



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन," पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद - 380 009.

दूरभाष : (079) 2754 4630

E-mail: cus-ahmd-adj@gov.in

फैक्स : (079) 2754 2343

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-234/SVPIA-B/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-234/SVPIA-B/O&A/HQ/2023-24 dated: 07.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	80/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	28.06.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	28.06.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Noticee	:	Shri Kunwar Singh, S/o Shri Moharman Singh, Ward No. 24, Ranjana Nagar Bhind, Madhya Pradesh - 477001, India.
(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), 8वीं मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) रुपये पे न्यायालय 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 धरा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Shri Kunwar Singh, (hereinafter referred to as the said "person/ Noticee"), residing at Ward No. 24, Ranjana Nagar Bhind, Madhya Pradesh 477001, holding Aadhaar Card No. 4901 0763 2536. During the course of search proceedings by the AIU Officers of a person at Bay/ Parking Stand No. 37 in the apron area of SVP International Airport, Ahmedabad, who is an employee of CAFS (Casino Air-Caterers & Flight Services), Gandhinagar, Gujarat having an identity card issued by CAFS, Gandhinagar, Gujarat and the Officers on the basis of a call received from Mr. Mayank Thanki, Security Supervisor of SpiceJet that they have noticed some suspicious movement of a person, named Shri Kunwar Singh, who is staff of CAFS and boarded the flight No SG-16 for offloading of catering, the person was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 10.10.2023 in presence of two independent witnesses for person's personal search and examination of his baggage.

2. The AIU Officers informed the Panchas that on the basis of information passed on by the Security Supervisor of SpiceJet, Mr. Mayank Thanki that their team has noticed some suspicious movement of a person named Shri Kunwar Singh, working as Senior Supervisor of CAFS (M/s. Casino Air- Caterers & Flight Services), Gandhinagar. Thus, the Officers along with the Panchas reached at Bay/ Parking Stand No. 37 in the apron area of SVP International Airport, Ahmedabad, in a vehicle provided by SpiceJet, where the Officers and the Panchas saw some persons are standing in the Bay/ Parking Stand No. 37 in the apron area of SVP International Airport. On being asked by the AIU officers one person introduced himself as Mr. Mayank Thanki, Security Supervisor of SpiceJet and then the person introduced another person who identified himself as Shri Kunwar Singh, who is an employee of CAFS and residing at Ward No. 24, By Pass Road, Ranjana Nagar, Bhind, Madhya Pradesh 477001, to the Officers in presence of the Panchas. The Officers in presence of the Panchas also saw that there are some other persons also standing. On being asked by the AIU officers in presence of Panchas, they introduced themselves as the

staff of CISF, SVPI Airport. The AIU officers therefore, informed the Panchas that a thorough search of Shri Kunwar Singh required to be carried out and Panchas were requested to be present as independent Panchas during the entire proceedings and the above named Panchas gave their consent to remain present as witnesses during the entire proceedings.

2.1 Accordingly, the Officers in presence of the Panchas offered their personal search to Shri Kunwar Singh, but he denied and said that he is having full trust on the Officers and the AIU Officers asked the person whether he wants to be checked before an Executive Magistrate or Superintendent of Customs, in reply to which the person gave his consent to be searched in front of the Superintendent of Customs. The Officers, in presence of the Panchas, conducted personal search of Shri Kunwar Singh and found some yellow-coloured metallic items in his possession wrapped in grey coloured adhesive tape as informed by Mr. Mayak Thanki, Security Supervisor of Spice Jet.

