OIO No:254/ADC/SRV/O&A/2024-25
F. No: VIII/10-157/SVPIA-A/O&A/HQ/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380009.

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DIN: 20250271MN000000A582

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-157/SVPIA-A/O&A/HQ/ 2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-157/SVPIA-A/O&A/HQ/ 2024-25 dated 15.07.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**254/ADC/SRV/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**07.02.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**07.02.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**Shri Aashif Gafar Mirza**,S/o- Shri Gafar Alimamad Mirza, Divaniya Colony Igarasa Pir Dargah, Mustafamanjid, Veraval, Gir Somnath, Pin-362265.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का 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 साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा 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, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case:

Shri Aashif Gafar Mirza (hereinafter referred to as the said "passenger/ Noticee"), residential address as per passport is S/o- Shri Gadar Alimamad Mirza, address Divaniya Colony Igarasa Pir Dargah, Mustafamanjid, Veraval, Gir Somnath, Pin - 362265, Gujarat, India holding Indian Passport No. Y5402760, arrived by Thai Airways Flight No. TG343 (Seat No. 51K) from Bangkok to Ahmedabad on 22.03.2024 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific input, the passenger was intercepted by the officers of DRI, AZU and Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 23.03.2024 in presence of 02 independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying a blue colored trolley bag as his Checked-in baggage.

2. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The officers informed the passenger that they would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of 02 independent

witnesses gave his consent to be searched in presence of the Superintendent of Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes. Thereafter the passenger, removed the metallic substances from his body such as mobile, purse etc., and kept it in a tray placed on the table there and after that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound was heard indicating that nothing objectionable/ dutiable was on his body/ clothes. Further, the AIU officers asked the passenger to keep his baggage into X-Ray Baggage Scanning Machine installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. The passenger kept his baggage into X-Ray Baggage Scanning Machine for scanning of his baggage. On scanning of his baggage, no suspicious image appeared on the screen of the X-Ray machine.

Thereafter, the officers, in presence of the panchas, asked the passenger whether he has concealed any substance in his body, to which he replies in negative. After thorough interrogation by the officers, Shri Aashif Gafar Mirza accepted that he is hiding 03 capsules covered with black adhesive tape inside his rectum and the capsules contain gold paste with chemical mix in semi solid form. The officers, then lead the passenger to the washroom located near belt No. 6 of arrival hall, terminal 2, SVPI Airport, Ahmedabad and the passenger come out of the washroom with 03 capsules wrapped in black adhesive tape.

2.1 The officers informed the panchas that the capsules recovered from Shri Aashif Gafar Mirza contains semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only.

Accordingly, the officers, the panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad - 380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said 03capsules of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 867.06 Grams (weight inclusive of black adhesive tape). The photograph of the same is as under:

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said semi solid substances concealed in the said capsules into solid gold. After completion of the procedure, Government Approved Valuer informed that 1 Gold bar weighing **760.75** grams having purity 999.0/24 Kt. is derived from the above mentioned 867.06 Grams of 03 capsules containing gold paste and chemical mix.

The photograph of the extracted gold bar is as under:

2.3 After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 1585/2023-24 dated 23.03.2024 certified that the gold bar is having purity 999.0/24kt, market value of **Rs.51,94,401/-** (Rupees Fifty-One Lakhs Ninety-Four Thousand Four Hundred One only) and having tariff value of **Rs.44,34,412/-** (Forty-Four lakhs Thirty-Four thousand Four hundred Twelve only). The value of the gold bar has been calculated as per the which has been calculated as per the Notification No. 22/2024-Customs (N.T.) DTD. 15.03.2024 (Gold) and Notification No. 18/2024-Customs (N.T.) dtd. 07.03.2024 (exchange Rate). The Government Approved Valuer submits his valuation report to the AIU Officers which is annexed as Annexure-A to the Panchnama. He submits his valuation report to the AIU Officer vide certificate no. 1585/2023-24 dated 23.03.2024 which is in Annexure-A and Annexure-B for passenger. The outcome of the said testing is summarized in below table:

S. No.	Details of items	Net weight in grams	Purity	Market value (Rs.)	Tariff value (Rs.)
1	1 Gold Bar	760.75	999.0/ 24 Kt.	51,94,401/-	44,34,412/-

3. The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 1585/2023-24 dated 23.03.2024 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 – Shri Aashif Gafar Mirza were withdrawn under the Panchnama dated 23.03.2024:

(i) Copy of Passport No.Y5402760 issued at Ahmedabad on 27.06.2023 and valid up to 26.06.2033.

