



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-225/SVPIA-C/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-225/SVPIA-C/O&A/HQ/2023-24 dated: 26.03.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: 87/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	: 01.07.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 01.07.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: Shri Firoj Najir Tamboli, Palasdeo, Tah. Indapur, Pune- 413132, Maharashtra, India.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी 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 Firoj Najir Tamboli, (D.O.B: 17.02.1989) (hereinafter referred to as "the said passenger/ Noticee"), residential address as per passport is Palasdeo, Tah. Indapur, Pune- 413132, Maharashtra, India, holding Indian Passport No. M7864867, arrived by Thai Airways Flight No. TG 343 from Bangkok to Ahmedabad on 17.11.2023 (Seat No: 31 A) at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 18.11.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying one black coloured and one red coloured trolley bag.

2. The officers asked the passenger if he had anything to declare to the Customs, in reply to which he denied. The officers informed the passenger that he would be conducting his personal search and detailed examination of his baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/clothes. Thereafter the passenger, removed the metallic substances from his body such as mobile, purse etc., and after that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, However, no beep sound was heard, indicating there was nothing objectionable/ dutiable on his body/ clothes. Thereafter, the said passenger, panchas and the officers moved to the AIU office located opposite belt no.2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the

baggage of the passenger. The officers checked the baggage of the passenger, however nothing objectionable was found. Further, the officers scanned both the trolley bags of the passenger in X-ray baggage scanning machine (BSM) installed near the green channel counter at terminal-2 of SVPI, Ahmedabad in which a dark black yellow outline appeared in the middle border of the red coloured trolley bag. Now, the AIU officers thoroughly checked the said trolley bag from which black yellow coloured outline appears but nothing found inside the trolley bag. Further, the officers again scanned the said trolley bag after removing all the materials packed in the said trolley bag and then confirms that the dark black yellow outline was appearing in middle boarder of the red-coloured trolley bag. Thereafter, the officers found a metal wire coated with white rhodium concealed into the middle border of the said trolley bag. The officer pulled the said metal wire with the help of small hammer and removes it from the trolley bag. On being asked, the passenger agreed that the wire is made of pure gold coated with white rhodium

2.1 Thereafter, the AIU officer called the Government Approved Valuer and informed him that white coloured metal wire had been recovered from a passenger and the passenger had informed that it is made of gold coated with white rhodium 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 AIU Officer that the testing of the said material is only possible at his workshop as the gold wire has to be converted into gold bar by melting it and also informs the address of his workshop. Thereafter, the panchas along with the passenger and the 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-380 006. On reaching the above referred premises, the AIU officers introduced the panchas as well as the passenger to one person named Shri Kartikey Vasantraai Soni, Government Approved Valuer. Here, after weighing the white coloured metal wires on his weighing scale, Shri Kartikey Vasantraai Soni informed that the said wire recovered from Shri Firoj Najir Tamboli are gold wire and the same is weighing 293.750 grams.

2.2 Thereafter, he leads us to the furnace, which is nearby in his premise. Here, Shri Kartikey Vasantrai Soni started the process of converting the said white rhodium coated gold wire recovered from Shri Firoj Najir Tamboli into gold bar. The coated gold wire was put into the furnace and upon heating the said gold wire, it turns into liquid material. The said substance in liquid state is taken out of furnace, and poured into a mould and after cooling for some time, it becomes golden coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed vide certificate No. 881/2023-24 that the weight of the said gold bar was **292.430** grams which was derived from 293.750 grams said gold wire recovered from Shri Firoj Najir Tamboli. Now, the Government Approved Valuer, in presence of panchas, the passenger and the Officers started testing and valuation of the said golden coloured bar. After testing and valuation, the Govt. Approved Valuer confirms that it is 24 Kt. gold having purity 999.0. Now, the Govt. Approved Valuer summarizes that this gold bar is made up of 24 Kt. gold having purity 999.0 weighing 292.430 Grams having Tariff value of **Rs.15,59,219/-** (Rupees Fifteen Lakhs Fifty-Nine Thousand Two Hundred Nineteen Only) and Market value of **Rs.18,42,309/-** (Rupees Eighteen Lakhs Forty-Two Thousand Three Hundred Nine Only). The value of the gold bar has been calculated as per the Notification No. 82/2023-Customs (N.T.) dated 15.11.2023 (gold) and Notification No. 84/2023-Customs (N.T.) dated 16.11.2023 (exchange rate).