2.2 The AIU Officers, in presence of the Panchas asked Shri Kunwar Singh, to accompany them to Arrival Hall of Terminal 2 of SVP Ahmedabad. On reaching at the Arrival Hall of Terminal 2 of SVP Ahmedabad, the officers of AIU asked the person 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 person removed all the metallic objects such as mobile, belt etc. and keeps in a plastic tray and passes through the DFMD. However, no beep sound was heard indicating nothing more objectionable/ metallic substance on his body/ clothes. Thereafter, the Officers, the Panchas and the person moved to the AIU Office located opposite Belt No.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad. The Officers checked the person thoroughly however nothing objectionable was found. Shri Kunwar Singh, then stated that the yellow-colored metallic items are gold and that he has hidden some more gold bars in the dust bin of the catering truck. The officers of Customs AIU then immediately informed the CISF officials about the truck. The CISF, then informed the officials that the truck with number plate GJ 18 BT 2916 has already been intercepted

at the CISF Security point at ATC Tower Exit Gate at Terminal 2 as part of their random checking procedure. Then the Officers, the Panchas, and Shri Kunwar Singh, at once, reached the CISF Security point at ATC Tower Exit Gate at Terminal 2. The CISF Official, informed the AIU Officers that during search of the said catering truck they found some yellow colored metallic items wrapped in grey coloured adhesive tape in the dust bin of the catering truck lying below the garbage bag. The CISF personnel, then, in presence of the Panchas handed over the yellow coloured metallic items to the AIU Officers and the AIU officers as well as the CISF personnel further carried out search of the catering truck and did not found any other suspicious/ objectionable item in the truck. The AIU Officers asked Shri Kunwar Singh once again to accompany them to the Arrival Hall of Terminal 2 of SVP Ahmedabad for further action and all reached the Arrival Hall of Terminal 2 of SVP Ahmedabad.

2.3 Thereafter, the AIU Officers called the Government Approved Valuer and informed him that some yellow coloured metallic item has been found and the person has informed that it is gold bars and hence, he needs to come to the Airport for testing for the Valuation of the said material. In reply, the Government Approved Valuer informed the AIU Officer that the testing will be done at Airport and will come at the earliest. The Government Approved Valuer reached the Office and the AIU Officers introduced the Panchas as well as the person named Shri Kartikey Vasantraai Soni, Government Approved Valuer. The AIU officer took the photograph of the said metallic items wrapped in grey adhesive tape having total gross weight of 2341.300 Grams. Thereafter the adhesive tape was removed and the metallic items were weighed. The net weight of the said metallic items found to be 2332.800 grams.

2.4 The Government Approved Valuer, in presence of AIU Officers, the Panchas, the person started testing and valuation of the said yellow coloured bars and confirmed that it is of 24 Kt. gold having purity 999.0. Thereafter, the Govt. Approved Valuer summarized the gold bars and informed that there is total **20 Gold TT bars** made up of 24 Kt. gold having purity 999.0 with a total weighment of **2332.800** grams having market value of **Rs.1,38,66,163/-** (Rupees One Crore

Thirty-Eight Lakhs Sixty-Six Thousand One Hundred Sixty-Three Only) and Tariff Value of **Rs.1,18,23,132/-** (Rupees One Crore Eighteen Lakhs Twenty-Three Thousand One Hundred Thirty-Two Only). The value of the gold bars has been calculated as per the Notification No. 71/2023-Customs (N.T.) dated 29.09.2023 (gold) and Notification No. 73/2023-Customs (N.T.) dated 05.10.2023 (exchange rate). He submitted his valuation report/ certificate No. 691/2023-24 dated 10.10.2023 to the AIU Officers which has been taken on record. The Panchas and the said person put their dated signature on the said valuation report.

2.5 The details of the Valuation of the said gold bars as tabulated in below table:

Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold TT Bars (AL Etihad DUBAI-UAE 10 TOLAS 999.0)	20	2332.800	999.0 24Kt.	1,38,66,163/-	1,18,23,132/-

