



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/10-243/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओ नोटिस संख्या - तारीख / Show Cause Notice No. and Date	: VIII/10-243/SVPIA-D/O&A/HQ/2023-24 dated: 01.05.2024
C	मूल आदेश संख्या/ Order-In-Original No.	: 135/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 Pathan Moinkhan Salim Residing at Hanuman Faliyu, AT-PO. Kharod, Tal. Ankleshwar, Bharuch, Gujarat-394115.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), 4वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (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 6.4% अधिकतम 10 करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 के धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the case:

Shri Pathan Moinkhan Salim (herein after referred to as "the passenger/ Noticee") residing at Hanuman Faliyu, AT-PO. Kharod, Tal. Ankleshwar, Bharuch, Gujarat - 394115 holding Indian Passport bearing No. B6150216 arrived from Dubai by Indigo Flight No. 6E 1478 dated 15.12.2023 at SVP International Airport, Ahmedabad on 15.12.2023. On the basis of passenger profiling, the passenger was intercepted by the Officers of Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to the Customs, under Panchnama proceedings dated 15.12.2023 in presence of two independent witnesses, for passenger's personal search and examination of his baggage. The passenger was carrying one Black colored trolley bag and one black colored hand bag as Checked-in baggage.

2. The AIU officers asked the passenger if he had anything dutiable to declare to the Customs Authorities, to which the said passenger replied in negative. The AIU officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The officers asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/ clothes. The passenger removed all the metallic objects such as mobile, purse etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound was heard indicating there was nothing objectionable/ metallic substance on his body/ clothes. Thereafter, the officers checked the baggage of the passenger, however nothing objectionable was found. Further, the officers scanned one black colored trolley bag and black colored bag-pack of the passenger in X-ray baggage scanning machine (BSM) installed near the green channel counter at terminal-2 of SVPI, Ahmedabad in which a dark black colored image with yellow outline appeared in the upper side borders of the trolley bag. Now, the AIU officers thoroughly checked the trolley bag from which black colored image appeared but nothing objectionable found inside the trolley bag.

Further, the officers again scanned the said trolley bag after removing all the materials packed in the trolley bags and then confirmed that the dark black colored image with yellow outline is appearing inside upper side layers of the trolley bag. Thereafter, the officers scratch the upper side borders of the trolley bag and find some yellow color metal stick/ rod/ wire concealed inside the upper side layers of the trolley bag. The officers asked the passenger, whether said stick/ rod/ wire coated with white rhodium was made of Gold, to which the passenger admitted that the stick/ rod is made of Gold.

2.1 Thereafter, the AIU officers called the Government Approved Valuer, Shri Kartikey Vasantrai Soni, and informed him that a yellow-coloured metal stick/ rod has been recovered from the inner layers of upper sides of the trolley bag of a passenger and the passenger has informed that it is gold, and therefore he is required to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informed the AIU Officers that the testing of the said material is only possible at his workshop as the gold sticks have to be converted into gold bar by melting it, and informed the address of his workshop and requested officers to come at his workshop. Thereafter, the AIU Officers along with Panchas and the passenger left the Airport premises in a government vehicle and reached at the premises of the Government approved valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad -380006. On reaching the above referred premises, the AIU officers introduced the Panchas as well as the passenger to Shri Kartikey Vasantrai Soni, Government approved valuer. Here, after weighing the yellow-colored metal stick/ rod/ wire on his weighing scale, Shri Kartikey Vasantrai Soni informed that the weight of the said yellow metal stick/ rod/ wire recovered from the passenger is 200.340 grams.

2.2 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of extracting the gold from the said 02 gold sticks/ rods. After completion of extraction, the Government Approved Valuer informed that one Gold Bar weighing **199.760** Grams having purity of 999.0/24 Kt was derived from the gold sticks/ rods/ wire, weighing 200.340 grams recovered from said

trolley bag. The valuation Certificate No. 995/2023-24 dated 15.12.2023 prepared by Shri Kartikey Vasantrai Soni. After testing and valuation, the Govt. Approved Valuer vide his certificate No. 995/2023-24 dated 15.12.2023 confirmed that it is gold having purity 999.0/24 Kt. The Govt. Approved Valuer summarized that this gold bar is made up of 24kt gold having purity 999.0 weighing **199.760** grams derived from 200.340 grams of gold wires/ stick/ rod coated with white rhodium recovered, concealed inside the trolley bag of the passenger. Further, the Govt. Approved Valuer informed that the market value of the said gold is **Rs.12,87,653/-** (Rupees Twelve Lakhs Eighty-Seven Thousand Six Hundred and Fifty-Three Only) and Tariff Value is **Rs.11,09,741/-** (Rupees Eleven Lakhs Nine Thousand Seven Hundred and Forty-One only). The value of the gold bar has been calculated as per the Notification No. 89/2023-Customs (N.T.) dated 28.11.2023 (gold) and Notification No. 90/2023-Customs (N.T.) dated 07.12.2023 (exchange rate). The outcome of the said testing is summarized in below table.

