

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुरानेहाईकोर्टेक्सामने, नवरंगपुरा, अहमदाबाद – 380 009.

दूरभाष: (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स: (079) 2754 2343

DIN:20250171MN0000888D04

PREAMBLE

A	फ़ाइलसंख्या / File No.	:	VIII/10-105/SVPIA-B/O&A/HQ/2024-25
B	कारणबताओनेटिससंख्या—तारीख / Show Cause Notice No. and Date	:	VIII/10-105/SVPIA-B/O&A/HQ/2024-25 dated 11.07.2024
C	मूलआदेशसंख्या / Order-In-Original No.	:	217/ADC/SRV/O&A/2024-25
D	आदेशतिथि / Date of Order-In-Original	:	01.01.2025
E	जारीकरनेकीतारीख / Date of Issue	:	01.01.2025
F	द्वारापारित / Passed By	:	Shree Ram Vishnoi, Additional Commissioner, Customs, Ahmedabad
G	आयातककानाम औरपता / Name and Address of Importer / Passenger	:	Mr. Patel Sohel Suleman, Vataniya Khadki, Amod, Bharuch, Gujarat -392140
(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 मंजिल, हड्को 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		

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

	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 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, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

Brief facts of the case: -

Shri Patel Sohel Suleman, (hereinafter referred to as the said "passenger/ Noticee"), residing at Vataniya Khadki, Amod, Bharuch, Gujarat - 392140 holding an Indian Passport Number No. W8438441, arrived by Indigo Flight No. 6E 1478 from Dubai to Ahmedabad and his boarding pass bearing Seat No.10F, at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of specific information provided by AIU officer, Ahmedabad and passenger profiling, one male passenger namely Mr. Patel Sohel Suleman, who arrived by Indigo Flight No.6E 1478 on 03.02.2024 came from Dubai at Terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad is suspected to be carrying smuggled gold either in his baggage or concealed in his clothes/ body and on suspicious movement of the passenger, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPI Airport, Customs, Ahmedabad under Panchnama proceedings dated 03.02.2024 in presence of two independent witnesses for passenger's personal search and examination of his baggage.

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

2. The AIU Officers asked about his identity of Mr. Patel Sohel Suleman by his Passport No. W8438441, who travelled by Indigo Flight No.6E 1478 from Dubai to Ahmedabad and his boarding pass bearing Seat No.10F, after he had crossed the Green Channel at the Ahmedabad International Airport. In the presence of the Panchas, the AIU Officers asked Shri Mr. Patel Sohel Suleman if he has anything to declare to the Customs, to which he denied the same politely. The officers offered their personal search to the passenger, but the passenger denied and said that he had full trust on them. Now, the officers asked the passenger whether he wanted to be checked in front of an Executive Magistrate or Superintendent of Customs, in reply to which he gave the consent to be searched in front of the Superintendent of Customs.

2.1 The AIU Officers, in presence of the Panchas, observed that Mr. Patel Sohel Suleman had carried two trolley bags. The officers, in presence of the Panchas carried out scanning of the trolley bags in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed. The AIU Officers, in presence of the Panchas, asked Mr. Patel Sohel Suleman to walk through the Door Frame Metal Detector (DFMD) machine; prior to passing through the said DFMD, the passenger was asked to remove all the metallic objects he was wearing on their body/ clothes. Thereafter, the passenger readily removed the metallic substances from his body such as belt, mobile, wallet etc. and kept it on the tray placed on the table and after that officer asked him to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound/ alert was generated. Thereafter, the AIU Officers in presence of Panchas, asked the passenger whether he has concealed any

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

substance in his body, to which he replied in negative. Then, after thorough interrogation by the Officers, in presence of Panchas, the passenger did not confess he has carried any high valued dutiable goods. The Officers under the reasonable belief that the said passenger carried some high valued dutiable goods by way of concealing it in his body parts and on sustained interrogation Mr. Patel Sohel Suleman confessed that he carried gold in paste form (viz four long pouches wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue colour innerwear). He is now taken to the AIU room opposite belt no. 2 of arrival Hall, Terminal 2 by the Officer, where Mr. Patel Sohel Suleman removes his jeans and innerwear and he is allowed to wear other clothes he brought with him. In presence of the Panchas and the AIU Officers, Mr. Patel Sohel Suleman tear the waist band and the Panchas along with the officers see four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-colored jeans and one pouch stitched with his blue coloured innerwear. The weight of the all the pouch and strips removed by Mr. Patel Sohel Suleman was measured which comes to approximately 1117.250 Grams.

