



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमा शुल्क भवन", पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद - 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-07/SVP/IA-A/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-07/SVP/IA-A/O&A/HQ/2024-25 dated: 08.04.2024
C	मूल आदेश संख्या/ Order-In-Original No.	: 129/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	: 28.08.2024
E	जारी करने की तारीख/ Date of Issue	: 28.08.2024
F	द्वारा पारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	: Shri Abubaker Miyanmuhammed Ghaswala, 11/451, 3rd Floor, Flat No. B3, Vibhuti Appt. Pandoli Ni Pole, Nanavat Surat City -395003.
(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 ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धारा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case: -

Shri Abubakar Miyanmuhammad Ghaswala, aged 37 years (DOB 02.03.1986) son of Shri Miyanmuhammad Abdulkader Ghaswala holding Indian Passport No. P9156400 address (as per passport): 11/451, 3rd Floor, Flat No. B3, Vibhuti Appt. Pandoli Ni Pole, Nanavat Surat City - 395003 arrived from Abu Dhabi to Ahmedabad on 15.11.2023 by Flight No. EY286 at SVPI Airport, Ahmedabad around 19.25 hours. On the basis of specific input that passenger was carrying dutiable/ contraband goods, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration to the Customs, under the Panchnama proceedings dated 15.11.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage.

02. The pax was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. Not being satisfied with the reply of the suspected passenger, the officer asked him to pass through the Door Frame Metal Detector (DFMD) installed at the arrival hall after removing all the metallic substances. The passenger was passed through the Door Frame Metal Detector (DFMD) installed at the end of the green channel in the Arrival Hall of Terminal 2 building; however, no beep sound was heard.

03. The said passenger was carrying one red coloured trolley bag as checked in baggage and one black coloured back-pack as hand baggage. All the bags were scanned in the X-Ray Bags Scanning Machine (XBIS) located near the green channel counter at terminal 2 of SVPI Ahmedabad. On checking his baggage nothing objectionable was found. Thereafter, the passenger was taken to the AIU Office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad. On sustained interrogation, passenger asked whether he was concealing any high value dutiable goods, then the passenger confessed that he has plastic strip of gold and chemical mix paste

concealed in the waist of jeans. The same was removed by the passenger and handed over to the AIU Officer.

04. The said material in paste form appeared to be of gold which needed to be confirmed and the purity as well as weight of the paste needed to be ascertained by a Government Approved Valuer. The AIU officers called the Government Approved Valuer for testing of said packets. The Government Approved Valuer informed AIU officer that the testing of the said material was only possible at his workshop as gold has to be extracted from such paste form by melting it and also informed the address of his workshop and requested the AIU officers to come for testing and valuation. Thereafter, at around 21.30 Hrs. of 15.11.2023 the AIU Officers along with the panchas and the passenger left the Airport premises in a Government Vehicle and reached at the premises of the Government Approved Valuer, Shri Kartikey Vasantrai Soni located at K.V. Jewels, C.G. Road, Ahmedabad. Here, after weighing the said plastic strip containing gold paste is weighing 666.870 grams. Thereafter, Government Approved Valuer started the process of converting the said paste material into solid gold. The gold and chemical mix substance was put into the furnace. Upon heating the said paste substance, it turned into liquid material. The said substance in liquid state was taken out of furnace, and poured in a bar shaped plate and after cooling it for some time, it becomes yellow coloured solid metal in the form of bar. After completion of the procedure, the Government Approved Valuer informed that the gold bar weighing **585.950** grams having purity 999.0 is derived from the 666.870 grams substance containing gold and chemical mix paste.

05. After testing the said bar, the Government Approved Valuer confirmed vide his Valuation certificate No. 873/2023-24 dated 15.11.2023 that it was pure gold. Further, he informed that as per the total Market Value of the said recovered gold bar derived from the paste substance consisting of Gold & Chemical Mix, total having net weight of gold **585.950** grams, purity 999.0, Market Value at **Rs.36,56,328/-** (Rupees Thirty-Six Lac Fifty-Six Thousand Three Hundred and Twenty-Eight only) and Tariff Value is **Rs.31,26,108/-** (Rupees Thirty-One Lac Twenty-Six Thousand One Hundred and Eight

Only). The value of the gold bar has been calculated as per the Notification No. 83/2023-Customs (N.T.) dated 15.11.2023 (gold) and Notification No. 81/2023-Customs (N.T.) dated 02.11.2023 (exchange rate).

