

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्कभवन”, पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद-380009.
दूरभाष: (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in, फैक्स: (079) 2754 2343

DIN No. 20250271MN0000999B34

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-164/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या- तारीख / Show Cause Notice No. and Date	:	VIII/10-164/SVPIA-A/O&A/HQ/2024-25 dated: 18.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	266/ADC/SRV/O&A/2024-25
D	आदेशतिथि/ Date of Order-In- Original	:	26.02.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	26.02.2025
F	द्वारापारित/ Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Sajid Anvarbhai Shekh Taherpura, Behind Police line, Siddhpur, Patan, Gujarat-384151
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का 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 साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा 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, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

Shri Sajid Anvarbhai Shekh, (D.O.B: 26.08.1990)

(hereinafter referred to as the said “passenger/ Noticee”), residential address as per passport is Taherpura, Behind Police line, Siddhpur, Patan, Gujarat - 384151 holding Indian Passport No. R4015752, arrived by Indigo Airlines Flight No. 6E92 from Jeddah to Ahmedabad on 16.02.2024 (Seat No: 10C) 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 16.02.2024, in presence of two independent witnesses for passenger’s personal search and examination of his baggage.

2. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he 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 his consent to be searched in presence of the Superintendent of Customs. Thereafter, the baggage of the passenger was scanned in the X-Ray Bag Scanning Machine (BSM) installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad and some suspicious images were observed/ noticed by the AIU officers. The AIU officer asked him about the suspicious image shown by the X-Ray Bag Scanning Machine (BSM). After sustained interrogation Shri Sajid Anvarbhai Shekh confessed that he is carrying 02 gold bars hidden in date’s packet. Thereafter, the passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes. The passenger removed the metallic substances from his body such as mobile, wallet, etc. and kept it in a plastic tray placed on the table and after that he was asked to pass

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound was heard indicating there was nothing objectionable/ dutiable substance on his body/ clothes.

2.1 The officers wanted to ensure the correctness of weight and value of the recovered gold bars from Shri Sajid Anvarbhai Shekh. Hence, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted and accordingly, the officers, the panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, C.G. Road, Ahmedabad - 380006. Shri Kartikey Vasantrai Soni, the Government Approved Valuer informed that 02 Gold bars weighing **233.180 grams** having purity 999.0/24 Kt. is recovered from Shri Sajid Anvarbhai Shekh. After testing the said gold bar, the Government Approved Valuer confirmed that it is pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 1380/2023-24 dated 16.02.2024 certified that extracted 02 gold bars are having purity 999.0/24kt and tariff value is **Rs.12,50,127/-** (Rupees Twelve Lakh Fifty Thousand One hundred and twenty-seven only) and Market value is **Rs.14,83,958/-** (Rupees Fourteen Lakh Eighty-Three Thousand Nine Hundred and Fifty-Eight Only). The value of the gold bar was calculated as per the Notification No. 12/2024-Customs (N.T.) dated 15-02-2024 (Gold) and Notification No. 13/2024-Customs (N.T.) dtd. 15-02-2024 (exchange Rate). The details of item recovered from the passenger are as under:

S. No.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1	Gold Bars (02pcs)	233.180	999.0 24Kt.	1483958/-	1250127/-

The photograph of the extracted 02 gold bars is as follows:-

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25



2.2 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: 1380/2023-24 dated 16.02.2024 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 -Shri Sajid Anvarbhai Shekh were withdrawn under the Panchnama dated 16.02.2024:-

- (i) Copy of Stamped pages of Passport No. R4015752 issued at Ahmedabad on 13.09.2017 and valid up to 12.09.2027.
- (ii) Boarding pass of Indigo Airlines from Jeddah to Ahmedabad dated 16.02.2024 having seat No.10C.

