



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुरानेहाईकोर्ट 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/10-223/SVPIA-C/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-223/SVPIA-C/O&A/HQ/2023-24 dated: 04.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	78/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	आयातककानाम और पता / Name and Address of Importer / Passenger	:	Smt. Reshma Banu Mohammed Asif RM. No. 16, G sector, S-2-Line, NR. Noor Masjid, Cheeta Camp, Trombay, Mumbai-400088
(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 असतुष्ट 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, हुडको 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 डिग्री 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: -

Smt. Reshma Banu Mohammed Asif (hereinafter referred to as "the said passenger/ Noticee"), residential address as per passport is RM. No. 16, G Sector, S-2-Line, NR. Noor Masjid, Cheeta Camp, Trombay, Mumbai-400088, holding Indian Passport No. N6911259, arrived by Spice Jet Flight No. SG 16 from Dubai to Ahmedabad on 09.11.2023 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling, the passenger was intercepted by the officers of Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 10.11.2023 in presence of two independent witnesses for passenger's personal search and examination of her baggage. The passenger was carrying a red colored trolley bag and one hand bag as her Checked-in baggage.

2. The AIU officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. The officers 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 the same politely. Then officers asked the passenger whether she wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave her consent to be searched in presence of the Superintendent of Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects she was wearing on her body/ clothes. Thereafter the passenger, removed the metallic substances from her body such as mobile, purse etc., and kept it in a tray placed on the table there and after that she was asked to pass through the Door Frame Metal Detector (DFMD) machine and while she passed through the DFMD Machine, no beep sound was heard indicating that nothing objectionable/ dutiable was on her body/ clothes. Further, the AIU

officers asked the passenger to keep her baggage into X-Ray Baggage Scanning Machine installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. The passenger kept her baggage into X-Ray Baggage Scanning Machine for scanning but no suspicious image appeared on the screen of the X-Ray machine.

Thereafter, the officers of AIU along with the passenger and the Panchas moved to the AIU office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The passenger Smt. Reshma Banu Mohammed Asif is examined thoroughly by the Lady AIU officer. The Lady AIU officer asked the said passenger to change all her clothes. During examination of her clothes, the lady officer finds that the vest & shorts worn by the passenger is unusually heavy. On further examination, it is found that the said vest & shorts has two layers stitched on the inner side. The officer in presence of the Panchas and the passenger cut open the stitched layer wherein a yellow paste like substance is found spread between two layers of the said vest & shorts. On being asked, the passenger Smt. Reshma Banu Mohammed Asif tells the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

2.1 The officers informed the Panchas that the vest and shorts recovered from Smt. Reshma Banu Mohammed Asif contains semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the Panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad-380006 in government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said vest and shorts of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 968.400 grams.

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said semi solid substances concealed in the said vest & shorts into solid gold. After completion of the procedure, Government Approved Valuer informed that **1 Gold bar weighing 331.51** grams having purity 999.0/24 Kt. is derived from the above-mentioned vest & shorts containing gold paste and chemical mix.

3. After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 865/2023-24 dated 10.11.2023 certified that the gold bar is having net weight of **331.510** Grams, purity 999.0/ 24kt, tariff value of **Rs.17,93,749/-** (Rupees Seventeen Lakhs Ninety-Three Thousand Seven Hundred Forty-Nine only) and Market value of **Rs.20,65,307/-** (Rupees Twenty Lakhs Sixty-Five Thousand Three Hundred Seven only). The value of the gold bar has been calculated as per the Notification No. 79/2023-Customs (N.T.) dated 31.10.2023 (gold) and Notification No. 81/2023-Customs (N.T.) dated 02.11.2023 (exchange rate).

4. Accordingly, one gold bar having purity 999.0/24 Kt. weighing 331.510 grams, derived from the semi solid substance comprising of gold and chemical mix, recovered from the said passenger, was seized vide Panchnama dated 10.11.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A statement of Smt. Reshma Banu Mohammed Asif was recorded on 10.11.2023, under Section 108 of the Customs Act, 1962, wherein she inter alia stated that -

(i) she runs a beauty parlour in Mumbai;

- (ii) she went to Dubai on 06.11.2023 and returned on 10.11.2023 by SG-16 from Dubai to Ahmedabad; that she had never indulged in any smuggling activity in the past and this was first time she had carried gold;
- (iii) Her friend told her to deliver the said gold paste to a person waiting outside Ahmedabad Airport who in return would give her Rs. 12,000/-; her friend advised to conceal the gold in form of semi-solid gold paste with chemical mix in clothes so that it cannot be found during check at Airport;
- (iv) she had been present during the entire course of the Panchnama dated 10.11.2023 and she confirmed the events narrated in the said panchnama at Terminal-2, SVPI Airport, Ahmedabad;
- (v) she is aware that smuggling of gold without payment of Customs duty is an offence; she is well aware of the gold concealed in vest and shorts containing gold and chemical mix in semi-solid paste form but she did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty.

6. The above said gold bar weighing 331.510 grams recovered from Smt. Reshma Banu Mohammed Asif, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the said one gold bar weighing 331.510 grams is attempted to be smuggled by the said passenger, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 331.510 grams derived from the above said semi solid gold paste with chemical mix, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 10.11.2023.

7. In view of the above, **Smt. Reshma Banu Mohammed Asif**, residing at RM. No. 16, G Sector, S-2-Line, NR. Noor Masjid, Cheeta Camp, Trombay, Mumbai - 400088, holding Indian Passport No. N6911259, was called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2nd Floor, Customs House, Navrangpura Ahmedabad as to why:

- (i) One Gold Bar weighing **331.510** grams having purity 999.0/24kt, Tariff value **Rs.17,93,749/-** and Market value of **Rs.20,65,307/-**, derived from semi solid gold paste found

spread in vest and shorts containing gold and chemical mix in semi-solid paste form, by the passenger and placed under seizure under Panchnama proceedings dated 10.11.2023 and Seizure Memo Order dated 10.11.2023, 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. Smt. Reshma Banu Mohammed Asif has not submitted written reply to the Show Cause Notice.