Sr. No.	Details of Items	Pieces	Purity	Net Weight (in Grams)	Market Value (In Rs.)	Tariff Value (In Rs.)
1	Gold Bar	01	24kt. Gold Bar 999.0	585.950	36,56,328/-	31,26,108/-

06. A statement of the passenger Shri Abubaker Miyanmuhammad Ghaswala, dated 16.11.2023 was recorded under Section 108 of the Customs Act, 1962 wherein he stated that:

- i. he was engaged in the business of ladies garments and his mobile number is 9173737780;
- ii. His monthly income is Rs.30,000/- (approx.).
- iii. On being asked regarding his overseas travels, he stated that he went to Abu Dhabi for the purpose of business and came SVPI International Airport, Ahmedabad at approx. 07.00 AM on 15.11.2023 by Etihad Airlines Flight No. EY286, after immigration checks, he picked up his checked in bag and walked towards the exit gates through the Green Channel after crossing the Customs counter at the red channel. At the time of taking exit the Customs officers intercepted him and repeatedly asked about carrying any high valued item. He Confessed/ admitted that he has concealed gold and chemical mix paste into his waist of jeans.
- iv. On being asked regarding the gold paste concealed in the waist of jeans, he stated that he visited Abu Dhabi for purchase of clothes. During his visit, Shri Kamalbhai given over him one trouser and offered him Rs.10,000/- to handed over the same in India, he told me one person will collect the gold from me at SVPI Airport, Ahmedabad and will be pay 10,000/- for this transaction at the time of delivery, but he did not give me the name and contact number of the receiving person. This gold was not purchased by me, I was tempted to earn money, and I took the jeans and wore the same.
- v. On being asked why he had opted for green channel without declaring the dutiable goods, he stated that in Riyadh, his friend had guided him to not make any declaration at Ahmedabad Airport regarding concealment of gold done by him. He had full confidence that the gold concealed in the waist of jeans could not be find by Customs. Hence, he had opted for green channel without the declaration with an intent to clear the gold to evade the payment of Customs Duty.

07. In view of the above, 585.950 grams Gold Bar had been placed under Seizure on 16.11.2023 under Panchnama proceedings dated 15.11.2023 (RUD-01) and Seizure Memo dated 16.11.2023 on the

reasonable ground that the same are liable for confiscation under the Customs Act, 1962 in as much as the said act was an attempt to smuggle the said goods inside India illegally. The seized goods i.e. one gold bar weighing 585.950 grams having purity 999.0 (24 Kt.) recovered/ derived from the paste comprising of Gold and chemical Mix totally weighing 666.870 grams had been handed over to the warehouse in-charge for safe keeping vide E. No. 5310 dated 16.11.2023.

08. In view of the above, **Shri Abubaker Miyanmuhmmmed Ghaswala**, Son of Shri Miyanmuhmmmed Abdulkader Ghaswala, holding an Indian Passport Number No. P9156400 residing at 11/451, 3rd Floor, Flat No.B3, Vibhuti Appt. Pandoli Ni Pole, Nanavat, Surat City -395003, was called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 'Custom House' Building, Near All India Radio, Old High Court Lane, Navrangpura, Ahmedabad 380009, within 30 days of the receipt of this notice as to why :

(i) One gold bar weighing **585.950** grams having purity of 999.0 (24 Kt.) recovered/derived from the paste comprising of Gold and chemical Mix totally weighing 666.870 grams, Market Value at **Rs.36,56,328/-** (Rupees Thirty Six Lac, Fifty Six Thousand Three Hundred and Twenty Eight only) and Tariff Value is **Rs.31,26,108/-** (Rupees Thirty One Lac Twenty Six Thousand One Hundred and Eight Only), which has been calculated as per the Notification No. 83/2023-Customs (N.T.) dated 15.11.2023 (gold) and Notification No. 81/2023-Customs (N.T.) dated 02.11.2023 (exchange rate), should not be confiscated under the provisions of Sections 111(d), 111 (f), 111(i), 111 (j) and 111 (l) and 111(m)of the Customs Act, 1962 and ;

(ii) Penalty should not be imposed upon the passenger under Section 112 of the Customs Act, 1962;

Defence Reply and Personal Hearing:

09. Shri Abubaker Miyanmuhmmmed Ghaswala has not submitted written reply to the Show Cause Notice.

9.1. Shri Abubaker Miyanmuhmmmed Ghaswala was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but neither the Noticee nor his representative appear for personal hearing on the given dates.

Discussion and Findings:

10. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his 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.

11. In the instant case, I find that the main issue to be decided is whether the 585.950 grams of 01 gold bar, recovered/ derived from the paste comprising of Gold and chemical Mix totally weighing 666.870 grams, having Tariff Value of Rs.31,26,108/- (Rupees Thirty-One Lakhs Twenty-Six Thousand One Hundred Eight Only) and Market Value of Rs.36,56,328/- (Rupees Thirty-Six Lakhs Fifty-Six Thousand Three Hundred Twenty-Eight Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 15.11.2023, 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.