2.2 Thereafter, the AIU officers called the Government Approved Valuer and informed him that total five pouches containing semisolid substance consisting of gold and chemical mix recovered from a passenger and the passenger has informed that it is gold in semisolid/ paste form and hence, he needs to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer informed the AIU Officer that the testing of the said material is only possible at his workshop as gold has to be extracted

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

from such semisolid substance consisting of gold and chemical mix form by melting it and also informed the address of his workshop. As such, the AIU Officers along with the passenger and the Panchas visited the Shop No. 301, Golden Signature, Behind Ratnam Complex, Near National Handloom, C.G. Road, Ahmedabad - 380 006, where the officers introduced Shri Soni Kartikey Vasantrai, the Government Approved Valuer to the Panchas, as well as the passenger. After weighing the said semisolid substance covered with white adhesive tape on his weighing scale, Shri Kartikey Vasantrai Soni provided detailed primary verification report of semi-solid substance consisting of Gold and Chemical mix having Gross Weight of 1117.250 Grams. Shri Kartikey Vasantrai Soni also weighed the semisolid substance consisting of gold and chemical mix after removing the white adhesive tape is **weighing 1108.210** grams.

The Officers took the photograph of the same which is as under:



2.3 Thereafter, the Government approved valuer led the Panchas, officers and the passenger to the furnace which is located inside his business premises. The Government approved valuer started the process of converting the pouches of gold and chemical mix recovered from the passenger, into solid gold after removing the white colour adhesive tape, semi solid paste packed in transparent

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

tape is obtained was put into the furnace and upon heating item it turned into mixture of gold like material and put it in a furnace. After some time, taken out of furnace and poured in a bar shaped plate and after cooling for some time it became yellow coloured solid metal in form of a bar. After completion of the procedure, the Government Approved Valuer take the weight of the said golden coloured bar which is derived from **1108.210** Grams of five pouches containing semisolid substance consisting of gold and chemical mix, in presence of Panchas, the passenger and the AIU Officers comes to **989.560 Grams**. After completing the procedure, the Government approved valuer confirmed vide Valuation Certificate No. 1294/2023-24 dtd. 03.02.2024 that the semi-solid substance consisting of Gold and Chemical mix, recovered from Mr. Patel Sohel Suleman, one gold bar weighing 989.560 grams having purity 999.0/24 Kt., having market value of **Rs.64,30,161/-** (Rupees Sixty-four lakh thirty thousand one hundred and sixty-one only) and having tariff value of **Rs.54,99,470/-** (Rupees Fifty-four lakh ninety-nine thousand four hundred seventy only). The value of the gold bar has been calculated as per the Notification No. 09/2024-Customs (N.T.) dated 31.01.2024 (gold) and Notification No. 10/2024-Customs (N.T.) dated 01.02.2024 (exchange rate). He submits his valuation report to the AIU Officer which is in Annexure-A and Annexure-B.

The details of the valuation of the said gold bar is tabulated as below:

Sl. No.	Details of Items	PCS	Gross Weight In Gram	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
Gold bar derived from 1108.210 Grams of pouches removing white adhesive tape containing gold paste and chemical mix recovered from Mr. Patel Sohel Suleman							
1.	Gold Bar	1	1108.210	989.560	999.0 24Kt.	64,30,161/-	54,99,470/-

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

The Photographs of the net weight of the pure gold is as under:-



2.4 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent Panchas the passenger and officers. All were satisfied and agreed with the testing and valuation Certificate dated 03.02.2024 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 certificate.

