



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-224/SVPIA-C/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-224/SVPIA-C/O&A/HQ/2023-24 dated: 27.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 89/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 01.07.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 01.07.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: Ms. Laxmi Kumar Banswani, BK No. 1098, Room No. 18, Near Neelam Apt OT SEC, Ulhasnagar, Thane-421003.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें 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 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), 4वि 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 0.4% अधिकतम 10 करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी 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, 1982 के धरा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case: -

Ms. Laxmi Kumar Banswani, (D.O.B: 12.07.1987) (hereinafter referred to as "the said passenger/ Noticee"), residential address as per passport is BK No. 1098, Room No. 18, Near Neelam Apt OT SEC, Ulhasnagar, Thane-421003, holding Indian Passport No. M3424871, arrived by Spice Jet Flight No. SG-16 from Dubai to Ahmedabad on 22.11.2023 (Seat No: 15 D) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of suspicious movement, the passenger was intercepted by the 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 22.11.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying a one black coloured trolley bag.

2. The officers asked the passenger whether if she had anything to declare to the Customs, in reply 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. Now, the AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from her body/ clothes. Further, the passenger readily removed all the metallic objects such as mobile, wallet etc. and kept in a plastic tray and passed through the DFMD machine. However, light blinks and loud beep sound was heard indicating there was something objectionable/ dutiable on her body/ clothes. On the basis of indication of light blinks in the machine, the officers observed that Ms. Laxmi Kumar Banswani had worn hand bangles made of beads and hair

clutcher. The officers in presence of the panchas requested the said passenger to remove hand bangles seems to be made of beads, hair clutcher and any metal object from her legs. Ms. Laxmi Kumar Banswani removes her 02 hand bangles, 01 hair clutcher and 02 yellow metal anklets. The above articles recovered from Ms. Laxmi Kumar Banswani were checked primarily by the officers and put it in a tray and pass through the X-Ray baggage scanning machine. On scanning the said articles, a dark yellow black outline appeared on each article indicating the presence of heavy metal like gold. On being asked, Ms. Laxmi Kumar Banswani informed the officers in our presence that the said articles are made of gold and to avoid Customs duty payment, she brought gold from Dubai in the form of beads of hand bangle, hair clutcher and anklets covered/ hidden under socks. Thereafter, the officers of AIU, the said 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. During frisking, Ms. Laxmi Kumar Banswani was examined thoroughly by the Lady AIU officer. Ms. Laxmi Kumar Banswani was asked by the Lady officer to change all her clothes. Ms. Laxmi Kumar Banswani changed all her clothes. During examination of her clothes, the lady officer finds that the inner wear i.e. Bra of the passenger was unusually heavy. On further examination, it was found that the said inner wear had two layers stitched on both the sides. The officers in presence of the panchas and the passenger cut opens the stitched layer wherein a plastic pouch consisting of yellow paste like substance was found from both side of the said inner wear. On being asked, the passenger tells the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

2.1 Thereafter, the Customs officers calls the Government Approved Valuer on 22.11.2023 and informed him about the articles recovered from Ms. Laxmi Kumar Banswani and yellow semi solid paste and requested him to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informs the Customs officer that the testing of the said articles and yellow paste was only possible at his workshop as gold has to be extracted from such semi solid paste by melting it and also informs the address of his

workshop and requested to come. Thereafter, at around 09:15 am on 22.11.2023, the panchas along with the passenger and the AIU officer leave the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer. On reaching the above referred premises, the AIU officer introduced the panchas as well as the passenger to one person namely Shri Kartikey Soni Vasantrai, Government Approved Valuer. Here, the Government approved valuer weighed individually all the items i.e. beads, hair clutcher, anklets and semi sold yellow paste recovered from the passenger. Then he weighed all the articles one by one and informed that the gross weight of the said items are as under :

- a) Ms. Laxmi Kumar Banswani:
Beads: 58.47 Gms.
Hair clutcher : 58.66 Gms
Anklets: 140.12 Gms
Yellow Semi solid paste: 497.87 Gms

