



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
 दूरभाष : (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-05/SVPIA-D/O&A/HQ/2024-25
B	कारणबता ओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-05/SVPIA-D/O&A/HQ/2024-25 dated: 04.04.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	128/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	28.08.2024
E	जारी करने की तारीख/ Date of Issue	:	28.08.2024
F	द्वारा पारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	Shri Injamamul Haque, Kanhayabari, Post-Bishanpur, PS-Kochadhaman, Kishanganj, Bihar, Pin-855101.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्रॉटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Shri Injamamul Haque S/o Shri Afsar Alam (herein after referred to as the 'passenger') residing at Kanhaiyabari, Post-Bishanpur, PS-Kochadhaman, Kishanganj, Pin-855101 holding Indian Passport bearing No. W3309764 arrived from Dubai to Ahmedabad by Spice-Jet Airlines Flight having number SG-16 at SVP International Airport, Ahmedabad on 09.11.2023. On the basis of suspicion, a cross sign was marked by the baggage scanning officer who has duty on belt. Therefore, the passenger was asked to scan the baggage on Red Channel and while scanning the baggage some suspicious image was observed by the red channel officer, hence, the officer of the Red Channel was asked to passenger to open the bag, the bag was opened by the passenger, in which there was three knives found and might be it is gold, the Customs Officers handed over to AIU officer for further investigation. Thorough baggage checking and personal checking of the passenger during the entire proceedings the consent of the panchas was taken by the AIU officer to present as independent witness in the said proceedings. Accordingly, in the presence of two panchas, the AIU officers asked about his identity, in reply the passenger identifies himself as Injamamul Haque, aged-29 years and shows his passport bearing number W3309764 and informed that he has travelled from Dubai to Ahmedabad by Spice-Jet Airlines, Flight No. SG-16, Boarding pass bearing Sr. No. 39. He was carrying one black coloured check-in bag and one hand bag with him.

Thereafter, in the presence of we the panchas, the AIU officers asked the passenger whether he is carrying dutiable goods or foreign currency or any restricted goods and whether wishes to declare anything before Customs Authorities, under Panchnama proceedings dated 09.11.2023 in presence of two independent witnesses, to which the said passenger replied negative. Now the AIU officers asked the passenger for personal search and examination of his baggage.

2.1 The AIU officers again asked the passenger if he had anything dutiable to declare to the Customs authorities, to which the said passenger again replied in negative. The AIU officers informed the

passenger that they would be conducting his personal search and detailed examination of his baggage. The said passenger was asked by officers whether he wished to be searched before a Gazetted officer or Magistrate for which he agreed to being searched by a Gazetted officer. Before conducting the search, the AIU officers offered their personal search to which he denied and said that it is not necessary and he has full faith in the officers.

Now, the officers put/ placed all the baggage in Baggage Scanning Machine (BSM) installed near the green channel in the Arrival Hall of Terminal 2 building for examination/ checking in presence of the panchas. On examination of hand baggage, the officers of the AIU didn't notice/ observe any suspicious/ unusual but in his check-in baggage, the officers noticed something wrong/ suspicious. Therefore, in presence of the panchas, the officers asked the passenger to open the bag. While bag was opened, it found that there are three knives hidden by the passenger viz. Shri Injamamul Haque.

The officers of the AIU in presence of the panchas asked about the knives which is high valued dutiable article, in reply he said that he don't know about the cost or high valued dutiable knives, the knives were handed over to me by the unknown person saying that to deliver the same to some other person in India, for this he has arranged my tickets to come from Dubai to India. Further, he said that the unknown person did not provide his contact number and the other person who will take these knives from me, but I was told when I will reach at Ahmedabad Airport, he will contact me and these knives will take from me. After, sustained interrogation and repeated questioning, Shri Injamamul Haque shows his innocence in this matter. Now, the officers of the AIU decided/ need to cut these knives in lathe machine, the panchas and passenger Shri Injamamul Haque, and the AIU officers leave the premises of Airport and reach at the premises of Lathe Machine. Here the knives cut and showed that rectangular solid object coated with Rhodium in each knife which appears like gold. Now, it needed to confirm that whether this is gold or not.

2.2 Thereafter, the Customs officers calls the Government Approved Valuer and informs him that three knives have been recovered from one passenger and hence, he needs to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informs the Customs officer that the testing of the said material is only possible at his workshop as gold must be extracted from such paste form by melting it and informs the address of his workshop.

2.3 Thereafter, two panchas along with the passenger Shri Inmamul Haque and AIU officers leave the Airport premises in a Government Vehicle and reach at the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G. Road, Ahmedabad-380006.