4. Accordingly, 02 gold bars having purity 999.0/24 Kt. weighing 233.180 grams recovered from Shri Sajid Anvarbhai Shekh were seized vide Panchnama dated 16.02.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bars were smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A statement of Shri Sajid Anvarbhai Shekh was recorded on 16.02.2024, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that:-

- (i) He had visited UAE three times for Umrah purpose.
- (ii) He is a Molana and his travel expenses this time were borne by his devotees.
- (iii) The gold was purchased by him for his family.
- (iv) He had intentionally not declared the seized items, i.e., gold before the Customs Authorities at SVP International Airport Ahmedabad, as he wanted to clear it illicitly and evade payment of Customs Duty. He was fully aware that clearing gold without declaring before Customs, with an intent to evade payment of customs duty is an offence, under the provisions of Customs Act, 1962 and Regulations
- (v) He agreed that he had done evasion of Customs duty. He confessed that he bought 02 gold bars hidden under date's packet weighing 233.180 grams having purity 999.0/24kt and tariff value is Rs.1250127/- (Rupees Twelve Lakh Fifty Thousand One hundred and Twenty Seven only) and Market value is Rs.1483958/- (Rupees Fourteen Lakh Eighty Three Thousand Nine Hundred and Fifty Eight Only) which were recovered from his baggage.

6. The above said 02 gold bars weighing 233.180 grams of 24Kt, with purity 999.0 having tariff value of Rs.12,50,127/- (Rupees Twelve Lakh Fifty Thousand One hundred and Twenty Seven only) and Market value of Rs.14,83,958/- (Rupees Fourteen Lakh Eighty Three Thousand Nine Hundred and Fifty Eight Only), recovered from Shri Sajid Anvarbhai Shekh, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in date's packet, which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the Gold bars weighing 233.180 grams which was attempted to be smuggled by Shri Sajid Anvarbhai Shekh are liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said 02 gold bars weighing 233.180 grams derived from Date's packets was placed under seizure under the provision of

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 16.02.2024.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. —*In this Act, unless the context otherwise requires, —*

(22) "goods" includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(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;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section 11A – Definitions -*In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) Section 77 – Declaration by owner of baggage. —
The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

IV) Section 110 – Seizure of goods, documents and things.—*(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

V) Section 111 – Confiscation of improperly imported goods, etc.—*The following goods brought from a place outside India shall be liable to confiscation:-*

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VI) Section 112 – Penalty for improper importation of goods, etc.- Any person, -

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

VII) Section 119 – Confiscation of goods used for concealing smuggled goods-Any goods used for concealing smuggled goods shall also be liable to confiscation."

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) Section 3(2) - The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."

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

III) Section 11(1) - *No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."*

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

CONTRAVICTION AND VIOLATION OF LAWS

8. It therefore appears that -

(a) The passenger Shri Sajid Anvarbhai Shekh was actively indulged in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 233.180 grams having with purity 999.0 having tariff value of Rs.12,50,127/- (Rupees Twelve Lakh Fifty Thousand One hundred and Twenty Seven only) and Market value of Rs.14,83,958/- (Rupees Fourteen Lakh Eighty Three Thousand Nine Hundred and Fifty Eight Only). The said gold was concealed in Date's packet by the passenger and was not declared to the Customs. The passenger opted green channel to exit the Airport with the deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Therefore, the improperly imported gold bars weighing 233.180 grams of purity 999.0/24 Kt. by Shri Sajid Anvarbhai Shekh by way of concealment and without declaring it 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

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

(Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

- (b)** By not declaring the value, quantity and description of the goods imported by his, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.
- (c) The improperly imported gold by the passenger found concealed in Date's packet, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of the Customs Act, 1962.
- (d) Shri Sajid Anvarbhai Shekh by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.
- (e) As per Section 123 of the Customs Act 1962, the burden of proving that the 02 gold bars weighing 233.180 grams of 24Kt, with purity 999.0 having tariff value of Rs.12,50,127/- (Rupees Twelve Lakh Fifty Thousand One hundred and Twenty Seven only) and Market value of Rs.14,83,958/- (Rupees Fourteen Lakh Eighty Three Thousand Nine Hundred and Fifty Eight Only) derived from Date's packet of Shri Sajid Anvarbhai Shekh without declaring it to the Customs, is not smuggled goods, is upon the passenger Shri Sajid Anvarbhai Shekh.

09. Accordingly, a Show Cause Notice No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25 dated 18.07.2024 was issued to **Shri Sajid Anvarbhai Shekh**, residing at Taherpura, Behind Police line,

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

Siddhpur, Patan, Gujarat - 384151, holding Indian Passport No. R4015752, as to why:

- (i) The **02 gold bars** weighing **233.180** grams of 24Kt, with purity 999.0 having tariff value of **Rs.12,50,127/-** (Rupees Twelve Lakh Fifty Thousand One hundred and twenty-seven only) and Market value of **Rs.14,83,958/-** (Rupees Fourteen Lakh Eighty Three Thousand Nine Hundred and Fifty Eight Only) derived from Date's packet of Shri Sajid Anvarbhai Shekh and placed under seizure under panchnama proceedings dated 16.02.2024 and Seizure Memo Order dated 16.02.2024, should not be confiscated under the provisions 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.