2.2 Thereafter, the government approved valuer takes the above said items including semi solid yellow paste recovered from Ms. Laxmi Kumar Banswani and leads us to the furnace, inside his workshop. Here, he started the process of converting the said substances into solid gold by putting the semi solid yellow paste, beads and hair clutcher fully into the furnace and upon heating the said semi solid substance, turns into liquid material. The said substance in liquid state is taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it becomes yellow coloured solid metal in form of 02 bars. After testing the said yellow coloured metal, the Government Approved Valuer vide its report No. 903/2023-24 dated 22.11.2023 confirms that it is pure gold. After completion of the procedure, Government Approved Valuer informs that 02 Gold bars net weighing **547.080** Grams having purity 999.0/24kt is derived from above mentioned articles and also informs that two anklets are of pure gold and weighing **140.120** Grams having purity 999.0/24kt. Further, he informed that the recovered 02 gold bars from the articles of Ms. Laxmi Kumar Banswani is having net weight of 547.080 Grams, purity 999.0/24kt, tariff value of **Rs.29,18,732/-** (Rupees Twenty-Nine Lakhs Eighteen Thousand Seven Hundred Thirty-Two only) and market value of **Rs.34,75,599/-** (Rupees Thirty-Four Lakhs Seventy-Five Thousand Five Hundred Ninety-Nine only) and 02 gold anklets net

weighing 140.120 gms purity 999.0/24kt, tariff value of **Rs.7,47,556/-** (Rupees Seven Lakhs Forty Seven Thousand Five Hundred Fifty Six only) and market value of **Rs.8,90,182/-** (Rupees Eight Lakhs Ninety Thousand One Hundred Eighty Two only). The value of the gold bar has been calculated as per the Notification No. 82/2023-Customs (N.T.) dated 15.11.2023 (gold) and Notification No. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate).

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 903/2023-24 dated 22.11.2023 given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates.

3. The following documents produced by the passenger – Ms. Laxmi Kumar Banswani was withdrawn under the Panchnama dated 22.11.2023.

- i) Copy of Passport No. M3424871 issued at Thane on 11.11.2014 valid up to 10.11.2024.
- ii) Boarding pass of Spice Jet Flight No. SG 16, Seat No. 15D from Dubai to Ahmedabad dated 21.11.2023.

4. Accordingly, 2 gold bars and 2 anklets having purity 999.0/24 Kt. totally weighing **687.200** grams, derived from semi solid yellow paste, beads, hair clutcher and 2 anklets recovered from Ms. Laxmi Kumar Banswani was seized vide Panchnama dated 22.11.2023, 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 Ms. Laxmi Kumar Banswani was recorded on 22.11.2023, under Section 108 of the Customs Act, 1962, wherein she inter alia stated that:-

- (i) She is working as a Back-office admin job in Kalani College, Ulhasnagar and lives with her daughter and younger sister at

BK No. 1098, Room No. 18, Near Neelam Apt OT SEC, Ulhasnagar, Thane-421003.

- (ii) She went to Dubai on 18.11.2023 and returned back on 22.11.2023 by Spice Jet Flight No. SG-16 from Dubai to Ahmedabad; that she borrowed the money from her friends living in Dubai to purchase the gold from there; that she had never indulged in any smuggling activity in the past and this was first time she had carried gold;
- (iii) Gold in Dubai is cheaper than India. So, she supposed to purchase gold from there and sell it in India at higher rates to earn some money as her sister was about to marry and she is to borne her expenses.
- (iv) She had been present during the entire course of the Panchnama dated 22.11.2023 and she confirmed the events narrated in the said panchnama drawn on 22.11.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) She was aware that smuggling of gold without payment of Customs duty is an offence; she was aware of the gold concealed in the form semi solid yellow paste, beads, hair clutcher and 2 anklets but she did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty. He confirmed the recovery of Gold totally weighing 687.200 grams having purity 999.0/24 KT valued at Rs. 36,66,288/- (Tariff value) and Market value of Rs. 43,65,781/- from him under the Panchnama dated 22.11.2023; he had opted for green channel to attempt to smuggle the gold hidden in innerwear as semi solid yellow paste, beads, hair clutcher and 2 anklets without paying Customs duty.

6. The above said 2 gold bars and 2 anklets totally weighing 687.200 Grams, tariff value of Rs.36,66,288/- (Rupees Thirty-Six Lakh Sixty-Six Thousand Two Hundred eighty-eight only) and market value of Rs.43,65,781/- (Rupees Forty-Three Lakh Sixty-Five Thousand Seven Hundred Eighty-One only), recovered from Ms. Laxmi Kumar Banswani, was 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 yellow paste in innerwear, beads, hair clutcher and 2 anklets, which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the 2 gold bars and 2 anklets total weighing 687.200 grams which was attempted to be smuggled by Ms. Laxmi Kumar Banswani, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said 2 gold bars and 2 anklets totally weighing 687.200 grams derived from semi solid yellow paste, beads, hair clutcher and 2 anklets, was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 22.11.2023.