12. I find that the Panchnama has clearly drawn out the fact that on the basis of specific input that one passenger was carrying dutiable/ contraband goods, the passenger was intercepted by the Air

Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad, while passenger was attempting to exit through green channel without making any declaration to the Customs, under the Panchnama proceedings dated 15.11.2023. The pax was questioned by the AIU officers as to whether he was carrying any dutiable/ contraband goods in person or in his baggage, to which he denied. Not being satisfied with the reply of the suspected passenger, the officer asked him to pass through the Door Frame Metal Detector (DFMD), and while he passed through the Door Frame Metal Detector (DFMD) no beep sound was heard. On sustained interrogation, the passenger confessed that he has plastic strip of gold and chemical mix paste concealed in the waist of jeans. The same was removed by the passenger and handed over to the AIU Officer.

13. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said plastic strip containing gold paste which was weighing 666.870 grams. After completion of extraction, the Government Approved Valuer informed that Gold Bar weighing **585.950** Grams having purity 999.0/ 24kt is derived from the 666.870 Grams of Rhodium Coated Rectangle shape Rods concealed inside the Knives, in check-in baggage of the passenger. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.31,26,108/-** (Rupees Thirteen Lakhs Twenty-Six Thousand One Hundred Eight only) and Market value is **Rs.36,56,328/-** (Rupees Thirty-Six Lakhs Fifty-Six Thousand Three Hundred Twenty-Eight only). 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	Tariff Value (Rs.)	Market Value (Rs.)
1.	Gold Bar	1	585.950	999.0/ 24 Kt	31,26,108/-	36,56,328/-

14. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 585.950 grams, derived from rectangular solid object coated with Rhodium recovered from Shri Abubaker Miyanmuhmmmed Ghaswala was seized vide Panchnama dated 15.11.2023, 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.

I also find that the said 585.950 grams of 1 gold bar obtained from the 666.870 Grams derived from the paste substance consisting of Gold & Chemical Mix having Tariff Value of Rs.31,26,108/- and Market Value of Rs.36,56,328/- carried by the passenger Shri Abubaker Miyanmuhmmmed Ghaswala 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 15.11.2023 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, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wanted to save Customs duty, he had concealed the same in his clothes, i.e. waist of jeans, 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 he had not declared the said gold paste 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 1 gold bar, derived from gold paste, ('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, 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 Shri Abubaker Miyanmuhmmmed Ghaswala had carried the said gold weighing 585.950 grams, while arriving from Abu Dhabi to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24Kt/999.00 purity totally weighing 585.950 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 his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 585.950 grams concealed by him, 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 bar weighing 585.950 grams, having Tariff Value of Rs.31,26,108/- and Market Value of Rs.36,56,328/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 15.11.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

19. I find that the Noticee confessed of carrying the said gold of 585.950 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 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 with the wilful intention to smuggle the impugned goods. The said gold bar weighing 585.950 grams, having Tariff Value of Rs.31,26,108/- and Market Value of Rs.36,56,328/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 15.11.2023. 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 said gold bar weighing 585.950 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.

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 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 585.950 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 his clothes, i.e. waist of jeans. 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 585.950 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 15.11.2023 stated that he 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 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".

28. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 585.950 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 585.950 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 himself and abetted the act of smuggling of the said gold bar weighing 585.950 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Abu Dhabi to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 585.950 grams, having purity 999.0 by concealment. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

30. Accordingly, I pass the following Order:

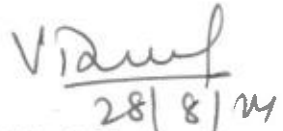
ORDER

- i) I order absolute confiscation of One gold bar weighing 585.950 grams having purity of 999.0 (24 Kt.) recovered/

derived from the paste comprising of Gold and chemical Mix, totally weighing 666.870 grams, Market Value at **Rs.36,56,328/-** (Rupees Thirty Six Lac, Fifty Six Thousand Three Hundred and Twenty Eight only) and Tariff Value is **Rs.31,26,108/-** (Rupees Thirty One Lac Twenty Six Thousand One Hundred and Eight Only), placed under seizure under Panchnama dated 15.11.2023 and seizure memo order dated 15.11.2023, 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.11,00,000/-** (Rupees Eleven Lakhs Only) on Shri Abubaker Miyanmuhmmmed Ghaswala under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-07/SVPIA-A/O&A/HQ/2024-25 dated 08.04.2024 stands disposed of.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-07/SVPIA-A/O&A/HQ/2024-25 Date: 28.08.2024
DIN: 20240871MN000000DE3E

BY SPEED POST AD

To,
Shri Abubaker Miyanmuhammed Ghaswala,
11/451, 3rd Floor, Flat No.B3,
Vibhuti Appt. Pandoli Ni Pole,
Nanavat Surat City -395003.

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.