



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/10-194/SVPIA-D/O&A/HQ/2023-24
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-194/SVPIA-D/O&A/HQ/2023-24 dated: 29.01.2024
C	मूल आदेश संख्या/ Order-In-Original No.	: 41/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	: 27.05.2024
E	जारी करने की तारीख/ Date of Issue	: 27.05.2024
F	द्वारा पारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	: To, Smt. Kadari Jasminbanu Imtiyazhusen, (residential address as per passport) P. No. 9, Alvi Duplex, Inside Shahejad Park, Nasim Parlour Gali, Fatehvadi, Sarkhej, Ahmedabad.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), 4 वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (4.00) 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 (4.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 0.4% अधिकतम 10 करोड़ शुल्क हम करना होगा जहां शुल्क या 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 धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case: -

Smt. Kadari Jasminbanu Imtiyazhusen (D.O.B: 29.01.1990) (hereinafter referred to as the said "passenger/ Noticee"), residential address as per passport is P. No. 9, Alvi duplex, Inside Shahejad Park, Nasim Parlour Gali, Fatehvadi, Sarkhej, Ahmedabad, holding Indian Passport No. Y6624856, arrived by Spice Jet Flight No. SG 16 from Dubai to Ahmedabad on 25.11.2023 having seat No. 14B, at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of suspicious movement, the passenger was intercepted by the Customs Officers and 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 25.11.2023 in presence of two independent witnesses for passenger's personal search and examination of her baggage. The passenger was carrying one trolley bag and one shoulder bag as Checked-in baggage.

2. The officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. The officers informed the passenger that she would be conducting her personal search and detailed examination of her baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether she wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave her consent to be searched in presence of the Superintendent of Customs. Now, the AIU officer asks the passengers to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from their body/ clothes.

The passenger removes all the metallic objects such as mobile, purse, the passengers and keeps in a plastic tray and passes through the DFMD. However, no beep sound is heard indicating there is nothing objectionable/ metallic substance on her body/ clothes. Thereafter, the said passenger, Panchas and the officers move to the AIU office located opposite belt No. 1 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passengers. The AIU officers has started thoroughly scrutinizing the Clothes, while scrutinizing in detail the officers observed that Clothes are thicker than the usual clothes. Further, the officers start unwrapping the inner thin layers of the clothes and has found some golden colour powder in between layers of clothes.

2.1 The officers informed the Panchas that the Gold into Powder form concealed in clothes substance recovered from Smt. Kadari Jasminbanu Imtiyazhusen contains gold, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from Gold into Powder form concealed in clothes and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the Panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad - 380006. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said Gold into Powder form concealed in clothes substance comprising of gold on his weighing scale and informed that it was weighing 1414.9 grams (weight inclusive of clothes). Further, he put these clothes in furnace and recovered gold ashes from these clothes. Total weigh of gold ashes comes to 595.52 Grams, he states that this semi solid substance is mixture of 100% Purity of Gold with Chemical. So, the same substance needs Melting Process to Derive Exact Quantity & Purity of Gold with Chemical. Then, Mr. Kartikey Vasantrai Soni starts the process of converting the said semi solid substance that belongs to Smt. Kadari Jasminbanu Imtiyazhusen into Pure gold. The said substance in liquid state is taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it becomes yellow coloured solid metal in

form of a bar. After completion of the procedure, Government Approved Valuer informs that gold bar weighing **581.88** Grams having purity 999.0/24kt is derived from the Semi solid substance recovered



from the clothes.

The photograph of the same is as under :

2.2 Now, the Government Approved Valuer, in presence of panchas, the passenger and the Officers, starts testing and valuation of the said golden coloured bar. After testing and valuation, Shri Soni Kartikey Vasantrai vide certificate no. 912/2023-24 dated 25.11.2023 that this gold bar is made up of 24 Kt. gold having purity 999.0 weighing 581.88 Grams having Market Value at **Rs.37,03,084/-** (Rupees Thirty-seven Lakhs Three Thousand and Eighty-Four only) and tariff value at **Rs.31,02,549/-** (Rupees Thirty-One Lakhs Two Thousand Five Hundred and Forty-Nine only). The value of the gold bars has been calculated as per the Notification No. 82/2023-Customs (N.T.) dated 15.11.2023 (gold) and Notification No. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate). The details of the Valuation of the said gold bar is tabulated in below table:

Sr. No.	Details of Items	PCs	Gross wight in Gram	Net Weight in Gram	Purity	Market value (in Rs.)	Tariff value (in Rs.)
1	Gold Bar (Extracted from Clothes)	01	595.52	581.88	999.0 24 Kt	37,03,084/-	31,02,549/-

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent Panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate given by Shri Kartikey

Vasantraai 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 – Smt. Kadari Jasminbanu Imtiyazhusen was withdrawn under the Panchnama dated 25.11.2023.

- i) Boarding Pass from Dubai to Ahmedabad of Spice Jet Flight No. SG 16 dated 24.11.2023, Seat No. 14B.
- ii) Copy of Passport No. Y6624856 issued at Ahmedabad on 14.07.2023 valid up to 13.07.2033.

4. Accordingly, gold bar having purity 999.0/24 Kt. weighing 581.88 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Smt. Kadari Jasminbanu Imtiyazhusen was seized vide Panchnama dated 25.11.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A statement of Smt. Kadari Jasminbanu Imtiyazhusen was recorded on 25.11.2023, under Section 108 of the Customs Act, 1962, wherein she inter alia stated that -

- (i) She is not regular and frequent flier. This is her first travel to abroad and prior to this she never travelled abroad i.e. Dubai. The financial position of her family is very poor and it is very difficult run the family. So, she and her mother decided to visit Dubai. In greed to earn money. She planned to work with someone to bring the items from Dubai to India.
- (ii) one person Rahmat Ali met him at Dubai and he told her that he will give Rs.15,000/- and flight ticket and in lieu of this she was asked to carry Salwar-payjama from Dubai to Ahmedabad Airport and to hand over the same to a person who will contact her at Ahmedabad Airport.

- (iii) She boarded the flight SG 16 of Spice Jet Airlines from Dubai to Ahmedabad on 24.11.2023;
- (iv) She had been present during the entire course of the Panchnama dated 25.11.2023 and he confirmed the events narrated in the said panchnama drawn on 25.11.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) She was aware that smuggling of gold without payment of Customs duty is an offence; She was aware of the gold concealed in the layers of clothes but She did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty. She confirmed the recovery of Gold totally weighing 581.88 grams having purity 999.0/24 KT valued at Market Value at Rs.37,03,084/- (Rupees Thirty-seven Lakhs Three Thousand and Eighty-Four only) and tariff value at Rs.31,02,549/- (Rupees Thirty-One Lakhs Two Thousand Five Hundred and Forty-Nine only) from her under the Panchnama dated 25.11.2023; She had opted for green channel to attempt to smuggle the gold hidden in the layers of her clothes without paying Customs duty.

6. The above said gold bar weighing 581.88 grams, tariff value of Market Value at Rs.37,03,084/- (Rupees Thirty Seven Lakhs Three Thousand and Eighty Four only) and tariff value at Rs.31,02,549/- (Rupees Thirty One Lakhs Two Thousand Five Hundred and Forty Nine only) recovered from Smt. Jasminbanu Imtiyaz Husen Kadari was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in Gold into Powder form concealed in clothes, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 581.88 grams which was attempted to be smuggled by Smt. Kadari Jasminbanu Imtiyazhusen liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 581.88 grams derived from the Gold into Powder form concealed in clothes total weighing 1414.9 grams (Including Clothes), was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 25.11.2023.

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 in the Customs Act, 1962 :

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.