7. In view of the above, **Ms. Laxmi Kumar Banswani**, residing at BK No. 1098, Room No. 18, Near Neelam Apt OT SEC, Ulhasnagar, Thane-421003, holding Indian Passport No. M3424871, was called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Customs House, Opp. Old Gujarat High Court, Navrangpura, Ahmedabad-380009, as to why:

- (i) Two Gold Bars and Two anklets, totally weighing **687.200** Grams, purity 999.0/24kt, having tariff value of **Rs.36,66,288/-** (Rupees Thirty-Six Lakh Sixty-Six Thousand Two Hundred eighty-eight only) and market value of **Rs.43,65,781/-** (Rupees Forty Three Lakh Sixty Five Thousand Seven Hundred Eighty One only), concealed in innerwear as semi solid yellow paste, beads, hair clutcher and 2 anklets, by the passenger and placed under seizure under panchnama proceedings dated 22.11.2023 and Seizure Memo Order dated 22.11.2023, 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, Ms. Laxmi Kumar Banswani, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

8. Ms. Laxmi Kumar Banswani has not submitted written reply to the Show Cause Notice.

8.1 Ms. Laxmi Kumar Banswani 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 Two Gold Bars and Two anklets totally weighing 687.200 grams, obtained from the concealed in innerwear as semi solid yellow paste, beads, hair clutcher and 2 anklets, having total Tariff Value of Rs.36,66,288/- (Rupees Thirty-Six Lakhs Sixty-Six Thousand Two Hundred Eighty-Eight Only) and total Market Value of Rs.43,65,781/- (Rupees Forty-Three Lakhs Sixty-Five Thousand Seven Hundred Eighty-One Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 22.11.2023, 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 suspicious movement, the passenger was intercepted by the 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 22.11.2023. The officers asked the passenger whether if she had anything to declare to the Customs, in reply to which she denied. The AIU officers asked the said passenger to pass through the Door Frame Metal Detector (DFMD) Machine, and when she passed through the DFMD machine, light blinks and loud beep sound was heard indicating there was something objectionable/ dutiable on her body/ clothes. On the basis of indication of light blinks

in the machine, the officers observed that Ms. Laxmi Kumar Banswani had worn hand bangles made of beads and hair clutcher. The officers in presence of the panchas requested the said passenger to remove hand bangles seems to be made of beads, hair clutcher and any metal object from her legs. Ms. Laxmi Kumar Banswani removed her 02 hand bangles, 01 hair clutcher and 02 yellow metal anklets. The above articles recovered from Ms. Laxmi Kumar Banswani were checked primarily by the officers and put it in a tray and pass through the X-Ray baggage scanning machine. On scanning the said articles, a dark yellow black outline appeared on each article indicating the presence of heavy metal like gold. On being asked, Ms. Laxmi Kumar Banswani informed the officers that the said articles are made of gold and to avoid Customs duty payment, she brought gold from Dubai in the form of beads of hand bangle, hair clutcher and anklets covered/ hidden under socks. During frisking, Ms. Laxmi Kumar Banswani was examined thoroughly by the Lady AIU officer. Ms. Laxmi Kumar Banswani was asked by the Lady officer to change all her clothes. Ms. Laxmi Kumar Banswani changed all her clothes. During examination of her clothes, the lady officer found that the inner wear i.e. Bra of the passenger was unusually heavy. On further examination, it was found that the said inner wear had two layers stitched on both the sides. The officers cut opens the stitched layer wherein a plastic pouch consisting of yellow paste like substance was found from both side of the said inner wear. On being asked, the passenger informed the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

12. Shri Kartikey Soni Vasantraai, the Government Approved Valuer weighed individually all the items i.e. beads, hair clutcher, anklets and semi sold yellow paste recovered from the passenger, and informed that the gross weight of the said items are as under :

- b) Ms. Laxmi Kumar Banswani:
Beads: 58.47 Gms.
Hair clutcher : 58.66 Gms
Anklets: 140.12 Gms
Yellow Semi solid paste: 497.87 Gms

After completion of the procedure, Government Approved Valuer informed that 02 Gold bars net weighing **547.080** Grams having purity

999.0/24kt is derived from above mentioned articles and also informs that two anklets are of pure gold and weighing **140.120** Grams having purity 999.0/24kt. Further, he informed that the recovered 02 gold bars from the articles of Ms. Laxmi Kumar Banswani is having net weight of 547.080 Grams, purity 999.0/24kt, tariff value of **Rs.29,18,732/-** (Rupees Twenty-Nine Lakhs Eighteen Thousand Seven Hundred Thirty-Two only) and market value of **Rs.34,75,599/-** (Rupees Thirty-Four Lakhs Seventy-Five Thousand Five Hundred Ninety-Nine only) and 02 gold anklets net weighing 140.120 gms purity 999.0/24kt, tariff value of **Rs.7,47,556/-** (Rupees Seven Lakhs Forty Seven Thousand Five Hundred Fifty Six only) and market value of **Rs.8,90,182/-** (Rupees Eight Lakhs Ninety Thousand One Hundred Eighty Two only).