(ii) Boarding pass of Thai Airlines Flight No.TG343 from Bangkok to Ahmedabad dated 22.03.2024 having seat No.51K.

4. Accordingly, gold bar having purity 999.0/24 Kt. weighing 760.75 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from Shri Aashif Gafar Mirza was seized vide Panchnama dated 23.03.2024, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Custom duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made thereunder. A statement of Shri Aashif Gafar Mirza was recorded on 23.03.2024, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that:

(i) He was working as casual worker in industries located in my area;

(ii) He took flight for Bangkok by flight of Air India from Mumbai on 13.03.2024 from CSMI Airport, Mumbai. After spending almost 7 days in Bangkok he boarded flight TG 343 of Thai Airlines from Bangkok to Ahmedabad on 22.03.2024 and returned back to Ahmedabad on 22.03.2024. he stated that travel ticket was booked by an agent at Bangkok. he stated that he came in contact to a person whose name is

not known to him in a Mall in Bangkok. he stated that prior to this no case of Customs has been booked against him for any reason. This is the first time when he took attempt to smuggle Gold with chemical mix paste by way of concealment of Gold paste in the body i.e. rectum;

(iii) He stated that this gold is not him and not purchased by him. While he was returning to India from Bangkok on 22.03.2024 by TG 343 by Thai Airways one unknown person who met him at Bangkok has given him this gold to hand over the same in India for which he was promised by that unknown person that he would be paid Rs.20,000/-. At the time of handing over this gold & Chemical mix paste in form of capsules. he was instructed that this gold would be carried by way of body concealment i.e. Rectum and do not eat or drink anything during the travelling. he also state that the said gold did not belong to him and not purchased by him. he was fully aware that he was having Gold concealed in my body i.e. Rectum but he was not aware of the actual quantity of Gold. He don't have any mobile number or photo of the person to whom the said Gold capsules would be handed over in India. he was also aware that import of gold such ways of concealment and evade of duty is an offence;

(iv) he had been present during the entire course of the Panchnama dated 23.03.2024 and he confirmed the events narrated in the said panchnama drawn on 23.03.2024 at Terminal-2, SVPI Airport, Ahmedabad;

(v) he was aware that smuggling of gold without payment of Custom duty is an offence; he was well aware of the gold concealed in 03 capsules containing gold and chemical mix in semi-solid form in his rectum but he did not make any declarations in this regard with an intention to smuggle the same without payment of Custom duty.

5. The above said gold bar weighing 760.75 grams recovered from Shri Aashif Gafar Mirza, 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 form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar weighing 760.75 grams is attempted to be smuggled by Shri Aashif Gafar Mirza, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 760.75 grams derived from the above said semi solid gold paste with chemical mix weighing 867.06 Grams along with its packing material used to conceal the semi solid gold paste in 03 capsules, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 23.03.2024.

6. 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 amounted to Rs.51,94,401/- totally weighing 760.75 grams recovered from Shri Aashif Gafar Mirza is more than Rs.50,00,000/-, hence this case is fit for arrest of the said passenger under Section 104 of the Customs Act, 1962. Hence, the passenger was arrested on 23.03.2024.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions.—*In this Act, unless the context otherwise requires,—*

(22) "goods" includes-

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(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;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section11A – Definitions *-In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) "Section 77 – Declaration by owner of baggage.—*The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."*

IV) Section 79. Bona fide baggage exempted from duty. -

(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said

officer is satisfied that it is for the use of the passenger or his family or isa bonafide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

