



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-227/SVPIA-B/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-227/SVPIA-B/O&A/HQ/2023-24 dated: 15.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	86/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	28.06.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	28.06.2024
F	द्वारापारित/ Passed By	:	Vishal Malani , Additional Commissioner, Customs, Ahmedabad.
G	आयातकानाम और पता / Name and Address of Importer / Passenger	:	Shri Veluthedathu Abdul Gafoor , Henseena Mahal, K K Puram Road, Kudlu, P.O. Kasargod, Kerala - 671124.
(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 (5.00) 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 (5.00) 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 डूब्टी 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 Veluthedathu Abdul Gafoor residing at Henseena Mahal, K K Puram Road, Kudlu, P.O. Kasargod, Kerala – 671124 (hereinafter referred to as the said “person/Noticee”), holding an Indian Passport Number No. Z6726142, arrived from Dubai to Ahmedabad by Spicejet Flight No. SG-16 (Seat No. 8E) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling one passenger who arrived by Spicejet Flight No. SG-16 came from Dubai to Ahmedabad on 02.11.2023 at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 02-03.11.2023 in presence of two independent witnesses for passenger’s personal search and examination of his baggages.

2. Accordingly, in the presence of the panchas, the officers intercepted a passenger with his baggage when the said passenger tried to exit through Green Channel at the arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. On being asked about his identity by the AIU officer, the passenger identified himself as Mr. Veluthedath Abdul Gafoor and shown his Passport which is an Indian Passport bearing No. Z6726142 and shown his Boarding Pass which shows that he had travelled from Dubai to Ahmedabad on 02.11.2023 by Spicejet Flight No. SG-16 (Seat No. 8E) at SVPI Airport, Ahmedabad and the Officers have strong belief that the suspected passenger had carried some dutiable/objectionable with him but not declared the same before the customs authority. The officers requested Panchas for the said verification.

2.1 The AIU Officers asked the passenger in the presence of the panchas, if he had anything to declare to Customs, in reply to which he denied.

2.2 The AIU officers, in presence of the panchas, offer his personal search to the passenger but he denied and said that he had full trust

on the AIU officers. Then, the AIU officers asked the passenger whether he wants his baggage to be checked in front of Executive Magistrate or Superintendent of Customs, a Gazetted Officer, in reply to which the said passenger gave his consent for his baggage may be searched in front of the Superintendent of Customs.

2.3 The AIU officers again asked the above said passenger whether he has anything dutiable to declare to the customs authorities, to which the said passenger denied again. Now in presence of the panchas, the AIU officers asked Shri Veluthedath Abdul Gafoor to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he is wearing on his body/clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc. and keep it on the tray placed on the table and after that officer asks them to pass through the Door Frame Metal Detector (DFMD) machine and while he passes through the DFMD Machine, no beep sound/alert is generated indicating some dutiable/objectionable item is there.

2.4 Further, the Officers, along with the Panchas observed that Shri Veluthedath Abdul Gafoor, had carried one black coloured hand bag and a blue trolley bag. The officers, in presence of the panchas scanned the luggage in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, All the bags were scanned in the X-Ray Bags Scanning Machine (XBIS) located Opp. Belt No.2 at terminal 2 of SVPI Ahmedabad. On checking his baggage, at the time of scanning some suspicious x-ray image shown/ noticed/ observed in the scanner machine by the AIU Officer. Thereafter, the passenger was taken to the AIU Office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad. On sustained interrogation, passenger was asked whether he concealed any high value dutiable goods, the passenger denied. But, the AIU Officers have strong belief that the suspected passenger had carried some dutiable/objectionable with him, therefore they checked all the bags thoroughly and found that four packets of biscuits i.e. Nabil Digestive Biscuits having suspicious image, containing cream between biscuits. So the officers

of the AIU before the passenger, and panchas torn/ opened the packet and checked one piece of biscuit, containing cream between the biscuit, however on going through the wrapping cover it is found that the packets shows single biscuit picture which created more suspicious about the cream, and thereafter during the scanning X-ray image of the biscuit also found to be gold inside the cream. Now, the Officers needs to confirm it whether there is gold or not.

3. Thereafter, the AIU officers in presence of the panchas called the Government Approved Valuer and informed him that gold hidden inside the cream biscuits was recovered from one passenger and hence, requested him to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the officer that the testing of the material is possible only at his workshop as gold has to be extracted from biscuit/cream by diluting /melting it and also informed the address of his workshop.

3.1 Thereafter, the AIU Officers, the panchas along with the passenger left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad-380006. On reached the above referred premises, the AIU officer introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. The Government Approved Valuer Shri Kartikey Vasantrai Soni, took the photo graphs of the four packets of biscuits and confirmed the semi solid substance of gold and chemical mix is in the cream in between the biscuits separated from 1578.340 grams with 4 boxes of biscuits, in presence of the panchas.