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	Market Value (Rs.)
1.	Gold Bar	1	292.430	24 Kt	18,42,309/-

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate No: 881/2023-24 dated 18.11.2023 given by Shri Kartikey Vasantrai Soni and in token of the

same, the Panchas and the passenger put their dated signature on the said valuation certificates.

3. The following documents produced by the passenger – Shri Firoj Najir Tamboli were withdrawn under the Panchnama dated 18.11.2023:

- (i) Copy of Passport No. M7864867 issued at Pune on 09.04.2015 and valid up to 08.04.2025.
- (ii) Copy of Aadhar Card bearing No.6630 6148 2878

4. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 292.430 grams, derived from white rhodium coated gold wire recovered from Shri Firoj Najir Tamboli was seized vide Panchnama dated 18.11.2023, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made thereunder.

5. A statement of Shri Firoj Najir Tamboli was recorded on 18.11.2023, under Section 108 of the Customs Act, 1962, wherein he inter alia stated that -

- (i) he is a school teacher in Pune, Maharashtra and lives with his wife, in a joint family at Palasdeo, Tah. Indapur, Pune-413132, Maharashtra.
- (ii) he went to Bangkok on 14.11.2023 and returned back on 17.11.2023 by Thai Airways Flight No. TG 343 from Bangkok to Ahmedabad; that he managed some money from share of his farming for purchase of gold; that he had never indulged in any smuggling activity in the past and this was first time he had carried gold;
- (iii) In Bangkok, the gold shopkeeper suggested me to buy gold from there and sell it in India. As the gold price is cheaper there so he suggested me to sell the same in India at higher rates to earn good profit. He also suggested me to convert the gold into wire form and conceal the same in the trolley bag to prevent Customs checking. He gave me a red coloured trolley bag wherein gold wire was concealed under panchanama dated 18.11.2023 weighted 292.43gms;
- (iv) he had been present during the entire course of the Panchnama dated 18.11.2023 and he confirmed the events narrated in the said panchnama drawn on 18.11.2023 at Terminal-2, SVPI Airport, Ahmedabad;
- (v) he was aware that smuggling of gold without payment of Customs duty is an offence; he was aware of the gold concealed in the form of wire in the middle boarder of red

coloured trolley bag but he did not make any declarations in this regard with an intention to smuggle the same without payment of Customs duty. He confirmed the recovery of Gold totally weighing 292.43 grams having purity 999.0/24 KT valued at Rs. 15,59,219/- (Tariff value) and Market value of Rs. 18,42,309/- from him under the Panchnama dated 18.11.2023; he had opted for green channel to attempt to smuggle the gold concealed in the form of wire in the middle boarder of red coloured trolley bag without paying Customs duty.

6. The above said gold bar weighing 292.43 Grams, tariff value of Rs.15,59,219/- (Rupees Fifteen Lakh Fifty-Nine Thousand Two Hundred Nineteen only) and market value of Rs. 18,42,309/- (Rupees Eighteen Lakh Forty-Two Thousand Three Hundred Nine Only only), recovered from Shri Firoj Najir Tamboli, was attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of metal wire coated with white rhodium in the middle boarder of red coloured trolley bag, which was clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 292.43grams which was attempted to be smuggled by Shri Firoj Najir Tamboli, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962; hence, the above said gold bar weighing 292.43grams derived from the metal wire coated with white rhodium 293.75 grams, was placed under seizure under the provision of Section 110 of the Customs Act, 1962 vide Seizure memo Order dated 18.11.2023.

