



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-244/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या - तारीख / Show Cause Notice No. and Date	:	VIII/10-244/SVPIA-D/O&A/HQ/2023-24 dated: 02.05.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	136/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	:	Miss Sanyuktaben Laljibhai Chaudhari 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 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, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) 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 (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case:

Miss Sanyuktaben Laljibhai Chaudhari (hereinafter referred to as "the passenger/ Noticee") residing at Chaudharivas Machhava, Machhava, Mehsana, Gujarat - 384130 holding Indian Passport bearing No. X8955882 arrived from Dubai by Indigo Flight No. 6E 1478 dated 27.12.2023 at SVP International Airport, Ahmedabad on 27.12.2023. On the basis of scanning of Checked in baggage of the passenger at the baggage scanning machine, suspected to carry high valued dutiable/ contraband goods, by the Customs officers at RED Channel SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to the Customs. The Officers of Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad intercepted the passenger under Panchnama proceedings dated 27.12.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying one Black coloured and one blue coloured trolley bag as Checked-in baggage.

2. The AIU officers asked the passenger if she 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 her personal search and detailed examination of her 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 her 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 her body/ clothes. Thereafter, the officers checked the baggage of the passenger, however nothing objectionable was found. Further, the officers scanned one Black coloured and one blue coloured trolley bag 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 coloured image with yellow outline appeared in all

04 side corners of both the trolley bags. Now, the AIU officers thoroughly checked the trolley bags from which black coloured image appeared but nothing found inside the trolley bags. Further, the officers again scanned the said trolley bags after removing all the materials packed in the trolley bags and then confirmed that the dark black coloured image with yellow outline was appearing in side corners of the trolley bag. Thereafter, the officers scratched the corner sides of trolley bags and found some rhodium coated metal sticks (wires) concealed inside all the four sides of the trolley bags. The officer asked the passenger whether the sticks are made of Gold, to which the passenger admitted that the sticks are made of Gold.

2.1 Thereafter, the AIU officers called the Government Approved Valuer Shri Kartikey Vasantrai Soni, and informed him that gold wires coated with white rhodium have been recovered from 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 rhodium coated gold wires must be converted into gold bar by melting it and informs 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, the Government approved valuer. Here, after weighing the said gold wires coated with white rhodium on his weighing scale, Shri Kartikey Vasantrai Soni informed that the weight of the said coated gold wires recovered from the passenger is 300.190 grams.

2.2 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of extracting the gold from the said gold wires. After completion of extraction, the Government Approved Valuer informed that one Gold Bar weighing **299.390** Grams having purity of 999.0/24 Kt was derived from the gold wires coated with white rhodium weighing 300.190 grams recovered from said

trolley bags. The valuation Certificate No. 1046/2023-24 dated 27.12.2023 prepared by Shri Kartikey Vasantrai Soni. After testing and valuation, the Govt. Approved Valuer vide his certificate No. 1046/2023-24 dated 27.12.2023 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 299.390 grams derived from 300.190 grams of gold wires coated with white rhodium recovered concealed inside the trolley bags of the passenger. Further, the Govt. Approved Valuer informed that the market value of the said gold bar is **Rs.19,54,119/-** (Rupees Nineteen Lakhs Fifty-Four Thousand One Hundred and Nineteen Only) and Tariff Value is **Rs.16,53,357/-** (Rupees Sixteen Lakh Fifty-Three Thousand Three Hundred and Fifty-Seven only). The value of the gold bar has been calculated as per the Notification No. 91/2023-Customs (N.T.) dated 27.12.2023 (gold) and Notification No. 93/2023-Customs (N.T.) dated 21.12.2023 (exchange rate). The Panchas and the passenger put dated signature on the said valuation report. The details of the Valuation of the said gold bar are tabulated in below table:

Sl. No.	Details of Items	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	299.390	999.0/24 Kt	19,54,119/-	16,53,357/-

2.3. The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in the presence of the independent Panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 1046/2023-24 dated 27.12.2023 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. The following documents produced by the passenger were withdrawn under the Panchnama dated 27.12.2023.