2.6 The AIU Officers informed the Panchas as well as the person Shri Kunwar Singh, that the recovered 20 Gold TT bars of 24Kt. with purity 999.0 weighing 2332.800 Grams having market value of Rs.1,38,66,163/- (Rupees One Crore Thirty Eight Lakhs Sixty-Six Thousand One Hundred Sixty Three Only) and Tariff Value of Rs.1,18,23,132/- (Rupees One Crore Eighteen Lakhs Twenty Three Thousand One Hundred Thirty Two Only), which have been calculated as per the Notification No. No. 71/2023-Customs (N.T.) dated 29.09.2023 (gold) and Notification No. 73/2023-Customs (N.T.) dated 05.10.2023 (exchange rate) recovered from the above said person were attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962. Thus, the AIU officers informed that they have a reasonable belief that the above said Gold were attempted to be smuggled by Shri Kunwar Singh is liable for confiscation as per the provisions of the Customs Act, 1962; hence, the said gold bars along with packing material viz. grey adhesive tape are being placed under

seizure, vide Seizure Memo issued from F. No. VIII/10-137/AIU/B/2023-24 dated 10.10.2023.

2.7 The AIU officer, then, in presence of the Panchas and in the presence of the said person Shri Kunwar Singh, placed the 24 kt. gold bars of 999.0 purity weighing 2332.800 grams recovered from Shri Kunwar Singh in a transparent plastic box along with the packing materials i.e. grey coloured adhesive tape ties it with white thread and seals it with the Customs lac seal in such a manner that same cannot be opened without tempering the Customs lac seal. The said sealed transparent plastic container containing gold TT bars along with the packing materials has been handed over to the Ware House In-charge, SVPI Airport, Ahmedabad vide Ware House Entry No. 5155 dated 10.10.2023.

3. A Statement of Shri Kunwar Singh S/O Shri Moharman Singh, aged 38 years, holding Aadhaar Card No.4901 0763 2536, residing at Ward No. 24, Ranjana Nagar Bhind, Madhya Pradesh 477001, was recorded under Section 108 of the Customs Act, 1962 before the Superintendent (AIU), Customs, SVPI Airport, Ahmedabad on 10.10.2023, wherein he stated as under:

1. His name, age and address stated above is true and correct. Currently he is an employee in catering services of CAFS for the last eight months.
2. He lives in Ahmedabad in accommodation provided by the company at Bhat Gaon, Ahmedabad. He has two daughters who live with his wife at his native place i.e. Madhya Pradesh. His wife is a house wife.
3. He graduated (B.A.). His monthly income is approximately Rs.19,000/-.
4. Yes, he knows bringing of gold or handing and taking over of the gold without payment of duty and without declaring to the customs is an offense.
5. He stated that he does not want to pay the customs duty and also, he was not going to declare these dutiable gold bars before the customs.
6. His salary Account in Federal Bank with A/c No. 99980117315221 in Chandkheda branch, Ahmedabad.

7. He stated that he never indulged in any smuggling activity in the past.

8. He stated that as he is an employee of CAFS so he came at Bay/ Parking area No 37 in the apron of SVPIA airport for the purpose of offloading of foods from Spice Jet Flight No SG-16 which was coming from Dubai to Ahmedabad.

9. He stated that his permanent residence is in Madhya Pradesh and here in Ahmedabad, he resides in the company accommodation at Bhat Gaon Ahmedabad.

10. He stated that he does not know that person who were bringing these gold bars and from where but he received a telephonic call from Dubai from an unknown person to take away these gold bars which were hidden inside the lavatory of Spice Jet flight SG-16.

11. He met with an unknown person 15 days ago who was coming from Dubai from the same flight Spice Jet at the time of deboarding of plane. He also asked for my telephone to make an emergency call to his family. It may be possible that he had taken my contact no that day.

12. He has been told to hand over these gold bars to an unknown person outside of the airport. He doesn't know that person and he was told that he will receive a call on his phone.

13. These gold bars do not belong to him. He has been offered Rs.80,000/- for handing over these gold bars.

14. He stated that none other than him is involving in this work.

15. He has carefully gone through the Panchnama dated 10.10.2023 and put his dated signature on it in token of having read and understood after agreeing with the same.