Defense reply and record of personal hearing:

10. The noticee through his advocate submitted his written submission dated 30.01.2025 wherein he denies all the allegation of SCN. He submitted that it is true that he had brought 02 gold bars which were hidden in packets of dates. He mentioned that the statement under Section 108 was given under fear and duress of being arrested and therefore, they are not true and for the reasons cannot be relied to be true for the purpose of invoking the violations as alleged in the impugned SCN. He further submitted that the gold is neither prohibited nor restricted, hence the goods in question is not liable for confiscation and he also not liable for penal action under Section 112 of Customs Act, 1962. He submitted that he was coming back from Jeddah and gold bars were brought for his personal use and was not in commercial quantity. The bills produced/recovered was not incorporated at anywhere during the panchnama. The gold was not concealed ingeniously, as it was in his baggage.

He hides the gold in baggage, because of fear of loot/theft, as he has to travel from Ahmedabad to Patan through tribal belt by bus/jeep, where many cases of loot/theft/highway

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

robbery happened as per the police record. It was his first time of bringing gold therefore, unable to declare the same, due to ignorance of Customs law/Rules. He submitted that he requested the officers to release the gold on payment of duty, fine and penalty. Further, he had produced the copy of invoice at material time, however the same was not incorporated in the SCN. He was studied upto 7th Standard, therefore, he did not know what was written in panchnama and statement and was forced to sign in fear of arrest and same was retracted after knowing the what was written in statement.

He submitted following case laws in his defense wherein the gold was released on redemption fine:-

- *Yakub Ibrasher Yousuf 2011(263) ELT-685(Tri.Mum) and subsequently 2014-TIOL-277-CESTST-MUM*
- *Shaikh Jameel Pasha Vs Govt. Of India 1997(91) ELT277(AP)*
- **KADAR MYDEEN V/s Commissioner of Customs (Preventive), West Bengal 2011(136) ELT 758**

And also relied on the orders passed by Revision Authority as:-

- **Order No: 73/2020-CUS(WZ)/ASRA/MUMBAI DT. 28.05.2020**
in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Ingenious Concealed on Knee Case granted RF, PP)
- **Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020**
IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export)
- **Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020**
in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export)
- **Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI DT. 07.08.2020**
in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment in Jeans Poket Case granted RF, PP)
- **Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020** in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal.
- **2019(369) E.L.T.1677(G.O.I)** in c/a Ashok Kumar Verma.
- **Order No: 20/2021 CUS(WZ)/ASRA/MUMBAI DT. 11.02.2021**
in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF, PP.)

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

- **Order No: 954/2018 CUS(WZ)/ASRA/MUMBAI DT. 22.11.2018**
in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya (Eligible passenger granted RF,PP.)
- **Order No: 29/2018 CUS(WZ)/ASRA/MUMBAI DT. 31.01.20128**
in c/a Commissioner, Customs, Chennai v/s Smt. Navene Elangovan (Eligible passenger granted RF, PP.)
- **Order No: 140/2021 CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021**
in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF,PP)
- **Order No: 14/2018-CUS dated 05.01.2018 of the Government of India Passed by Shri. R. P. Sharma Commissioner & Additional Secretary to the Government of India, under section 129DD of the Customs Act 1962. in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed in Shoes Case granted RF, PP).**
- **Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT. 29.09.2021**
in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Silver Coated Case granted RF, PP)
- **Order No: 214/2021 CUS(WZ)/ASRA/MUMBAI DT. 26.08.2021**
in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed strips wrapped on his ankles Case granted RF, PP)
- **Order No: 10/2019 CUS(WZ)/ASRA/MUMBAI DT. 30.09.2021**
in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai. (Ingenious Concealment Case Undergarment granted RF, PP).
- **Order No. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022** in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai. (Ingenious Concealment Case in soles of Sandals)
- **Order No. 243 & 244/2022 CUS(WZ)/ASRA/MUMBAI DT 24.08.2022** in c/a (1) Pradip Sevantilal Shah (2) Rajesh Bhikhabhai Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Silver/Rhodium Coated Case granted RF, PP)

