

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/10-43/SVPIA-A/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-43/SVPIA-A/O&A/HQ/2024-25 dated: 09.05.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	137/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	28.08.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	28.08.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	Shri Amaan Ullah, 2871, Gali Bul Buli Khana, Pahari Bhojla, Delhi, Pin-110006
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे 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), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (₹.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 साथकेवल पांच (₹.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 डियूटी 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:

Shri Amaan Ullah, (D.O.B: 17.10.2004) (hereinafter referred to as "the said passenger/ Noticee"), residential address as per passport is 2871, Gali Bul Buli Khana, Pahari Bhojla, Delhi, Pin-110006, India, holding Indian Passport No. Y9189739, arrived by Indigo Flight No. 6E-1478 from Dubai to Ahmedabad on 14.12.2023 (Seat No: 29C) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of passenger profiling, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 14.12.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage.

2. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The officers informed the passenger that he would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes. Thereafter, the passenger removed the metallic substances from his body such as mobile, belt etc., and kept it in a plastic tray placed on the table there and after that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound was heard indicating there was nothing objectionable/ dutiable substance was on his body/ clothes. Thereafter, the baggage (Blue colour trolley bag, red bag and purse) of the passenger was scanned in the X-Ray Bag Scanning Machine (BSM) installed near the Green Channel counter at

terminal 2 of SVPI Ahmedabad. While scanning the Blue coloured trolley bag in the X-Ray Bag Scanning Machine (BSM) some suspicious image observed/ noticed by the AIU officers. The AIU officers asked him about the suspicious image shown by the X-Ray Bag Scanning Machine (BSM) but the passenger didn't give satisfactory reply. Further, in order to confirm it, the officers again asked the passenger whether any dutiable/ contraband item concealed in the Skating Board. Thereafter, the passenger accepted that he had concealed the gold in the Skating Board. Thereafter, the AIU officers removed the parts of the Skating Board. Further, the AIU officers cut the bolts and axle parts of the skating board with the help of the cutter and removed yellow-coloured rods from it.

2.1 The officers informed the panchas that the aforesaid Gold Rods concealed in the parts of Skating Board, recovered from Shri Amaan Ullah required 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 such Rods comprising of gold 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, C.G. Road, Ahmedabad-380006. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said Rods on his weighing scale and informed that it was weighing 306.400 grams (gross weight).

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said Rods into solid gold. After completion of the melting procedure, the Government Approved Valuer informed that 1 Gold bar weighing **306.240 grams** having purity 999.0/24 Kt. is derived from the said Rods. After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 989/2023-24 dated 14.12.2023 certified that the extracted gold bar is having purity 999.0/24kt and tariff value is **Rs.17,01,277/-** (Rupees Seventeen Lac One Thousand Two Hundred and Seventy-Seven only), and Market value is **Rs.19,75,248/-** (Rupees Nineteen Lac Seventy-Five Thousand Two Hundred and Forty-Eight 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 details of item recovered from the passenger are as under:

S. No.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1	1 Gold Bar	306.240	999.0/24 Kt.	19,75,248/-	17,01,277/-

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. 989/2023-24 dated 14.12.2023 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 certificates.

3. The following documents produced by the passenger – Shri Amaan Ullah were withdrawn under the Panchnama dated 14.12.2023.

- i) Copy of Stamped pages of Passport No. Y9189739 issued at Delhi on 18.09.2023 valid up to 17.09.2033.
- ii) Boarding pass dated 14.12.2023 showing Seat No.29C of Indigo Flight No. 6E-1478 from Dubai to Ahmedabad.

4. Accordingly, the said gold bar having purity 999.0/24 Kt. weighing 306.240 grams, derived from the Rods concealed in the parts of Skating board recovered from Shri Amaan Ullah was seized vide Panchnama dated 14.12.2023, under the provisions of 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 there under.

5. A statement of Shri Amaan Ullah was recorded on 14.12.2023, under Section 108 of the Customs Act, 1962, wherein he interalia stated that:-

(i) he is a student and pursuing graduation from Delhi. He lives with his parent, two elder brothers and a younger sister;

(ii) he went to Dubai for visit and returned back to Ahmedabad same day on 14.12.2023 by Indigo Flight No. 6E-1478 from Dubai to Ahmedabad; that he contacted to travel agent for booking of ticket for Dubai and return and made payments to the travel agent; that this was the first incident when the Gold in the form of gold rod of 24 KT purity concealed in the skateboard;

(iii) he had travelled two times to Dubai and opted Ahmedabad International Airport as arrival point and used IGI Airport as departure point; that he opted Ahmedabad International Airport as arrival being cheaper flight fare as well as to search the burkha market in Ahmedabad; that he informed that his distant relative has handed over the skateboard to him and he was unaware about the presence of concealed gold in the skateboard; that the gold bar derived/recovered from the said skateboard under Panchanama dated 14.12.2023 weighted 306.240 gms;

(iv) he had been present during the entire course of the Panchanama dated 14.12.2023 and he confirmed the events narrated in the said panchanama drawn on 14.12.2023 at Terminal-2, SVPI Airport, Ahmedabad;

(v) he was aware that bringing dutiable/prohibited/restricted goods without declaration and without payment of duty is an offence; he said that he was not aware about the concealment of the gold rod in the skateboard and due to this reason, he opted to cross Green channel. He confirmed the recovery of Gold totally weighing 306.240 grams having purity 999.0/24 KT valued at tariff value Rs.17,01,277/- (Rupees Seventeen Lac One Thousand Two Hundred and Seventy-Seven only), and Market value is Rs.19,75,248/- (Rupees Nineteen Lac Seventy-Five Thousand Two Hundred and Forty Eight Only) from him under the Panchanama dated 14.12.2023.