2.5 The following documents produced by the passenger Mr. Patel Sohel Suleman were withdrawn under the Pachamama dated 03.02.2024:

- (i) Copy of Passport No. W8438441 issued at Dubai on 06.12.2022 and valid up to 05.12.2032.
- (ii) Boarding pass of IndiGo Flight No. 6E1478 from Dubai to Ahmedabad dated 03.02.2024 having seat No. 10F.

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

3. Thereafter, the AIU officers asked in the presence of the Panchas, to produce the identify proof documents of the passenger and the passenger produced the identity proof documents which have been verified and confirmed by the AIU officers and found correct.

4. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 989.560 grams, derived from semi-solid substance consisting of Gold and Chemical mix, recovered from Mr. Patel Sohel Suleman, having market value of Rs.64,30,161/- (Rupees Sixty-four lakh thirty thousand one hundred and sixty-one only) and having tariff value of Rs.54,99,470/- (Rupees Fifty four lakh ninety nine thousand four hundred seventy only) which were attempted to smuggle gold into India with an intent to evade payment of Customs duty which is a clear violation of the provisions of the Customs Act, 1962, was seized vide Panchnama dated 03.02.2024, vide Seizure Memo dated 03.02.2024 issued from F. No. VIII/10-288/AIU/B/2023-24 dated 03.02.2024, under the provisions of Section 110(1) & (3) of Customs Act, 1962 and accordingly the same was liable for confiscation as per the provisions of Customs Act, 1962 read with Rules and Regulation made thereunder.

5. A Statement of Mr. Patel Sohel Suleman was recorded under Section 108 of the Customs Act, 1962 on 03.02.2024, wherein he, inter-alia stated that -

(i) His name, age and address stated above is true and correct. He is a Office Manager in Dubai. He Studied upto 12th Standard.

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

(ii) He is living with his Father, Mother and Wife. His father is working in water filter plant.

(iii) He went to Dubai on 30th January, 2024 to join his duties in Dubai but due to medical emergency he returned on 03.02.2024 approx. 09.20 AM. There, he purchased the gold in the paste form in Jewellery Shop, as the price of Gold in Dubai is cheaper as compared to India, hence to get the monetary benefit to sell the Gold in India.

(iv) He arranged the money from his personal savings and borrowings from his friend named Sajid, who is working in Dubai.

(v) After he get exited from the Ahmedabad Airport, friend Sajid was going to Instruct to whom he has to give the Gold.

(vi) He stated that the gold items of 989.560 grams are found in his possession and belongs to him and my friend.

(vii) He never indulged in smuggling of gold in past. This is the first time he has brought Gold into India concealing the same in the clothes worn by him.

(viii) The Indigo Flight No. 6E 1478 from Dubai arrived at SVPI Airport, Ahmedabad on 03.02.2024. Thereafter, he was intercepted by the officers of Air Intelligence Unit when he arrived at Arrival Hall of T-2 Terminal of SVPI International Airport when he was about to exit through the green channel. During his personal search, carried out by the Officers in presence of him and the Panchas, he confessed that he was carrying gold paste in some pouches concealed into the waist band of the jeans as well as in his innerwear. He was taken to the AIU room opposite belt no. 2 of arrival hall, Terminal 2 by the Officer, and he removed his jeans and innerwear and is allowed to wear another clothes he brought with me. In presence of the Panchas and the AIU Officers, he tore the waist band and show the officers four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of blue coloured jeans and one pouch stitched with blue colour innerwear which is approximately 1117.250 Grams (with adhesive tape) After removing the adhesive tape the gross weight come to 1108.210 grams Thereafter the gold items were converted into gold bar by melting it at the premises of the Govt. approved valuer in presence of himself, AIU officers and the Panchas and gold bar of 989.560 grams of 999.0/ 24 Kt purity valued at Rs.64,30,161/- (market value) and Rs. 54,99,470/- (tariff value) was recovered. After the

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

completion of aforementioned proceedings at the workshop of the Govt. approved valuer, the Panchas, AIU officers and he came back to the Airport in government vehicle along with the recovered gold. The said Gold bar weighing 989.560grams was seized by the officers under Panchnama dated 03.02.2024 under the provision of Customs Act, 1962.