3.1. A Statement of Shri Mayank Ashok Thanki, Security Supervisor of M/s. SpiceJet posted at SVPI, Ahmadabad was also recorder under Section 108 of the Customs Act, 1962 and it was stated that at around 0030 hrs. on 10.10.2023, he got a call from one of their Security staff, Mr. Kuldeep Kanojia, who is working as Trainee Security Executive since last two months. He was intimated that a person namely Mr. Kunwar Singh from CAFS, who is engaged in loading/ offloading of catering was moving suspiciously in and around the flight SG 16 at around 00:30 hrs. and on inquiry Mr. Kuldeep Kanojia noticed that some yellow-coloured metal was being carried by Mr. Kunwar Singh and he stopped him as a precaution and asked him to come Bay no. 37 in the apron area of SVP International Airport, Ahmedabad

immediately; when he reached at Bay No. 37 in the apron area of SVP International Airport, Ahmadabad at around 0055 hrs., he found Shri Kunwar Singh who was sitting the step ladder of flight SG 16 in presence of their security staff headed by Shri Kuldeep Kanojia. Then he noticed that Shri Kunwar Singh was in awkward position and saw the yellow-coloured metallic items with him and he immediately called the officers of Customs AIU, SVPI, and Ahmedabad.

3.2 A Statement of Shri Kuldeep Bhai Kanojia, Trainee Security Executive of M/s. SpiceJet posted at SVPI, Ahmadabad was also recorded under Section 108 of the Customs Act, 1962 and it was stated that on that night, he noticed that a person namely Shri Kunwar Singh from CAFS who is engaged in loading/ offloading of catering was moving suspiciously in an around the flight SG 16 at around 0030 hrs. at Bay No. 37 and on inquiry, he noticed that Shri Kunwar Singh carried some yellow coloured metal and for further inquiry he stopped him as a precaution and intimated Shri Mayank Ashok Thanki about the same as he is his senior officer. Shri Ashok Thanki came at Bay No. 37 in the apron area of SVPI Ahmedabad at around 0055 hrs. and he briefed him everything. He immediately informed the Customs AIU officers of SVPI Ahmedabad. The AIU Officers along with Panchas and after some procedures/ personal search of Shri Kunwar Singh, the AIU officers found some yellow-coloured metallic items in the possession of Shri Kunwar Singh wrapped in grey coloured adhesive tape.

3.3. A Statement of Shri Jayeshbhai Chavda, Operator/ employer of Anjali Hotel. Shri Jayeshbhai stated that he work as a Driver high lift operator in Anjali Hotel; that Shri Kunwar Singh is a co-worker with him, because of that he knew Shri Kunwar Singh; that he was in T-1 and Shri Kunwar Singh asked him to drive the vehicle from T1 to T2 to unload goods from the flight and he went with him to T2; that he parked the vehicle and after some time he saw Shri Kunwar Singh came from the flight followed by the security staff of SpiceJet and he felt something happened. He was questioned by the SpiceJet staff; they asked whether he was given anything by Shri Kunwar Singh, but he denied. He further stated that they asked him to get down from the vehicle and they searched him and the vehicle and they got something

from the vehicle which he did not know; later the SpiceJet staff informed the same to the Customs.

4.1. The above said gold bars with a net weightment of 2332.800 grams having purity of 999.0/24 Kt. involving market value of Rs.1,38,66,163/- (Rupees One Crore Thirty Eight Lakhs Sixty-Six Thousand One Hundred Sixty Three Only) and Tariff Value of Rs.1,18,23,132/- (Rupees One Crore Eighteen Lakhs Twenty Three Thousand One Hundred Thirty Two Only), recovered from the said person, which were attempted to be smuggled into India with an intent to evade payment of Customs duty which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the Gold bars totally weighing 2332.800 Grams which were attempted to be smuggled by Shri Kunwar Singh are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said twenty gold bars weighing 2332.800 grams was placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 10.10.2023, issued from F. No. VIII/10-137/AIU/B/2023-24, under Section 110 (1) & (3) of the Customs Act, 1962. He has committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962.

