



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुरानेहाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-273/SVPIA-C/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-273/SVPIA-C/O&A/HQ/2023-24 dated: 17.04.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	133/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	28.08.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	28.08.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानाम और पता / Name and Address of Importer / Passenger	:	Shri Babar Mahmud Riyaj Javid, 310, Ulghar, Siludi, Bharuch- 393135.
(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 न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Shri Babar Mohammad Riyaj Javid, (DOB: 13.02.1995), (hereinafter referred to as "the said passenger/ Noticee"), residential address as per passport is 310, Ulghar, Siludi, Bharuch- 393135, Gujarat, holding Indian Passport No. X5934381, arrived by Spice jet Flight No. SG 16 from Dubai to Ahmedabad on 12.12.2023 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of Intelligence, the passenger was intercepted by the officers of Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 12.12.2023 in presence of two independent witnesses for passenger's personal search and examination of his baggage. The passenger was carrying a Red coloured trolley bag and a black coloured shoulder bag as Checked-in baggage.

2. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The officers informed the passenger that 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 kept it in a tray placed on the table there. After that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, no beep sound was heard indicating that nothing objectionable/ dutiable was on his body/ clothes. Thereafter, the officers of AIU, the said passenger and the panchas move 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. During examination, the passenger Shri Babar Mahmad Riyaj Javid is examined thoroughly by the AIU officers. The AIU officers asked the said passenger to change all his clothes. During examination of his clothes, the officers find that the underwear and vest worn by the passenger is unusually heavy. On further examination, it was found that the said underwear and vest has two layers stitched on the inner side. The officers in presence of the panchas and the passenger cut opens the stitched layer of underwear and vest wherein a yellow paste like material is found spread between the two layers of the said underwear and vest. On being asked, the passenger Shri Babar Mahmad Riyaj Javid tells the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

2.1 The officers informed the panchas that the yellow paste like substance spread in the underwear and vest recovered from Shri Babar Mahmad Riyaj Javid contains semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad - 380006. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said underwear and vest having semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 1558.00 grams (weight inclusive of underwear and vest). Thereafter, the government approved valuer tells the officers in presence of we the panchas and the said passenger that first he has to burn the said underwear and vest for making ash of it. Then, he takes the said underwear and vest recovered from the passenger and start the process of burning it and makes ash weighing 801.410 gms of it.

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni, started the process of converting the ash of the said semi solid substances into solid gold. After completion of the procedure, Government Approved Valuer informed that One (1) Gold Bar totally weighing **780.810** Grams having purity 999.0/ 24kt is derived from the said underwear and vest recovered from the passenger containing semi solid substance consisting of gold paste and chemical mix. After testing the said gold bar, the Government Approved Valuer confirmed that it was pure gold. Shri Soni Kartikey Vasantrai vide certificate No. 974/2023-24 dated 12.12.2023 certified that the extracted gold bar is having purity 999.0/24kt and tariff value of **Rs.43,37,688/-** (Rupees Forty-Three Lakhs Thirty-Seven Thousand Six Hundred Eighty-Eight Only) and Market value of **Rs.49,37,842/-** (Rupees Forty-Nine Lakhs Thirty-Seven Thousand Eight Hundred Forty-Two Only). The value of the gold bar has been calculated as per the Notification No. 89/2023-Customs (N.T.) dated 28.11.2023 (gold) and Notification No. 90/2023-Customs (N.T.) dated 07.12.2023 (exchange rate). The photograph of the extracted gold bar is as follows:

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 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 Babar Mahmad Riyaj Javid were withdrawn under the Panchnama dated 12.12.2023:

- i) Copy of Passport No. X5934381 issued at Surat on 28.03.2023 valid up to 27.03.2033.
- ii) Boarding pass of Spice jet Flight SG-16, Seat No. 23C from Dubai to Ahmedabad arrived on 12.12.2023.

4. Accordingly, one gold bar having purity 999.0/24 Kt. weighing 780.810 grams, derived from the semi solid substance comprising of gold and chemical mix, recovered from Shri Babar Mahmad Riyaj Javid,

was seized vide Panchnama dated 12.12.2023, 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.