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

- **Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case).**
- **Order No. 287/2022 CUS(WZ)/ASRA/MUMBAI DT 10.10.2022 in c/a Upletawala Mohammed Fahad Akhtar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted Re-Export on RF, PP).**
- **Order No. 282/2022 CUS(WZ)/ASRA/MUMBAI DT 29.09.2022 in c/a Dipesh Kumar Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case granted RF, PP)**
- **Order No. 284/2022 CUS(WZ)/ASRA/MUMBAI DT 04.10.2022 in c/a Prakash Gurbani V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Case Re-Export, granted RF, PP)**
- **Order No. 314/2022 CUS(WZ)/ASRA/MUMBAI DT 31.10.2022 in c/a Sanjay Kumar Bhavsar V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Chrome Plated Gold Buckles & Hooks Case granted RF, PP)**
- **Order No. 56/2023 CUS(WZ)/ASRA/MUMBAI DT 19.01.2023 in c/a Jayesh Kumar Kantilal Modh Patel V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment in wallet Case granted RF, PP)**
- **Order No. 10/2019 CUS(WZ)/ASRA/MUMBAI DT 30.09.2019 in c/a Pr. Commissioner of Customs, CSI Airport, Mumbai Vs. Smt. Faithimath Raseena Mohammed. (Ingenious Concealment in Undergarments Case granted RF, PP)**
- **Order No. 404 & 405/2023 CUS(WZ)/ASRA/MUMBAI DT 30.03.2023 in c/a (1) Huzefa Khuzem mamuwala (2) Shabbir Raniiwala V/s. Pr. Commissioner of Customs, Ahmedabad. (Ingenious Concealment Socks and Trouser Pockets Case granted Re-Export & RF, PP)**
- **Order No. 349/2022-CUS(WZ)/ASRA/MUMBAI DT 29.11.2022 in c/a Mr. Fakhardi Hasan Abu Mohammed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai (Ingenious Concealment in wallet Case granted RF, PP)**
- **Order No. 395-396/2023-CUS(WZ)/ASRA/MUMBAI DT 28.03.2023 in c/a (1) Shri Tohid Wahid Motiwala (2) Smt. Saika Tohid Motiwala V/s. Pr. Commissioner of Customs, CSI Airport,**

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)

- **Order No. 352/2022-CUS(WZ)/ASRA/MUMBAI DT 30.11.2022 in c/a Shri Mr. Meiraj Mahiuddin Ahmed V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)**
- **Order No. 309/2022-CUS(WZ)/ASRA/MUMBAI DT 01.11.2022 in c/a Mr. Mohammad Amahdi Hemati V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in wallet Case granted RF, PP)**
- **Order No. 380/2022-CUS(WZ)/ASRA/MUMBAI DT 14.12.2022 in c/a Mr. Mohammad Murad Motiwala V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)**
- **Order No. 516-517/2023-CUS(WZ)/ASRA/MUMBAI DT 30.06.2023 in c/a (1) Saba Parveen Irfan Khan (2) Anwar M.T. V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste 1478.3415 grams Case granted RF, PP)**
- **Order No. 786/2023 CUS(WZ)/ASRA/MUMBAI DT 25.10.2023 in c/a Shri Kapil Makhanlal V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)**
- **Order No. 885/2023 CUS(WZ)/ASRA/MUMBAI DT 07.12.2023 in c/a Ma Mansi C. Trivedi V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)**
- **Order No. 883/2023 CUS(WZ)/ASRA/MUMBAI DT 05.12.2023 in c/a Shri Shankarlal Nayak V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)**
- **Order No. 907-909/2023 CUS(WZ)/ASRA/MUMBAI DT 12.12.2023 in c/a Mr. Shahrukkhan Muniruddin Pathan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)**
- **Order No. 899/2023 CUS(WZ)/ASRA/MUMBAI DT 11.12.2023 in c/a Mr. Miteshkumar C. Dhakan V/s. Pr. Commissioner of Customs, Ahmedabad. (Case granted RF, PP)**