7. In view of the above, Shri Firoj Najir Tamboli, residing at Palasdeo, Teh. Indapur, Pune- 413132, Maharashtra, India, holding Indian Passport No. M7864867, was called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at 2nd Floor, Customs House, Opp. Old High Court, Navrangpura, Ahmedabad-380009, as to why:

- (i) One Gold Bar weighing **292.43** Grams, purity 999.0/24kt, tariff value of **Rs.15,59,219/-** (Rupees Fifteen Lakh Fifty-Nine Thousand Two Hundred Nineteen only) and market value of **Rs.18,42,309/-** (Rupees Eighteen Lakh Forty Two Thousand Three Hundred Nine Only only), concealed in the form of metal wire coated with white rhodium in the middle

border of red coloured trolley bag carried by the passenger, and was placed under seizure under panchnama proceedings dated 18.11.2023 and Seizure Memo Order dated 18.11.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) The red-coloured trolley bag used for concealment of the said gold bar in the form of metal wire coated with white rhodium in the middle border of red coloured trolley bag, seized under panchnama dated 18.11.2023 and Seizure memo order dated 18.11.2023, 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 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

8. Shri Firoj Najir Tamboli has not submitted written reply to the Show Cause Notice.

9. Shri Firoj Najir Tamboli was given opportunity to appear for personal hearing on 19.06.2024; 21.06.2024 and 24.06.2024 but he did not appear for personal hearing on the given dates.

Discussion and Findings:

10. 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.

11. In the instant case, I find that the main issue to be decided is whether the 292.430 grams of 01 gold bar, obtained from the metal wire coated with white rhodium concealed in the middle border of red coloured trolley bag, having Tariff Value of Rs.15,59,219/- (Rupees Fifteen Lakhs Fifty-Nine Thousand Two Hundred Nineteen Only) and Market Value of Rs.18,42,309/- (Rupees Eighteen Lakhs Forty-Two Thousand Three Hundred Nine Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 18.11.2023, 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. red-coloured trolley bag used for concealment of the said gold bar in the form of metal wire coated with white rhodium in the middle border of red coloured trolley bag, 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.

12. I find that the Panchnama has clearly drawn out the fact that on the basis of suspicious movement, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 18.11.2023. The officers asked the passenger if he had anything to declare to the Customs, in reply to which he denied. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine, and while he passed through the DFMD Machine, no beep sound was heard, indicating there was nothing objectionable/ dutiable on his body/ clothes. The officers scanned both the trolley bags of the passenger in X-ray baggage scanning machine (BSM), in which a dark black yellow outline appeared in the middle border of the red coloured trolley bag. The AIU officers thoroughly checked the said trolley bag from which black yellow coloured outline appears but nothing found inside the trolley bag. Further, the officers again scanned the said trolley bag after removing all the materials

packed in the said trolley bag and then confirmed that the dark black yellow outline was appearing in middle border of the red-coloured trolley bag. Thereafter, the officers found a metal wire coated with white rhodium concealed into the middle border of the said trolley bag. The officer pulled the said metal wire with the help of small hammer and removed it from the trolley bag. On being asked, the passenger admitted that the wire is made of pure gold coated with white rhodium

13. It is on record that Shri Kartikey Vasantryai Soni, the Government Approved Valuer, after weighing the said white coloured metal wires on his weighing scale, informed that the said wire recovered from Shri Firoj Najir Tamboli are gold wire and the same is weighing 293.750 grams (gross). Shri Kartikey Vasantryai Soni after completion of the process, informed that the weight of the said gold bar is **292.430** grams (net) which was derived from 293.750 grams of said gold wire recovered from Shri Firoj Najir Tamboli. After testing and valuation, the Govt. Approved Valuer confirms that it is 24 Kt. gold having purity 999.0, having Tariff value of **Rs.15,59,219/-** (Rupees Fifteen Lakhs Fifty-Nine Thousand Two Hundred Nineteen Only) and Market value of **Rs.18,42,309/-** (Rupees Eighteen Lakhs Forty-Two Thousand Three Hundred Nine 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	292.430	999.0/24 Kt	15,59,219/-	18,42,309/-