(ix) His ticket was booked by his friend settled in Dubai.

6. The above said gold bar with a net weightment of 989.50 grams having purity of 999.0/24 Kt. And having market value of Rs.64,30,161/- (Rupees Sixty-four lakh thirty thousand one hundred and sixty-one only) and having tariff value of Rs.54,99,470/- (Rupees Fifty four lakh ninety nine thousand four hundred seventy only) recovered from the said passenger, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of four long pouches wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue coloured jeans and one pouch stitched with his blue colour innerwear, which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the Gold bar totally weighing 989.50Grams which were attempted to be smuggled by Shri Patel Sohel Suleman is liable for confiscation under the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 989.50 grams which was derived and concealed in four long pouches wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue coloured jeans and one pouch stitched with his blue coloured innerwear, were placed under seizure under the provision of Section 110 of the Customs Act, 1962, vide Seizure Memo Order dated 03.02.2024, issued from F.No. VIII/10-288/AIU/B/2023-24, under Section 110 (1) & (3) of Customs Act, 1962.

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

6.1. 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 in this case is more than Rs.50/- Lakhs, hence this case is fit for arrest and hence, the said passenger was arrested under Section 104 of the Customs Act, 1962.

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;

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

(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) Section 11A – 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 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."

V) 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;

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

- (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;"

VI) 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.

VII) 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

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:

I) 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.*

CONTRAVICTION AND VIOLATION OF LAWS

8. It therefore appears that:

(a) The passenger had dealt with and actively indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold bar weighing 989.50 Grams having purity 999.0/24 Kt. by way of four long pouches wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue coloured jeans and one pouch stitched with his blue colour innerwear, involving market value of Rs.64,30,161/- (Rupees Sixty four lakh thirty thousand one hundred and sixty one only) and having tariff value of Rs.54,99,470/- (Rupees Fifty four lakh ninety nine thousand four hundred seventy only), 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

allied Acts, Rules, and Regulations. Therefore, the improperly imported 989.50 Grams of gold bar of purity 999.0/24 Kt. by the passenger, which was concealed in four long pouches wrapped with white adhesive tape containing gold paste into the waist band of his blue coloured jeans and one pouch stitched with his blue colour innerwear, 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 Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold bar by the passenger, Mr. Patel Sohel Suleman, which was concealed in four long pouches wrapped with white adhesive tape containing gold paste into the waist band of his blue coloured jeans and one pouch stitched with his blue colour innerwear, 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

Act, 1962.

(d) Mr. Patel Sohel Suleman, 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.

(e) As per Section 123 of the Customs Act, 1962, the burden of proving that the gold bar weighing 989.50 Grams having purity 999.0/24 Kt. and having market value of Rs.64,30,161/- (Rupees Sixty-four lakh thirty thousand one hundred and sixty-one only) and having tariff value of Rs.54,99,470/- (Rupees Fifty four lakh ninety nine thousand four hundred seventy only), which was concealed in four long pouches wrapped with white adhesive tape containing gold paste into the waist band of his blue coloured jeans and one pouch stitched with his blue colour innerwear, without declaring it to the Customs, are not smuggled goods, is upon the passenger and Noticee, Mr. Patel Sohel Suleman.