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

- **Order No. 898/2023-CUS(WZ)/ASRA/MUMBAI DT 11.12.2023**
in c/a Mr. Radheshyam R. Tiwari V/s. Pr. Commissioner of Customs, CSI Airport, Mumbai. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
- **Order No. 880-882/2023-CUS(WZ)/ASRA/MUMBAI DT 05.12.2023** in c/a Mr. Shri Santosh Suresh Vaswani V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
- **OIA No. AHD-CUSTM-000-APP-176-23-24 DT 25.09.2023** IN c/a Ms Shaikh Anisa Mohammed Amin V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
- **OIA No. AHD-CUSTM-000-APP-179-23-24 DT 26.09.2023** IN c/a Mr Shaikh Imran Abdul Salam V/s Commissioner of Customs (Appeals), Ahmedabad. (Ingenious Concealment in Gold Dust/Paste Case granted RF, PP)
- **Order No. 961/2023-CUS(WZ)/ASRA/MUMBAI DT 29.12.2023**
in c/a Mr. Lokesh Panchal V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
Customs, Excise & Service Tax Appellate Tribunal (WZ) Bench at Ahmedabad. (Customs Appeal No. 11971 of 2016-SM) Final Order No. 10254/2024 dated 29.01.2024 Shri Lookman Mohamed Yusuf V/S. CC- Amedabad, (Ingenious Concealment Gold Case of 4999.180 grams granted RF, PP)
- **Order No. 830-831/2023-CUS(WZ)/ASRA/MUMBAI DT 05.12.2023** in c/a 1. Mr. Muneer Bellipady Mohammed and 2. Mr. Rashid Bannoor Ahmed V/s. Pr. Commissioner of Customs, Ahmedabad. (Gold Case granted RF, PP)
- In the case of Union of India Vs Dhanak M Ramji 201 (252) ELT A 102 (S.C.) the Hon'ble Supreme Court has held that the goods can be released to the passenger on redemption and in case the Owner is someone else, the department can very well ask the owner if she is claiming the ownership or it should be released to the passenger.

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

Further, relying on the latest judgements in which Hon'ble High Court has decided Gold is Not Prohibited and large quantity of gold has been released on redemption Fine and personal Penalty:-

- **High Court of Judicature at Allahabad Sitting at Lucknow, in CIVIL MISC REVIEW APPLICATION No. - 156 of 2022 in case of Sri Rajesh Jhamatmal Bhat And Another**
- **Rajasthan High Court, Manoj Kumar Sharma S/O Late Shri ... vs Union of India on 17 February, 2022**

He further state that the goods may be released at the earliest even provisionally for which they are ready to give bond or pay customs duty amount as ordered against the goods mentioned in the said SCN. It is also craved that if the same is not possible, to release the gold on payment of fine and penalty may be given too, for which the noticee is ready to pay penalty too and requested for a personal hearing in the matter.

During the PH, the Advocate of noticee relied on the following OIO passed by Additional Commissioner, Customs, Ahmedabad wherein Redemption fine was allowed:-

- OIO No. 136/ADC/VM/O&A/2023-24 dated 29.08.2023 in matter of Mohammadrumman Shakil Ahmed Shatrangiwala
- OIO No. 127/ADC/VM/O&A/2023-24 dated 01.08.2023 Shri Srishailam Salavath
- OIO No. AHM-CUSTM-000-COM-015-016-21-22 dated 29.11.2021 in case of Shri Rutugna Arvindkumar Trivedi.

11. To follow the principle of natural justice, personal hearing in the matter were fixed on 03.01.2025, 16.01.2025, 03.02.2025 & 10.02.2025. Shri Rishikesh Mehra, Advocate and Authorized Representative appeared for the personal hearing on 10.02.2025 on behalf of his client i.e Shri Sajid Anvarbhai Shekh. He re-iterated his written submission dated 30.01.2025. He submitted that his client is working as cook in Jeddah since 2016 and purchased the gold from his personal saving and hard earning money. That his client is illiterate person and was not aware of the customs law and gold was found in the luggage bag and does not amount to ingenious concealment. He submitted that the gold was not in commercial

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

quantity and also gold is neither prohibited nor restricted. That his client is ready to pay the applicable duty, fine and penalty and requested to release the gold. He requested to take lenient view and release the gold and submitted case law in his support wherein gold bar released on payment of redemption fine.

Discussion and Findings:

12. I have carefully gone through the facts of this case, written submission and the record of Personal Hearing.

13. In the instant case, I find that the main issue to be decided is whether the 233.180 grams of 02 gold bars (hidden/concealed in check-in baggage) of 24KT (999.0 purity), having Tariff Value of **Rs. 12,50,127/-** and Market Value of **Rs.14,83,958/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 16.02.2024 on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of suspicious movement, the noticee Shri Sajid Anvarbhai Shekh was intercepted by AIU officers and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers under Panchnama proceedings dated 16.02.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he is not carrying any high valued dutiable goods. Thereafter, the officers scanned the baggage at Baggage Scanning Machine (BSM) situated at Red Channel and observed that suspicious Images seemed to be in one bag. On being asked about the suspicious image, the noticee admitted that he was carrying 02 gold bars hidden in date's packet. The officers recovered 02 gold bars from the packet of Dates concealed in the baggage of the passenger.