13. The above said 2 gold bars and 2 anklets totally weighing **687.200** Grams, tariff value of **Rs.36,66,288/-** (Rupees Thirty-Six Lakh Sixty-Six Thousand Two Hundred eighty-eight only) and market value of **Rs.43,65,781/-** (Rupees Forty-Three Lakh Sixty-Five Thousand Seven Hundred Eighty-One only), recovered from Ms. Laxmi Kumar Banswani, was 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 yellow paste in innerwear, beads, hair clutcher and 2 anklets, which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the 2 gold bars and 2 anklets total weighing 687.200 grams which was attempted to be smuggled by Ms. Laxmi Kumar Banswani, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said 2 gold bars and 2 anklets totally weighing 687.200 grams derived from semi solid yellow paste, beads, hair clutcher and 2 anklets, was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 22.11.2023.

14. I also find that the said 687.200 grams of gold bar, having Tariff Value of Rs.36,66,288/- and Market Value of Rs.43,65,781/-, as discussed hereinabove, carried by the passenger Ms. Laxmi Kumar Banswani 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 22.11.2023 under Section 108 of the Customs Act, 1962.

15. 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, 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, 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.

16. Further, the passenger has accepted that she had not declared the said gold concealed in her innerwear/ cloth 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 said gold 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 the said gold 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 the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further, as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

17. From the facts discussed above, it is evident that Ms. Laxmi Kumar Banswani had carried the said gold totally weighing 687.200 grams of gold bars having purity 999.0, 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 687.200 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

18. It is seen that the Noticee had not filed the baggage declaration form and had not declared the said gold 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 concealed in her innerwear & other articles, as discussed above, by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold totally weighing 687.200 grams, having Tariff Value of Rs.36,66,288/- and Market Value of Rs.43,65,781/- recovered and seized from the passenger vide Seizure Order under the Panchnama proceedings both dated 22.11.2023 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 the said gold concealed in her innerwear & other articles,

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 concealed in her innerwear & other articles, totally weighing 687.200 grams having purity 999.0, and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

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 totally weighing 687.200 grams, having Tariff Value of Rs.36,66,288/- and Market Value of Rs.43,65,781/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 22.11.2023. 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 same, by deliberately not declaring the same by her 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 the 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 of gold into India in baggage. The said gold weighing 687.200 grams, was recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger had concealed the said gold in her innerwear & other articles. 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 said gold bar weighing 687.200 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 22.11.2023 stated that she has carried the gold by concealment to evade payment of Customs duty. In the

instant case, I find that the gold was carried by the noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

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 687.200 grams, carried by the passenger is, therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that gold bar weighing 687.200 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 the said gold bar weighing 687.200 grams, carried by her. She has agreed and admitted in her statement that she travelled with the said gold from Dubai to Ahmedabad. Despite her knowledge and belief that the gold 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 by concealing in her innerwear & other articles 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 **Two Gold Bars** and Two anklets, totally weighing **687.200** Grams, purity 999.0/ 24kt, having tariff value of **Rs.36,66,288/-** (Rupees Thirty-Six Lakh Sixty-Six Thousand Two Hundred eighty-eight only) and market value of **Rs.43,65,781/-** (Rupees Forty Three Lakh Sixty Five Thousand Seven Hundred Eighty One only), concealed in innerwear as semi solid yellow paste, beads,

hair clutcher and 2 anklets, by the passenger and placed under seizure under panchnama proceedings dated 22.11.2023 and Seizure Memo Order dated 22.11.2023, 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.14,00,000/-** (Rupees Fourteen Lakhs Only) on Ms. Laxmi Kumar Banswani under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-224/SVPIA-C/O&A/HQ/2023-24 dated 27.03.2024 stands disposed of.

Vishal
1.7.24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-224/SVPIA-C/O&A/HQ/2023-24
DIN: 20240771MN0000116177

Date: 01.07.2024

BY SPEED POST AD

To,
Ms. Laxmi Kumar Banswani,
BK No. 1098, Room No. 18,
Near Neelam Apt OT SEC, Ulhasnagar,
Thane-421003.

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.