4.2. In terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold amounting to Rs.1,38,66,163/- totally weighing 2332.800 grams recovered from Shri Kunwar Singh is more than Rs.50,00,000/-, hence this case is fit for arrest of the said Noticee under Section 104 of the Customs Act, 1962. Hence, the Noticee was arrested on 10.10.2023 and produced before the Additional Chief Metropolitan Magistrate, Ahmedabad who sent him to the Judicial Custody.

5. In view of the above, **Shri Kunwar Singh** S/O Shri Moharman Singh, holding Aadhaar Card No. 4901 0763 2536, residing at Ward No. 24, Ranjana Nagar Bhind, Madhya Pradesh 477001, was called upon to show cause in writing to the Additional Commissioner of Customs, having his Office located at 2nd Floor, 'Custom House' Building, Near All India Radio, Navrangpura, Ahmedabad-380 009, as to why:

- (i) The Twenty (20) Gold Bars weighing **2332.800** Grams having purity 999.0/24 Kt. and having market value of **Rs.1,38,66,163/-** (Rupees One Crore Thirty Eight Lakhs Sixty-Six Thousand One Hundred Sixty Three Only) and Tariff Value of **Rs.1,18,23,132/-** (Rupees One Crore Eighteen Lakhs Twenty Three Thousand One Hundred Thirty Two Only), recovered from him, wrapped in grey coloured adhesive tape, was placed under seizure under Panchnama proceedings dated 10.10.2023 and Seizure Memo/ Order dated 10.10.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j) of the Customs Act, 1962;
- (ii) The packing materials (i.e. Grey coloured Adhesive tape) used for packing and concealment of the above-mentioned 20 gold bars which were attempted to be smuggled into India in violation of Section 135, of the Customs Act, 1962, under Panchnama dated 10.10.2023 and seized under Seizure memo order dated 10.10.2023, should not be confiscated under Section 119 of the Customs Act, 1962; and
- (iii) Penalty should not be imposed upon the person, Shri Kunwar Singh, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

6. Shri Kunwar Singh has not submitted written reply to the Show Cause Notice.

7. Shri Kunwar Singh was given opportunity to appear for personal hearing on 19.01.2024; 21.06.2024 and 24.06.2024 but he did not 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 2332.800 grams of 20 gold bars, having Tariff Value of Rs.1,18,23,132/- (Rupees One Crore Eighteen Lakhs Twenty-Three Thousand One Hundred Thirty-Two Only) and Market Value of Rs.1,38,66,163/- (Rupees One Crore Thirty-Eight Lakhs Sixty-Six Thousand One Hundred Sixty-Three Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 10.10.2023, 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 materials (i.e. Grey coloured Adhesive tape) used for packing and concealment of the above-mentioned 20 gold bars is liable for confiscation under Section 119 of Act; and whether the Noticee 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 a call received from Mr. Mayank Thanki, Security Supervisor of SpiceJet that they have noticed some suspicious movement of a person, named Shri Kunwar Singh, who is staff of CAFS and boarded the flight No SG-16 for offloading of catering. Therefore, Shri Kunwar Singh was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad for his personal search and examination of his baggage. On being asked by the AIU officers,

one person introduced himself as Mr. Mayank Thanki, Security Supervisor of SpiceJet and then the person introduced another person who identified himself as Shri Kunwar Singh, who is an employee of CAFS, to the Officers. The Officers saw that there are some other persons also standing there. On being asked by the AIU officers, they introduced themselves as the staff of CISF, SVPI Airport. The Officers conducted personal search of Shri Kunwar Singh and found some yellow-coloured metallic items in his possession wrapped in grey coloured adhesive tape as informed by Mr. Mayak Thanki, Security Supervisor of Spice Jet.

