



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/10-15/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-15/SVPIA-B/O&A/HQ/2024-25 dated: 17.04.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	134/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	आयातकानामऔरपता / Name and Address of Importer / Passenger	:	Shri Ibrahim Khaleel, KSS Manzil, Peringadi PO Mangalpady, Kasaragod, Kerala – 671 324.
(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 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 Ibrahim Khaleel residing at KSS Manzil, Peringadi PO Mangalpady, Kasaragod, Kerala – 671 324 (hereinafter referred to as "the said passenger/ Noticee"), holding an Indian Passport Number No. B8089290, arrived from Dubai to Ahmedabad by Spice jet Flight No. SG-16 (Seat No. 21C) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad, by Indigo Flight No. 6E-1478 on 13.12.2023. On the basis of passenger profiling and noticing suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 13.12.2023 in presence of two independent witnesses for the passenger's personal search and examination of his baggage.

2. Accordingly, in the presence of the panchas, the officers intercepted a passenger with his baggage when the said passenger tried to exit through Green Channel at the arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. On being asked about his identity by the AIU officer, the passenger identified himself as Shri Ibrahim Khaleel and shown his Passport which is an Indian Passport bearing No. B8089290 and shown his Boarding Pass which shows that he had travelled from Dubai to Ahmedabad on 13.12.2023 by Indigo Flight No. 6E1478 (Seat No. 21C) at SVPI Airport, Ahmedabad and the Officers have strong belief that the suspected passenger had carried some dutiable/ objectionable with him but not declared the same before the Customs Authority. The officers observed that the passenger Shri Ibrahim Khaleel had carried one black colour trolley bag and one black shoulder bag.

2.1 The AIU Officers asked the passenger in the presence of the panchas, if he had anything to declare to Customs, in reply to which he denied.

2.2 The AIU officers, in presence of the panchas, offered their personal search to the passenger but he denied and said that he had full trust on the AIU officers. Then, the AIU officers asked the

passenger whether he wanted his baggage to be checked in front of Executive Magistrate or Superintendent of Customs, a Gazetted Officer, in reply to which the said passenger gave his consent for his baggage to be searched in front of the Superintendent of Customs.

2.3 Thereafter, the AIU officers again asked the passenger whether he has anything dutiable to declare to the Customs authorities, to which the said passenger denied again. The AIU officers further asked Shri Ibrahim Khaleel to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 Building, after removing all metallic objects from his body/ clothes. The passenger readily removed all the metallic objects such as mobile, watch etc. and kept in a plastic tray and passed through the DFMD. However, no beep sound was heard indicating there is nothing objectionable/ metallic substance on his body/ clothes. Now, in presence of the panchas, the AIU Officers scanned the baggages of the passenger Shri Ibrahim Khaleel in X-ray Bag Scanning Machine placed opposite Belt No. 2 at the arrival hall of Terminal-2, SVPIA, Ahmedabad. During the scanning of the baggage, nothing objectionable was found.

2.4 The AIU officers asked Shri Ibrahim Khaleel again if he is having anything dutiable which is required to be declared to the Customs to which the said passenger denied. Thereafter, the AIU officers informed the panchas that they have doubt that the said passenger had carried some high valued dutiable goods by way of concealment in between his cloths or in body parts. The officers of AIU, in front of the panchas carried out systematic frisking of the passenger Shri Ibrahim Khaleel, and found something suspicious in the jeans worn by the passenger. In the presence of the panchas, the officers asked the passenger to remove the jeans worn by him and the passenger removed his jeans and handed over the same to the AIU Officers after wearing another jeans. Thereafter, in presence of panchas and the said passenger, the AIU officers checked the removed jeans of the said passenger and the Officers, in presence of panchas found that a thin layer of yellow colour paste concealed inside two layers of fabric of jeans. Further, on detailed interrogation and frisking of the passenger in presence of the panchas,

the passenger confessed that the gold chain he worn is recently purchased from Dubai and is of 24 KT gold. Thereafter, the AIU officer in presence of panchas called the Government Approved Valuer and informed him that one jeans containing gold in paste form and a chain appears to be gold have been recovered from one passenger and hence, requested him to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the officer that the testing of the material is possible only at his workshop as gold has to be extracted from biscuit/ cream by diluting/ melting it and also informed the address of his workshop.

3.1 Thereafter, the AIU Officers, the panchas along with 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 one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. Here, after checking the jeans, weighed it on his weighing scale and informed that the gross weight of the jeans along with gold in semi-solid in paste form concealed in the Jeans recovered from passenger Shri Ibrahim Khaleel is 991.400 grams. Shri Kartikey Vasantrai Soni, the Government Approved Valuer, further in presence of the panchas after checking the gold chain recovered from Shri Ibrahim Khaleel, weighs it on his weighing scale and informed that the gross weight of the gold chain recovered from passenger Shri Ibrahim Khaleel found 99.650 grams.