5. A statement of Shri Babar Mahmad Riyaj Javid was recorded on 12.12.2023, under Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that:-

- (i) he works as a property dealer in Bharuch and lives with his mother and younger sister;
- (ii) he went to Dubai on 05.12.2023 and returned back on 12.12.2023 by Spice jet Flight No. SG 16 from Dubai to Ahmedabad; that he purchased the gold from his own source of income and borrowed some money from friends residing at Dubai; that he had never indulged in any smuggling activity in the past and this was first time he had carried gold;
- (iii) In Dubai, he purchased underwear and vest wherein gold was concealed between the layers; that the gold bar derived/recovered from the said paste by the goldsmith under panchanama dated weighted 780.810 gms;
- (iv) he had been present during the entire course of the Panchnama dated 12.12.2023 and he confirmed the events narrated in the said panchnama drawn on 12.12.2023 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 layers of his underwear and vest 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 780.810 grams having purity 999.0/24 Kt, from him under the Panchnama dated 12.12.2023; he had opted for green channel to attempt to smuggle the gold hidden in the layers of his underwear and vest without paying Customs duty.

6. The above said gold bar weighing 780.810 grams, recovered from Shri Babar Mahmad Riyaj Javid, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the underwear and vest in the form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 780.810 grams which was attempted to be smuggled by Shri Babar Mahmad Riyaj Javid, liable for confiscation as per the provisions of Section 111 of the Customs

Act, 1962. Hence, the above said gold bar weighing 780.810 grams derived from the semi solid gold paste, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 12.12.2023.

7. In view of the above, **Shri Babar Mahmad Riyaj Javid** S/o Shri Mohammad Moosa, residing at 310, Ulghar, Siludi, Bharuch- 393135, Gujarat, was called upon to show cause in writing to the Additional Commissioner of Customs, having his office located at 2nd Floor, Custom House, Navrangpura Ahmedabad, as to why:

- (i) One Gold Bar weighing **780.810** grams having purity 999.0/24 Kt. and having tariff value of **Rs.43,37,688/-** and Market value of **Rs.49,37,842/-**, derived from semi solid gold paste concealed between the stitched layers of the underwear and vest worn by the passenger and placed under seizure under panchnama proceedings dated 12.12.2023 and Seizure Memo Order dated 12.12.2023, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) Penalty should not be imposed upon the passenger, Shri Babar Mahmad Riyaj Javid under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defence Reply and Personal Hearing:

8. Shri Babar Mahmad Riyaj Javid has not submitted written reply to the Show Cause Notice.

9. Shri Babar Mahmad Riyaj Javid was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but neither the Noticee nor his representative appear for personal hearing on the given dates.

Discussion and Findings:

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 780.810 grams of 01 gold bar, recovered/ derived from the underwear and vest recovered from the passenger containing semi solid substance consisting of gold paste and chemical mix, having Tariff Value of Rs.43,37,688/- (Rupees Fourty-Three Lakhs Thirty-Seven Thousand Six Hundred Eighty-Eight Only) and Market Value of Rs.49,37,842/- (Rupees Fourty-Nine Lakhs Thirty-Seven Thousand Eight Hundred Fourty-Two Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 12.12.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.

12. I find that the Panchnama has clearly drawn out the fact that on the basis of Intelligence, the passenger was intercepted by the officers of Air Intelligence Unit (AIU), SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 12.12.2023. The officers asked the passenger whether he was carrying any contraband/ dutiable goods in person or in baggage to which he denied. The passenger Shri Babar Mahmad Riyaj Javid was examined thoroughly by the AIU officers. The AIU officers asked the said passenger to change all his clothes. During examination of his clothes, the officers find that the underwear and vest worn by the passenger is unusually heavy. On further examination, it was found

that the said underwear and vest has two layers stitched on the inner side. The officers in presence of the panchas and the passenger cut opens the stitched layer of underwear and vest wherein a yellow paste like material is found spread between the two layers of the said underwear and vest. On being asked, the passenger Shri Babar Mahmad Riyaj Javid told the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix weighing 801.410 grams (gross).

13. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, weighed the said underwear and vest wherein a yellow paste like material is found spread between the two layers of the said underwear and vest, which was weighing 801.410 grams. After completion of extraction, the Government Approved Valuer informed that Gold Bar weighing **780.810** Grams having purity 999.0/ 24kt is derived from the 801.410 Grams of said underwear and vest wherein a yellow paste like material is found spread between the two layers of the said underwear and vest ('**the said gold/ gold bar**' for short). Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.43,37,688/-** (Rupees Sixteen Lakhs Thirty Thousand Five Hundred One only) and Market value is **Rs.49,37,842/-** (Rupees Fourty-Nine Lakhs Thirty-Seven Thousand Eight Hundred Fourty-Two only). The details of the Valuation of the said gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Tariff Value (Rs.)	Market Value (Rs.)
1.	Gold Bar	1	780.810	999.0/ 24 Kt	43,37,688/-	49,37,842/-

14. Accordingly, the said gold bar having purity 999.0/ 24 Kt. weighing 780.810 grams, recovered from Shri Babar Mahmad Riyaj Javid was seized vide Panchnama dated 12.12.2023, 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 780.810 grams of 1 gold bar obtained from the 801.410 Grams, having Tariff Value of Rs.43,37,688/- and Market Value of Rs.49,37,842/- carried by the passenger Shri Babar Mahmad Riyaj Javid 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 12.12.2023 under Section 108 of the Customs Act, 1962.

15. I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wanted to save Customs duty, he had concealed the same in his clothes, i.e. underwear & vest, 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.

16. Further, the passenger has accepted that he had not declared the said gold concealed by him, on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said 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.

17. From the facts discussed above, it is evident that Shri Babar Mahmad Riyaj Javid had carried the said gold weighing 780.810 grams, while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24Kt/999.00 purity totally weighing 780.810 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.

18. 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 780.810 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 780.810 grams, having Tariff Value of Rs.43,37,688/- and Market Value of Rs.49,37,842/- recovered and seized from the passenger vide Seizure

Order under Panchnama proceedings both dated 12.12.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival at the Customs Airport. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

19. I find that the Noticee confessed of carrying the said gold of 780.810 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.

20. 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 780.810 grams, having Tariff Value of Rs.43,37,688/- and Market Value of Rs.49,37,842/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 12.12.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said gold bar weighing 780.810 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.

21. 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 780.810 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in his clothes, i.e. underwear & vest. 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.

22. In view of the above discussions, I hold that the said gold bar weighing 780.810 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 12.12.2023 stated that he has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the said gold was carried by the Noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

23. 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."

24. 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.

25. 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).

26. 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.

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

28. Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 780.810 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 780.810 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.

29. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold bar weighing 780.810 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 780.810 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.

30. Accordingly, I pass the following Order:

ORDER

- i) I order absolute confiscation of One gold bar weighing 780.810 grams having purity of 999.0 (24 Kt.) recovered/derived from underwear and vest, wherein a yellow paste like material was found spread between the two layers of the

said underwear and vest, and was placed under seizure under the Panchnama proceedings dated 12.12.2023, having Market Value at **Rs.49,37,842/-** (Rupees Fourty-Nine Lakhs Thirty-Seven Thousand Eight Hundred Fourty-Two only) and Tariff Value at **Rs.43,37,688/-** (Rupees Fourty-Three Lakhs Thirty-Seven Thousand Six Hundred Eighty-Eight Only), placed under seizure under Panchnama dated 12.12.2023 and seizure memo order dated 12.12.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

ii) I impose a penalty of **Rs.16,00,000/-** (Rupees Sixteen Lakhs Only) on Shri Babar Mahmad Riyaj Javid under the provisions of Section 112(a)(i) of the Customs Act, 1962.

31. Accordingly, the Show Cause Notice No. VIII/10-273/SVPIA-C/O&A/HQ/2023-24 dated 17.04.2024 stands disposed of.

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

F. No: VIII/10-273/SVPIA-C/O&A/HQ/2023-24 Date: 28.08.2024

DIN: 20240871MN000000F9D0

BY SPEED POST AD

To,

Shri Babar Mahmad Riyaj Javid,
310, Ulghar, Siludi,
Bharuch- 393135.

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.