11. It is on record that the AIU Officers asked Shri Kunwar Singh, to accompany them to Arrival Hall of Terminal 2 of SVP Ahmedabad. On reaching at the Arrival Hall of Terminal 2 of SVP Ahmedabad, the officers of AIU asked the person to pass through the Door Frame Metal Detector (DFMD) Machine and while he passed through the DFMD, no beep sound was heard indicating nothing more objectionable/ metallic substance on his body/ clothes. The AIU Officers checked the person thoroughly however nothing objectionable was found. I find that when asked by the AIU Officers, Shri Kunwar Singh, stated that the yellow-colored metallic items are gold and that he has hidden some more gold bars in the dust bin of the catering truck. The officers of Customs AIU then immediately informed the CISF officials about the truck. The CISF, then informed the officials that the truck with number plate GJ 18 BT 2916 has already been intercepted at the CISF Security point at ATC Tower Exit Gate at Terminal 2 as part of their random checking procedure. Then the Officers, and Shri Kunwar Singh, reached the CISF Security point at ATC Tower Exit Gate at Terminal 2. The CISF Official, informed the AIU Officers that during search of the said catering truck they found some yellow colored metallic items wrapped in grey coloured adhesive tape in the dust bin of the catering truck lying below the garbage bag. The CISF personnel, handed over the yellow coloured metallic items to the AIU Officers and the AIU officers as well as the CISF personnel further carried out search of the catering truck and did not found any other suspicious/ objectionable item in the truck.

12. I also find that the Government Approved Valuer, informed that there are total **20 Gold TT bars** made up of 24 Kt. gold having purity 999.0 with a total weighment of **2332.800** grams having market value of **Rs.1,38,66,163/-** (Rupees One Crore Thirty-Eight Lakhs Sixty-Six Thousand One Hundred Sixty-Three Only) and Tariff Value of **Rs.1,18,23,132/-** (Rupees One Crore Eighteen Lakhs Twenty-Three Thousand One Hundred Thirty-Two Only). The details of the Valuation of the said gold bars as tabulated in below table:

TABLE-I

Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold TT Bars (AL Etihad DUBAI-UAE 10 TOLAS 999.0)	20	2332.800	999.0 24Kt.	1,38,66,163/-	1,18,23,132/-

13. I also find that the said recovered 20 Gold TT bars of 24Kt. with purity 999.0 weighing 2332.800 Grams having market value of Rs.1,38,66,163/- (Rupees One Crore Thirty Eight Lakhs Sixty-Six Thousand One Hundred Sixty Three Only) and Tariff Value of Rs.1,18,23,132/- (Rupees One Crore Eighteen Lakhs Twenty Three Thousand One Hundred Thirty Two Only), recovered from the above said person Shri Kunwar Singh were attempted to be smuggled into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962 and is liable for confiscation as per the provisions of the Customs Act, 1962; hence, the said gold bars along with packing material viz. grey adhesive tape were placed under seizure, vide Seizure Memo issued from F. No. VIII/10-137/AIU/B/ 2023-24 dated 10.10.2023.

14. I find that in his statement Shri Kunwar Singh S/O Shri Moharman Singh, an employee in catering services of CAFS admitted that he knows bringing of gold or handing and taking over of the gold without payment of duty and without declaring to the customs is an offence, he does not want to pay the customs duty and also, he was not going to declare these dutiable gold bars before the customs. He further stated that he is an employee of CAFS so he came at Bay/

Parking area No 37 in the apron of SVPIA airport for the purpose of offloading of foods from Spice Jet Flight No SG-16 which was coming from Dubai to Ahmedabad. He further stated that he does not know that person who were bringing these gold bars and from where but he received a telephonic call from Dubai from an unknown person to take away these gold bars which were hidden inside the lavatory of Spice Jet flight SG-16; he met with an unknown person 15 days ago who was coming from Dubai from the same flight Spice Jet at the time of deboarding of plane. He has been told to hand over these gold bars to an unknown person outside of the airport. He doesn't know that person and he was told that he will receive a call on his phone. These gold bars do not belong to him. He has been offered Rs.80,000/- for handing over these gold bars.