2.4 On reaching the above referred premises, the AIU officers introduce the panchas as well as the passenger to one person named Shri Kartikey Vasantrai Soni, Government Approved Valuer. Here, after weighing the said rectangular solid object coated with Rhodium on his weighing scale, Shri Kartikey Vasantrai Soni informs that the said material has gross weighing 292.35 Grams and photograph of the same is as under:



2.5 Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, started the process of extracting the gold from the Rhodium Coated Rectangle shape Rods. After completion of extraction, Government Approved Valuer informed that Gold Bar weighing 287.510 Grams having purity 999.0/ 24kt is derived from the 292.35 Grams of Rhodium Coated Rectangle shape Rods. The valuation

Certificate No. 859/2023-24 dated 09.11.2023 prepared by Shri Kartikey Vasantrai Soni. After testing and valuation, the Govt. Approved Valuer vide his Certificate No. 859/2023-24 dated 09.11.2023 confirmed that it is gold having purity 999.0/24 Kt. The Govt. Approved Valuer summarized that this gold bar is made up of 24kt gold having purity 999.0 weighing **287.510** grams derived from 292.350 grams of Rhodium Coated Rectangle shape Rods concealed inside the Knives, in check-in baggage of the passenger. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.15,55,672/-** (Rupees Fifteen Lakhs Fifty-Five Thousand Six Hundred and Seventy-Two only) and Market value is **Rs.17,83,137/-** (Rupees Seventeen Lakhs Eighty-Three Thousand and One Hundred Thirty-Seven only) which has been calculated as per the Notification No. 79/2023-Customs (N.T.) dated 31.10.2023 (gold) and Notification No. 81/2023-Customs (NT) dated 02.11.2023 (exchange rate).

2.6 The Photograph of recovered gold bar derived from these Rhodium Coated Rectangle shape Rods is as under:-



-The outcome of the said testing is summarized in below table.

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	287.510	999.0/24 Kt	17,83,137/-	15,55,672/-

3. The said pure gold of 24 kt having 999.0 purity retrieved from the Rhodium Coated Rectangle Shape Rods inside the check-in baggage of the passenger, weighing 287.510 Grams, have Tariff Value of Rs.15,55,672/- (Rupees Fifteen Lakhs Fifty-Five Thousand Six Hundred and Seventy-Two only) and Market value is Rs.17,83,137/- (Rupees Seventeen Lakhs Eighty-Three Thousand and One Hundred Thirty-Seven only). The said gold recovered from the passenger was attempted to be smuggled inside India with intent to evade payment of Customs duty and was a clear violation of the provisions of Customs Act, 1962. Thus, having a reasonable belief that the said gold Bar (1 piece) having weight 287.510 Grams was attempted to be smuggled by the passenger, were liable for confiscation under the provisions of the Customs Act, 1962; they were placed under seizure vide Panchnama dated 09.11.2023 under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation under Section 111 of the Customs Act, 1962 (Seizure Report dated 09.11.2023). Further, the gold, recovered from the passenger, was placed under seizure under section 110 of the Customs Act, 1962 vide Panchnama dated 09.11.2023 drawn by the Officer of Customs, AIU, at SVPI Airport, Ahmedabad.

The following travelling documents and identity documents of the passenger were recovered and withdrawn for further investigation: -

- (i) Copy of Passport No. W3309764 issued at Patna on 31.08.2022 valid up to 31.08.2032.
- (ii) Passenger Manifest of Spice-Jet Flight having number SG-16 dtd. 08.11.2023 (Dubai to Ahmedabad) depicting name of Shri Injamamul Haque.

4. The statement of the passenger was recorded on 09.11.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he arrived from Spice-Jet Flight having number SG-16 on 09.11.2023 having Sr. No. 39 and, having Passport No. W5454770, at Sardar Vallabhbhai Patel International Airport, Ahmedabad. Furthermore, the passenger accepted that the said Gold Bar (1 Piece) having weight 287.510 Grams which was derived from Rhodium Coated Rectangle Shaped Rods having gross weight 292.350 concealed inside knives put in check-in baggage not belonged to him. Under his