09. Accordingly, a Show Cause Notice was issued to **Mr. Patel Sohel Suleman**, Vataniya Khadki, Amod, Bharuch, Gujarat - 392140, as to why:

(i) One Gold Bar weighing **989.50** Grams having purity 999.0/24 Kt. and having market value of **Rs.64,30,161/-** (Rupees Sixty-four lakh thirty thousand one hundred and sixty-one only) and having tariff value of **Rs.54,99,470/-** (Rupees Fifty four lakh ninety nine thousand four hundred seventy only), which was

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

concealed in four long pouches wrapped with white adhesive tape containing gold paste into the waist band of his blue coloured jeans and one pouch stitched with his blue colour innerwear, was placed under seizure under panchnama proceedings dated 03.02.2024 and Seizure Memo Order dated 03.02.2024, 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) The packing material i.e. white adhesive tape in which five pouches were wrapped under seizure on the reasonable belief that the same was used for packing and concealment of the above-mentioned gold bar which was attempted to be smuggled into India in violation of Section 77, Section 132 and Section 135, of the Customs Act, 1962, seized under Panchnama dated 03.02.2024 and Seizure memo order dated 03.02.2024, 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 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

10. The noticee has submitted his written reply vide letter dated 05.08.2024 through his authorized representative wherein he mentioned that his client has no knowledge of the requirement to

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

declare the gold at customs. The oversight was purely inadvertent and not a deliberate attempt to bypass legal stipulations. He mentioned that the gold in question under SCN was brought into country for a familial purpose, specifically for the occasion of an impending marriage in family. The gold article was bought from his own savings and has the valid bills which are submitted alongwith the submission. He submitted that the goods seized are not liable to be confiscated under Section 111(d), (l) and (m) of the Customs Act, 1962 and gold was not concealed ingeniously and in similar type of case gold was released by the various authorities.

He submitted that his client has claimed the ownership of the goods which were in his possession and is ready to pay the Customs Duty and any other customs dues. This is the first time that he brought this type of goods and there is no previous case registered against him and submitted that the violation of any law is out of ignorance and technical in nature. Further, he submitted that the gold is dutiable goods and not prohibited goods. He submitted that the conduct does not exhibit the requisite mens rea for the commission of a customs offence, as there was no intention to evade duty or to engage in any form of smuggling. He submitted a judgment in case of State of Maharashtra Vs. Mayer Hans George (AIR 1965 SC 722) where the supreme court emphasized the necessity of mens rea in customs offence.

He submitted that they are ready to comply with all legal requirement, including the payment of any fines, penalties and duties as imposed. The dutiable goods brought are neither restricted nor prohibited and can be released on redemption fine under Section 125 of the Customs Act, 1962 which allows for the payment of fine in lieu of confiscation and he requests to permit the redemption fine for the

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

seized gold upon payment of the applicable fine and duty and is committed to following all due procedures to resolve this matter expeditiously and in accordance with law. He submitted various case laws in his submission as :-

- The Hon'ble Supreme Court of India in Hargovind Das K. Joshi Vs. Collector of Customs reported in 1962 (61) E.L.T 172 (S.C)
- The Hon'ble Tribunal in case of Alferd Menezes Vs. Commissioner of Customs, Mumbai reported in 2011 (236) ELT 587 (Tri- Mumbai)
- The Hon'ble Tribunal in the case of T.Elvarasan Vs. Commissioner of Customs (Airport) reported in 2011 (266) ELT 167(Mad)
- The Hon'ble Tribunal in case of Yakub Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai reported in 2011 (263) ELT 685 (Tri-Mumbai)
- The Hon'ble Tribunal in the case of Mohini Bhatia Vs. Commissioner of Customs reported in 1999 (106) ELT 485 (Tri-Mumbai)
- Universal Traders Vs. Commissioner-2009 (240) ELT A78 (SC)
- Gauri Enterprise V C.C Pune-2002 (145) ELT 706 (Tri-Bang)
- Shaik Jamal Basha V. Government of India-1997 (91) ELT 277 (AP)
- VP Hameed V. Collector of Customs, Mumbai-1994 (73) ELT 425(Tri.)
- P.Sinnasamy Vs. Commissioner of Customs, Chennai-2007(220) ELT 308 (Tri-Chennai)
- Union of India Vs. Dhanak Madhusudhan Ramji-2009 (248) ELT 127(Bom.)