8. It therefore appears that:

- (a) The passenger Smt. Kadari Jasminbanu Imtiyazhusen had dealt with and knowingly indulged herself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing **581.88** grams having purity 999.0/24 Kt. derived from Gold in Powder form concealed in clothes, totally weighing 1414.9 grams (Including Clothes), and having Market Value at **Rs.37,03,084/-** (Rupees Thirty-seven Lakhs Three Thousand and Eighty-Four only) and tariff value at **Rs.31,02,549/-** (Rupees Thirty-One Lakhs Two Thousand Five Hundred and Forty-Nine only). The said gold powder was concealed in clothes by the passenger and not declared to the Customs. The passenger opted green channel to exit the Airport with 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. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 581.88 grams of purity 999.0/24 Kt. by Smt. Kadari Jasminbanu Imtiyazhusen 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 (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 her, 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 Smt. Kadari Jasminbanu Imtiyazhusen found concealed the Gold into Powder form in clothes, 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) Smt. Kadari Jasminbanu Imtiyazhusen by her above-described acts of omission and commission on her part has rendered herself 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 gold bar weighing 581.88 grams of purity 999.0/24 Kt. and having Market Value at **Rs.37,03,084/-** (Rupees Thirty Seven Lakhs Three Thousand and Eighty Four only) and tariff value at **Rs.31,02,549/-** (Rupees Thirty One Lakhs Two Thousand Five Hundred and Forty Nine only) derived from Gold into Powder form concealed in clothes totally weighing 1414.9 grams (Including Clothes) etc. by the passenger in the form of powder in clothes without declaring it to the Customs, is not smuggled goods, is upon the passenger Smt. Kadari Jasminbanu Imtiyazhusen.

9. Now, therefore, **Smt. Kadari Jasminbanu Imtiyazhusen** residing at (residential address as per passport) P. No. 9, Alvi Duplex, Inside Shahejad Park, Nasim Parlour Gali, Fatehvadi, Sarkhej, Ahmedabad, India, holding Indian Passport No. Y6624856, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, SVPI Airport, Ahmedabad having his office located at Terminal-2, SVPI Airport, Ahmedabad-380 006, as to why:

- (i) One Gold Bar weighing **581.88** grams having purity 999.0/24 Kt. and having Market Value at **Rs.37,03,084/-** (Rupees Thirty Seven Lakhs Three Thousand and Eighty Four only) and tariff value at **Rs.31,02,549/-** (Rupees Thirty One Lakhs Two Thousand Five Hundred and Forty Nine only) derived Gold into Powder form concealed in clothes by the

passenger and placed under seizure under panchnama proceedings dated 25.11.2023 and Seizure Memo Order dated 25.11.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

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

Defence Reply and Personal Hearing:

8. Smt. Kadari Jasminbanu Imtiyazhusen has not submitted written reply to the Show Cause Notice.

8.1. Smt. Kadari Jasminbanu Imtiyazhusen was given opportunity to appear for personal hearing on 02.05.2024; 05.05.2024 and 10.05.2024 but she did not appear for personal hearing on the given dates.

Discussion and Findings:

9. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file her reply/ submissions or to appear for the personal hearing opportunities offered to her. The adjudication proceedings cannot wait until the Noticee makes it convenient to file her submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

10. In the instant case, I find that the main issue to be decided is whether the 581.88 grams of gold bar, obtained from the powder of gold and chemical mixture weighing 595.52 grams, having Tariff Value of Rs.31,02,549/- (Rupees Thirty-One Lakhs Two Thousand Five Hundred Fourty-Nine Only) and Market Value of Rs.37,03,084/- (Rupees Thirty-Seven Lakhs Three Thousand Eighty-Four Only), seized

vide Seizure Memo/ Order under Panchnama proceedings both dated 25.11.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

11. I find that the Panchnama has clearly drawn out the fact that on the basis of suspicious movement, the passenger was intercepted by the Customs Officers and Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs. The officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. Now, the AIU officer asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine and on passing through the DFMD, no beep sound was heard indicating there is nothing objectionable/ metallic substance on her clothes. The AIU officers started thoroughly scrutinizing the Clothes, while scrutinizing in detail the officers observed that Clothes are thicker than the usual clothes. Further, the officers start unwrapping the inner thin layers of the clothes and has found some golden colour powder in between layers of clothes.

I also find that the said 581.88 grams of gold bar obtained from the 595.52 Grams of gold powder having Tariff Value of Rs.31,02,549/- and Market Value of Rs.37,03,084/- carried by the passenger Smt. Kadari Jasminbanu Imtiyazhusen appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in her statement recorded on 25.11.2023 under Section 108 of the Customs Act, 1962.

12. I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording her statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in her statement, she has clearly

admitted that she was aware that import of gold without payment of Customs duty was an offence but as she wants to save Customs duty, she had concealed the same in Clothes 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.