3.2 Shri Kartikey Vasantrai Soni informed the Officers that the gold paste was glued with the fabric of jeans hidden by a thin layer of another jeans fabric, so he would burn the fabric of the jeans to extract gold paste. Thereafter, he led the Officers, panchas and the passenger to the open terrace of his office where he burnt the jeans along with the gold paste in a container and after burning it completely, he collected all the ashes deposited in the container. Thereafter, he led the Officers, panchas and the passenger back to his office where he put the ashes collected in a bowl and weighed it again. The total weight of the Gold in ash form found 200.190 grams.

3.3 Shri Kartikey Vasantrai Soni led the Officers, panchas and the passenger to furnace which is nearby and started the process of converting gold paste into Gold Bar. He later, heated the said substance, it turned into liquid material. The said substance in liquid state is taken out of furnace, and poured into a mould and after cooling for some time, it became golden coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer now takes the weight of the golden coloured bar recovered from Shri Ibrahim Khaleel, in presence of we panchas, the passenger and the AIU Officers which comes 186.520 grams.

3.4 Thereafter, Shri Kartikey Vasantrai Soni in presence Officers, panchas as well as in the presence of the passenger, tested the said gold bar recovered from Shri Ibrahim Khaleel and after testing and valuation, he submitted Valuation Report No. 980/2023-24 under which it was confirmed that the said gold bar weighing 186.520. Grams is having purity of 999.0/24KT, having Tariff value of Rs.10,36,188/- (Rupees Ten lakhs thirty six thousand one hundred eighty eight only) and Market Value of Rs.11,76,009/- (Rupees Eleven lakhs seventy six thousand ninety six only) and thereafter, in presence of Officers, panchas as well as in the presence of the passenger, Shri Kartikey Vasantrai Soni tested the said gold chain recovered from Shri Ibrahim Khaleel and after testing and valuation, it is confirmed that the said gold chain weighing 99.650 Grams having purity of 999.0/24KT, involving Tariff value of Rs.5,53,593/- (Rupees Five lakhs fifty three thousand five hundred ninety three only) and Market Value of Rs.6,28,293/- (Rupees Six lakhs twenty eight thousand two hundred ninety three only). The above value has been taken as per 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). Shri Kartikey Vasantrai Soni gave the details of gold bar and gold chain recovered from Shri Ibrahim Khaleel as below:

Sl. No.	Details of Items	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	186.520	999.0 24Kt.	10,36,188/-	11,76,009/-
2.	Gold chain	1	99.650	999.0 24Kt.	6,28,293/-	5,53,593/-
	Total	2	286.170	999.0 24Kt.	18,04,302/-	15,89,780/-

4. In view of the above, **Shri Ibrahim Khaleel**, holding an Indian Passport Number No. B8089290, residing at KSS Manzil, Peringadi PO Mangalpady, Kasaragod, Kerala – 671 324, 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) The said Gold (One gold bar and One gold chain), totally weighing **286.170** Grams having purity 999.0/24 Kt. and having Tariff value of **Rs.15,89,780/-** (Rupees Fifteen Lakhs eighty nine thousand seven hundred eighty only) and Market Value of **Rs.18,04,302/-** (Rupees Eighteen Lakhs four thousand three hundred two only), recovered from the Passenger, was placed under seizure under the panchnama proceedings dated 13.12.2023 and Seizure Memo/ Order dated 13.12.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

5. Shri Ibrahim Khaleel has not submitted written reply to the Show Cause Notice.
6. Shri Ibrahim Khaleel was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but

neither the Noticee nor his representative appear for personal hearing on the given dates.

Discussion and Findings:

7. 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.

8. In the instant case, I find that the main issue to be decided is whether the gold (One gold bar and One gold chain, totally weighing 286.170 grams recovered from the passenger, having total Tariff Value of Rs.15,89,780/- (Rupees Fifteen Lakhs Eighty-Nine Thousand Seven Hundred Eighty Only) and Market Value of Rs.18,04,302/- (Rupees Eighteen Lakhs Four Thousand Three Hundred Two Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 13.12.2023, 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.

9. I find that the Panchnama has clearly drawn out the fact that on the basis of passenger profiling and suspicious movement of passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad, when the said passenger tried to exit through Green Channel at the arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. The AIU Officers asked the passenger in the presence of the panchas, if he had anything to declare to Customs, in reply to which he denied. The AIU officers informed the panchas that they have doubt that the said passenger had carried some high valued dutiable goods by way of concealment in between his cloths or in body parts.

