled with 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 weighing 249.970 Grams by concealing in his

baggage (Electronic Egg Boiler). 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.

32. Further, I find that the passenger has contended that he had orally declared about said goods before the Customs; that gold was brought for his family members and due to ignorance of law he was unable to declare. In my view, the said submissions are without any substance because the passenger was intercepted when he was about to exit through the green channel and after interception he was asked as to whether he is carrying any dutiable goods or foreign currency or any restricted goods declarable to Customs, in reply he denied of having any such goods. Further, I find that the passenger in his statement categorically admitted that during the visit to Dubai he planned to buy some gold to smuggle into India in temptation of earning of quick money was also in contrary to the subsequent submission made by the passenger that the gold was brought for his family members. I also find that the passenger had carried the gold in concealed manner in his baggage (Electronic Egg Boiler) also in contrary to his claim of ignorance of law. Therefore, the contentions of the passenger are not tenable.

33. Accordingly, I pass the following Order:

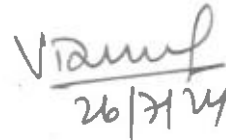
ORDER

- i) I order absolute confiscation of the gold bar having purity of 999.0/24KT, weighing **249.970 Grams** retrieved from some white coloured round shaped object, totally weighing 250.050 grams having total value of **Rs.18,53,278/-** (Rupee Eighteen Lakh Fifty-Three Thousand two Hundred and Seventy-Eight only) [Market Value] and **Rs.15,83,481/-** (Rupee fifteen Lakh, Eighty-Three Thousand, Four Hundred and Eighty-one only) [Tariff Value] placed under seizure vide

panchnama drawn on 27/05/2024 and Seizure Memo/ Order dated 27/05/2024 under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962.

- ii) I impose a penalty of **Rs.5,50,000/-** (Rupees Five Lakhs Fifty Thousand Only) on Shri Amirkhan Aiyubkhan Khan under the provisions of Section 112(a)(i) of the Customs Act, 1962.

34. This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.


26/7/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-107/SVPIA-D/O&A/HQ/2024-25
DIN: 20240771MN000081823E

Date: 26.07.2024

BY SPEED POST A.D.

To,
Shri Amirkhan Aiyubkhan Khan,
1658/3, Sindhiwad, Near Jamudi Ni Pole,
Jamalpur,
Ahmedabad, Pin – 380 001.

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.