V) "Section 110 – Seizure of goods, documents and things.—*(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

VI) "Section 111 – Confiscation of improperly imported goods, etc.– *The following goods brought from a place outside India shall be liable to confiscation:-*

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VII) "Section 112 – Penalty for improper importation of goods, etc.– *Any person,-*

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he know or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

VIII) "Section 119 – Confiscation of goods used for concealing smuggled goods–*Any goods used for concealing smuggled goods shall also be liable to confiscation."*

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;

I) "Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."*

II) "Section 3(3) - *All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."*

III) "Section 11(1) - *No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."*

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

l) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

Contravention and violation of law:

8. It therefore appears that:

(a) The passenger Shri Aashif Gafar Mirza had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing **760.75** grams having purity 999.0/24kt, market value of **Rs.51,94,401/-** (Rupees Fifty-One Lakhs Ninety-Four Thousand Four Hundred One only) and having tariff value of **Rs.44,34,412/-** (Forty-Four lakhs Thirty-Four thousand Four hundred Twelve only) The said semi solid gold paste was concealed in 03 capsules covered with black adhesive tape containing gold and chemical mix in semi-solid paste form and not declared to the Customs. The passenger opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 760.75 grams of purity 999.0/24 Kt. by Shri Aashif Gafar Mirza by way of concealment and without declaring it 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.

(b) By not declaring the value, quantity and description of the goods imported by him, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold by the passenger Shri Aashif Gafar Mirza, found concealed in 03 capsules containing gold and chemical mix in semi-solid paste form without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(d) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

(e) Shri Aashif Gafar Mirza by his above-described acts of omission and commission on his part has rendered himself liable to penalty under Section 112 of the Customs Act, 1962.

(f) As per Section 123 of Customs Act 1962, the burden of proving that the gold bar weighing 885.99 grams having purity 999.0/24kt, market value of Rs.51,94,401/- (Rupees Fifty-One Lakhs Ninety-Four Thousand Four Hundred One only) and having tariff value of Rs.44,34,412/- (Forty Four lakhs Thirty Four thousand Four hundred Twelve only), derived from semi solid gold paste concealed in 03 capsules containing gold and chemical mix in semi-solid paste form in rectum, without declaring it to the Customs, is not smuggled goods, is upon the passenger Shri Aashif Gafar Mirza.

09. Accordingly, a Show Cause Notice No. VIII/10-157/SVPIA-A/O&A/HQ/2024-25 dated 15.07.2024 was issued to **Shri Aashif Gafar Mirza**, residing at S/o- Shri Gadar Alimamad Mirza, address

Divaniya Colony Igarasa Pir Dargah, Mustafamanjid, Veraval, Gir Somnath, Pin - 362265, Gujarat, India holding Indian Passport No. Y5402760, as to why:

(i) One Gold Bar weighing **760.75** grams having purity 999.0/24kt, market value of **Rs.51,94,401/-** (Rupees Fifty-One Lakhs Ninety-Four Thousand Four Hundred One only) and having tariff value of **Rs.44,34,412/-** (Forty Four lakhs Thirty Four thousand Four hundred Twelve only), derived from semi solid gold paste concealed in 03 capsules containing gold and chemical mix in semi-solid paste form in rectum by the passenger and placed under seizure under panchnama proceedings dated 23.03.2024 and Seizure Memo Order dated 23.03.2024, 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.

Defense reply and record of personal hearing:

10. The noticee has not submitted any written submission to the Show Cause Notice issued to him.

11. The noticee was given opportunity for personal hearing on 23.12.2024, 30.12.2024 & 10.01.2025 but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

11.1 Before, proceeding further, I would like to mention that Hon'ble Supreme Court, High Courts and Tribunals have held, in several judgments/decision, that ex-parte decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon some the relevant judgments/orders which are as under-

a) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

> *"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."*

b). Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), the Hon'ble Court has observed that;

Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

c) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon'ble court has observed that;

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

d) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.). The Hon'ble Court has observed that:

Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

e) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), the Hon'ble CESTAT has observed that;

Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

f). The Hon'ble High Court of Jharkhand in W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that

"Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to

appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed."