statement, the passenger admitted that the said gold is not purchased by him, he is just a carrier only he went to Dubai for searching a job as his broker assured him to provide job in Dubai with salary of Rs.35,000/- but almost two months passed and no job was offered to him, so, he decided to come back in India as his VISA also nearing to expire. At that time one person contacted him and arranged tickets from Dubai to India and given him one bag to hand over in India. He asked the person about the bag but he told me that nothing dangerous or illegal items is there in bag except three knives as the same is famous in Dubai and useful. As I was convinced and obliged as my ticket booked by him, I accepted to carry the bag and hand over the same in India at Ahmedabad Airport whoever will contact me at Airport on behalf of the person. But the same was clearly meant for commercial purpose and hence do not constitute bonafide baggage within the meaning of Section 79 of the Customs Act, 1962. Further, the said goods were also not declared before Customs by the pax. Further, he again confirmed the recovery of gold bar weighing 287.510 grams of 999.0/24 Kt. purity and its Tariff value at Rs.15,55,672/- (Rupees Fifteen Lakhs Fifty-Five Thousand Six Hundred and Seventy-Two only) and Market value is Rs.17,83,137/- (Rupees Seventeen Lakhs Eighty-Three Thousand and One Hundred Thirty-Seven only) from him during the course of Panchnama dated 09.11.2023.

5. Therefore, on the basis of facts narrated above, the said gold Bar (1 Piece) weighing 287.510 grams of 999.0/24 Kt purity having Tariff value at Rs.15,55,672/- and Rs.17,83,137/- (Market value), derived from 292.350 grams hidden/ concealed in the handle of the knives recovered from the passenger, appeared liable for confiscation, was placed under seizure under Panchnama dated 09.11.2023 as said gold totally weighing 287.510 grams seized under Panchnama dated 09.11.2023 was "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. It also appeared that the said pax has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 09.11.2023 under Section 108 of the Customs Act, 1962. He has committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962.

6. In view of the above, **Shri Injamamul Haque**, resident of at Kanhaiyabari, Post-Bishanpur, PS-Kochadhaman, Kishanganj, Pin-855101 holding Indian Passport bearing No. W3309764 arrived from Dubai to Ahmedabad by Spice-Jet Airlines Flight having number SG-16 at SVP International Airport, Ahmedabad on 09.11.2023, was called upon to show cause in writing to the Additional Commissioner of Customs, SVPI Airport, Ahmedabad having his office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad, as to why:

- i) The One Gold Bar, weighing **287.510** grams having purity 999.0 (24KT) recovered/ derived from gold capsule and transparent pouch weighing 292.350 grams, having Tariff Value of **Rs.15,55,672/-** (Rupees Fifteen Lakhs Fifty Five Thousand Six Hundred and Seventy Two only) and Market value is **Rs.17,83,137/-** (Rupees Seventeen Lakhs Eighty Three Thousand and One Hundred Thirty Seven only) placed under seizure under panchnama dated 09.11.2023 and seizure memo order dated 09.11.2023 should not be confiscated under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) The packing material i.e. Knives used for concealment of gold seized under panchnama 09.11.2023 should not be confiscated under Section 119 of the Customs Act, 1962; and
- iii) Penalty should not be imposed upon the passenger under Section 112(a) and 112(b) of the Customs Act, 1962.

Defence Reply and Personal Hearing:

7. Shri Injamamul Haque has not submitted written reply to the Show Cause Notice.

7.1. Shri Injamamul Haque was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but neither the Noticee or his representative appear for personal hearing on the given dates.

Discussion and Findings:

8. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

9. In the instant case, I find that the main issue to be decided is whether the 287.510 grams of 01 gold bar, obtained from the Rhodium Coated Rectangle Shape Rods inside the checked-in baggage, having Tariff Value of Rs.15,55,672/- (Rupees Fifteen Lakhs Fifty-Nine Thousand Two Hundred Nineteen Only) and Market Value of Rs.18,42,309/- (Rupees Eighteen Lakhs Fourty-Two Thousand Three Hundred Nine Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 09.11.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; the packing material used for packing and concealment of the seized goods, i.e. knives used for concealment of the said gold bar in the form of Rhodium Coated Rectangle Shape Rods inside the checked-in baggage, is liable for confiscation under Section 119 of the Act; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

10. I find that the Panchnama has clearly drawn out the fact that on the basis of suspicion, a cross sign was marked by the baggage scanning officer who has duty on belt. Therefore, the passenger was asked to scan the baggage on Red Channel and while scanning the baggage some suspicious image was observed by the red channel officer. Hence, the officer of the Red Channel asked the passenger to open the bag, the bag was opened by the passenger, in which there was three knives found and might be it is gold, the Customs Officers handed over to AIU officer for further investigation. The officers of the

AIU asked about the said three knives which is high valued dutiable article, in reply he said that he don't know about the cost of high valued dutiable knives, the knives were handed over to him by the unknown person saying that to deliver the same to some other person in India, for this he has arranged my tickets to come from Dubai to India.

11. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, after weighing the said rectangular solid object coated with Rhodium on his weighing scale, Shri Kartikey Vasantrai Soni informed that the said material grossly weighing 292.35 Grams. After completion of extraction, the Government Approved Valuer informed that Gold Bar weighing 287.510 Grams having purity 999.0/24kt is derived from the 292.35 Grams of Rhodium Coated Rectangle shape Rods concealed inside the Knives, in check-in baggage of the passenger. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.15,55,672/-** (Rupees Fifteen Lakhs Fifty-Five Thousand Six Hundred and Seventy-Two only) and Market value is **Rs.17,83,137/-** (Rupees Seventeen Lakhs Eighty-Three Thousand and One Hundred Thirty-Seven only). The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Tariff Value (Rs.)	Market Value (Rs.)
1.	Gold Bar	1	287.510	999.0/ 24 Kt	15,55,672/-	18,42,309/-

12. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 287.510 grams, derived from rectangular solid object coated with Rhodium recovered from Shri Injamamul Haque was seized vide Panchnama dated 09.11.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 287.510 grams of 1 gold bar obtained from the 292.35 Grams of rectangular solid object coated with Rhodium having Tariff Value of Rs.15,55,672/- and Market Value of

Rs.18,42,309/- carried by the passenger Shri Injamamul Haque 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 09.11.2023 under Section 108 of the Customs Act, 1962.

13. I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wanted to save Customs duty, he had concealed the same in his baggage with an intention to clear the gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

14. Further, the passenger has accepted that he had not declared the said rectangular solid object coated with Rhodium 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 1 gold bar, derived from rectangular solid object coated with Rhodium, ('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, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act,

1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

15. From the facts discussed above, it is evident that Shri Injamamul Haque had carried the said gold weighing 292.35 grams, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 287.510 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

16. It is seen that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 287.510 grams concealed by him, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It, is therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 287.510 grams, having Tariff Value of Rs.15,55,672/- and Market Value of Rs.18,42,309/- recovered and seized from the passenger vide Seizure

Order under Panchnama proceedings both dated 09.11.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

17. I find that the Noticee confessed of carrying the said gold of 287.510 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

18. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the

passenger did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bar weighing 287.510 grams, having Tariff Value of Rs.15,55,672/- and Market Value of Rs.18,42,309/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 09.11.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said gold bar weighing 287.510 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 provisions of Section 112 of the Customs Act, 1962.

19. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 287.510 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in his baggage. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

20. In view of the above discussions, I hold that the said gold bar weighing 287.510 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the Noticee in his statement dated 09.11.2023 stated that he has carried

the gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

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

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

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

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

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the

view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

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

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

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

25. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry Of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

26. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 287.510 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 287.510 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

27. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold bar weighing 287.510 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Dubai to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 287.510 grams, having purity 999.0 by concealment. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

28. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of One Gold Bar having purity 999.0 (24KT) derived from Rhodium Coated Rectangle Shaped Rods having gross weight 292.350 concealed inside knives put in check-in baggage, having Tariff Value of **Rs.15,55,672/-** (Rupees Fifteen Lakhs Fifty Five Thousand Six Hundred and Seventy Two only) and Market value is **Rs.17,83,137/-** (Rupees Seventeen Lakhs Eighty Three Thousand and One Hundred Thirty Seven only) placed under seizure under panchnama dated 09.11.2023 and seizure memo order dated 09.11.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- ii) I order absolute confiscation of packing material i.e. Knives used for concealment of gold seized under Panchnama dated 09.11.2023 and Seizure memo order dated 09.11.2023, under Section 119 of the Customs Act, 1962; and

iii) I impose a penalty of **Rs.5,50,000/-** (Rupees Five Lakhs Fifty Thousand Only) on Shri Injamamul Haque under the provisions of Section 112(a)(i) of the Customs Act, 1962.

29. Accordingly, the Show Cause Notice No. VIII/10-05/SVPIA-D/O&A/HQ/2024-25 dated 04.04.2024 stands disposed of.

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

F. No: VIII/10-05/SVPIA-D/O&A/HQ/2024-25 Date: 28.08.2024
DIN: 20240871MN0000999A5A

BY SPEED POST AD

To,
Shri Injamamul Haque,
Kanhayabari, Post-Bishanpur,
PS-Kochadhaman,
Kishanganj, Bihar, Pin-855101.

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- (v) Guard File.