13. Further, the passenger has accepted that she had not declared the said gold powder concealed in clothes on her arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the gold powder which was in her possession and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold powder recovered from her possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

14. From the facts discussed above, it is evident that Smt. Kadari Jasminbanu Imtiyazhusen had carried gold powder weighing 595.52 grams, (wherefrom 581.88 grams of gold bar having purity 999.0 recovered on the process of extracting gold from the said powder) while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 581.88 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 powder in her clothes and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

15. It is seen that the Noticee had not filed the baggage declaration form and had not declared the said gold powder which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold powder weighing 595.52 grams concealed in her clothes (extracted gold bar of 581.88 grams) by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 581.88 grams (derived from the gold powder, totally weighing 595.52 grams), having Tariff Value of Rs.31,02,549/- and Market Value of Rs 37,03,084/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 25.11.2023 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 powder concealed in her clothes, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same is liable to confiscation under the Act. It, is therefore, proved beyond doubt that the Noticee has committed

an offence of the nature described in Section 112 of the Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

16. I find that the Noticee confessed of carrying the said gold powder of 595.52 grams concealed in her clothes (extracted gold bar of 581.88 grams having purity 999.0) and attempted to remove the said gold from the Customs Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

17. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign destination with the wilful intention to smuggle the impugned goods. The said Gold bar weighing 581.88 grams, derived from the Semi Solid substance Material, totally weighing 595.52 grams, having Tariff Value of Rs.31,02,549/- and Market Value of Rs.37,03,084/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 25.11.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had

attempted to remove the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 595.52 grams (Gold bar weighing 581.88 grams derived from the same) by deliberately not declaring the same by her on arrival at airport with the wilful intention to smuggle the impugned gold into India. I therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

18. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. Gold bar weighing 581.88 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 595.52 grams, was recovered from her possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, passenger concealed the gold powder in her clothes. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

19. In view of the above discussions, I hold that the said gold bar weighing 581.88 grams, (derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 595.52 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 her statement dated 25.11.2023 stated that she has carried the gold by concealment in Clothes to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting

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

20. 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."

21. 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.

22. 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).

- 23.** 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.

- 24.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government Of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in

very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

25. Given the facts of the present case before me and the judgements and rulings cited above, gold bar weighing 581.88 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 595.52 grams carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that said gold bar weighing 581.88 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.

26. I further find that the passenger had involved herself and abetted the act of smuggling of gold bar weighing 581.88 grams, derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, totally weighing 595.52 grams carried by her. She has agreed and admitted in her statement that she travelled with gold powder consisting of Gold & Chemical Mix, totally weighing 595.52 grams from Dubai to Ahmedabad. Despite her knowledge and belief that the gold powder carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold powder of 595.52 grams by concealing in her clothes (extracted gold bar of 581.88 grams having purity 999.0). Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

27. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the gold bar weighing **581.88** grams, of 24Kt/999.0 purity having Tariff Value of **Rs.31,02,549/-** (Rupees Thirty-One Lakhs Two Thousand Five Hundred Fourty-Nine Only) and **Rs.37,03,084/-**

(Rupees Thirty-Seven Lakhs Three Thousand Eighty-Four Only) derived from the Semi Solid substance Material consisting of Gold & Chemical Mix, recovered and seized from the passenger Smt. Kadari Jasminbanu Imtiyazhusen vide Seizure Order under Panchnama proceedings both dated 25.11.2023, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

- ii) I impose a penalty of **Rs.11,00,000/-** (Rupees Eleven Lakh Only) on Smt. Kadari Jasminbanu Imtiyazhusen under the provisions of Section 112(a)(i) of the Customs Act 1962.

28. Accordingly, the Show Cause Notice No. VIII/10-194/SVPIA-D/O&A/HQ/2023-24 dated 29.01.2024 stands disposed of.


27/5/24

(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-194/SVPIA-D/O&A/HQ/2023-24 Date: 27.05.2024
DIN: 20240571MN0000111C94

BY SPEED POST AD

To,
Smt. Kadari Jasminbanu Imtiyazhusen,
(residential address as per passport)
P. No. 9, Alvi Duplex, Inside Shahejad Park,
Nasim Parlour Gali, Fatehvadi, Sarkhej,
Ahmedabad.

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.