6. The above said gold bar weighing 306.240 grams, valued at Rs.17,01,277/- (Tariff value) and Rs.19,75,248/- (Market value), recovered from Shri Amaan Ullah, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of Rods concealed in the parts of Skating board, which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 306.240 grams which was attempted to be smuggled by Shri Amaan Ullah, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 306.240 grams derived from the Gold Rods weighing 306.400 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 14.12.2023.

7. In view of the above, **Shri Amaan Ullah**, residing at 2871, Gali Bul Buli Khana, Pahari Bhojla, Delhi, Pin-110006, India, holding Indian Passport No. Y9189739, was called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2ndFloor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:

- (i) One Gold Bar weighing **306.240** grams having purity 999.0/24 Kt. and having tariff value of **Rs.17,01,277/-** (Rupees Seventeen Lac One Thousand Two Hundred and Seventy Seven only), and Market value is **Rs.19,75,248/-** (Rupees Nineteen Lac Seventy Five Thousand Two Hundred and Forty Eight Only), derived from Rods concealed in the parts of Skating Board weighing 306.400 grams (gross weight) by the passenger and placed under seizure under the panchnama proceedings dated 14.12.2023 and Seizure Memo Order dated 14.12.2023, should not be confiscated under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

8. Shri Amaan Ullah has not submitted written reply to the Show Cause Notice.

9. Shri Amaan Ullah 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:

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 306.240 grams of 01 gold bar, recovered/ derived from 306.400 grams of Gold Rods concealed in the parts of Skating Board, having Tariff Value of Rs.17,01,277/- (Rupees Seventeen Lakhs One Thousand Two Hundred Seventy-Seven Only) and Market Value of Rs.19,75,248/- (Rupees Nineteen Lakhs Seventy-Five Thousand Two Hundred Forty-Eight Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 14.12.2023, 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; 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 passenger profiling, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 14.12.2023. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The baggage (Blue colour trolley bag, red bag and purse) of the passenger was scanned in the X-Ray Bag Scanning Machine (BSM) installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. While scanning the Blue coloured trolley bag in the X-Ray Bag Scanning Machine (BSM) some suspicious image observed/ noticed by the AIU officers. The AIU officers asked him about

the suspicious image shown by the X-Ray Bag Scanning Machine (BSM) but the passenger didn't give satisfactory reply. Further, in order to confirm it, the officers again asked the passenger whether any dutiable/ contraband item concealed in the Skating Board. The passenger accepted that he had concealed the gold in the Skating Board.

13. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, after weighing the said gold rods on his weighing scale, Shri Kartikey Vasantrai Soni informed that the said material grossly weighing 306.400 Grams. After completion of conversion, the Government Approved Valuer informed that Gold Bar weighing 306.240 Grams having purity 999.0/ 24kt is derived from the 306.400 Grams of gold rods. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.17,01,277/-** (Rupees Seventeen Lakhs One Thousand Two Hundred Seventy-Seven only) and Market value is **Rs.19,75,248/-** (Rupees Nineteen Lakhs Seventy-Five Thousand Two Hundred Fourty-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	306.240	999.0/ 24 Kt	17,01,277/-	19,75,248/-

14. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 306.240 grams, derived from gold rods concealed in the parts of skating board, recovered from Shri Amaan Ullah was seized vide Panchnama dated 14.12.2023, 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 306.240 grams of 1 gold bar obtained from the 306.400 Grams derived from gold rods concealed in the parts of skating board, having Tariff Value of Rs.17,01,277/- and Market Value of Rs.19,75,248/- carried by the passenger Shri Amaan Ullah

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 14.12.2023 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 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.

16. Further, the passenger has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said 1 gold bar, derived from gold rods concealed in the parts of skating board, ('**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 Amaan Ullah had carried the said gold, 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 of 24Kt/999.00 purity weighing 306.240 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 306.240 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 306.240 grams, having Tariff Value of Rs.17,01,277/- and Market Value of Rs.19,75,248/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 14.12.2023 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.

19. I find that the Noticee confessed of carrying the said gold of 306.240 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 306.240 grams, having Tariff Value of Rs.17,01,277/- and

Market Value of Rs.19,75,248/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 14.12.2023. 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 306.240 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.

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 306.240 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.

22. In view of the above discussions, I hold that the said gold bar weighing 306.240 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 14.12.2023 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.

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 306.240 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 306.240 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 306.240 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 306.240 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:

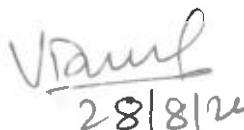
O R D E R

- i) I order absolute confiscation of One Gold Bar weighing **306.240** grams having purity 999.0/24 Kt. and having tariff value of **Rs.17,01,277/-** (Rupees Seventeen Lac One Thousand Two Hundred and Seventy Seven only), and Market value is **Rs.19,75,248/-** (Rupees Nineteen Lac Seventy Five Thousand Two Hundred and Forty Eight Only), derived from Rods concealed in the parts of Skating Board weighing 306.400 grams (gross weight) by the passenger and placed under seizure under the Panchnama proceedings

dated 14.12.2023 and Seizure Memo Order dated 14.12.2023, 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 impose a penalty of **Rs.6,00,000/-** (Rupees Six Lakhs Only) on Shri Amaan Ullah under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-43/SVPIA-A/O&A/HQ/2024-25 dated 09.05.2024 stands disposed of.


28/8/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-43/SVPIA-A/O&A/HQ/2024-25 Date: 28.08.2024
DIN: 20240871MN000000C22C

BY SPEED POST AD

To,
Shri Amaan Ullah,
2871, Gali Bul Buli Khana,
Pahari Bhojla,
Delhi, Pin-110006.

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.