The officers of AIU, in front of the panchas carried out systematic frisking of the passenger Shri Ibrahim Khaleel, and found something suspicious in the jeans worn by the passenger. In presence of the panchas, the officers asked the passenger to remove the jeans worn by him and the passenger removed his jeans and handed over the same to the AIU Officers after wearing another jeans. Thereafter, in presence of panchas and the said passenger, the AIU officers checked the removed jeans of the said passenger and the Officers, in presence of panchas found that a thin layer of yellow colour paste concealed inside two layers of fabric of jeans. Further, on detailed interrogation and frisking of the passenger in presence of the panchas, the passenger confessed that the gold chain he worn is recently purchased from Dubai and is of 24 KT gold.

10. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said jeans wherein a thin layer of yellow colour paste concealed inside two layers of fabric of jeans. After completion of extraction, the Government Approved Valuer informed that Gold Bar is weighing 186.52 grams and one gold chain is weighing 99.65 grams, i.e. the gold totally weighing **286.170** Grams having purity 999.0/ 24kt is ('**the said gold**' for short). Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold is **Rs.15,89,780/-** (Rupees Fifteen Lakhs Eighty-Nine Thousand Seven Hundred Eighty only) and total Market value is **Rs.18,04,302/-** (Rupees Eighteen Lakhs Four Thousand Three Hundred Two only). The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Grams	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	186.520	999.0 24Kt.	10,36,188/-	11,76,009/-
2.	Gold chain	1	99.650	999.0 24Kt.	6,28,293/-	5,53,593/-
Total		2	286.170	999.0 24Kt.	18,04,302/-	15,89,780/-

11. Accordingly, the said gold having purity 999.0/ 24 Kt. totally weighing 286.170 grams, recovered from Shri Ibrahim Khaleel was seized vide Panchnama dated 13.12.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold 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 gold totally weighing 286.170 grams, having total Tariff Value of Rs.15,89,780/- and total Market Value of Rs.18,04,302/- carried by the passenger Shri Ibrahim Khaleel 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 13.12.2023 under Section 108 of the Customs Act, 1962.

12. I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording 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 clothes, i.e. jeans, with an intention to clear the gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

13. Further, the passenger has accepted that 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 gold, 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.

14. From the facts discussed above, it is evident that Shri Ibrahim Khaleel had carried the said gold totally weighing 286.170 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 of 24Kt/999.00 purity totally weighing 286.170 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.

15. 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 286.170 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 weighing 286.170 grams, having Tariff Value of Rs.15,89,780/- and Market Value of Rs.18,04,302/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 13.12.2023 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.

16. I find that the Noticee confessed of carrying the said gold of 286.170 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.

17. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold weighing 286.170 grams, having Tariff Value of Rs.15,89,780/- and Market Value of Rs.18,04,302/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 13.12.2023. 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 weighing 286.170 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 the provisions of Section 112 of the Customs Act, 1962.

18. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of 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 weighing 286.170 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 clothes. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

19. In view of the above discussions, I hold that the said gold weighing 286.170 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty is liable for absolute confiscation. Further, the Noticee in his statement dated 13.12.2023 stated that he has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the said gold was carried by the Noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

20. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

21. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

22. Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act,

1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under:

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

23. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

24. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 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".

25. Given the facts of the present case before me and the judgements and rulings cited above, the said gold weighing 286.170 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold weighing 286.170 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

26. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold weighing 286.170 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 286.170 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.

27. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of the said gold (One gold bar and One gold chain), totally weighing **286.170** Grams having purity 999.0/24 Kt. and having Tariff value of **Rs.15,89,780/-** (Rupees Fifteen Lakhs eighty nine thousand seven hundred eighty only) and Market Value of **Rs.18,04,302/-** (Rupees Eighteen Lakhs four thousand three hundred two only), recovered from the Passenger, was placed under seizure under the Panchnama proceedings dated 13.12.2023 and Seizure Memo/ Order dated

13.12.2023, 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 Ibrahim Khaleel under the provisions of Section 112(a)(i) of the Customs Act, 1962.

28. Accordingly, the Show Cause Notice No. VIII/10-15/SVPIA-B/O&A/HQ/2024-25 dated 17.04.2024 stands disposed of.

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

F. No: VIII/10-15/SVPIA-B/O&A/HQ/2024-25 Date: 28.08.2024
DIN: 20240871MN000000B471

BY SPEED POST AD

To,
Shri Ibrahim Khaleel,
KSS Manzil, Peringadi
PO Mangalpady,
Kasaragod, Kerala – 671 324.

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.*