3. A statement of the passenger Miss Sanyuktaben Laljibhai Chaudhari, was recorded on 27.12.2023 under Section 108 of the Customs Act, 1962 wherein she, *inter alia*, stated that-

- (i) She went to Dubai on 21st December, 2023 as a tourist and returned on 27.12.2023 at approx. 09:30 AM. During her

visit, there she met with Mr. Tinu, during conversation he informed her, if she carry two trolley bags to India, he will bear the cost of her tickets and hotel. She thought, by accepting the offer she will save some money.;

- (ii) She was told by Mr. Tinu that inside the trolley bags, there is concealed gold sticks in the side corner of the Bags weighing around 300 grams;
- (iii) She has never indulged in any smuggling activity in the past. This is the first time She have brought Gold into India concealing the same in two trolley bags;
- (iv) She had been present during the entire course of the Panchnama dated 27.12.2023 and he confirmed the events narrated in the said Panchnama drawn on 27.12.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) She is aware that smuggling of gold without payment of Customs duty is an offence; she is well aware of the gold concealed in the side corner of the Bags but she 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 299.390 grams recovered from Miss Sanyuktaben Laljibhai Chaudhari, 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 Bags, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 299.390 grams is attempted to be smuggled by Miss Sanyuktaben Laljibhai Chaudhari, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 299.390 grams derived from the above said side corner of the Bags weighing 300.190 grams along with its 02 (black and blue coloured) trolley bags, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 27.12.2023.

5. In view of the above, **Miss Sanyuktaben Laljibhai Chaudhari**, residing at Chaudharivas Machhava, Machhava, Mehsana, Gujarat - 384130, was called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Custom House, Opp. Old High Court, Navrangpura, Ahmedabad - 380009, as to why:

- (i) One Gold Bar, weighing **299.390** grams having purity 999.0 (24KT) recovered/ derived from 300.190 grams gold

wire coated with white rhodium concealed inside the trolley bags, having market value of **Rs.19,54,119/-** (Rupees Nineteen Lakh Fifty Four Thousand One Hundred and Nineteen Only) and Tariff Value of **Rs.16,53,357/-** (Rupees Sixteen Lakh Fifty Three Thousand Three Hundred and Fifty Seven only) placed under seizure under Panchnama dated 27.12.2023 and seizure memo order dated 27.12.2023 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) Two black and blue coloured trolley bags used for concealment of the said gold bar in the form of metal wires coated with white Rhodium, seized under Panchnama dated 27.12.2023 and Seizure memo order dated 27.12.2023, 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. Miss Sanyuktaben Laljibhai Chaudhari has not submitted written reply to the Show Cause Notice.
7. Miss Sanyuktaben Laljibhai Chaudhari was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but neither the Noticee or her 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 her reply/ submissions or to appear for the personal hearing opportunities offered to her. The

adjudication proceedings cannot wait until the Noticee makes it convenient to file her submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

9. In the instant case, I find that the main issue to be decided is whether the 299.390 grams of 01 gold bar, recovered/ derived from 300.190 grams gold wire coated with white rhodium concealed inside the trolley bag, having Tariff Value of Rs.16,53,357/- (Rupees Sixteen Lakhs Fifty-Three Thousand Three Hundred Fifty-Seven Only) and Market Value of Rs.19,54,119/- (Rupees Nineteen Lakhs Fifty-Four Thousand One Hundred Nineteen Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 27.12.2023, 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 bags, used for concealment of the said gold bar in the form of Rhodium Coated Rectangle Shape Rods, 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 scanning of checked in baggage of the passenger at the baggage scanning machine, it was suspected that the passenger is carrying high valued dutiable/ contraband goods, at RED Channel SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to the Customs. The Officers of Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad intercepted the passenger under Panchnama proceedings dated 27.12.2023. The AIU officers asked the passenger if she had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. Further, the officers scanned one Black coloured and one blue coloured trolley bag 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 coloured image with yellow outline appeared in all 04 side