Sl. No.	Details of gold	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	199.760	999.0/24 Kt	12,87,653/-	11,09,741/-

2.3. The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent Panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 995/2023-24 dated 15.12.2023 given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificate. The following documents produced by the passenger were withdrawn under the Panchnama dated 15.12.2023. The following travelling documents and identity documents of the passenger were recovered and withdrawn for further investigation:

- (i) Copy of Passport No. B6150216 issued at Surat on 05.10.2023 and valid up to 04.10.2033.
- (ii) Boarding pass of Indigo Flight No. 6E 1478 from Dubai to Ahmedabad dated 15.12.2023 having seat No. 21F.
- (iii) Copy of Aadhar Card bearing No. 3036 1273 0806.

3. A statement of the passenger Shri Pathan Moinkhan Salim was recorded on 15.12.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that -

"He visited Dubai for the first time for tourist purpose and purchased some Dry-fruits for his family; his friend gave trolley bag to handover someone in India and receiver will call you and he will pay Rs.10,000/- for this purpose; this is his first arrival in Ahmedabad; I was instructed by my friend in Dubai to handover the Bag to a person at Ahmedabad and therefore, this is the only reason for opting Ahmedabad Airport for arrival; the tickets were arranged by my friend who handed over the bag at Dubai; He had been present during the entire course of the Panchnama dated 15.12.2023 and he confirmed the events narrated in the said Panchnama drawn on 15.12.2023 at Terminal-2, SVPI Airport, Ahmedabad; He is aware that smuggling of gold without payment of Customs duty is an offence; he is well aware of the gold concealed in the side corner of the Bags but he did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty."

4. The above said gold bar weighing 199.760 grams recovered from Shri Pathan Moinkhan Salim, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the side corner of the Baggage, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 199.760 grams is attempted to be smuggled by Shri Pathan Moinkhan Salim liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 199.760 grams derived from the above said side corner of the Bags weighing 200.340 grams along with trolley bag, was placed under seizure under the provisions of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 15.12.2023.

5. In view of the above, **Shri Pathan Moinkhan Salim** residing at Hanuman Faliyu, AT-PO. Kharod, Tal. Ankleshwar, Bharuch, Gujarat-394115, is called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Customs House, Opp. Old High Court, Navrangpura, Ahmedabad - 380009, as to why:

- (i) One Gold Bar, weighing **199.760** grams having purity 999.0/ 24KT recovered/ derived from 200.340 grams gold wire coated with white rhodium concealed inside the trolley bag, having market value of **Rs.12,87,653/-** (Rupees Twelve Lakhs Eighty-Seven Thousand Six Hundred and Fifty-Three Only) and Tariff Value of **Rs.11,09,741/-** (Rupees Eleven Lakhs Nine Thousand Seven Hundred and Forty One only) placed under seizure under Panchnama dated 15.12.2023 and seizure memo order dated 15.12.2023 should not be confiscated under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) The black colored trolley bag used for concealment of the said gold bar in the form of metal wires coated with white Rhodium, seized under Panchnama dated 15.12.2023 and Seizure memo order dated 15.12.2023, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the passenger, under Section 112(a) and 112(b) of the Customs Act, 1962.

Defence Reply and Personal Hearing:

6. Shri Pathan Moinkhan Salim has not submitted written reply to the Show Cause Notice.

7. Shri Pathan Moinkhan Salim was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but neither the Noticee or his representative appear for personal hearing on the given dates.

Discussion and Findings:

8. 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.

9. In the instant case, I find that the main issue to be decided is whether the 199.760 grams of 01 gold bar, recovered/ derived from 200.340 grams gold wire coated with white rhodium concealed inside the trolley bag, having Tariff Value of Rs.11,09,741/- (Rupees Eleven Lakhs Nine Thousand Seven Hundred Fourty-One Only) and Market Value of Rs.12,87,653/- (Rupees Twelve Lakhs Eighty-Seven Thousand Six Hundred Fifty-Three Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 15.12.2023, 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; the packing material used for packing and concealment of the seized goods, i.e. black colored trolley bag, used for concealment of the said gold bar in the form of Rhodium Coated Rectangle Shape Rods inside the checked-in baggage, is liable for confiscation under Section 119 of the Act; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

10. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling, the passenger was intercepted by the Officers of Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to the Customs. The AIU officers asked the passenger if he had anything dutiable to declare to the Customs Authorities, to which the said passenger replied in negative. The officers scanned one black colored trolley bag and black colored bag-pack of the passenger in X-ray baggage scanning machine (BSM) installed near the green channel counter at terminal-2 of SVPI, Ahmedabad in which a dark black colored image with yellow outline appeared in the upper side borders of the trolley bag. The officers again scanned the said trolley bag after removing all the materials packed in the trolley bag and then confirmed that the dark black colored image with yellow outline is appearing inside upper side layers

of the trolley bag. Thereafter, the officers scratch the upper side borders of the trolley bag and found some yellow color metal stick/ rod/ wire concealed inside the upper side layers of the trolley bag. The officers asked the passenger, whether said stick/ rod/ wire coated with white rhodium was made of gold, to which the passenger admitted that the stick/ rod is made of gold.

11. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, after weighing the said yellow color metal stick/ rod/ wire coated with Rhodium on his weighing scale, Shri Kartikey Vasantrai Soni informed that the said material grossly weighing 200.340 Grams. After completion of extraction, the Government Approved Valuer informed that Gold Bar weighing 199.760 Grams having purity 999.0/ 24kt is derived from the 200.340 Grams of yellow color metal stick/ rod/ wire coated with Rhodium, 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.11,09,741/-** (Rupees Fifteen Lakhs Fifty-Five Thousand Six Hundred and Seventy-Two only) and Market value is **Rs.12,87,653/-** (Rupees Seventeen Lakhs Eighty-Three Thousand and One Hundred Thirty-Seven 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	199.760	999.0/ 24 Kt	11,09,741/-	12,87,653/-

12. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 199.760 grams, derived from rectangular solid object coated with Rhodium recovered from Shri Pathan Moinkhan Salim was seized vide Panchnama dated 15.12.2023, 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 199.760 grams of 1 gold bar obtained from the 200.340 Grams of rectangular solid object coated with

Rhodium having Tariff Value of Rs.11,09,741/- and Market Value of Rs.12,87,653/- carried by the passenger Shri Pathan Moinkhan Salim 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 15.12.2023 under Section 108 of the Customs Act, 1962.

13. 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 baggage 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.

14. Further, the passenger has accepted that he had not declared the said rectangular solid object coated with Rhodium 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 rectangular solid object coated with Rhodium, ('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.

15. From the facts discussed above, it is evident that Shri Pathan Moinkhan Salim had carried the said gold weighing 200.340 grams, 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 199.760 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.

16. 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 199.760 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 199.760 grams, having Tariff Value of Rs.11,09,741/- and Market Value of

Rs.12,87,653/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 15.12.2023 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.

17. I find that the Noticee confessed of carrying the said gold of 199.760 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.

18. 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 199.760 grams, having Tariff Value of Rs.11,09,741/- and Market Value of Rs.12,87,653/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 15.12.2023. 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 199.760 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 provisions of Section 112 of the Customs Act, 1962.

19. 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 199.760 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 baggage. 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.

20. In view of the above discussions, I hold that the said gold bar weighing 199.760 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the

Noticee in his statement dated 15.12.2023 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.

21. 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."

22. 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.

23. 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).*

24. 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.

25. 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".

26. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 199.760 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 199.760 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.

27. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold bar weighing 199.760 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Dubai 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 199.760 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.

28. Accordingly, I pass the following Order:

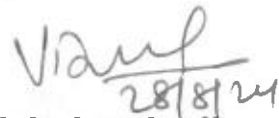
ORDER

- i) I order absolute confiscation of One Gold Bar, weighing **199.760** grams having purity 999.0/ 24KT recovered/ derived from 200.340 grams gold wire coated with white rhodium concealed inside the trolley bag, having market

value of **Rs.12,87,653/-** (Rupees Twelve Lakhs Eighty-Seven Thousand Six Hundred and Fifty-Three Only) and Tariff Value of **Rs.11,09,741/-** (Rupees Eleven Lakhs Nine Thousand Seven Hundred and Forty One only) placed under seizure under Panchnama dated 15.12.2023 and seizure memo order dated 15.12.2023, 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 order absolute confiscation of packing material, i.e. black colored trolley bag used for concealment of the said gold bar in the form of metal wires coated with white Rhodium, seized under Panchnama dated 15.12.2023 and Seizure memo order dated 15.12.2023, under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.4,50,000/-** (Rupees Four Lakhs Fifty Thousand Only) on Shri Pathan Moinkhan Salim under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-243/SVPIA-D/O&A/HQ/2023-24 dated 01.05.2024 stands disposed of.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-243/SVPIA-D/O&A/HQ/2023-24 Date: 28.08.2024
DIN: 20240871MN0000555DD9

BY SPEED POST AD

To,
Shri Pathan Moinkhan Salim
Residing at Hanuman Faliyu,
AT-PO. Kharod, Tal. Ankleshwar,
Bharuch, Gujarat-394115.

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.