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said 02 gold bars and informed that the weight of said bars is **233.180** Grams having purity 999.0/24KT which are hidden/concealed in check in baggage in packets of dates. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said derived 02 gold bars is **Rs.12,50,127/-** and Market value is **Rs.14,83,958/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold bars (02 pieces of Suisse 10 tola fine gold 999.0)	02	233.180	999.0/ 24Kt	14,83,958/-	12,50,127/-

16. Accordingly, the said 02 gold bars (hidden/concealed in check in baggage in dates packets) having purity 999.0/24 Kt. weighing 233.180 grams, recovered from noticee was seized vide Panchnama dated 16.02.2024 , under the provisions of the Customs Act, 1962, on the reasonable belief that the said 02 gold bars was smuggled into India by the said noticee 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.

I also find that the said 233.180 grams of 02 gold bars, having Tariff Value of **Rs.12,50,127/-** and Market value is **Rs.14,83,958/-** carried by the passenger 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 16.02.2024 under Section 108 of the Customs Act, 1962.

17. I also find that the noticee 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. I find that under the statement, he

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. His intention was to evade the customs duty, so he had done this illegal carrying of gold of 24KT. in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

18. Further, the noticee has accepted that he had not declared the said gold concealed by him, 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 said 02 gold bars, ('the said gold' for short), which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further, as gold is a notified item and when notified goods are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

smuggled, shall be on the person from whose possession the goods have been seized in term of Section 123 of Customs Act, 1962.

19. The offence committed was admitted by the noticee in his statement recorded on 16.02.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. Under his submission, I find that the noticee has stated that the statement was given under duress and threat of being arrest and statement was recorded in English and he did not know what was written in the statement and he was forced to sign that and not allowed to write in his own handwriting. I find from the content of the statement dated 16.02.2024 that the Statement under Section 108 of Customs Act, 1962 was tendered voluntarily without any threat, coercion or duress and the noticee was at liberty to not endorse the typed statement if the same had been taken under threat/fear as alleged by the noticee. Therefore, I don't find any force in the contention of the noticee in this regard. It is on the record the noticee has requested the officer to type the statement on his behalf on computer and same was recorded as per his say and put his signature on the Statement. Further, I find from the content of statement that the statement was tendered by him voluntarily and willingly without any threat, coercion or duress and same was explained to him. Further, I find that the noticee has clearly mentioned in his statement that the content was explained to him in Hindi and after satisfaction and understanding what was written, he put his dated signature on the statement. Therefore, the argument of the noticee that he did not know what was written in panchnama and statement as both typed in English is not maintainable. The offence committed is admitted by the noticee in his statement recorded on 16.02.2024 under Section 108 of the Customs Act, 1962. It is on the record the noticee had tendered his statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. This principle has been enunciated by the judicial fora as discussed under:-

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidences"
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that "It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [Reported in 1997 (89) E.L.T 646 (S.C)] held that evidence confession statement made before Customs Officer, though retracted within six days, is an admission and binding, Since Customs officers are not Police Officers under Section 108 of Customs Act and FERA"

Further, the noticee has submitted that the statement was retacted by him immediately after knowing what was typed in that, however from the records, I find no such retraction made by him before any authority, therefore, the claim of noticee does not hold any ground. Moreover, the allegation made in the SCN was not based merely on the basis of Statement, rather the noticee has not provided any documentary evidences which support their claim on Gold during the investigation. The noticee has advanced his argument by stating that copy of invoice was produced before customs authority at the time of interception, however the same was not incorporated in SCN. In this regard, I find from the records available and submission made by the

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

noticee, no such invoice is available in record or submitted by the noticee in his submission or during the personal hearing and it is only afterthought. It is on record that the said concealed gold was carried by him and thereby violated provisions of Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

20. I find under submission that the noticee mentioned that due to ignorance of Customs Laws, he was unable to declare the same before authority. *The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.* It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the noticee had kept the gold in form of bars concealed in packets of dates in his baggage, which was in his possession and failed to declare the same before the Customs Authorities on their arrival at SVPIA, Ahmedabad. From the facts discussed above, it is evident that noticee had carried the said gold weighing 233.180 grams, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold bar of 24KT/999.00 purity totally weighing 233.180 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 bars and not declaring the same before the Customs, it is established that the noticee 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.

21. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 233.180 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly the noticee does not fall under ambit of "eligible passenger". The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 233.180 grams, having Tariff Value of Rs.12,50,127/- and Market Value of Rs.14,83,958/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 16.02.2024 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 concealed by him in form of gold bars concealed in check in baggage in packets of dates, it is observed that the noticee 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

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

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.

22. I find that the Noticee confessed of carrying the said gold of 233.180 grams concealed by him 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 amended. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

23. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bars weighing 233.180 grams, having Tariff Value of Rs.12,50,127/- and Market Value of Rs.14,83,958/- recovered and seized from the passenger vide Seizure Order under Panchnama

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

proceedings both dated 16.02.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bars weighing 233.180 grams, 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 the provisions of Section 112 of the Customs Act, 1962.

24. I 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 the 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 233.180 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in bars form concealed/hide in his baggage in packets of dates. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

25. Further, I find that the Noticee has quoted and relied on various case laws/judgments as mentioned above, in his defense, in respect of release of gold on payment of redemption fine. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products* [2004 (170) ELT 135(SC)] has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi* [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar* [2007(2013) ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from. Therefore, the ratio of ruling of the cases cited by the noticee is not squarely applicable in the instant case. In view of the above discussions, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. **Further, no evidence viz. copy of invoice, any bank statement or other documents, has been produced to prove licit import of the seized gold bars, which shows that the noticee has nothing to submit in his defense and sole purpose of the noticee to smuggle the same into India and to avoid the payment of duty without declaring the same before customs authority at airport. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123.** Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is ingenious in nature, as the noticee concealed the gold in form of cut bars in his baggage in packets of dates with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bars weighing 233.180 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

liable for absolute confiscation. Further, the Noticee in his statement dated 16.02.2024 stated that he has carried the said 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 of the said gold bars in baggage.

I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

26. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

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

28. Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

29. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

30. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

31. The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

"23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."

"26. *The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country.**"*

32. Given the facts of the present case before me and the judgements and rulings cited above, the said 02 gold bars weighing 233.180 grams, carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 02 gold bars weighing 233.180 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.**

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SPVIA-A/O&A/HQ/2024-25

33. In regard to imposition of penalty under Section 112 of Customs Act, 1962, I find that in the instant case, the principle of mens-reas is established on the basis of documents available on records. Accordingly, on deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of *M/s. Hindustan Steel Ltd Vs. State of Orissa*; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee was attempting to evade the Customs Duty by not declaring the gold weighing 233.180 grams having purity of 999.0 and 24K. Hence, the identity of the goods is not established and non-declaration at the time of import is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold weighing 233.180 grams, carried by him. He has agreed and admitted in his statement that he travelled from Jeddah to Ahmedabad with the said gold bars concealed in packets of dates in his baggage. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 233.180 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee 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 of the Act and I hold accordingly.

34. Accordingly, I pass the following Order:

ORDER

i) I order **absolute confiscation** of 02 gold bars weighing

OIO No:266/ADC/SRV/O&A/2024-25
F. No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25

233.180 grams having purity of 999.0 (24KT.) concealed in packets of dates recovered from check in baggage, having Market value of **Rs.14,83,958/-** (Rupees Fourteen Lakh Eighty Three Thousand Nine Hundred and Fifty Eight Only) and Tariff Value of **Rs.12,50,127/-** (Rupees Twelve Lakh Fifty Thousand One hundred and twenty-seven only), placed under seizure under Panchnama dated 16.02.2024 and seizure memo order dated 16.02.2024, 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. 4,00,000/- (Rupees Four Lakh Only)** on **Shri Sajid Anvarbhai Shekh** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

35. Accordingly, the Show Cause Notice No. VIII/10-164/SVPIA-A/O&A/HQ/2024-25 dated 18.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-164/SVPIA-A/O&A/HQ/2024-25 Date:26.02.2025

DIN: 20250271MN0000999B34

BY SPEED POST AD

To,

Shri Sajid Anvarbhai Shekh
Taherpura, Behind Police line,
Siddhpur, Patan,
Gujarat-384151

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site.
6. Guard File.