8.1 Smt. Reshma Banu Mohammed Asif 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 her reply/ submissions or to appear for the personal hearing opportunities offered to her. 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 331.510 grams of gold bar, obtained from the paste of gold and chemical mixture weighing 968.400 grams, having Tariff Value of Rs.17,93,749/- (Rupees Seventeen Lakhs Ninety-Three Thousand Seven Hundred Fourty-Nine Only) and Market Value of

Rs.20,65,307/- (Rupees Twenty Lakhs Sixty-Five Thousand Three Hundred Seven Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 10.11.2023, 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; whether the goods used for packing and concealment of seized goods is liable for confiscation under the provisions of Section 119 of the Act 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 the passenger was intercepted on the basis of passenger profiling, the passenger was intercepted by the officers of Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs. The AIU officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine and while she passed through the DFMD Machine, no beep sound was heard indicating that nothing objectionable/ dutiable was on her body/ clothes. Further, the AIU officers asked the passenger to keep her baggage into X-Ray Baggage Scanning Machine for scanning, but no suspicious image appeared on the screen of the X-Ray machine. The passenger Smt. Reshma Banu Mohammed Asif is examined thoroughly by the Lady AIU officer. The Lady AIU officer asked the said passenger to change all her clothes. During examination of her clothes, the lady officer found that the vest & shorts worn by the passenger was unusually heavy. On further examination, it was found that the said vest & shorts has two layers stitched on the inner side. The officer in presence of the Panchas and the passenger cut open the stitched layer wherein a yellow paste like substance was found spread between two layers of the said vest & shorts. On being asked, the passenger Smt. Reshma Banu Mohammed Asif informed the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

12. It is on record that the Government approved valuer Shri Kartikey Vasantrai Soni after completion of the procedure of converting, informed that **1 Gold bar weighing 331.51** grams having purity 999.0/24 Kt. is derived from the above-mentioned vest & shorts containing gold paste and chemical mix. Vide certificate no. 865/2023-24 dated 10.11.2023, he certified that the gold bar is having net weight of **331.510** Grams, purity 999.0/ 24kt, tariff value of **Rs.17,93,749/-** (Rupees Seventeen Lakhs Ninety-Three Thousand Seven Hundred Forty-Nine only) and Market value of **Rs.20,65,307/-** (Rupees Twenty Lakhs Sixty-Five Thousand Three Hundred Seven only).

13. I also find that the said 331.510 grams of gold bar obtained from the 968.400 Grams of gold paste having Tariff Value of Rs.17,93,749/- and Market Value of Rs.20,65,307/- carried by the passenger Smt. Reshma Banu Mohammed Asif 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 10.11.2023 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 her 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 her statement, she has clearly admitted that she was aware that import of gold without payment of Customs duty was an offence but as she wants to save Customs duty, she had concealed the same in cloths (vest & shorts) worn by her, 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 she had not declared the said gold paste concealed in her clothes on her 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 her 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 her 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 Smt. Reshma Banu Mohammed Asif had carried gold paste weighing 968.400 grams, (wherfrom 331.510 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 331.510 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 Clothes 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 her 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 968.400 grams concealed in Clothes (extracted gold bar of 331.510 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 331.510 grams (Derived from the gold paste, totally weighing 968.400 grams), having Tariff Value of Rs.17,93,749/- and Market Value of Rs.20,65,307/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 10.11.2023 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 Clothes, 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 she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. 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 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 her 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 968.400 grams concealed in Clothes (extracted gold bar of 331.510 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 331.510 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 968.400 grams, having Tariff Value of Rs.17,93,749/- and Market Value of Rs.20,65,307/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 10.11.2023. 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 968.400 grams (Gold bar weighing 331.510 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 her 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 331.510 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 968.400 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 clothes. 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 331.510 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 968.400 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 her statement dated 10.11.2023 stated that she has carried the gold by concealment in Clothes 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, gold bar weighing 331.510 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 968.400 grams carried by the

passenger is therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that gold bar weighing 331.510 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 331.510 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 968.400 grams carried by her. She has agreed and admitted in her statement that she travelled with gold paste consisting of Gold & Chemical Mix, totally weighing 968.400 grams from Dubai to Ahmedabad. Despite her knowledge and belief that the gold paste carried by her 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 968.400 grams by concealing in Clothes (extracted gold bar of 331.510 grams having purity 999.0). Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she 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:

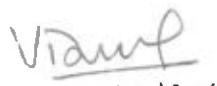
ORDER

- i) I order absolute confiscation of the gold bar weighing **331.510** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.17,93,749/-** (Rupees Seventeen Lakhs Ninety-Three Thousand Seven Hundred Fourty-Nine Only) and **Rs.20,65,307/-** (Rupees Twenty Lakhs Sixty-Five Thousand Three Hundred Seven Only) derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, recovered and seized from the passenger Smt. Reshma Banu Mohammed Asif vide Seizure Order under Panchnama

proceedings both dated 10.11.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs.7,00,000/-** (Rupees Seven Lakhs Only) on Smt. Reshma Banu Mohammed Asif under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-223/SVPIA-C/O&A/HQ/2023-24 dated 04.03.2024 stands disposed of.


28/6/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-23/SVPIA-C/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN00008858D1

BY SPEED POST AD

To,

Smt. Reshma Banu Mohammed Asif
RM. No. 16, G sector, S-2-Line, NR. Noor Masjid,
Cheeta Camp, Trombay, Mumbai-400088.

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.