Accordingly, the gold bar having purity 999.0/24 Kt. weighing 292.430 grams, derived from white rhodium coated gold wire recovered from Shri Firoj Najir Tamboli was seized vide Panchnama dated 18.11.2023, under the provisions of Customs Act 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under Customs Act 1962 read with Rules and Regulation made thereunder.

I also find that the said 292.430 grams of 1 gold bar obtained from the 293.750 Grams of gold wire having Tariff Value of

Rs.15,59,219/- and Market Value of Rs.18,42,309/- carried by the passenger Shri Firoj Najir Tamboli 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 18.11.2023 under Section 108 of the Customs Act, 1962.

14. 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.

15. Further, the passenger has accepted that he had not declared the said gold wire 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, 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.

16. From the facts discussed above, it is evident that Shri Firoj Najir Tamboli had carried the said gold weighing 293.750 grams, (wherefrom 292.430 grams of 1 gold bar having purity 999.0 recovered on the process of extracting gold from Wire) while arriving from Bangkok 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 292.430 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.

17. 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 292.430 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 292.430 grams, having Tariff Value of Rs.15,59,219/- and Market Value of Rs.18,42,309/- recovered and seized from the passenger vide Seizure

Order under Panchnama proceedings both dated 18.11.2023 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.

18. I find that the Noticee confessed of carrying the said gold of 293.750 grams (gross weight) 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.

19. 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 292.430 grams, having Tariff Value of Rs.15,59,219/- and Market Value of Rs.18,42,309/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 18.11.2023. 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 two gold bar weighing 292.430 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.

20. 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 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 292.430 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 bar 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.

21. In view of the above discussions, I hold that the said gold bar weighing 292.430 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 18.11.2023 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.

22. 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."

23. 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.

24. 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).

25. 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.

26. 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”.

27. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 292.430 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 292.430 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.

28. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold bar weighing 292.430 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Bangkok to Ahmedabad. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 292.430 grams by concealing having purity 999.0. 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:

29. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of One Gold Bar weighing **292.43** Grams, purity 999.0/24kt, tariff value of **Rs.15,59,219/-** (Rupees Fifteen Lakh Fifty-Nine Thousand Two Hundred Nineteen only) and market value of **Rs.18,42,309/-** (Rupees Eighteen Lakh Forty Two Thousand Three Hundred Nine Only only), concealed in the form of metal wire coated with white rhodium in the middle border of

red coloured trolley bag carried by the passenger, and was placed under seizure under panchnama proceedings dated 18.11.2023 and Seizure Memo Order dated 18.11.2023, 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 the red-coloured trolley bag used for concealment of the said gold bar in the form of metal wire coated with white rhodium in the middle border of red coloured trolley bag, seized under panchnama dated 18.11.2023 and Seizure memo order dated 18.11.2023, under Section 119 of the Customs Act, 1962; and
- iii) I impose a penalty of **Rs.6,00,000/-** (Rupees Six Lakhs Only) on Shri Firoj Najir Tamboli under the provisions of Section 112(a)(i) of the Customs Act, 1962.

30. Accordingly, the Show Cause Notice No. VIII/10-225/SVPIA-C/O&A/HQ/2023-24 dated 26.03.2024 stands disposed of.


(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-225/SVPIA-C/O&A/HQ/2023-24 Date: 01.07.2024
DIN: 20240771MN000000A3A5

BY SPEED POST AD

To,
Shri Firoj Najir Tamboli,
Palasdeo, Tah. Indapur,
Pune- 413132, Maharashtra, India.

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.