corners of both the trolley bags. The officers again scanned the said trolley bags after removing all the materials packed in the trolley bags and then confirmed that the dark black coloured image with yellow outline was appearing in side corners of the trolley bag. Thereafter, the officers scratched the corner sides of trolley bags and found some rhodium coated metal sticks (wires) concealed inside all the four sides of the trolley bags. The officer asked the passenger whether the sticks are made of Gold, to which the passenger admitted that the sticks are 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 300.190 grams. After completion of extraction, the Government Approved Valuer informed that Gold Bar weighing **299.390** Grams having purity 999.0/ 24kt is derived from the 300.190 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.16,53,357/-** (Rupees Sixteen Lakhs Fifty-Three Thousand Three Hundred Fifty-Seven only) and Market value is **Rs.19,54,119/-** (Rupees Nineteen Lakhs Fifty-Four Thousand One Hundred Nineteen 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	299.390	999.0/ 24 Kt	16,53,357/-	19,54,119/-

12. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 299.390 grams, derived from rectangular solid object coated with Rhodium recovered from Miss Sanyuktaben Laljibhai Chaudhari was seized vide Panchnama dated 27.12.2023, 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 299.390 grams of 1 gold bar obtained from the 300.190 Grams of rectangular solid object coated with Rhodium having Tariff Value of Rs.16,53,357/- and Market Value of Rs.19,54,119/- carried by the passenger Miss Sanyuktaben Laljibhai Chaudhari 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 27.12.2023 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 she had not declared the said rectangular solid object coated with Rhodium concealed by her, on her arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said 1 gold bar, derived from rectangular solid object coated with Rhodium, ('the said gold' for short), which was in her possession and failed to declare the same before the Customs Authorities on her arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from her possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is

conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

15. From the facts discussed above, it is evident that Miss Sanyuktaben Laljibhai Chaudhari had carried the said gold weighing 300.190 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 299.390 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 her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 299.390 grams concealed by her, 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 299.390 grams, having Tariff Value of Rs.16,53,357/- and Market Value of Rs.19,54,119/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 27.12.2023 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 her, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that she has knowingly carried the gold and failed to declare the same on her arrival at the Customs Airport. It is seen that she has involved herself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making her liable for penalty under Section 112 of the Customs Act, 1962.

17. I find that the Noticee confessed of carrying the said gold of 299.390 grams concealed by her 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 299.390 grams, having Tariff Value of Rs.16,53,357/- and Market Value of Rs.19,54,119/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 27.12.2023. 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 299.390 grams, by deliberately not declaring the same by her on arrival at airport with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

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 299.390 grams, was recovered from her 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 her 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 299.390 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 her statement dated 27.12.2023 stated that she 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 299.390 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 299.390 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 herself and abetted the act of smuggling of the said gold bar weighing 299.390 grams, carried by her. She has agreed and admitted in her statement that she travelled with the said gold from Dubai to Ahmedabad. Despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 299.390 grams, having purity 999.0 by concealment. Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

28. Accordingly, I pass the following Order:

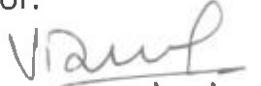
ORDER

- i) I order absolute confiscation of One Gold Bar, weighing **299.390** grams having purity 999.0 (24KT) recovered/ derived from 300.190 grams gold wire coated with white rhodium concealed inside the trolley bags, having market value of **Rs.19,54,119/-** (Rupees Nineteen Lakh Fifty Four Thousand One Hundred and Nineteen Only) and Tariff Value of **Rs.16,53,357/-** (Rupees Sixteen Lakh Fifty Three Thousand Three Hundred and Fifty Seven only) placed under seizure under Panchnama dated 27.12.2023 and seizure

memo order dated 27.12.2023, 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. Two black and blue coloured trolley bags used for concealment of the said gold bar in the form of metal wires coated with white Rhodium,, seized under Panchnama dated 27.12.2023 and Seizure memo order dated 27.12.2023, under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.6,00,000/-** (Rupees Six Lakhs Only) on Miss Sanyuktaben Laljibhai Chaudhari under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-244/SVPIA-D/O&A/HQ/2023-24 dated 02.05.2024 stands disposed of.


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

F. No: VIII/10-244/SVPIA-D/O&A/HQ/2023-24 Date: 28.08.2024

DIN: 20240871MN0000113167

BY SPEED POST AD

To,
Miss Sanyuktaben Laljibhai Chaudhari
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.