Discussion and Findings:

12. 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.

13. In the instant case, I find that the main issue to be decided is whether the **760.75** grams of gold bar, derived from semi solid gold paste in 03 capsules wrapped in black adhesive tape containing gold and chemical mix in semi-solid paste concealed in rectum having Tariff value of **Rs.44,34,412/- (Forty Four lakhs Thirty Four thousand Four hundred Twelve only)** and Market Value of **Rs.51,94,401/- (Rupees Fifty-One Lakhs Ninety-Four Thousand Four Hundred One only)**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 23.03.2024, 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 noticee is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the panchnama dated 23.03.2024 clearly draws out the fact that the noticee, who arrived from Bangkok in Flight No. TG343 (Seat No. 51K) was intercepted by the Air Intelligent Unit (AIU) officers & DRI officers, SVP

International Airport, Customs, Ahmedabad on the basis of specific input, when he was trying to exit through green channel of the Arrival Hall of Terminal 2 of SVPI Airport, without making any declaration to the Customs. While the noticee passed through the Door Frame Metal Detector (DFMD) Machine, after removing all the metallic objects he was wearing on his body/ clothes, no beep sound was heard which indicated there was no objectionable/dutiable substance on his body/clothes. Further, the AIU officers asked the passenger to keep his baggage into X-Ray Baggage Scanning Machine installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. The passenger kept his baggage into X-Ray Baggage Scanning Machine for scanning of his baggage. On scanning of his baggage, no suspicious image appeared on the screen of the X-Ray machine. After thorough interrogation by the officers, the noticee accepted that he is hiding three capsules containing semi solid substance consisting of Gold and Chemical mix concealed inside his rectum. The noticee handed over the 03 capsules wrapped in black tape containing semi solid substance consisting of Gold and Chemical mix after returned from washroom. It is on record that the noticee had admitted that he was carrying the gold in paste form concealed in his rectum in capsule form, with intent to smuggle into India without declaring before Customs Officers. It is also on record that Government approved Valuer had tested and converted said capsules in Gold Bar with certification that the gold is of 24 kt and 999.0 purity, weighing 760.75 Grams. The Tariff Value of said Gold bar weight 760.75 grams having purity 999.0/24 Kt. derived from 867.06 grams of 03 capsules containing semi solid paste consisting of gold and chemical mix concealed in rectum, was **Rs.44,34,412/-** and market Value of **Rs.51,94,401/-**, which was placed under seizure under Panchnama dated 23.03.2024, in the presence of the noticee and independent panch witnesses.

15. I also find that the passenger/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 of 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/noticee. In fact, in his statement dated 23.03.2024, he has clearly admitted that he had travelled from Bangkok to Ahmedabad by Flight No. TG343 dated 23.03.2024 carrying gold paste in form of capsule concealed in his rectum; that he had intentionally not declared the substance containing foreign origin gold before the Customs authorities as he wanted to clear the same illicitly and evade payment of customs duty; that he was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016.

16. I find that the noticee has clearly accepted that he had not declared the gold in paste form concealed in his rectum, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. In the statement, he admitted that the gold was not purchased by him and some unknown person gave him the said gold in form of capsules at Bangkok and for carrying the said gold to India, he would get an amount of Rs.20,000/-. I find that the noticee had gave his statement voluntarily under Section 108 of Customs Act, 1962. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled

goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

17. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 760.75 gms., retrieved from the gold paste in form of capsules concealed by the noticee in his rectum, while arriving from Bangkok to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 760.75 gms, seized under panchnama dated 23.03.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By secreting the gold in form of capsules having gold and chemical mix concealed in his rectum and not declaring the same before the Customs, it is established that the passenger/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.

18. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find 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 as amended and he was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport,*

issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 760.75 grams concealed by him, without declaring to the Customs on arrival in India 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.

19. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity weighing 760.75 gms., retrieved from gold paste concealed in rectum in form of capsules, having total Tariff Value of Rs.44,34,412/- and market Value of Rs.51,94,401/-, seized vide Seizure Memo/Order under the Panchnama proceedings both dated 23.03.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. By using the modus of concealing the gold in rectum and without declaring to the Customs on arrival in India, it is observed that the passenger/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 to the Customs on his arrival at the 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 were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

20. I find that the passenger/noticee has confessed of carrying gold of 24 kt having 999.0 purity, weighing 760.75 grams and attempted to remove the said gold by concealing the gold in his rectum and attempted to remove the said gold from the Customs 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 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.

21. 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 records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. One Gold Bar weighing 760.75 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bar Rs.51,94,401/- and Tariff Value Rs.44,34,412/- retrieved from the gold paste concealed in rectum, were placed under seizure vide panchnama dated 23.03.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, he attempted to remove the gold by concealing in the rectum and by deliberately not declaring

the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) & 112(b) of Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

22. I further find that 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-fulfillment 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 the same was not eligible passenger to bring or import gold into India in baggage. The gold was recovered in a manner concealed in rectum in form of capsules and 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 passenger.

23. In view of the above discussions, I hold that the gold weighing 760.75 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner for extraneous consideration. In the instant case, ***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.***

24. In the case of ***Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble 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 has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.***

25. Further I find that in a case decided by the ***Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUSin respect of Malabar Diamond Gallery Pvt Ltd,*** the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

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

26. The ***Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)]*** has held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold,

by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –

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

27. In [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 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 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

28. The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

"***23.*** *There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of*

concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."

*24……***.**

25……

*"**26.** The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC)* ***has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country****."*

29. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bars. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in his rectum with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 760.75 grams of 24Kt./999.0 purity in form of gold bar, derived from the gold and chemical paste concealed in rectum in form of capsules is therefore, liable to be **confiscated absolutely**. **I therefore hold in unequivocal terms that the gold weighing 760.75 grams of 24Kt./999.0 purity, 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 Act.**

30. I further find that the passenger had involved himself in the act of smuggling of gold weighing 760.75 grams of 24Kt./999.0 purity, retrieved from gold and chemical paste concealed in rectum in form of capsules. Further, it is fact that the passenger/noticee has travelled with gold weighing 760.75 grams of 24Kt./999.0 purity, retrieved from paste concealed in his rectum from Bangkok 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 thereunder. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing

with the smuggled gold which he knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Sections 112 of the Customs Act, 1962 and I hold accordingly.

31. Accordingly, I pass the following Order:

O R D E R

i.) I order absolute confiscation of the One Gold Bar weighing **760.75 grams** of purity 999.0/24kt having Market Value at **Rs.51,94,401/-** (Rupees Fifty-One Lakhs Ninety-Four Thousand Four Hundred One only) and Tariff Value is **Rs.44,34,412/-** (Forty Four lakhs Thirty Four thousand Four hundred Twelve only) derived from semi solid gold paste in three capsules wrapped in Black tape concealed in rectum by the passenger/noticee Shri Aashif Gafar Mirza and placed under seizure under panchnama dated 23.03.2024 and seizure memo order dated 23.03.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii.) I impose a penalty of **Rs. 13,00,000/-** (Rupees Thirteen Lakh Only) on Shri Aashif Gafar Mirza under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

32. Accordingly, the Show Cause Notice No. VIII/10-157/SVPIA-A/O&A/HQ/2024-25 dated 15.07.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 07-02-2025 15:13:40

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-157/SVPIA-A/O&A/HQ/2024-25 Date:07.02.2025

OIO No:254/ADC/SRV/O&A/2024-25
F. No: VIII/10-157/SVPIA-A/O&A/HQ/2024-25

DIN: 20250271MN000000A582

By SPEED POST A.D.

To,
Shri Aashif Gafar Mirza,
S/o- Shri Gafar Alimamad Mirza,
Divaniya Colony Igarasa Pir Dargah,
Mustafamanjid, Veraval, Gir Somnath,
Pin-362265, Gujarat, India

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in.
6. Guard File.