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

- A. Rajkumar CC (Chennai)-2015 (321) ELT 540 (Tri-Chennai)
- Kadar Mydin Vs. Commissioner of Customs (Preventive), west Bengal-2001 (136) ELT 758
- Sapna Sanjeev Kohli Vs. Commissioner of Customs, Airport Mumbai-2008 (230) ELT 305
- Vatakkal Moosa V Collector of Customs, Cochin-1994 (72) ELT 473 (G.O.I)
- Commr. Of C.Ex & ST, Lucknow vs. Mohd. Halim Mohd. Shamim Khan in 2018 (359) ELT 265 (Tri-ALL.)

The noticee has prayed for acknowledge the absence of illicit intent and non-guilt on the part of noticee and consider this as an inadvertent oversight without any criminal malafide, allow to pay requisite fine, penalty and duties to facilitate the release of the seized gold under Section 125 of the Customs Act, 1962, Direct the customs authority to release the seized property upon fulfilment of the necessary legal formalities and pass any other order as this esteemed authority deems fit and proper in the interest of justice.

11. The noticee was given opportunity for personal hearing on 09.12.2024. Shri Fouzan Soniwala, Advocate and authorized representative was appeared for personal hearing on behalf of Shri Patel Sohel Suleman, wherein he re-iterated the submission made on 05.08.2024 and also submitted that he noticee is ready to pay the duty, fine and penalty for release of gold. He requested to take a lenient view in the matter and allow to release the gold on payment of reasonable fine and penalty. He submitted that he has nothing more to add.

Discussion and Findings:

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

12. I have carefully gone through the facts of this case and the written submission made by the noticee and submission made during personal hearing. I find that the noticee has attended the PH and requests for release of gold in lieu of payment of applicable duty/tax, fine and penalty. I therefore proceed to decide the instant case on the basis of evidences and documents available on record.

13. In the instant case, I find that the main issue to be decided is whether the **989.50** grams of 01 gold bar (derived from gold paste concealed in four long pouches wrapped with white adhesive tape containing gold paste into the waist band of his blue coloured jeans and one pouch stitched with his blue colour innerwear) of 24KT(999.0 purity), having Tariff Value of **Rs.54,99,470/-** and Market Value of **Rs.64,30,161/-**, seized vide Seizure Memo/ Order under Panchnama proceedings both dated 03.02.2024 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 passenger is liable for penal action under the provisions of Section 112 of the Act.

After having identified and framed the main issue to be decided, as stated above, I now proceed to deal with the issue in the light of facts and circumstances of the case provision of the Customs Act, 1962, contentions of the noticee and evidences available on record.

14. I find that the Panchnama has clearly drawn out the fact that on the basis of input that Shri Patel Sohel Suleman was suspected to be carrying restricted/prohibited goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. The AIU officers under

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

Panchnama proceedings dated 03.02.2024 in presence of two independent witnesses asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the passenger to pass through the Door Frame Metal Detector and while passing DFMD, no beep sound was heard indicating that he is not carrying any high valued dutiable goods. The officers, in presence of the Panchas carried out scanning of the trolley bags in the scanner installed near the exit gate of the arrival hall of SVPI Airport, Ahmedabad, however, nothing suspicious was observed. on sustained interrogation Mr. Patel Sohel Suleman confessed that he carried gold in paste form (viz four long pouches wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue colour innerwear). Thereafter, Mr. Patel Sohel Suleman removes his jeans and innerwear. It is on record that, in presence of the Panchas and the AIU Officers, the noticee tear the waist band and the Panchas along with the officers see four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue-coloured innerwear. The weight of the all the pouch and strips removed by Mr. Patel Sohel Suleman was measured which comes to approximately 1117.250 Grams and after removing the white adhesive tape, the gross weight comes to 1108.210 grams. Under his reply, I find that, the noticee has submitted that the noticee had no knowledge of the requirement to declare the gold at custom and the oversight was purely inadvertent and not deliberate attempt to bypass legal stipulations, however under Panchnama it is very clear that on sustained interrogation and after passing from the DFMD

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

machine, only thereafter, the noticee has confessed he was carrying gold paste in pouch concealed into the waist band of his jeans as well as in his innerwear. I further note that the noticee in his submission mentioned that he was not aware about the procedure of payment of customs duty. The explanation given by the noticee cannot be held to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgments.

15. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue coloured innerwear and after completion of extraction, the Government Approved Valuer informed that 01 gold bar weighing **989.50** Grams having purity 999.0/24KT is derived from five pouches containing semisolid substance consisting of gold and chemical mix. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said 01 gold bar is **Rs.54,99,470/-** and Market value is **Rs.64,30,161/-**. The details of the Valuation of the said gold bar are tabulated as below:

Sl. No	Details of Items	PC S	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar(Derived from semisolid substance)	1	989.50	999.0/24Kt	64,30,161/-	54,99,470/-

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

16. Accordingly, the said 01 gold bar (derived from five pouches containing semisolid substance consisting of gold and chemical mix) having purity 999.0/24 Kt. weighing 989.50 grams, recovered from noticee was seized vide Panchnama dated 03.02.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said 01 gold bar was smuggled into India by the said noticee 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 989.50 grams of 01 gold bar (derived from five pouches containing semisolid substance consisting of gold and chemical mix), having Tariff Value of **Rs.54,99,470/-** and Market value is **Rs.64,30,161/-** carried by the passenger 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 03.02.2024 under Section 108 of the Customs Act, 1962. I find under submission that the noticee has claimed the ownership of gold and mentioned that he had purchased the said gold for familial purpose and submitted the purchase invoice. On going through the statement tendered by the noticee, I find that the noticee has submitted that the gold was purchased for monetary benefit as rate of gold was cheaper in Dubai as compared to India. Therefore, I do not find any force in the contention of noticee in this regard and producing the invoices is afterthought. It is on the record the noticee had tendered their statement voluntarily under Section 108 of Customs Act, 1962 and Statement recorded under Section 108 of Customs Act, 1962 has evidentiary value under the provision of law. To support my view, I relied on the judgments as:-

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

- Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is a valid evidences"
- In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that "It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."

17. I also find that the noticee had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement as well as in his written submission. 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 the said gold in form of paste was purchased from jewellery shop in

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

Dubai as price of gold is cheaper in Dubai than India, so bought the gold to get monetary benefit after selling the same in India. He clearly admitted that he was fully aware that gold was concealed in form of gold paste in four long strips wrapped with white adhesive tape concealed into waist band of his blue-coloured jeans and one pouch stitched with his blue colour innerwear. I find that understatement, he admitted that he was aware that the bringing gold by way of concealment to India was illegal and it was an offense. He clearly mentioned in his statement that to avoid the payment of customs duty, he opted this illegal smuggling of gold dust, in commercial quantity in India without declaration. I find from the content of the statement, that said smuggled gold was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. I find from the statement that the said goods were also not declared before Customs and he was aware that smuggling of gold without payment of customs duty is an offence. Since he had to clear the gold without payment of Customs duty, he did not make any declarations in this regard. He admitted that he had opted for green channel so that he could attempt to smuggle the Gold without paying customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992 as amended, the Foreign Trade (Development & Regulations) Rules, 1993 as amended and the Foreign Trade Policy 2015-2020.

18. Further, the noticee 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 01 gold bar (derived from five pouches containing

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

semisolid substance consisting of gold and chemical mix), ('the said gold' for short), which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, 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.

19. Under his submission, I find that the noticee has mentioned that he has no knowledge of requirement to declare the gold at customs and is law abiding person with no prior record of any criminal activity or involvement in any illicit operations. I find that he submits that the violation is out of ignorance and technical in nature and admits to pay the applicable duty, fine and penalty in lieu of release of gold. He requested for payment of redemption fine in lieu of confiscation of goods as gold in dutiable goods and not prohibited goods. The noticee has submitted various case law wherein redemption fine is allowed for release of gold as mentioned at Para 10 hereinabove. In contrary to this, I relied on the judgments where the redemption is not allowed and same are discussed below.