15. It is also on record that in his statement, of Shri Mayank Ashok Thanki, Security Supervisor of M/s. SpiceJet posted at SVPI, Ahmadabad he stated that he got a call from one of their Security staff, Mr. Kuldeep Kanojia, who is working as a Trainee Security Executive since last two months; he was intimated that a person namely Mr. Kunwar Singh from CAFS, who is engaged in loading/ offloading of catering was moving suspiciously in and around the flight SG 16 and on inquiry Mr. Kuldeep Kanojia noticed that some yellow-coloured metal was being carried by Mr. Kunwar Singh and he stopped him as a precaution and asked him to come Bay no. 37 in the apron area of SVP International Airport, Ahmedabad; he noticed that Shri Kunwar Singh was in awkward position and saw the yellow-coloured metallic items with him and he immediately called the officers of Customs AIU, SVPI, and Ahmedabad.

16. It is also on record that in his statement, Shri Kuldeep Bhai Kanojia, Trainee Security Executive of M/s. SpiceJet posted at SVPI, Ahmadabad stated that on that night, he noticed that a person namely Shri Kunwar Singh from CAFS who is engaged in loading/ offloading of catering was moving suspiciously in an around the flight SG 16 at around 0030 hrs. at Bay No. 37 and on inquiry, he noticed that Shri Kunwar Singh carried some yellow coloured metal and for further inquiry he stopped him as a precaution and intimated Shri Mayank

Ashok Thanki about the same as he is his senior officer. Shri Ashok Thanki came at Bay No. 37 in the apron area of SVPI Ahmedabad at around 0055 hrs. and he briefed him everything. He immediately informed the Customs AIU officers of SVPI Ahmedabad. The AIU Officers along with Panchas and after some procedures/ personal search of Shri Kunwar Singh, the AIU officers found some yellow-coloured metallic items in the possession of Shri Kunwar Singh wrapped in grey coloured adhesive tape.

17. I find that in view of the statement of the above referred persons, the said gold bars with a net weighment of 2332.800 grams having purity of 999.0/24 Kt. involving market value of Rs.1,38,66,163/- (Rupees One Crore Thirty Eight Lakhs Sixty-Six Thousand One Hundred Sixty Three Only) and Tariff Value of Rs.1,18,23,132/- (Rupees One Crore Eighteen Lakhs Twenty Three Thousand One Hundred Thirty Two Only), recovered from the said person Shri Kunwar Singh, which were attempted to be smuggled into India with an intent to evade payment of Customs duty which was clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the Gold bars totally weighing 2332.800 Grams which were attempted to be smuggled by Shri Kunwar Singh are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

18. I find that in terms of Board's Circulars No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dated 23/10/2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus. (AS) dated 23/10/2015, as revised vide Circular No. 13/2022-Customs, 16-08-2022, the market value of gold amounting to Rs.1,38,66,163/- totally weighing 2332.800 grams recovered from Shri Kunwar Singh is more than Rs.50,00,000/-, hence he was arrested under Section 104 of the Customs Act, 1962.

I also find that the said 2332.800 grams of gold bars, having Tariff Value of Rs.1,18,23,132/- and Market Value of Rs.1,38,66,163/- carried by the Noticee Shri Kunwar Singh appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the Noticee in his statement recorded on 10.10.2023 under Section 108 of the Customs Act, 1962.

19. I also find that the Noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the Noticee. 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 wants to save Customs duty, he had not declared the same 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.

20. Further, the Noticee, Shri Kunwar Singh has accepted that he had not declared the said gold 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 Noticee had kept the said gold bars which was in his possession and failed to declare the same before the Customs Authorities. The case of smuggling of the said 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 Noticee 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 the 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.

21. From the facts discussed above, it is evident that Shri Kunwar Singh had carried gold bars 2332.800 grams having purity 999.0 recovered from him, 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 2332.800 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 not declaring the same before the Customs, it is established that the Noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

22. It is seen that the Noticee had not declared the said gold bars 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. Therefore, the said improperly imported gold bars weighing 2332.800 grams, by the Noticee without declaring to the Customs cannot be treated as bonafide household goods or personal effects. The Noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the Noticee has rendered the said gold bars weighing 2332.800 grams, having Tariff Value of Rs.1,18,23,132/-/- and Market Value of Rs.1,38,66,163/- recovered and seized from the Noticee vide Seizure Order under Panchnama proceedings both dated 10.10.2023 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 not declaring the said gold bars, it is observed that the Noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same. 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.