3.2 Thereafter, in presence of the panchas, he diluted the above cream of weighing 596.20 grams with water and later strained the semi solid substance of gold and chemical mix and heated the same in the area near to the furnace situated in his office and obtained powder form weighing 287.050 grams.

3.3 Thereafter, Shri Kartikey Vasantrai Soni starts the process of converting the substance of gold and chemical mix into powder form. He later upon heating the said substance, it turned into liquid material. The said substance in liquid state is taken out of furnace, and poured into a mould and after cooling for some time, it became golden coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer took the weight of the said golden coloured bar having purity of 999.0/24KT derived from the total weight of **287.040** grams cream of the biscuits having gross weight of 287.050 grams.

3.4 Further, the Govt. Approved Valuer informed that the total Market Value of the said recovered gold bar is **Rs.18,08,352/-** (Rupees Eighteen Lakhs eight thousand three hundred fifty two only) and Tariff Value is **Rs.15,53,129/-** (Rupees Fifteen Lakhs Fifty three thousand one hundred and twenty nine only), which has been calculated as per the Notification No.79/2023-Customs (N.T.) dtd.31-10-2023 (Gold) and Notification No. 81/2023-Customs (N.T.) dtd.02.11.2023 (exchange Rate) vide Certificate No. 834/2023-24, dated 03-11-2023.

4. The AIU Officers informed the panchas as well as the passenger, that the gold bar having purity of 999.00(24 Kt.) weighing 287.040 grams having Tariff value of Rs.18,08,352/- (Rupees Eighteen Lakhs eight thousand three hundred fifty two only) and Tariff Value is Rs.15,53,129/- (Rupees Fifteen Lakhs Fifty three thousand one hundred and twenty nine only), which has been calculated as per the Notification No.79/2023-Customs (N.T.) dtd.31-10-2023 (Gold) and Notification No. 81/2023-Customs (N.T.) dtd.02.11.2023 (exchange Rate) recovered from Shri Veluthedath Abdul Gafoor. The said passenger had attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of Customs Act, 1962. Thus, the officers informed that they have a reasonable belief that the aforesaid Gold is being attempted to be smuggled by the passengers and is liable for confiscation as per the provisions of Customs Act, 1962; hence, the aforesaid Gold is being placed under seizure, ide Seizure Memo issued from F. No. VIII/10-

177/AIU/B/2022-23 dated 03.11.2023 under Section 110 (1) and (3) of the Customs Act, 1962.

5. A Statement of Shri Veluthedathu Abdul Gafoor, was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 03.11.2023, wherein he explained as under:

1. His name, age and address stated above is true and correct. He resides at above address since his birth. He is doing the business related to readymade garments/ perfume etc in Dubai.

2. :- He lives with his wife and his family at his native place at Kasargod, Kerala and his monthly income is Rs. 25,000/- per month. His wife is house wife.

3 :- He has completed 10th standard and he can speak and understand Hindi and English language.

4 :- He used to travel to Dubai once in a month or once in two months for the purpose looking after business at Dubai, he departed to Dubai on 19.10.2023 alone and returned back today i.e. on 02.11.2023 by Spicejet Flight No. SG-16.

5 :- Yes, his brother is working in Dubai.

6:- On arrival at SVPI Airport at Ahmedabad at about 11:40 PM., he walked towards the exit gates through the Green Channel after crossing the Customs counter at the red Channel. He confirmed the events narrated in the panchnama drawn on 03.11.2023 at Terminal -2, SVPI Airport, Ahmedabad. During the course of said panchnama he has carried four packets of biscuits i.e. Nabil Digestive Biscuits in which, he concealed semi solid substance of gold by way of cream weighing 287.050 grams from which Gold bar weighing 287.040 Grams having purity of 999.0/24KT, valued at Rs. 18,08,352/- (Market Value) and

Rs.15,53,129/- (Tariff Value) was derived. Thereafter, the AIU Officer on the reasonable belief that the said retrieved 287.040 Grams of Gold of purity 24 Karat was attempted to be smuggled by keeping it in a concealed manner under provisions of The Customs Act, 1962 and hence, the same was placed under seizure on 03.11.2023.

7:- He have purchased the said Gold in paste form a Gold shop in Dubai. He further stated that the Gold in paste in cream form belongs to him.

8:- The money for purchase of Gold in paste form was made from earnings for the last 28 years .

9:- He do not know the amount of money i.e. for purchase of the said Gold. He also do not have any purchase bill/invoice pertaining to the said purchase.

10:- He do not remember the name of the Gold Shop and he will recall the name of the shop.