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

From the facts discussed and provisions, it is evident that noticee had carried the said gold weighing 989.50 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 bar of 24KT/999.00 purity totally weighing 989.50 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 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.

20. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/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 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

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 989.50 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.

It, is therefore, proved that by the above acts of contravention, the noticee has rendered the said gold weighing 989.50 grams, having Tariff Value of Rs.54,99,470/- and Market Value of Rs.64,30,161/- recovered and seized from the noticee vide Seizure Order under Panchnama proceedings both dated 03.02.2024 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 in form of four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue-coloured innerwear, shows the mens-rea of the noticee to not declare and to evade the payment of customs duty. It is observed that the noticee was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

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.

21. I find that the Noticee confessed of carrying the said gold of 989.50 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 amended. 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.

22. 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

the noticee did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bar weighing 989.50 grams, having Tariff Value of Rs.54,99,470/- and Market Value of Rs.64,30,161/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 03.02.2024. Despite having knowledge that the goods had to be declared and such import without declaration and by not discharging eligible customs duty, is an offence under the Act and Rules and Regulations made under it, the noticee had attempted to remove the said gold bar weighing 989.50 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.

23. 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 989.50 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

passenger concealed the said gold in form of four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue coloured innerwear. 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.

24. In view of the above discussions, 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 form of four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue coloured innerwear with intention to smuggle the same into India and evade payment of customs duty. Therefore, I hold that the said gold bar weighing 989.50 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 03.02.2024 stated that he has carried the said 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 of the said gold in form of four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue coloured

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

innerwear. *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.*

25. 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."

The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]

26. 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.

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

27. 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).

28. 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

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.

29. 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".

30. 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*

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

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-reas."

"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."

31. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 989.50 grams (derived from semi solid paste in form of four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue coloured innerwear), carried by the noticee is therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said 01 gold bar weighing 989.50 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.**

32. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 989.50 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold paste in form of four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue coloured innerwear, 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

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

under it, the noticee attempted to smuggle the said gold of 989.50 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112 of the Act and I hold accordingly.

33. Accordingly, I pass the following Order:

O R D E R

- i) I order **absolute confiscation** of one gold bar weighing **989.50** grams having purity of 999.0 (24KT.) recovered/ derived from semi solid paste in form of four long strips wrapped with white adhesive tape containing gold paste concealed into the waist band of his blue-coloured jeans and one pouch stitched with his blue coloured innerwear, having Market value of **Rs.64,30,161/-** (Rupees Sixty Four Lakhs Thirty Thousand One Hundred and Sixty One only) and Tariff Value of **Rs.54,99,470/-** (Rupees Fifty Four Lakhs Ninety Nine Thousand Four Hundred and Seventy only), placed under seizure under Panchnama dated 03.02.2024 and seizure memo order dated 03.02.2024, 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. i.e. white adhesive tape in which five pouches were wrapped under seizure on the reasonable belief that the same was used for packing and concealment of the above-mentioned

OIO No:217/ADC/SRV/O&A/2024-25
F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25

gold bar, seized under panchnama dated 03.02.2024 and Seizure memo order dated 03.02.2024, under Section 119 of the Customs Act, 1962

iii) I impose a penalty of **Rs. 16,00,000/- (Rupees Sixteen Lakh Only)** on **Shri Patel Sohel Suleman** under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

34. Accordingly, the Show Cause Notice No. VIII/10-105/SVPIA-B/O&A/HQ/2024-25 dated 11.07.2024 stands disposed of.

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-105/SVPIA-B/O&A/HQ/2024-25 Date:01.01.2025
DIN: 20250171MN0000888D04

BY SPEED POST AD

To,
Mr. Patel Sohel Suleman,
Vataniya Khadki,Amod,
Bharuch, Gujarat -392140

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, CCO, Customs Ahmedabad Zone, Ahmedabad for uploading on official web-site i.e. sys-ccocusam@gov.in.
6. Guard File.