23. I find that the Noticee confessed of carrying the said gold bars weighing 2332.800 grams having purity 999.0 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 Noticee 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.

24. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the Noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bars weighing 2332.800 grams, having Tariff Value of Rs.1,18,23,132/- and Market Value of Rs.1,38,66,163/- recovered and seized from the Noticee vide Seizure Order under Panchnama proceedings both dated 10.10.2023. 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 Noticee had attempted to remove the said gold bars weighing 2332.800 grams by deliberately not declaring the same by him with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the Noticee 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.

25. 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 Noticee, trying to smuggle it, was not eligible. The said Gold bars weighing 2332.800 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. 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 Noticee.

26. In view of the above discussions, I hold that the said gold bars weighing 2332.800 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from the Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the Noticee in his statement dated 10.10.2023 admitted that he wanted to clear the same out of Airport without declaring the same 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 not declaring to the Customs. I am therefore, not inclined to use my discretion to give an option to redeem the said gold on payment of redemption fine, as envisaged under Section 125 of the Act.

27. 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."

28. 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.

29. 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).

30. 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.

31. 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".

32. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bars weighing 2332.800 grams, carried by the Noticee is therefore liable to be confiscated absolutely. I, therefore, hold in unequivocal terms that the said gold bars weighing 2332.800 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.

33. I further find that the Noticee had involved himself and abetted the act of smuggling of gold bar weighing 2332.800 grams, carried by

him. He has agreed and admitted in his statement that despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Noticee attempted to smuggle the said gold of 2332.800 grams having purity 999.0. Thus, it is clear that the Noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the Noticee is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

34. Accordingly, I pass the following Order:

ORDER

- (i) I order absolute confiscation of the Twenty (20) Gold Bars weighing **2332.800** Grams having purity 999.0/24 Kt. and having market value of **Rs.1,38,66,163/-** (Rupees One Crore Thirty Eight Lakhs Sixty-Six Thousand One Hundred Sixty Three Only) and Tariff Value of **Rs.1,18,23,132/-** (Rupees One Crore Eighteen Lakhs Twenty Three Thousand One Hundred Thirty Two Only), recovered from Shri Kunwar Singh, wrapped in grey coloured adhesive tape, was placed under seizure under Panchnama proceedings dated 10.10.2023 and Seizure Memo/ Order dated 10.10.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j) of the Customs Act, 1962;
- (ii) I order absolute confiscation of the packing materials (i.e. Grey coloured Adhesive tape) used for packing and concealment of the above-mentioned 20 gold bars which were attempted to be smuggled into India in violation of Section 119 of the Customs Act, 1962, under Panchnama dated 10.10.2023 and seized under Seizure memo order dated 10.10.2023, should not be confiscated under Section 119 of the Customs Act, 1962; and

- (iii) I impose a penalty of **Rs.45,00,000/-** (Rupees Fourty-Five Only) on Shri Kunwar Singh under the provisions of Section 112(a)(i) of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

35. Accordingly, the Show Cause Notice No. VIII/10-234/SVPIA-B/O&A/HQ/2023-24 dated 07.03.2024 stands disposed of.

Vishal
28/6/24

(Vishal Malani)

Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-234/SVPIA-B/O&A/HQ/2023-24 Date: 28.06.2024
DIN: 20240671MN0000333A1C

BY SPEED POST AD

To,
Shri Kunwar Singh,
S/o Shri Moharman Singh,
Ward No. 24, Ranjana Nagar Bhind,
Madhya Pradesh - 477001, India.

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 Dy./Asstt. Commissioner of Customs (Prosecution), Ahmedabad.
- (v) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (vi) Guard File.