11:- He has purchased the said Gold to sell in the local market for earning money.

12:- The to and fro flight tickets were booked by him.

13:- The decision to smuggle gold was taken by him. He is well aware of the provisions of Customs Act and he knows the smuggling of Gold is punishable offence.

14:- No. This is the first time he engaged in the activities of smuggling of Gold.

15:- He is not holding any bank account.

16:- He has perused the said panchnama dated 02/03.11.2023 drawn at Terminal-2 of SVPI Airport, Ahmedabad and he stated

that he was present during the entire course of the said panchnama and he agreed with the contents of the said panchnama.

6. The above said gold bar with a net weightment of 287.040 grams having purity of 999.0/24 Kt. involving Tariff value of Rs.18,08,352/- (Rupees Eighteen Lakhs eight thousand three hundred fifty two only) and Tariff Value is Rs.15,53,129/- (Rupees Fifteen Lakhs Fifty three thousand one hundred and twenty nine only), recovered from the said person, which were attempted to be smuggled into India with an intent to evade payment of Customs duty which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar totally weighing 287.040 Grams which were attempted to be smuggled by Shri Veluthedathu Abdul Gafoor are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 287.040 grams was placed under seizure under the provisions of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 03.11.2023, issued from F. No. VIII/10-177/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

7. In view of the above, Shri Veluthedathu Abdul Gafoor, holding an Indian Passport Number No. Z6726142, residing at Henseena Mahal, K K Puram Road, Kudlu, P.O. Kasargod, Kerala – 671124, was called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:

(i) The One Gold Bar weighing 287.040 Grams having purity 999.0/24 Kt. and having involving Market value of Rs.18,08,352/- (Rupees Eighteen Lakhs eight thousand three hundred fifty two only) and Tariff Value is Rs.15,53,129/- (Rupees Fifteen Lakhs Fifty three thousand one hundred and twenty nine only), recovered from Shri Veluthedathu Abdul Gafoor who carried four packets of biscuits i.e. Nabil Digestive Biscuits in which, he concealed semi solid substance of gold by

way of cream, was placed under seizure under panchnama proceedings dated 02/03.11.2023 and Seizure Memo Order dated 03.11.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

8. Shri Veluthedathu Abdul Gafoor has not submitted written reply to the Show Cause Notice.

8.1 Shri Veluthedathu Abdul Gafoor was given opportunity to appear for personal hearing on 19.06.2024; 21.06.2024 and 24.06.2024 but she did not appear for personal hearing on the given dates.

Discussion and Findings:

9. 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 her 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.

10. In the instant case, I find that the main issue to be decided is whether the 287.040 grams of gold bar, obtained from the paste of gold and chemical mixture weighing 596.20 grams, having Tariff Value of Rs.15,53,129/- (Rupees Fifteen Lakhs Fifty-Three Thousand One Hundred Twenty-Nine Only) and Market Value of Rs.18,08,352/- (Rupees Eighteen Lakhs Eight Thousand Three Hundred Fifty-Two Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 03.11.2023, on a reasonable belief that the same is liable

for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

11. I find that the panchnama has clearly drawn out the fact that on the basis of passenger profiling, one passenger who arrived by Spicejet Flight No.SG-16 came from Dubai to Ahmedabad on 02.11.2023 at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad and on suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 02-03.11.2023. The AIU Officers asked the passenger, if he had anything to declare to Customs, in reply to which he denied. The AIU officers again asked the above said passenger whether he has anything dutiable to declare to the customs authorities, to which the said passenger denied again. The AIU officers asked Shri Veluthedath Abdul Gafoor to walk through the Door Frame Metal Detector (DFMD) machine; and while he passed through the DFMD Machine, no beep sound/ alert was generated. The officers, scanned the baggage in the scanner and on checking his baggage, some suspicious x-ray image shown/ noticed/ observed in the scanner machine by the AIU Officer. On sustained interrogation, passenger was asked whether he concealed any high value dutiable goods, the passenger denied. The AIU Officers have strong belief that the suspected passenger had carried some dutiable/ objectionable with him, therefore they checked all the bags thoroughly and found that four packets of biscuits i.e. Nabil Digestive Biscuits having suspicious image, containing cream between biscuits. So, the officers of the AIU torn/ opened the packet and checked one piece of biscuit, containing cream between the biscuit. On going through the wrapping cover, it is found that the packets shows single biscuit picture which created more suspicious about the cream, and thereafter during the scanning X-ray image of the biscuit also found to be gold inside the cream.

12. The Government Approved Valuer Shri Kartikey Vasantrai Soni, confirmed the semi solid substance of gold and chemical mix is in the cream in between the biscuits separated from 1578.340 grams with 4

boxes of biscuits. Thereafter, he diluted the above cream of weighing 596.20 grams with water and later strained the semi solid substance of gold and chemical mix and heated the same in the area near to the furnace situated in his office and obtained powder form weighing 287.050 grams. Thereafter, Shri Kartikey Vasantrai Soni starts the process of converting the substance of gold and chemical mix into powder form. After completion of the procedure, Government Approved Valuer took the weight of the said golden coloured bar having purity of 999.0/ 24KT derived from the total weight of **287.040** grams cream of the biscuits having gross weight of 287.050 grams of purity 999.0/ 24 Kt., having total Market Value of the said recovered gold bar is **Rs.18,08,352/-** (Rupees Eighteen Lakhs eight thousand three hundred fifty two only) and Tariff Value is **Rs.15,53,129/-** (Rupees Fifteen Lakhs Fifty three thousand one hundred and twenty nine only).

13. I also find that the said 287.040 grams of gold bar obtained from the 596.20 Grams of gold paste having Tariff Value of Rs.15,53,129/- and Market Value of Rs.18,08,352/- carried by the passenger Shri Veluthedathu Abdul Gafoor 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 her statement recorded on 03.11.2023 under Section 108 of the Customs Act, 1962.

14. 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 in Biscuits 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.

15. Further, the passenger has accepted that he had not declared the said gold paste concealed in Biscuits 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 paste which was in his possession and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold paste recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that 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.

16. From the facts discussed above, it is evident that Shri Veluthedathu Abdul Gafoor had carried gold paste weighing 596.20 grams, (wherfrom 287.040 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said paste) 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 287.040 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 paste in Biscuits 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.

17. It is seen that the Noticee had not filed the baggage declaration form and had not declared the said gold paste 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 paste weighing 596.20 grams concealed in Biscuits (extracted gold bar of 287.040 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.

18. It is, therefore, proved that by the above acts of contravention, the passenger has rendered the gold bar weighing 287.040 grams (Derived from the gold paste, totally weighing 596.20 grams), having Tariff Value of Rs.15,53,129/- and Market Value of Rs.18,08,352/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 03.11.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold paste concealed in Biscuits, 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.

19. I find that the Noticee confessed of carrying the said gold paste of 596.20 grams concealed in Biscuits (extracted gold bar of 287.040 grams having purity 999.0) and attempted to remove the said gold

from the Customs 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.

20. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign destination with the wilful intention to smuggle the impugned goods. The said gold bar weighing 287.040 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 596.20 grams, having Tariff Value of Rs.15,53,129/- and Market Value of Rs.18,08,352/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 03.11.2023. 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 Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 596.20 grams (Gold bar weighing 287.040 grams derived from the same) 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.

21. 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 287.040 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 596.20 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of customs duty. Further, passenger concealed the gold paste in Biscuits. 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.

22. In view of the above discussions, I hold that the gold bar weighing 287.040 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 596.20 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 03.11.2023 stated that he has carried the gold by concealment in Biscuits 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.

23. 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."

24. 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.

25. 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).

26. 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.

27. 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".

28. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 287.040 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 596.20 grams carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that gold bar weighing 287.040 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.

29. I further find that the passenger had involved herself and abetted the act of smuggling of gold bar weighing 287.040 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 596.20 grams carried by him. He has agreed and admitted in his statement that he travelled with gold paste consisting of Gold & Chemical Mix, totally weighing 596.20 grams from Dubai to Ahmedabad. Despite his knowledge and belief that the gold paste 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 paste of 596.20 grams by concealing in Biscuits (extracted gold bar of 287.040 grams having purity 999.0). Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

30. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of One Gold Bar weighing 287.040 Grams having purity 999.0/24 Kt. and having involving Market value of Rs.18,08,352/- (Rupees Eighteen Lakhs eight thousand three hundred fifty two only) and Tariff Value is Rs.15,53,129/- (Rupees Fifteen Lakhs Fifty three thousand one hundred and twenty nine only), recovered from Shri Veluthedathu Abdul Gafoor who carried four

packets of biscuits i.e. Nabil Digestive Biscuits in which, he concealed semi solid substance of gold by way of cream, was placed under seizure under Panchnama proceedings dated 02/03.11.2023 and Seizure Memo Order dated 03.11.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs.6,00,000/-** (Rupees Six Lakhs Only) on Shri Veluthedathu Abdul Gafoor under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-227/SVPIA-B/O&A/HQ/2023-24 dated 15.03.2024 stands disposed of.

Vishal
28/6/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-227/SVPIA-B/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN0000222CAB

BY SPEED POST AD

To,

Shri Veluthedathu Abdul Gafoor,
Henseena Mahal, K K Puram Road,
Kudlu, P.O. Kasargod,
Kerala – 671124.

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.